

OPTION AND LEASE AND EASEMENT FOR A WIND ENERGY PROJECT

This Option and Lease and Easement for a Wind Energy Project ("Agreement") is dated this 29 day of June, 2020, and made effective on the date on which COMPANY signs the Agreement (the "Effective Date"), between **Julie A. Upah, as Trustee of the Vivian G. Cutler Trust** ("OWNER"), and **Salt Creek Wind LLC**, a Delaware limited liability company, and its assigns (herein collectively "COMPANY") based on the following terms and conditions:

ARTICLE I **DEVELOPMENT PERIOD**

1. **Development Period.** During the Development Period (as defined in Article I, Section 2 below), OWNER hereby grants to COMPANY an exclusive option to lease for wind energy purposes (as defined in Article II, Section 2) the real property of OWNER located in the County of Tama, State of Iowa as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). During the Development Period, COMPANY shall also have the exclusive right to study the feasibility of wind energy conversion on the Property. Such study rights shall include installation of equipment for the studies of wind speed, wind direction and other meteorological data and the extraction of soil samples using a drilling rig or otherwise, together with a reasonable right of access to, from and across the Property in connection therewith.

2. **Development Period.** The "Development Period" shall be for a term commencing on the Effective Date and continuing for (i) the remainder of the calendar month in which the Effective Date occurs, and (ii) the next succeeding twelve (12) consecutive calendar months, subject to extension for up to four (4) additional one-year terms as provided in Article I, Section 3, below.

3. **Consideration.** COMPANY shall pay to OWNER within forty-five (45) days of the Effective Date, an amount equal to Six Dollars (\$6.00) per acre of the Property or Five Hundred Dollars (\$500), whichever is greater, which will be full payment for the period of (i) the remainder of the calendar month in which the Effective Date occurs, and (ii) the next succeeding twelve (12) consecutive calendar months. COMPANY may extend the Development Period for up to four (4) additional one-year terms by paying to OWNER within thirty (30) days after the end of the then-current Development Period an amount equal to Three Dollars (\$3.00) per acre of the Property or Five Hundred Dollars (\$500.00), whichever is greater, for each additional one-year term; and upon making such payment the Development Period shall automatically be deemed so extended as if the same had been continuously in effect. Payments to extend the Development Period will discontinue on the earlier of the Lease Effective Date (as defined in Article I, Section 5) or the termination of this Agreement. COMPANY, at its sole option, may terminate this Agreement at any time during the Development Period upon thirty (30) days' written notice to OWNER. On termination of the Development Period, neither party shall have any further obligation or liability to the other.

4. **Memorandum of Option and Lease.** OWNER agrees to execute and deliver to COMPANY the Memorandum of Option and Lease and Easement for a Wind Energy Project attached to this Agreement as Exhibit B (the "Memorandum of Option and Lease"), and COMPANY shall, at its expense, cause the same to be recorded with the recorder of deeds for the county in which the Property is located. OWNER hereby expressly consents and agrees that, in the

event COMPANY exercises its option to lease the Property as herein provided, COMPANY shall be authorized to execute and record the Notice of Commencement of Lease attached to the Memorandum of Option and Lease, without further authorization or other action on the part of OWNER.

5. **Exercise of Option.** COMPANY may exercise its option to lease the Property by giving written notice to OWNER at any time prior to the termination of the Development Period, and the term of the Lease (as defined in Article II, Section 1 below) shall commence on the date such notice is given, or such other date within the then-current Development Period as COMPANY may specify in such notice (the "Lease Effective Date").

6. **Local Company Representative.** Upon COMPANY exercising its option to lease the Property, COMPANY shall notify OWNER of the name and contact information of a representative for the COMPANY ("Local Company Representative") to facilitate communication under this Lease.

7. **Condition of Property.** OWNER hereby agrees that during the Development Period, OWNER will not, without the prior written consent of COMPANY and such consent will not be unreasonably withheld (i) dispose of, grant, license, or lease any interest in the Property, (ii) permit to be placed on or with respect to any part of the Property any restrictions, covenants, conditions, easements, licenses, permits, encroachments, leases or any similar matter, (iii) seek any zoning, platting, subdivision or other change affecting the use of the Property, (iv) construct any new improvements or make any material alteration on the Property, or (v) take any other action which would cause any representation made by OWNER under this Agreement untrue, in a material adverse manner, before the Lease Effective Date or termination.

ARTICLE II **LEASE**

1. **Lease.** In the event COMPANY exercises its option to lease the Property, then commencing on the Lease Effective Date, OWNER shall lease to COMPANY and COMPANY shall lease from Owner the Property (the "Lease") on the terms herein provided. Upon COMPANY exercising the option to lease, OWNER agrees to sign any documentation reasonably requested by COMPANY to evidence that the option has been exercised and the leasehold and easement rights set forth herein have been granted.

2. **Purpose of Lease.** The Lease shall be for wind energy purposes and COMPANY shall have the exclusive right to use the Property for wind energy purposes. OWNER and COMPANY acknowledge and agree that nothing herein is deemed to construe an agricultural use or purpose of any kind by COMPANY. For purposes of this Lease, "wind energy purposes" means those activities related to using the Property as part of a wind-powered generating facility (the "Project"), with any and all activities related thereto, including, without limitation,

(a) Converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted;

(b) Developing, constructing, reconstructing, repowering, erecting, installing, improving, replacing, relocating and removing from time to time, and using, maintaining, repairing, operating and monitoring, the following, for the benefit of one or more projects: (i) wind turbines, wind energy conversion systems and wind power generating facilities (including associated towers, foundations, support structures, footings, and other necessary structures and equipment), in each case of any type or technology (collectively, "Wind Turbines"); (ii) power collection, distribution and transmission facilities, including above and below ground electrical lines no greater than 161kV on monopole structures, wires and cables, conduit, footings, foundations, vaults, junction boxes, power conditioning equipment, and above-ground transformers at each Wind Turbine location; (iii) control, communications and radio relay systems and telecommunications equipment, including radios, fiber, wires, cables, conduit and poles; (iv) roads (including, but not limited to, the right to improve existing roads or to build new roads to facilitate access to the Wind Turbines and related facilities constructed, or to be constructed, in the Project), culverts and erosion control facilities; (v) crane pads and staging areas reasonably necessary for the installation and maintenance of the Wind Turbines and all the other improvements; (vi) warning, safety, identification or directional signs; (vii) fences, gates and other safety and security protection facilities;; and (viii) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing (all of the foregoing, including the Wind Turbines, are collectively referred to as "Windpower Facilities"); and

(c) Undertaking any other activities reasonably necessary or convenient in connection with accomplishing any of the foregoing purposes or for the benefit of one or more Projects, including conducting surveys, installation of temporary equipment for the studies of wind speed, wind directions and other meteorological data, and environmental, biological, cultural, geotechnical and other tests, including geotechnical drilling and studies.

(d) without limiting any of the foregoing, OWNER hereby grants to COMPANY the following easements (collectively, the "Operations Easements") on, over, under and across the Property for the benefit of COMPANY and its successors and assigns and for the benefit of the Projects and of COMPANY, and any of its affiliates', successors' or assigns', energy generation projects:

i. An exclusive easement for the free and unobstructed flow of wind over and across the Property and the right to use, capture, and convert the wind for energy generation.

ii. A non-exclusive easement for vehicular (including cranes and other heavy construction equipment) and pedestrian ingress, egress and access to, from and across the Property and adjacent lands 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 COMPANY or anyone else may construct from time to time on any portion of the Property. The foregoing rights shall include rights to construct, maintain, improve, rebuild, relocate or widen new and existing roads, and to perform temporary earthmoving as reasonably necessary to build suitable access and construction routes for the Project.

iii. An exclusive easement to install, maintain, repair, replace, repower, relocate and operate on the Property multiple (i) underground and/or above-ground transmission, distribution and collection cables (including fiber optic cables), conduits, wire and lines for the transmission of electrical energy to and from the Property, (ii) underground and/or above-ground communication cables (including fiber optic cables), conduits, wire and lines for the transmission of communications related to COMPANY's permitted uses of the Property to and from the Property, (iii) power conditioning equipment, energy storage equipment and transformers, and (iv) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing.

iv. An exclusive easement, right and entitlement over, across and under the Property for any audio, visual, view, light, noise, sound, vibration, air turbulence, wake, shadow flicker, electromagnetic, television reception and any other effect of any kind whatsoever, and for ice or other weather created hazards, resulting directly or indirectly from or caused by the operation of Windpower Facilities by COMPANY or any of its respective affiliates, successors and assigns. OWNER, for itself and any OWNER affiliates or any of their principals, employees, agents, licensees of any tier or invitees ("Related Persons"), does hereby waive, remise and release any first party right, claim or cause of action that it may now have or that it may have in the future against COMPANY or its respective affiliates, successors and assigns, as a direct or indirect result of any of the effects or hazards described above; provided, however, that this waiver and release shall not apply to any claims against OWNER made by third parties not described in this sentence.

v. An exclusive easement on, over, across or under the Property for any encroachment or overhang of any Windpower Facilities now or hereafter constructed by COMPANY or any affiliate thereof or their respective successors and assigns, as part of any Project.

vi. A non-exclusive easement on, over, across and under any property adjacent to the Property that is owned or controlled by OWNER, to be used as necessary for ingress, egress and access in connection with the construction, operation and maintenance of the Windpower Facilities or any Project.

The Operations Easements are easements in gross and are personal to COMPANY for the benefit of COMPANY and its successors and assigns, as owner of the Operations Easements, in connection with its development of energy generation facilities on the Property and on real properties adjacent to or in the vicinity of the Property. The Operations Easements shall run with the Property and inure to the benefit of and be binding upon OWNER and the holder of the respective Operations Easements and their respective successors and assigns, and all persons

claiming under them. No act or failure to act on the part of COMPANY, a sublessee or the holder of the Operations Easements shall be deemed to constitute an abandonment, surrender or termination thereof, except upon recordation by the holder of a quitclaim deed specifically conveying the Operations Easements back to OWNER. Nonuse of the Operations Easements shall not prevent the future use of the entire scope of the Operations Easements if they are later needed. No use of or improvement to the Property or any lands benefited by the Operations Easements which is permitted under the terms of this Lease, and no transfer of the Operations Easements which is permitted under the express terms of this Lease, shall, separately or in the aggregate, constitute an overburdening of the Operations Easements.

(e) OWNER understands COMPANY may, from time to time, approach OWNER about acquiring from OWNER additional exclusive rights and or exclusive easements to install, maintain, repair, replace, repower, relocate and operate on the Property, facilities and or equipment necessary for the operation and function of the Windpower Facilities, including but not limited to, an equipment laydown area, an operations building, a project substation with transformers, switchgear and all other equipment necessary to interconnect to the transmission grid, an overhead transmission line greater than 161 kV, energy firming and storage equipment, and permanent meteorological towers. OWNER agrees to be obligated to meet with COMPANY, in a timely fashion, to listen to and seriously consider any such request or offers for additional rights or easements and to negotiate in good faith compensation for such additional rights.

3. **Term of Lease.** The initial term of the Lease shall be twenty-five (25) years from the Lease Effective Date (the "Initial Term"), subject to extension as provided in Section 4 of this Lease.

4. **Option to Renew Lease.** COMPANY shall have the right to extend the term of the Lease by written notice to OWNER no later than thirty (30) days prior to the expiration of the then current term (i) for an additional fifteen (15) year period commencing upon the expiration of the Initial Term, and (ii) for an additional ten (10) year period commencing upon the expiration of the aforementioned fifteen (15) year period (each such additional term, a "Renewal Term"), on the same terms and conditions as in effect during the Initial Term.

5. **Payments.** COMPANY shall pay to OWNER the following:

5.1 **Exercise of Option Payment.** In consideration of COMPANY exercising the Lease option, COMPANY shall pay to OWNER a one-time payment equal to the greater of One Thousand Dollars (\$1,000) or Three Dollars (\$3.00) per acre of the Property, unless the Property is less than 40 acres, in which event the payment shall be equal to Five Hundred Dollars (\$500). COMPANY shall make this payment within forty-five (45) days after the Lease Effective Date.

5.2 **Fees During Construction Period.** For the period commencing on the Lease Effective Date and continuing until the Operations Date (as defined below), COMPANY shall pay to the OWNER an annual fee equal to Three Dollars (\$3.00) per acre of the Property or Five Hundred Dollars (\$500), whichever is greater, which shall be due within forty-five (45) days after the first anniversary of the Lease Effective Date and each anniversary of the Lease Effective

Date until the earlier of the Operations Date or the termination of this Lease. Any such payment for partial years shall be prorated.

5.3 **Turbine Operating Fees.** In the event that one or more Wind Turbines are installed on the Property, COMPANY shall pay to OWNER an annual "Turbine Operating Fee", for the period commencing on the date (such date, the "Operations Date") that electricity from such Wind Turbine(s) is first sold (excluding the initial period when the Wind Turbine is generating electricity as part of its initial performance testing protocol), and for so long as such Wind Turbine(s) remains on the Property (the date of removal of such turbine, the "Removal Date"), equal to the greater of the following (subject to Section 5.7):

(i) an amount equal to the nameplate Wind Turbine capacity installed on the Property multiplied by the per megawatt amount defined below (the "Annual Megawatt Multiplier"). For the period commencing on the Operations Date, the Annual Megawatt Multiplier shall be Three Thousand Dollars (\$3,000) per megawatt per year, and on each successive anniversary of the Operations Date thereafter, the Annual Megawatt Multiplier shall increase by the Escalation Rate as defined in Section 5.10 below. This amount shall be calculated each year and paid as the "Annual Operating Fee"; or

(ii) an amount calculated by taking the annual Gross Revenue (as defined below) actually received by the COMPANY divided by the total number of Wind Turbines in the Project multiplied by the number of Wind Turbines installed on the Property multiplied by the percentage amount shown in Table 1 for the applicable period (the "Royalty Percentage"). The parties hereto agree that the Royalty Percentage shall only be applicable where COMPANY is selling the power generated at the Project at wholesale to a third party purchaser (e.g. a utility selling power generated by the Project at retail to customers would be exempt from paying the Royalty Percentage).

Table 1

Lease Year	Royalty Percentage
*1-14	Two and One-Half Percent (2.5%)
15-24	Three Percent (3.0%)
25+	Four Percent (4.0%)

*This time period shall include the first partial calendar year following the Operations Date and the following fourteen full calendar years.

The Annual Operating Fee shall be paid in quarterly installments due within forty-five (45) days after the last day of each quarter, until the Removal Date. Within forty-five (45) days after the first anniversary of the Operations Date, and annually thereafter within forty-five (45) days after each successive anniversary, until the Removal Date, COMPANY shall determine the amount (if any) by which the sum calculated under Section 5.3 (ii), for the preceding calendar year, exceeds the sum paid to OWNER as the Annual Operating Fee (the "TRUE UP AMOUNT"), and COMPANY

shall deliver to OWNER a statement reasonably identifying the computation of the TRUE UP AMOUNT. If the TRUE UP AMOUNT is positive then COMPANY shall pay the TRUE UP AMOUNT to OWNER within such forty-five (45) day period. Turbine Operating Fees for any partial year shall be prorated.

5.4 **Gross Revenue:** For the purposes hereof, the term “Gross Revenue” means Aggregate Total Revenue, less Transmission and Interconnection Expenses.

(a) For purposes hereof, the term “Aggregate Total Revenue” shall mean (i) the payments actually received by COMPANY during the applicable period of time, from the sale of electrical energy generated by the Project and as delivered to the final point of sale plus (ii) any payments received (A) from the renewable energy credits, carbon credits, greenhouse gas credits, pollution credits or any similar environmental attributes that directly result from the operation of Project or (B) pursuant to a business interruption insurance policy or from the manufacturer of any Wind Turbine unit under the provisions of its warranty therefore, in each case if made specifically in lieu of revenues from the normal operation of such Wind Turbines.

(b) For avoidance of doubt, the term “Aggregate Total Revenue” shall exclude, without limitation, revenues received: (i) from the sale, assignment, transfer or other disposition of Windpower Facilities or any other of COMPANY’s improvements (and any interest therein); (ii) from sales of electrical energy produced from any Wind Turbines not associated with the Project; (iii) from any rental or other payment received by COMPANY in exchange for COMPANY’s assigning, mortgaging or otherwise transferring all or any interest of COMPANY in this Agreement; (iv) from the sale, modification or termination of any obligation under a power purchase agreement; (v) from parasitic or other loss (i.e. electrical energy used to power Windpower Facilities or development activities or lost in the course of transforming, shaping, transporting or delivering the electricity); (vi) from sales of electrical energy for which payment is not received (including because of default by the purchaser thereof); (vii) or from any production tax credits, investment tax credits, grants in lieu of investment tax credits or other tax benefits and credits, or any reimbursement thereof received by COMPANY in connection with any wind project, except only for the credits specified in Section 5.4(a)(ii)(A) above.

(c) For purposes hereof, the term “Transmission and Interconnection Expenses” shall mean expenses actually incurred by the COMPANY in connection with transmission and delivery of electricity to the final point of sale, including but not limited to, electricity transmission, interconnection, delivery or distribution services during the applicable period of time, for the electrical energy generated and sold from the Project.

(d) In the event that electrical energy produced from the Project is commingled with electrical energy produced from Wind Turbines located in other projects, COMPANY shall, using such methods, calculations, procedures and formulae as COMPANY may in good faith adopt, allocate the Project a portion of the Gross Revenues received from such commingled electrical energy.

Once every third year after the Operations Date, within thirty (30) days of COMPANY’s receipt of written request by OWNER, OWNER shall have the right to audit the books and records of COMPANY pertaining to the Property and Wind Turbines on the Property, specifically those

calculations related to Gross Revenue, as defined above. The audit shall occur at the offices of the COMPANY or at some other location specified by COMPANY in its sole discretion. COMPANY shall pay for the costs and expenses of the audit. Should any audit find a discrepancy in OWNER's favor greater than 10%, than COMPANY shall pay any such shortfall to OWNER plus interest in the amount of Prime rate (as published in the Wall Street Journal) plus 2% calculated from the date of the miscalculation to the date of the audit.

5.5 **Construction Payment.** In the event one or more Wind Turbines are installed on the Property, COMPANY shall pay OWNER a one-time "Construction Payment" in the amount equal to Six Thousand (\$6,000.00) Dollars per megawatt of nameplate Wind Turbine capacity installed on the Property. The Construction Payment shall be paid to the OWNER within forty-five (45) days after the date that the first tower section of any Wind Turbine(s) is erected on the Property. No additional Construction Payment shall be due in connection with any replacement or repowering of Wind Turbines on the Property.

5.6 **Participation Fee.** During the term of the Lease, for the period commencing on the Operations Date, COMPANY shall pay to OWNER a "Participation Fee" in an amount equal to the Participation Fee Rate. The "Participation Fee Rate" shall be Twenty Dollars (\$20.00) per acre per year of the Property or Five Hundred Dollars (\$500), whichever is greater, and effective on each anniversary of the Operations Date such rate shall increase by the Escalation Rate as defined in Section 5.10 below. The Participation Fee shall be paid within forty-five (45) days after the first anniversary of the Operations Date, and annually thereafter within forty-five (45) days after each successive anniversary of the Operations Date. Participation Fees for partial years shall be prorated.

5.7 **Access Road Payment.** COMPANY shall pay OWNER, for the period commencing on the Operations Date, an annual payment equal to One Dollar (\$1.00) per year for each linear foot of access road built upon the Property by COMPANY in excess of 1,500 (one thousand five hundred) feet per Wind Turbine installed on the Property (the "Access Road Payment"). The Access Road Payment shall increase by the Escalation Rate as defined in Section 5.10 below effective on each anniversary of the Operations Date. By way of example and not limitation, if two Wind Turbines are installed upon the Property and 3,500 (three thousand, five hundred) linear feet of road are built on the Property, then the payment due to OWNER would be one dollar (\$1.00) times (3,500 linear feet minus 1,500 linear feet for the first Wind Turbine and 1,500 linear feet for the second Wind Turbine) which is equal to Five Hundred Dollars (\$500); reflecting one dollar (\$1.00) for each linear foot in excess of the 3,000 linear feet threshold for the two Wind Turbines on the Property. If no Wind Turbine is installed on the Property, COMPANY shall pay OWNER the Access Road Payment for each linear foot of access road built on the Property. The first Access Road Payment shall be paid within forty-five (45) days after the first anniversary of the Operations Date, and annually thereafter within forty-five (45) days after each successive anniversary of the Operations Date. Access Road Payments shall commence on the Operations Date and continue until the Removal Date. Access Road Payments for partial years shall be prorated.

5.8 **Collection System Payment.** COMPANY shall pay OWNER a one-time payment equal to two dollars (\$2.00) for each linear foot of collection system cabling placed or buried on the Property in excess of 1,500 (one thousand, five hundred) feet per Wind Turbine installed on the Property. By way of example and not limitation, if two Wind Turbines are installed

upon the Property and 4,000 (four thousand) linear feet of collection system cable are buried on the Property, then the payment due to OWNER would be two dollars (\$2.00) times (4,000 linear feet minus 1,500 linear feet for the first Wind Turbine and 1,500 linear feet for the second Wind Turbine) which is equal to two thousand dollars (\$2,000); reflecting two dollars (\$2.00) for each linear foot in excess of the 3,000 linear feet threshold for the two Wind Turbines on the Property. If no Wind Turbine is installed on the Property, then COMPANY shall pay OWNER a one-time payment equal to two dollars (\$2.00) for each linear foot of collection system cabling placed or buried on the Property. Any Collection System Payment shall be paid within forty-five (45) days after the Operations Date.

5.9 **Construction Delay.** If COMPANY has not commenced construction of Windpower Facilities on any of the land which is part of the land for the Project by the date which is thirty (30) days prior to the third anniversary of the Lease Effective Date, then this Lease shall automatically terminate upon such third anniversary, unless extended by written agreement between COMPANY and OWNER.

5.10 **Escalation Rate.**

- (a) The "Fixed Escalator" is defined as 2.5% per annum.
- (b) The "Inflation Escalator" is defined as the greater of (i) 2.0% or (ii) the percentage change, if any, in the GDPIPD for the preceding available four calendar quarters. "GDPIPD" means the gross domestic product implicit price deflator, as computed and published quarterly by the U.S. Department of Commerce, as presented and revised from time to time in the "Gross Domestic Product: [applicable quarter] Quarter 'Final' Press Release" released periodically by the Bureau of Economic Analysis.
- (c) During the Initial Term of the Lease, the Escalation Rate shall be equal to (i) the Fixed Escalator if the COMPANY is selling the output of the Project wholesale to a third party or (b) the Inflation Escalator if the ownership of the COMPANY is a utility, municipal or cooperative using the output of the Project to serve its customers.
- (d) During any Renewal Term of the Lease, the Escalation Rate shall be equal to the Inflation Escalator.
- (e) Notwithstanding the Escalation Rates defined in 5.10(c) and (d) above, in the first year of the first Renewal Term, the Annual Megawatt Multiplier defined in Section 5.3(i), the Participation Fee Rate defined in Section 5.6, and the Access Road Payment defined in Section 5.7 (each one a "Fee" and collectively the "Fees") shall be adjusted to equal the greater of (i) the value of the Fee in the last year of the Initial Term, as escalated by the Inflation Escalator up to the first year of the first Renewal Term or (ii) the value of the Fee in the year of the Operations Date multiplied by the percentage increase in the GDPIPD from the

applicable year and quarter of the Operations Date to the first quarter of the first year of the first Renewal Term.

6. **Ownership of the Windpower Facilities.** OWNER shall have no ownership or other interest in any of the Windpower Facilities installed on the Property, and COMPANY may remove any or all of the Windpower Facilities at any time. OWNER disclaims, waives and releases any claim that the Windpower Facilities constitute fixtures, regardless of how the Windpower Facilities are affixed to the Property.

7. **Taxes.**

(a) OWNER shall pay, when due, all real property taxes and assessments levied against the Property (subject to Section 7(b) of this Agreement) and all personal property taxes and assessments levied against any property and improvements owned by OWNER and located on the Property. Subject to Section 7(c) of this Agreement, if OWNER shall fail to pay any such taxes or assessments when due, COMPANY may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any payment otherwise due to OWNER from COMPANY. In the event such taxes and assessments are greater than any Payment due to Owner, in addition to deducting the payment from any payment due, COMPANY may pursue legal options for the difference.

(b) COMPANY shall pay all personal property taxes and assessments levied against the Windpower Facilities when due including any production tax imposed on the electricity produced by the Windpower Facilities. In addition, COMPANY agrees to pay to the relevant taxing authority, on behalf of the OWNER, or reimburse the OWNER for (as the case may be), any increase in the real property taxes levied against the Property as a result of the installation of the Windpower Facilities on the Property by COMPANY, including any reclassification of the Property as a result of the Windpower Facilities or this Agreement. COMPANY shall not be liable for taxes attributable to facilities installed by OWNER or others on the Property, or for any increase in the underlying value of the Property itself. It is a condition precedent to OWNER's right to any reimbursement of any such increased taxes hereunder that OWNER submit the real property tax bill to COMPANY within six (6) months after OWNER receives the bill from the taxing authority. OWNER shall, if requested by COMPANY, cooperate with COMPANY in effecting a tax division of the Property or in protesting any such increased taxes.

(c) Either party may contest the validity or amount of any levied taxes, assessments or other charges for which each is responsible under this Agreement as long as such contest is pursued in good faith and with due diligence and the party contesting the tax, assessment or charge has paid the obligation in question or posted bond to pay the obligation in the event of an adverse determination. Both parties shall cooperate in pursuit of any such appeal.

8. **Utilities.** COMPANY shall pay for all electrical and telephone/communication facilities furnished to the Windpower Facilities.

9. **Termination.**

9.1 **COMPANY's Right to Terminate.** COMPANY shall have the right to terminate the Agreement as to all or any part of the Property at any time, effective upon thirty (30)

days' written notice to OWNER during the Development Period and upon ninety (90) days' written notice to OWNER during the Initial Term or any Renewal Term. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property. In the event of a partial termination, COMPANY and OWNER shall execute an amendment to this Agreement and a new Memorandum of Option and Lease in recordable form evidencing the change in Property subject to this Agreement.

9.2 **OWNER's Right to Terminate.** OWNER shall have the right to terminate the Agreement only if a material default in the performance of COMPANY's payment obligations under this Agreement shall have occurred and remains uncured by the end of the applicable period set forth in this Section 9.2, and subject also to the terms of Section 18 of this Agreement. OWNER shall simultaneously notify COMPANY and all Mortgagees (as hereinafter defined) of the default, which notice shall set forth in reasonable detail the facts pertaining to the default and specify the method of cure. COMPANY shall have the right to remedy the default within ninety (90) days of the date of COMPANY's receipt of notice of default from OWNER, or, if cure will take longer than ninety (90) days, COMPANY shall have such additional period of time as is necessary to complete such cure, provided that COMPANY must promptly undertake the cure within the relevant time period and thereafter diligently prosecute the cure to completion.

9.3 **Effect of Termination.** Upon termination of the Agreement, COMPANY shall upon written request by OWNER, execute and record a quitclaim deed to OWNER of all of COMPANY's right, title and interest in and to the Property. If COMPANY fails to execute and record a quitclaim deed, OWNER may record with the county recorder of deeds of the county in which the Property is located an OWNER's affidavit stating that the Agreement has been terminated together with proof of service of a copy of the affidavit (such affidavit must have been delivered no less than thirty (30) days prior to such recordation being permitted hereunder) to COMPANY and all Mortgagees according to the notice procedures provided in Section 18 of this Agreement, provided OWNER shall not have any right to file this Agreement as part of such affidavit. Unless COMPANY or a Mortgagee records with the applicable county recorder of deeds a written objection or denial of termination within thirty (30) days after service on it of the affidavit, the affidavit shall have the same effect as COMPANY's quitclaim deed.

10. **Changes.** If, at any time during the Development Period, Initial Term or any Renewal Term of this Agreement, COMPANY deems it to be necessary or desirable to meet legal or regulatory requirements, COMPANY may request that OWNER amend this Agreement or re-execute a new agreement substantially in the form of this Agreement with a term equal to the term of this Agreement remaining as of the date of execution of the new agreement, and OWNER shall execute and enter into the new agreement with COMPANY or its designee; provided, however, that no such amendment or new agreement will materially impair any of OWNER's rights under this Agreement or substantially increase the burdens or obligations of OWNER hereunder or reduce the amount of payments required to be made hereunder.

11. **Requirements of Governmental Agencies.** COMPANY shall have the right in its sole discretion, to apply for such permits, variances, conditional use permits, zoning modifications or other governmental approvals as COMPANY considers necessary or appropriate for its use of the Property as permitted by this Agreement and/or for the installation, operation and use of the Windpower Facilities, and shall have the right to seek such amendments or revisions to applicable

zoning and wind use ordinances, statutes and regulations, and to contest by appropriate legal proceedings, brought in the name of COMPANY, OWNER, or in the names of both COMPANY and OWNER where appropriate or required, the validity or applicability to the Property or the Windpower Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. OWNER shall cooperate with COMPANY in every reasonable way with respect to the foregoing, at no out-of-pocket expense to OWNER. Any such contest or proceeding, including any maintained in the name of OWNER, shall be controlled and directed by COMPANY, provided that COMPANY shall indemnify and defend OWNER from any liability arising due to COMPANY's failure to observe or comply during any such contest or proceeding with the contested law, ordinance, statute, order, regulation or property assessment

12. **Waiver or Reduction of Setback on Property.** OWNER 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 COMPANY or any COMPANY Related Person ("Setback"), as they apply to the Property. Further, where waiver or elimination of any Setback is not permitted by law, OWNER hereby consents to any reduction in such Setback as applied to the Property, including reductions in setbacks to the minimum Wind Turbine setbacks required by the governmental authority provided no Wind Turbine is located closer than 1500 feet from any occupied residence(s) located on the Property as of the Effective Date, provided, however, that OWNER may, in OWNER's sole discretion, allow a Wind Turbine Setback from occupied residences on OWNER's Property to be closer than 1500 feet, but in no event closer than 1250 feet. Setback of Wind Turbine from occupied residence(s) shall be measured from the center line of the Wind Turbine tower. Further, if so requested by COMPANY or any COMPANY Related Person, OWNER shall, without demanding additional consideration therefor (excluding Setbacks from any occupied residence), (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 COMPANY 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. OWNER further consents to a zero (0) Setback for Wind Turbines and Windpower Facilities placed on parcels adjacent to all or any portion of the Property in connection with the development of any Project, by COMPANY, its successors and/or assignees or, at the COMPANY's discretion, in connection with the development of a Project on one or more parcels adjacent to the Property which project does not include the Property.

13. **Location of Windpower Facilities.** COMPANY may change the proposed location(s) of any of the Windpower Facilities from the initially proposed location(s) in connection with the initial installation of the Windpower Facilities. Once the Project is completely constructed, COMPANY shall not be entitled to place any additional Wind Turbine locations upon the Property without the prior written consent of OWNER (which such consent shall not be unreasonably conditioned, delayed, or withheld); provided that the foregoing shall not preclude any replacement of any of the then-existing Wind Turbine or repowering of any of the then-existing Wind Turbine locations.

14. **Company Covenants.**

14.1 **OWNER Activities.** COMPANY shall make reasonable efforts not to disturb OWNER's activities on the Property (provided that OWNER's activities are not inconsistent with COMPANY's rights under this Agreement). COMPANY shall share with OWNER its site development plan prior to construction, showing OWNER the proposed location of Wind Turbine, roads and electric power lines, before making its final decisions as to location of Wind Turbines, roads and power lines on the Property. COMPANY shall use commercially reasonable efforts to install the above-ground transmission poles and wires, if any, parallel to public roads/easements, existing fence lines, and property lines, and installation of transmission poles and wires that bisect OWNER's Property diagonally through the middle of the Property shall require OWNER consent. The above-ground transmission line structures shall be limited to a monopole design, and transmission line voltage shall be no greater than 161kV. Upon request of OWNER, COMPANY shall post the access roads it constructs to the Windpower Facilities as being private roads only for use by personnel in connection with the Windpower Facilities. OWNER, or any person granted the right by OWNER for access and use of the Property, may use or cross such roads provided that the same shall not interfere with COMPANY's rights under this Agreement.

14.2 **Insurance.**

14.2.1 **COMPANY's Insurance.** COMPANY shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring COMPANY against loss or liability caused by the Windpower Facilities and COMPANY's use of the Property under the Agreement, in an amount not less than Two Million Dollars (\$2,000,000.00) of combined single limit coverage per occurrence, accident or incident, which has a commercially reasonable deductible. COMPANY at its option may self-insure this coverage. Certificates of such insurance shall be provided to OWNER at OWNER's written request.

14.2.2 **OWNER's Insurance.** If COMPANY provides written notice to OWNER of its intent to place Windpower Facilities on the Property, then OWNER shall be obligated to abide by the provisions of this Section 14.2.2. COMPANY shall provide notice of its intent to place Windpower Facilities on the Property in either the notice of exercise of the option to lease or by other written notice. Within sixty (60) days after (i) the Lease Effective Date, as specified in the notice of exercise of the option to lease the Property, or (ii) date of any other written notice specifying COMPANY's intent, OWNER shall secure and thereafter maintain, at his expense, a broad form comprehensive coverage policy of public liability insurance insuring OWNER against loss or liability caused by OWNER, his invitees, agents, employees, or contractors, in an amount not less than Two Million Dollars (\$2,000,000.00) of combined single limit coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Owner shall request the insurance carrier name the COMPANY as an additional insured, provided there is no additional premium charged for doing so. Owner shall notify COMPANY prior to any change or the cancellation of the policy. Certificates of such insurance shall initially be provided to COMPANY by OWNER within thirty (30) days of the Lease Effective Date or date of any other notice and for the remainder of the Lease OWNER shall provide certificates of such insurance to COMPANY within fifteen (15) days of COMPANY's written request. As long as such policy is in effect, OWNER's liability to COMPANY, for any instance other than those caused by the willful or gross negligence of OWNER, his invitees, agents, employees or contractors, shall not exceed the limit of

the policy. If OWNER does not maintain the coverage required by this Section 14.2.2, OWNER's liability to company shall be unlimited.

14.3 **Safety.** COMPANY may construct such fencing around the perimeter of the Windpower Facilities as COMPANY may deem necessary or appropriate to secure or enclose the same and take other security precautions if it is determined by COMPANY, in its sole discretion, that such fencing and/or security measures will reduce such risks of damage, death or injury without unduly burdening OWNER's use of the Property. The expense for any and all fencing constructed by COMPANY, or other security measures taken by COMPANY, shall be borne solely by COMPANY. OWNER authorizes COMPANY to take such additional reasonable safety measures as deemed appropriate by COMPANY to reduce the risk of damage to the Windpower Facilities or the risk that the Windpower Facilities will cause damage, injury or death to people, livestock, other animals and property.

14.4 **Construction Liens.** COMPANY shall use commercially reasonable efforts to 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 the installation and operation of Windpower Facilities on the Property pursuant to this Lease; provided, however, that COMPANY may contest any such lien by appropriate proceedings. COMPANY shall satisfy such lien in full within thirty (30) days after such proceeding has become final and unappealable. Without limiting the foregoing, COMPANY may settle any such lien on terms it deems satisfactory in its sole discretion so long as such settlement results in the removal of such lien from the Property pursuant to applicable law.

14.5 **Hazardous Materials.** COMPANY shall not violate, and shall defend, indemnify and hold harmless OWNER for, from and against any violation by COMPANY or COMPANY's agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

14.6 **Removal of Facilities.** Within twelve (12) months from the expiration or termination of all rights under this Agreement, COMPANY shall remove all Windpower Facilities, including foundations, to a depth of forty-eight (48) inches below grade and replace all removed top soil. The COMPANY's Access Rights shall continue during the period of decommissioning. If COMPANY fails to remove any of the Windpower Facilities within the required time period, such Windpower Facilities shall be considered abandoned by COMPANY and OWNER may cause the Windpower Facilities to be removed from the Property and dispose of them pursuant to the Decommissioning Plan in Section 14.6.1 below, without notice or liability to COMPANY.

14.6.1 **Plan and Security for COMPANY's Removal Obligations.** Tama County Ordinance, Article XIX. Conditional Use Permits, Section 6.1.(n) Discontinuation and Decommissioning requires COMPANY to provide a Decommissioning Plan and security for removal or decommissioning of the Project. COMPANY shall only be obligated to provide a single Removal Bond (defined below) to remove all facilities on all properties consistent with the requirements of the ordinance. In order to maximize the economies of scale associated with the removal of a Project, the net removal costs of the Windpower Facilities shall be calculated on the

basis of the entire Project and the Removal Bond shall be provided on that basis. Upon the fifteenth (15th) anniversary of the Operations Date of the Project, or if the Project is built in phases as provided in Section 14.10 upon the fifteen (15th) anniversary of the Operations Date of each phase, COMPANY shall submit a Decommissioning Plan and obtain security for COMPANY's removal obligations described above in Section 14.6, in the form of a bond from an investment grade company or issuer ("**Removal Bond**"), which Removal Bond will cover the removal cost of removing said Windpower Facilities from the all Properties at the end of the Initial Term (as it may be extended) of this Lease. The amount of the Removal Bond shall be the estimated cost of (i) removing the foregoing Windpower Facilities, net of their estimated salvage value, as estimated by an Iowa licensed professional engineer selected by COMPANY, and (ii) restoration of the Property in accordance with Section 14.6 above. The amount of the Removal Bond shall be updated every five (5) years after the initial estimate based on a new estimate by a licensed professional engineer selected by COMPANY.

14.7 Damages.

(a) **Crop Damage** - The parties acknowledge that OWNER may suffer damage to crops on the Property during COMPANY's construction, installation, operation, maintenance and removal of Windpower Facilities on the Property. COMPANY shall pay OWNER fair compensation for any such losses or damage to crops. Any crop loss compensation shall be reasonable and based upon actual standing crops that were destroyed on the Property that occurred as a direct result of COMPANY's construction, installation and maintenance of Windpower Facilities on the Property. Compensation shall be a fair market value for the amount of crop actually destroyed or damaged and shall be calculated by the following formula: $\text{Price} \times \text{Yield} \times \text{Percentage of Damage} \times \text{Acreage} = \text{Crop loss}$. Prices for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop. Yield will be the average of the next previous two (2) years' yields of the same crop as the damaged crop, according to OWNER's records, as received from and certified by OWNER, for the smallest parcel of land that includes the damaged area. For purposes of the foregoing, "OWNER's records" shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines. If OWNER does not have yield records available, the OWNER will use Farm Service Agency records for the county in which the Property is located (or other commonly used yield information available for the area) for the smallest parcel of land which includes the damaged area. The parties hereto shall try in good faith to agree to the extent of damage and acreage affected. If the parties hereto cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent. Payment of crop damages and/or other damages shall be made within thirty (30) days after determining the extent of damage. After completion of construction activities, and each time COMPANY exercises its rights to re-enter the Property to occupy areas not on access roads to or in fenced areas around Windpower Facilities, COMPANY shall de-compact the soil (in tillable areas) using deep ripping and other methods. In the two (2) years following COMPANY's construction and installation of the Windpower Facilities on the Property, COMPANY agrees to compensate the OWNER for lost yield due to compaction in those areas where Windpower Facility construction activities occurred exclusive of the area physically occupied by the Windpower Facilities ("Compaction Payment"). Year one Compaction Payment will be 50% of the crop damages payment amount as calculated above at time of construction and shall be paid on or before October 31st of the first full calendar year after the Operations Date.

Year two Compaction Payment will be 25% of crop damages payment amount as calculated above at time of construction and shall be paid on or before October 31st of the second full calendar year after the Operations Date. Compaction Payments shall be in addition to and irrespective of any crop damages payments made under this Section 14.7.

After construction is complete, COMPANY shall not be responsible to pay OWNER any losses of income, rent, business opportunities, profits or other losses arising out of OWNER's inability to grow crops on area occupied by any Wind Turbine or other aboveground Windpower Facilities, including gravel, steps/ladder and transformer located at base of Wind Turbine tower, and Wind Turbine access road, or otherwise use the Property.

Crop damages, compaction payments, and tile repair obligations as provided for herein are also applicable to interim repairs, repowering, decommissioning, or other similar activities of COMPANY. To allow adequate time for claims by OWNER and to assure payment, the surety bond or other undertaking shall not be released until December 31st of the second full crop year after completion of the final site decommissioning or the date upon which all claims from landowners have been satisfied, whichever is later.

(b) **Tile Lines / Other Fixtures** - The parties acknowledge that OWNER may suffer damage to tile lines or other fixtures on the Property during COMPANY's construction, installation and maintenance of Windpower Facilities on the Property. COMPANY shall repair or replace such tile line or other fixtures, or pay to OWNER fair compensation for such losses or damage. Fair compensation shall mean actual cost to repair at the point of damage and to return the tile or fixture to its pre-damage condition. If the parties cannot reach agreement as to amount which would constitute fair compensation, the issue shall be submitted to arbitration before the American Arbitration Association or any arbitrator mutually agreed to by the parties.

(c) **Livestock Damage** - If OWNER suffers any destruction of, or damage to, its livestock on the Property as a direct result of COMPANY's construction, installation, or removal of Windpower Facilities, COMPANY shall pay OWNER fair compensation equal to the revenue that the OWNER would have received on the open market for such destroyed or damaged livestock as set forth herein during the growing season in which such livestock were destroyed or damaged. The amount of revenue that the OWNER would have received on the open market for such destroyed or damaged livestock shall be determined by OWNER based upon (a) the number of livestock damaged or destroyed and (b) the average market price received for such live livestock in the week in which such livestock were destroyed or damaged. If the parties cannot reach agreement as to amount which would constitute fair compensation, the issue shall be submitted to arbitration before the American Arbitration Association or any arbitrator mutually agreed to by the parties.

14.8 **Conservation Programs.** To the extent COMPANY's installation or construction of the Windpower Facilities requires the removal of any of the Property from participation in the Farm Service Agency's Conservation Reserve Program or similar program in which it was enrolled and qualified at the time COMPANY's applicable installation or construction began at such site, and, as a result, OWNER incurs any penalties or reimbursement obligations to the government agency administering the program related to the period after disqualification, COMPANY agrees to reimburse OWNER the amount of such penalties and obligations or pay the amounts on behalf of OWNER within thirty (30) days of written notification by OWNER to COMPANY and verification by COMPANY. OWNER shall notify COMPANY of any new areas

of the Property that become eligible to be enrolled in any such program(s) after the Effective Date promptly upon such eligibility and shall also notify COMPANY of any such penalties or reimbursement for which COMPANY would be responsible under this Section should such areas be enrolled, together with an accounting and copies of the underlying documentation and billing and receipts. For avoidance of doubt, OWNER shall not qualify and enroll any new areas of the Property without COMPANY's prior written consent, which consent shall not be unreasonably conditioned, delayed, or withheld.

14.9 **Care and Appearance.** To the extent commercially practicable: (i) COMPANY shall maintain all roads used for ingress and egress and any other portion of the Property used by COMPANY, and shall maintain the Windpower Facilities in good condition and repair, ordinary wear and tear excepted, all at COMPANY's sole expense, (ii) COMPANY shall keep the Windpower Facilities and all of the Property free of debris, caused by COMPANY, (iii) COMPANY shall also be responsible for weed control on the portions of the Property occupied by the Windpower Facilities, and (iv) COMPANY shall not use the Property for storage except for materials, construction equipment and vehicles directly associated with construction or maintenance of the Windpower Facilities.

14.10 **Phased Construction.** COMPANY shall build the Project in no more than three (3) phases. The start of the last phase of construction shall commence no longer than sixty (60) months after the Operations Date for the first phase of construction (the "Final Phase Construction Date"). COMPANY shall have a one-time right to extend the start of the final phase of construction for up to one (1) year by paying to OWNER a one-time payment equal to the greater of One Thousand Dollars (\$1,000) or Three Dollars (\$3.00) per acre of the Property, unless the Property is less than 40 acres, in which event the payment shall be equal to Five Hundred Dollars (\$500). COMPANY shall make this payment on or before the date that is forty-five (45) days prior to the Final Phase Construction Date.

14.11 **Cooperation.**

(a) OWNER shall provide COMPANY with information regarding OWNER's land use patterns for COMPANY's use in the design and construction of the Windpower Facilities. The location and dimension of any Windpower Facilities shall be made by COMPANY in its sole discretion, except that COMPANY shall use commercially reasonable efforts to: (i) minimize the interruption of OWNER's operations on the Property by the Windpower Facilities, and (ii) install the access roads perpendicular to public roads or parallel to crop rows, existing fence lines, waterways or other natural contours.

(b) If, on the Property, beyond what is already restricted by governmental authority or other terms within this Agreement, there exists an area or areas upon which the OWNER has a restriction as to what can be constructed within such area or areas, the OWNER shall indicate the area or areas upon which the restriction exists and the extent of such restriction on Exhibit C to this Agreement. To the extent no such areas exist, OWNER shall so indicate "NONE" on Exhibit C and initial the Exhibit. Ultimately, the location and dimension of any Windpower Facilities on OWNER's Property shall be made by COMPANY, in its sole discretion, except that COMPANY shall adhere to the agreed upon restrictions, if any, on Exhibit C.

14.12 **Signal Interference.** In the event that COMPANY's operation of the Windpower Facilities on the Property causes any unreasonable interference with the quality of telephone, radio, or wireless internet or other communications signals to OWNER on the Property, COMPANY agrees to use commercially reasonable efforts to mitigate such interference.

14.13 **Aerial Application.** In order to facilitate planting, seeding, or treatment of crops with pesticide, fertilizer or other substance from the air ("Aerial Application", the plane and entity providing the treatment services to be defined as the "Aerial Applicator"), within the Project, upon OWNER's request and on the terms outlined below, COMPANY shall agree to confer and if deemed necessary, to shut down one or more turbines ("Curtail") no more than three (3) times per year. Any such individual Curtail shall be no longer in duration than necessary to accomplish the Aerial Application and shall not be allowed if the wind speed measured at the turbine is in excess of fifteen (15) miles per hour. OWNER or Aerial Applicator, seed corn company or other involved party designated by OWNER (in a written notice to COMPANY) as a representative ("Representative") must also comply with the following procedure regarding Curtail: 1) OWNER or Representative shall provide notice to the local COMPANY representative, at least twenty-four (24) hours in advance of the requested Curtail identifying the area(s) to be treated, the planned route of Aerial Applicator, and the specific turbines effected by Curtail and any requested yawing of the turbines; 2) OWNER or Representative shall provide a second notice to the local Company Representative no less than two (2) hours in advance of the time set for Curtail confirming time and details of Curtail; 3) Representative shall give immediate notice of completion as soon as treatment is completed allowing COMPANY to end Curtail safely and immediately restart the affected turbine(s), however, under no circumstances shall Curtail last longer than three (3) hours. Absent notice by Owner to COMPANY that the treatment is finished COMPANY may restart any turbine four (4) hours after the start of Curtail without any liability to OWNER or Representative. Any additional procedures necessary to safely accomplish Curtail shall be agreed to from time to time by OWNER and Representative(s). OWNER and Representative shall indemnify, defend and hold COMPANY harmless from all claims and damages by OWNER, Aerial Applicator or any third party of any sort arising from Aerial Application except claims and damages caused by COMPANY's failure to adhere to the procedure outlined above.

15. **OWNER Covenants.**

15.1 **No Interference.** OWNER's activities and any grant of rights OWNER makes to any person or entity other than COMPANY, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with: the construction, installation, maintenance or operation of the COMPANY's Windpower Facilities, whether located on the Property or elsewhere; access over the Property to such Windpower Facilities; or the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, OWNER agrees that any obstruction to the free flow of the wind by OWNER or persons other than COMPANY or a grantee or assignee of COMPANY or persons claiming through or under COMPANY or an assignee is prohibited throughout the entire area of the Property, which shall consist horizontally three hundred and sixty degrees (360°) from any point where any Windpower Facilities are or may be located at any time or from time to time (each such location referred to as a "Site") and for a distance from each Site to the boundaries of the Property, together vertically

through all space located above the surface of the Property, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Property through each Site to each point and on and along such line to the opposite exterior boundary of the Property. Trees, structures and improvements located on the Property as of the date of this Lease shall be allowed to remain and COMPANY may not require their removal. OWNER may not place or plant, or authorize the placement or planting by any other party of, any trees, structures or improvements on the Property after the Lease Effective Date or within five hundred (500) feet of a Wind Turbine, which may, in COMPANY's sole judgment, impede or interfere with the flow of wind to any Windpower Facility, unless OWNER has received prior written approval from COMPANY, such approval not to be unreasonably withheld for any such trees, structure or improvement. Notwithstanding anything contained in this Section 15.1 to the contrary, (i) OWNER shall have the right to plant trees, or place or build structures and improvements on the Property up to fifty (50) feet in overall height and maintaining a seven hundred fifty (750) foot setback from current or planned Wind Turbine locations, and (ii) OWNER shall have the right to construct not more than one (1) Small Turbine on the Property for OWNER's personal use, so long as such Small Turbine is located within two hundred fifty (250) feet of OWNER's existing residential building. A "Small Turbine" shall mean a wind turbine for residential farm use by OWNER with a nameplate capacity of forty (40) kilowatts or less and a hub height of twenty (20) meters or less.

15.2 **Title Review; Cooperation and No Encumbrances.**

(a) OWNER shall cooperate with COMPANY to obtain non-disturbance and subordination agreements, crossing agreements or documentation reasonably requested by COMPANY from any person with a lien, encumbrance, mortgage, lease or other exception to OWNER's fee title to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to COMPANY under this Agreement. OWNER shall also provide COMPANY with any further assurances and shall execute any estoppel certificates, consents to assignments, or additional documents which may be reasonably necessary for recording purposes or otherwise reasonably requested by COMPANY. The OWNER acknowledges OWNER's agreement to this Section 15.2(a) by initialing here. *JL* _____

(b) **Manure Management.** COMPANY acknowledges that OWNER may have granted a third party ("Grantee") an easement pursuant to its manure management easement agreement or other similar use easement on OWNER's property. Grantee's normal and anticipated use of its manure management easement agreement or other similar use easement on OWNER's property shall not be considered to be a disturbance of any rights of COMPANY granted by OWNER. COMPANY recognizes that Grantee's use and purpose of its manure easement or other similar easements are time sensitive matters. Therefore, Grantee agrees to take such reasonable steps as requested and reasonably required by COMPANY to accommodate and coordinate Grantee's said use of OWNER's property. This shall include, but is not limited to, coordinating with the local designated Local Company Representative, 24 hours before commencing manure application, so COMPANY can insure its operations do not conflict with the manure application or impede the ingress and egress from a given field is unobstructed and remove COMPANY personal or other similar use operations.

(c) To the best of Owner's knowledge, there are no encumbrances of liens against the Property, except as set forth in OWNER's title abstracts.

15.3 **Negative Covenant.** OWNER agrees not to grant or convey to any third party any rights in or to the Property relating to developing, constructing, installing, operating, maintaining, replacing and repairing Wind Turbine(s), supporting structures, foundations and pads, footings, electrical transformers, fixtures, electric distribution and transmission lines, cables, power poles, access roads, and any other related facilities and equipment, or undertaking any and all activities related thereto (including without limitation, the evaluation of wind energy resources).

15.4 **Requirements of Governmental Agencies/Lenders.** OWNER shall assist and fully cooperate with COMPANY, at no out-of-pocket expense to OWNER, in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews and clearances or any other approvals required or deemed desirable by COMPANY in connection with the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Windpower Facilities, including execution of applications for such approvals and delivery of information and documentation related thereto.

15.5 **Hazardous Materials.** OWNER shall not violate, and shall defend, indemnify and hold harmless COMPANY for, from and against any violation by OWNER or OWNER's agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property. OWNER shall defend, indemnify and hold harmless COMPANY for, from and against any environmental condition existing on the Property prior to the Effective Date or caused at any time by any person or entity other than COMPANY or COMPANY's agents or contractors.

15.6 **Quiet Enjoyment.** OWNER covenants and warrants that COMPANY shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire term without hindrance or interruption by OWNER or any person lawfully or equitably claiming by, through or under or superior to OWNER subject to the terms of this Agreement. OWNER and its activities on the Property and any grant of rights OWNER makes to any other person shall not interfere with any of COMPANY's activities pursuant to this Agreement, and OWNER shall not interfere with or allow interference with the wind speed or wind direction over the Property or otherwise engage in activities which might impede or decrease the output or efficiency of the Windpower Facilities.

16. **Indemnification.** COMPANY agrees to defend, indemnify and hold harmless OWNER and OWNER's officers, directors, employees, representatives, mortgagees and agents against losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, to the extent resulting from or arising out of (i) any operations or activities of COMPANY or its agents, employees and invitees on the Property; (ii) any negligent or intentional act or omission on the part of COMPANY; or (iii) any breach of this Agreement by COMPANY. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of OWNER or any party to which COMPANY has an obligation to so defend, indemnify and hold harmless.

COMPANY's obligations regarding crop, tile lines and/or livestock damage are specified in Section 14.7 of this Agreement and are not covered under this indemnification. This indemnification shall survive the termination of this Easement. In no event shall OWNER or COMPANY be liable to the other for incidental, consequential, special, punitive or indirect damages, including, without limitation, loss of use, loss of profits, costs of capital or increased operating costs, arising out of this Agreement, whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty, or otherwise. Nothing in this Section 16 shall override the obligations placed on OWNER by Section 14.2.2.

17. **Right to Mortgage and Assign.** COMPANY or a Sublessee (as defined below) may, upon notice to OWNER, but without OWNER's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement, any Sublease (as defined below), the Operations Easements and the Windpower Facilities (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" and the holders of the Mortgages, their designees and assigns are referred to in this Agreement as "Mortgagees". COMPANY and each Sublessee may not, without OWNER's consent, which shall not be unreasonably withheld, conditioned or delayed, 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, subleases, co-leases, co-tenancy rights, licenses or similar rights, however denominated (collectively, "Assignments"), excepting Assignments to "Affiliates" of COMPANY or Assignments to financing parties in connection with a sale/leaseback financing, neither of which shall require OWNER's consent. As used in this Agreement, an "Affiliate" of COMPANY means any person or entity that controls, is controlled by, or is under common control with COMPANY, directly or indirectly, by itself or as part of a group of investors, by ownership, Mortgage, contract right, voting control or otherwise, such that the controlling person, entity or the group of which it is a part can effectively direct the actions of such party. Upon the effective date of any Assignment under which all of the interest of COMPANY or any Sublessee (or the interest of their respective successors or assigns) in the Agreement is assigned, the COMPANY or Sublessee or their successor or assign, 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 the obligations of the assigning party by a writing delivered to and for the benefit of OWNER, and provides OWNER with the assignee's address for notices. If COMPANY's entire interest in this Agreement and the Project is assigned to a third party assignee that is not an Affiliate, then COMPANY shall pay to OWNER a one-time payment equal to the greater of Five Hundred Dollars (\$500.00) or Five Dollars (\$5.00) per acre. Under no circumstances shall any Mortgagee or Sublessee have any greater rights of ownership or use of the Agreement or the Operations Easements than the rights granted to COMPANY in this Agreement. As used in this Agreement, the term "Sublessee" means any person that receives an interest from COMPANY of less than all of COMPANY's right, title or interest under this Agreement or in one or more Operations Easements and (ii) the term "Sublease" means the grant or assignment of such rights from COMPANY to a Sublessee.

18. **Leasehold Mortgage.**

18.1 **Mortgage by COMPANY.** COMPANY may, from time to time, grant a Mortgage on the Windpower Facilities and/or the rights granted to the COMPANY under this Agreement (such rights, collectively, the "Leasehold and Easement Estates"). Nothing herein shall be deemed to permit the Mortgagee thereunder to take title to, or otherwise encumber, OWNER's fee title to the Property.

18.2 **Mortgagee Protection.** COMPANY shall provide to OWNER the relevant contact information for each Mortgagee, and such Mortgagee shall, for so long as its Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the following protections:

18.2.1 **Mortgagee's Right to Possession, Right to Acquire and Right to Assign.** A Mortgagee shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to the Leasehold and Easement Estates by any lawful means (subject to the provisions hereof); (c) to take possession of and operate the Windpower Facilities or any portion thereof and to perform all obligations to be performed by COMPANY hereunder, pursuant to its agreements with COMPANY, applicable law, or both; and (d) to acquire the Leasehold and Easement Estates by foreclosure or other legal proceedings or remedy (whether judicial or non-judicial) and thereafter to assign or transfer the Leasehold and Easement Estates to a third party. OWNER's consent shall not be required for any such acquisition of COMPANY's Leasehold and Easement Estates by a third party.

18.2.2 **Notice of Default: Opportunity to Cure.** As a condition to exercising any rights or remedies as a result of any alleged default by COMPANY, OWNER shall give written notice of the default to each Mortgagee concurrently with delivery of such notice to COMPANY, specifying in detail the alleged event of default and the required remedy. In the event the OWNER gives such written notice of default, the following provisions shall apply:

(a) A "monetary default" means failure to pay when due any rent, real property taxes, insurance premiums or other monetary obligation of COMPANY under this Agreement; any other event of default is a "non-monetary default."

(b) The Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to COMPANY and any of its successors and assigns after COMPANY's receipt of notice of default, plus, in each instance, the following additional time periods: (i) thirty (30) days in the event of any monetary default; and (ii) thirty (30) days in the event of any non-monetary default, provided that such thirty (30) day period shall be extended for the time reasonably required to complete such cure, including the time required for the Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of the Windpower Facilities (including possession by a receiver) or by instituting foreclosure proceedings, provided the Mortgagee acts with reasonable and continuous diligence. The Mortgagee shall have the absolute right to substitute itself for COMPANY and perform the duties of COMPANY hereunder for purposes of curing such defaults. OWNER expressly consents to such substitution, agrees to accept such performance, and authorizes the Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of COMPANY hereunder. OWNER shall not terminate the Agreement prior to expiration of the cure periods available to a Mortgagee as set forth above.

(c) During any period of possession of the Windpower Facilities or Leasehold and Easement Estates by a Mortgagee (or a receiver requested by such Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Mortgagee, the Mortgagee shall pay or cause to be paid the rent and all other monetary charges payable by COMPANY hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of the Leasehold and Easement Estates by the Mortgagee or its assignee or designee as a result of either foreclosure or other remedy, or by a purchaser at a foreclosure sale, the Agreement shall continue in full force and effect and the Mortgagee or party acquiring title to the Leasehold and Easement Estates shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon OWNER's right to terminate this Agreement based upon such defaults shall be deemed waived; (provided, however, the Mortgagee or party acquiring title to the Leasehold and Easement Estates shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("non-curable defaults"), e.g. untimely performance of an obligation. Non-curable defaults shall be deemed waived by OWNER upon completion of foreclosure proceedings or acquisition of the Leasehold and Easement Estates by such party.

(d) Any Mortgagee or other party who acquires the Leasehold and Easement Estates pursuant to foreclosure or other remedy shall not be liable to perform the obligations imposed on COMPANY by this Agreement incurred or accruing after such party no longer has ownership of the Leasehold and Easement Estates or possession of the Windpower Facilities.

(e) Neither bankruptcy nor insolvency shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable to OWNER hereunder are paid by the Mortgagee in accordance with the terms of this Agreement.

(f) Nothing herein shall be construed to extend the Agreement beyond the Agreement term or to require a Mortgagee to continue foreclosure proceedings after the default has been cured. If the default is cured and the Mortgagee discontinues foreclosure proceedings, the Agreement shall continue in full force and effect.

18.2.3 **New Lease to Mortgagee.** If this Agreement terminates because of COMPANY's default or if the Leasehold and Easement Estates are foreclosed, or if the Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, the OWNER shall, upon written request from any Mortgagee within ninety (90) days after any such event, enter into a new agreement concerning the Property, on the following terms and conditions:

(a) The terms of the new agreement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the term of this Agreement, at the same rent and subject to the same terms and conditions set forth in this Agreement. Such new agreement shall be subject to all existing subleases, provided the subtenants are not then in default.

(b) The new agreement shall be executed within thirty (30) days after receipt by OWNER of written notice of the Mortgagee's election to enter a new agreement, provided said Mortgagee: (i) pays to OWNER all rent and other monetary charges payable by

COMPANY its successors or assigns, as applicable, under the terms of the Agreement up to the date of execution of the new agreement, as if the Agreement had not been terminated, foreclosed, rejected or disaffirmed, less the rent and other income actually collected by OWNER from subtenants or other occupants of the Property; and (ii) perform all other obligations of COMPANY under the terms of the Agreement, to the extent performance is then due and susceptible of being cured and performed by the Mortgagee; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by COMPANY and would have accrued under this Agreement up to the date of commencement of the new agreement, except those obligations which constitute non-curable defaults. Any new agreement with the Mortgagee shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by OWNER.

(c) At the option of the Mortgagee, the new agreement may be executed by a designee of such Mortgagee.

(d) After the termination, rejection or disaffirmance of this Agreement and during the period thereafter during which any Mortgagee shall be entitled to enter into a new agreement concerning the Property, OWNER will not terminate any sublease or the rights of any sublease thereunder unless such sublease shall be in default under such sublease. During such period, if the OWNER shall receive any rent and other payments due from subleases, including subleases whose attornment it shall have agreed to accept, it will do so as agent of such Mortgagee and shall deposit such rents and payments in a separate and segregated account in trust subject to a right of setoff against amounts due to OWNER; and, upon the execution and delivery of such new agreement, shall account to the tenant under said new agreement for the rent and other payments made under said subleases; and the tenant shall thereupon assign the rent and other payments due under said subleases to any Mortgagees under the Agreement. The collection of rent by the OWNER acting as an agent pursuant to this Section shall not be deemed an acceptance by OWNER for its own account of the attornment of any sublease unless OWNER shall have agreed in writing with such sublease that its tenancy shall be continued following the expiration of any period during which a Mortgagee may be granted a new agreement, in which case such attornment shall take place upon such expiration but not before. OWNER shall not be under any obligation to enforce any sublease.

(e) If more than one Mortgagee makes a written request for a new agreement pursuant hereto, the new agreement shall be delivered to the Mortgagee requesting such new agreement whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force and effect. At no expense to OWNER, a Mortgagee shall provide a current title report on the Property to OWNER reflecting the priority of the lien of such Mortgagee.

(f) The provisions of this Section 18 shall survive the termination, rejection or disaffirmance of the Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by OWNER, COMPANY and such Mortgagee, and, from the effective date of such termination, rejection or disaffirmance of the Agreement to the date of execution and delivery of such new agreement, such Mortgagee may use and enjoy said Property without hindrance by OWNER or any person claiming by, through or under OWNER; provided that all of the conditions for a new agreement as set forth herein are complied with.

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

Notwithstanding any provision of the Agreement to the contrary, the parties agree that so long as there exists an unpaid Mortgage, this Agreement shall not be modified or amended and OWNER shall not accept a surrender of the Property or any part thereof or a cancellation or release of this Agreement from COMPANY prior to expiration of this Agreement without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by such Mortgagee.

18.4 **No Waiver.** No payment made to OWNER by a Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of the Agreement; and a Mortgagee having made any payment to OWNER pursuant to OWNER's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

18.5 **No Merger.** There shall be no merger of this Agreement with the fee estate in the Property by reason of the fact that this Agreement or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in Property and all persons (including Mortgagee) having an interest in this Agreement or in the estate of OWNER and COMPANY shall join in a written instrument effecting such merger and shall duly record the same.

18.6 **Further Amendments.** At COMPANY's request, OWNER shall amend this Agreement to include any provision which may reasonably be requested by a current or proposed Mortgagee; provided, however, that such amendment does not materially impair any of OWNER's rights or payments under this Agreement or substantially increase the burdens or obligations of OWNER hereunder. Upon the request of any Mortgagee, OWNER shall execute any additional instruments reasonably required to evidence such Mortgagee's rights under this Agreement.

19. **Force Majeure.** If performance of the Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance and continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood or other casualty or accident; strikes or labor disputes; war, terrorism, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirements of any government agency or utility; or any other act or condition beyond the reasonable control of a party hereto.

20. **Tax Credits.** If under applicable law the holder of a leasehold or easement interest in the nature of that held by COMPANY, or any successor or assign, under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at COMPANY's option, OWNER and COMPANY shall amend this Agreement or replace it with a different instrument so as to convert COMPANY's interest in the Property to a substantially similar interest that makes COMPANY eligible for such tax credit, benefit or incentive; provided, however, that no such amendment or replacement will materially impair any of OWNER's rights under this Agreement or substantially

increase the burdens or obligations of OWNER hereunder or reduce any payments required to be made hereunder.

ARTICLE III MISCELLANEOUS

1. **Confidentiality.** Because of the highly competitive nature of the renewable energy markets, it is in best interest of both Parties, and their successors or assigns, that OWNER shall maintain in the strictest confidence all information pertaining to the financial and other terms of this Agreement, COMPANY's site or product design, methods of operation, methods of construction, power production or availability of the Windpower Facilities, and the like, whether disclosed by COMPANY, and any of its successors and assigns, or discovered by OWNER, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of OWNER or its employees or agents; (ii) was already known to OWNER at the time of disclosure and which OWNER is free to use or disclose without breach of any obligation to any person or entity; or (iii) is necessary for disclosure of the obligations of this Agreement to any subsequent OWNER of the Property. OWNER can disclose the existence of this Agreement with other landowners located in the Project. OWNER shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of COMPANY, and any of its successors and assigns. Notwithstanding the foregoing, OWNER may disclose such information to OWNER's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of OWNER regarding this Agreement; or pursuant to lawful process, subpoena or court order requiring such disclosure; provided OWNER in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by COMPANY.

2. **OWNER's Authority.** OWNER represents and warrants to COMPANY that OWNER is the sole owner of the Property and has the unrestricted right and authority to execute this Agreement and to grant to COMPANY the rights and interests and to enter into the Agreement, the Lease and the grant the easements as contemplated hereunder. Each person signing this Agreement on behalf of OWNER is authorized to do so, and all persons having any ownership interest in the Property (including spouses) are signing this Agreement as OWNER. When signed by OWNER, this Agreement constitutes a valid and binding agreement enforceable against OWNER in accordance with its terms.

3. **Copy of Title Information/Abstract.** Within thirty (30) days of signing this Agreement, OWNER agrees to provide Tama County Abstract Company with any existing title reports, title abstracts, title commitments, deeds and/or other title information with respect to the Property in OWNER's possession of control. OWNER's title abstracts will be used to verify title to the Property and associated encumbrances and promptly returned to OWNER.

4. **Covenants Running with the Land.** OWNER and COMPANY agrees that all of the covenants and agreements contained in this Agreement touch and concern the Property and are expressly intended to, and shall, be covenants running with the land and shall be binding upon the

Property and each party's present and future estate or interest therein and upon each of the parties, their respective heirs, administrators, executors, legal representatives, successors and assigns.

5. **Notices.** All notices or other communications required or permitted by this Agreement, including payments to OWNER, shall be in writing and shall be deemed given when personally delivered to OWNER, COMPANY or COMPANY's successors and assigns, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified; or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Any notice shall be addressed as follows:

If to OWNER:

Vivian G. Cutler Trust
C/o Julie A. Upah, Trustee
1535 Hwy E29
Garwin, IA 50632
641-750-4088

If to COMPANY:

Salt Creek Wind LLC
1058 West Avenue M-14, Suite A
Palmdale, CA 93551
Attn: Kirk S Tracey
Telephone: 661-267-2005

And copy to:

Tracey & Associates
21718 Talisman St.
Torrance, CA 90503
Attn: Kirk S. Tracey

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph.

6. **Cooperation.** Each of the parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective parties. Further, as it relates to OWNER's Property, OWNER agrees to cooperate with any and all of the COMPANY's reasonable requests for assistance in the preparation of any and all the necessary materials to apply for and obtain any and all necessary permits including, but not limited to the Tama County Conditional Use Permits, provided that if any reasonable third party costs will need to be incurred by OWNER to provide assistance with permits, OWNER shall notify COMPANY prior to incurring the third party costs so that COMPANY can decide to (i) retract its request for cooperation or (ii) agree to reimburse OWNER for such third party costs.

7. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between OWNER and COMPANY respecting its subject matter. Any agreement,

understanding or representation respecting the Property, this Agreement, the Lease, the easements, or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both parties is null and void. This Agreement shall not be modified or amended except in a writing signed by both parties. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

8. **Governing Law; Dispute Resolution; Waiver of Jury Trial.** This Agreement shall be governed by and interpreted in accordance with the laws of the state in which the Property is located, excluding conflicts of laws principles. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the state courts located in the county in which the Property is situated. COMPANY AND OWNER, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY COURT ACTION, BROUGHT AGAINST ANY PARTY TO THIS AGREEMENT WITH RESPECT TO THIS AGREEMENT, THE PROPERTY, OR ANY OTHER MATTER RELATED TO THIS AGREEMENT OR THE PROPERTY.

9. **Partial Invalidity.** Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding.

10. **Section Headings.** The Article and Section headings herein are inserted only for the convenience of reference and shall in no way define, limit or describe the sole scope or intent of any provision of this Agreement.

11. **Counterparts.** This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.


12. **Acknowledgement.** OWNER has been informed by COMPANY and understands that the presence and operations of the Windpower Facilities on the Property and on adjacent property potentially will result in some nuisance to OWNER, and OWNER hereby accepts such nuisance and waives any right that OWNER may have to object to such nuisance (and OWNER releases COMPANY from any claims OWNER may have with respect to any such nuisance).

[Signature Page Follows]

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

COMPANY

Salt Creek Wind LLC,
a Delaware limited liability company

By: 
Name: Robert Bergstrom
Its: Manager
Dated: June 29, 2020

OWNER

Julie A. Upah, as Trustee of the Vivian G.
Cutler Trust

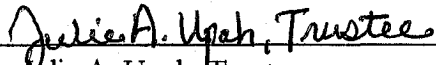
By: 
Name: Julie A. Upah, Trustee
By: _____
Name: Floyd F. Culter, III
Title: Beneficiary

EXHIBIT A

Vivian G. Cutler Trust Property

Legal description of property located in Tama County, Iowa:

PARCEL	SECTION	TOWNSHIP	RANGE	ACRES
10-08-400-002	8	84	15	38.62
10-08-400-004	8	84	15	40.00

The Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) and the Southeast Quarter of the Southeast Quarter (SE ¼ SE ¼) of Section Eight (8), Township Eighty-four (84) North, Range Fifteen (15), West of the 5th P.M. in Tama County, Iowa

Total Acres: 78.62

EXHIBIT B

This document prepared by:

When recorded return to:

**MEMORANDUM OF OPTION AND LEASE AND EASEMENT
FOR A WIND ENERGY PROJECT**

THIS MEMORANDUM OF OPTION AND LEASE AND EASEMENT FOR A WIND ENERGY PROJECT (the "Memorandum") is made and entered into as of the ___ day of _____, _____, by and between _____, an _____ (hereinafter called "Owner"), and **Salt Creek Wind LLC**, a Delaware limited liability company, and its assigns (hereinafter called "Company").

RECITALS

WHEREAS, reference is made to that certain Option and Lease and Easement for a Wind Energy Project dated as of _____, _____, by and between Owner and Company, (the "**Agreement**"), whereby Owner has granted to Company the right and option to lease and obtain easements over certain real property owned by Owner in Tama County, Iowa, and as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "**Property**"); and

WHEREAS, the parties wish to give notice of the existence of the Agreement and the right and option granted to Company to lease the Property, to obtain certain easements and the other rights and interest of Company.

NOW THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants, agreements and conditions contained herein and contained in the Agreement, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not otherwise defined in this Memorandum shall have the same meaning ascribed to such terms in the Agreement.

2. Option to Lease. During the Development Period, Owner hereby grants to Company an exclusive option to lease for wind energy purposes (as described in the Agreement) and obtain certain easements over the Property (the "Lease"). The "Development Period" shall be for a term commencing on the Effective Date and continuing for the remainder of the calendar month in which the Effective Date occurs, and the next succeeding twelve (12) consecutive calendar months, subject to extension for up to four (4) additional one-year terms. Company may exercise its option to lease and obtain certain easements over the Property by giving written notice of such election to Owner at any time prior to the termination of the Development Period, and the term of the Lease will commence on the date such notice is given, or such other date within the term of Development Period as Company may specify in such notice (the "Lease Effective Date").

3. Lease. In the event Company exercises its option to lease the Property, the term of Lease shall be twenty-five (25) years from the Lease Effective Date. Company has the right to extend the term of the Lease for an additional fifteen (15) year period and an additional ten (10) year period.

4. Notice of Commencement of Lease. In the event Company exercises its option for the Lease, Owner hereby irrevocably and unconditionally authorizes Company to execute the Notice of Commencement of Lease (the "Notice of Commencement") attached to this Memorandum as Exhibit B, and to record the same in the real property records for the county in which the Property is located, all without further authorization or action on the part of Owner. The Notice of Commencement, when so executed and recorded, shall confirm and provide record notice of the exercise of the option for the Lease by Company, the commencement of the Lease, and of the Lease Effective Date.

5. Covenants Running with the Land. Owner and Company agree that all of the covenants and agreements contained in the Agreement touch and concern the Property and are expressly intended to, and shall, be covenants running with the land and shall be binding upon the Property and each party's present and future estate or interest therein and upon each of the parties, their respective heirs, administrators, executors, legal representatives, successors and assigns.

6. Notice and Binding Effect. It is understood that the purpose of this Memorandum is to give notice of the Agreement. The Agreement contains other terms and conditions set forth more fully therein. All such terms and conditions of the Lease are incorporated herein by this reference. The parties hereby ratify and confirm the Agreement as if the Agreement were being re-executed by them and recorded. This Memorandum shall bind and inure to the benefit of Owner and Company and their respective successors and assigns, and shall encumber the Property and shall be binding on Owner's successors-in-interest thereto and all persons claiming by, through or under Owner, subject to the express provisions of the Agreement. In the event of any inconsistency between the provisions of this Memorandum and the Agreement, the provisions of the Agreement shall control.

7. Counterpart Execution. This Memorandum may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same instrument.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Option and Lease and Easement for a Wind Energy Project as of the day and year first above written.

Owner:

An _____

By: _____

Print Name: _____

STATE OF IOWA

)

)

SS:

COUNTY OF _____

)

This instrument was acknowledged before me on _____, 20__ by

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

Name (print): _____

Notary Public

My Commission Expires:

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX.

EXHIBIT A
TO MEMORANDUM OF OPTION AND LEASE AND EASEMENT
FOR A WIND ENERGY PROJECT

LEGAL DESCRIPTION OF PROPERTY

WHEREAS, pursuant to a letter dated _____, 20____, from Company to Owner, Company has exercised its right and option to lease and obtain the easements over the Property, on and subject to the terms of the Lease.

NOW THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants, agreements and conditions contained herein and contained in the Lease, Company and Owner agree as follows:

1. Definitions. Capitalized terms used but not otherwise defined in this Notice of Commencement shall have the same meaning ascribed to such terms in the Lease.

2. Lease. Owner hereby leases to Company, and Company hereby leases from Owner, the Property, on and subject to the terms of the Lease. The term of Lease shall be twenty-five (25) years from the Lease Effective Date. The Lease Effective Date is _____, 20____. Company has the right to extend the term of the Lease for an additional fifteen (15) year period and an additional ten (10) year period.

3. Easements. Owner hereby grants to Company the following easements (collectively, the "Operations Easements") on, over, under and across the Property for the benefit of Company and its successors and assigns and for the benefit of the Projects and of Company, and any of its affiliates', successors' or assigns', energy generation projects, each as more particularly described in the Agreement:

a. An exclusive easement for the free and unobstructed flow of wind over and across the Property and the right to use, capture, and convert the wind for energy generation.

b. A non-exclusive easement for vehicular (including cranes and other heavy construction equipment) and pedestrian ingress, egress and access to, from and across the Property and adjacent lands 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 Company or anyone else may construct from time to time on any portion of the Property. The foregoing rights shall include rights to construct, maintain, improve, rebuild, relocate or widen new and existing roads, and to perform temporary earthmoving as reasonably necessary to build suitable access and construction routes for the Project.

c. An exclusive easement to install, maintain, repair, replace, repower, relocate and operate on the Property multiple (i) underground and/or above-ground transmission, distribution and collection cables (including fiber optic cables), conduits, wire and lines for the transmission of electrical energy to and from the Property, (ii) underground and/or above-ground communication cables (including fiber optic cables), conduits, wire and lines for the transmission of communications related to Company's permitted uses of the Property to and from the Property, (iii) transformers, and (iv) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the

foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing.

d. An exclusive easement, right and entitlement over, across and under the Property for any audio, visual, view, light, noise, sound, vibration, air turbulence, wake, shadow flicker, electromagnetic, television reception and any other effect of any kind whatsoever, and for ice or other weather created hazards, resulting directly or indirectly from or caused by the operation of Windpower Facilities by Company or any of its respective affiliates, successors and assigns. Owner, for itself and any Owner affiliates or any of their principals, employees, agents, licensees of any tier or invitees ("Related Persons"), does hereby waive, remise and release any first party right, claim or cause of action that it may now have or that it may have in the future against Company or its respective affiliates, successors and assigns, as a direct or indirect result of any of the effects or hazards described above; provided, however, that this waiver and release shall not apply to any claims against Owner made by third parties not described in this sentence.

e. An exclusive easement on, over, across or under the Property for any encroachment or overhang of any Windpower Facilities now or hereafter constructed by Company or any affiliate thereof or their respective successors and assigns, as part of any Project.

f. A non-exclusive easement on, over, across and under any property adjacent to the Property that is owned or controlled by Owner, to be used as necessary for ingress, egress and access in connection with the construction, operation and maintenance of the Windpower Facilities or any Project.

The Operations Easements are easements in gross and are personal to Company for the benefit of Company and its successors and assigns, as owner of the Operations Easements, in connection with its development of energy generation facilities on the Property and on real properties adjacent to or in the vicinity of the Property. The Operations Easements shall run with the Property and inure to the benefit of and be binding upon Owner and the holder of the respective Operations Easements and their respective successors and assigns, and all persons claiming under them. No act or failure to act on the part of Company, a sublessee or the holder of the Operations Easements shall be deemed to constitute an abandonment, surrender or termination thereof, except upon recordation by the holder of a quitclaim deed specifically conveying the Operations Easements back to Owner. Nonuse of the Operations Easements shall not prevent the future use of the entire scope of the Operations Easements if they are later needed. No use of or improvement to the Property or any lands benefited by the Operations Easements which is permitted under the terms of this Lease, and no transfer of the Operations Easements which is permitted under the express terms of this Lease, shall, separately or in the aggregate, constitute an overburdening of the Operations Easements

4. Covenants Running with the Land. Owner and Company agree that all of the covenants and agreements contained in the Lease touch and concern the Property and are expressly intended to, and shall, be covenants running with the land and shall be binding upon the Property and each party's present and future estate or interest therein and upon each of the parties, their respective heirs, administrators, executors, legal representatives, successors and assigns.

5. Notice and Binding Effect. It is understood that the purpose of this Notice of Commencement is to give notice of the Lease, and the exercise of the option to lease by Company and Lease Effective Date. The Lease contains other terms and conditions set forth more fully therein. All such terms and conditions of the Lease are incorporated herein by this reference. The Lease is hereby ratified and confirmed as if the Lease were being re-executed by Company and Owner and recorded. This Notice of Commencement shall bind and inure to the benefit of Owner and Company and their respective successors and assigns, and shall encumber the Property and shall be binding on Owner's successors-in-interest thereto and all persons claiming by, through or under Owner, subject to the express provisions of the Lease. In the event of any inconsistency between the provisions of this Notice of Commencement and the Lease, the provisions of the Lease shall control.

[Signature page follows]

IN WITNESS WHEREOF, Company has executed this Notice of Commencement of Lease as of the date and year first written above.

COMPANY:

Salt Creek Wind LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

STATE OF _____)

)

SS:

COUNTY OF _____)

On this _____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is the _____ of Salt Creek Wind LLC, a _____ limited liability company, and that said instrument was signed in behalf of said limited liability company, by authority of its members; and said _____ acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

Name (print): _____

Notary Public

My Commission Expires:

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX.

EXHIBIT A
TO NOTICE OF COMMENCEMENT OF LEASE

LEGAL DESCRIPTION

EXHIBIT C
TO OPTION AND LEASE AGREEMENT FOR A WIND ENERGY PROJECT

RESTRICTED AREAS

NONE

Initial: JH _____