

# Lac qui Parle-Yellow Bank Watershed District

## Meeting Minutes #635

### January 5, 2023

#### Call to Order

The meeting was held in the Lac qui Parle County Commissioners' Room, Courthouse, Madison, MN with a virtual ZOOM login option. The meeting was officially called to order by Chairman Darrel Ellefson at 4:30 p.m. **Managers Present:** Chairman Darrel Ellefson, Secretary David Craigmile, Treasurer Andrew Weber, Vice-Chairman John Cornell & Publicity Michael Frank. **Managers absent:** None. **Staff present:** Administrator Trudy Hastad, Environmental/Feedlot Specialist Abby VanKempen, Environmental/HHW Specialist Jennifer Schuelke, Ditch Specialist Cindy Brehmer, Ditch Inspector Jared Roiland, Coordinator Mitch Enderson. **Staff Absent:** Park Manager, Ron Fjerkenstad. **Others present:** None

#### Approval of the Agenda

Chairman Ellefson asked for additions to the agenda. There being no additions to the agenda, Manager David Craigmile motioned to approve the agenda, seconded by Manager Andrew Weber. Upon roll call vote, motion passed 5-0.

#### Staff Reports:

##### Park Report: Ron Fjerkenstad

- Ron called and could not make the meeting as his driveway was still snowed in.

##### Ditch Report: Jared Roiland

- Attended the virtual Drainage Work Group meeting on December 8, 2023.
- We ordered a new tire for the Roxor and when it came, we took it down to LQP Coop to get the tire on the rim. Had some trouble getting the truck out of the shed due to snow blocking the shed. Lyndon had to come & blow us out.
- Registered for pesticide recertification course on March 21<sup>st</sup> in St. Cloud. This will be good for two years.
- We had a conference call today with Houston Engineering and Ag Tech drainage about the punch list items for the Br 3 CD #4 improvement project.
- Working with landowners on submitting insurance claims to the contractor's insurance company for damages on the County Ditch #42 improvement project.
- A buffer administrative penalty order was sent to a landowner for a non-compliant buffer strip on his parcel in Section 5, Madison Township. After receiving the order, he contacted us and is working with the SWCD to bring his parcel back into compliance.
- The pipe manufacturer requested a copy of the Br 3 CD #4 televising footage to review with the contractor so they can find ways to improve both the pipe and installation methods.
- Brian Murphy from H2Overviewers requested a list of all our watershed ditches and wanted to let us know their rates will be increasing. He was inquiring if we wanted to have the WS ditches redetermined we could still lock in the current rate.
- Trudy, Cindy, & I registered for a drainage conference in Alexandria on February 8<sup>th</sup> and 9<sup>th</sup>, 2023.

##### Environmental/HHW Specialist: Jennifer Schuelke

- The Holiday Lights collection program is going on through the end of January so I am picking up the lights weekly at the 5 locations in Dawson and 8 locations in Madison. I sent advertisements to the newspapers and radio to announce the final weeks of the program with final collection and the bins on February 1<sup>st</sup>, 2023.
- Marg and I attended the SWA meeting in Marshall on December 1<sup>st</sup>.
- Attended the 2022 Annual RAM meeting via ZOOM on December 15<sup>th</sup>. They are working with a company to bring plastic recycling to Minnesota.

- Completed the Demolition Landfill report and sent to SEH. We will have to continue to do well water testing at the Demo and send in the reports for the next five years.
- We are working on getting the new license for the Transfer Station since the Demo Landfill is closed.
- Attended the CUP meetings and a variance request this past month, along with the Zoning ordinance change meetings.
- Submitted the Electronics collections summary report.

**Environmental Feedlot/Planning & Zoning/SSTS Specialist:** Abby VanKempen

- We had 3 variance hearings and 2 conditional use permits in the last month and a half.
- Ordinance updates: added enforcement section, updated some definitions, and redid the performance standards for mining and excavating. Going to meet with the planning and Zoning board soon about a solar ordinance draft. Hoping to get a solar ordinance approved and published by February.
- Finished our annual SSTS report today. There were 27 tanks installed in LQP County in 2022.
- Entered the septic grant information into eLink last week. Distributed \$63,482.82 to homeowners in 2022 for septic system upgrades.
- Attended my first District D meeting last month via zoom.
- Had a question regarding a ring dyke around a farm site in the floodplain.
- Working on the annual feedlot report and financial report.
- It was another busy month for passports, we sent in 28 new passport applications and assisted people with many renewals as well. We sent in 110 new passport applications in 2022.

**Coordinator Report:** Mitch Enderson

- The 1W1P hearing was held December 15<sup>th</sup> despite a snow storm. A virtual option was added and around half of the people attended in person and half virtually.
- A resolution to adopt and implement the 1W1P comprehensive plan needs to be signed by all entities before we receive local implementation funding. Discussion followed.

Manager David Craigmile motioned to adopt the 1W1P Comprehensive Water Management Plan and authorized Administrator Hastad to sign, seconded by Manager Michael Frank. Upon vote, motion passed 5-0. (Attachment 1)

- Working on the year- end report for 1W1P.
- The previous SSTS loan has been closed out and reporting has been completed, submitted, and approved. There were 58 failing systems that were provided funding assistance with the loan from August 20, 2018 to August 20, 2022.
- Working on finishing reporting and closing out the Del Clark/Canby Creek grant by the end of January.
- The 2023 Watershed calendars were completed and sent.
- The No child left inside grant application was submitted. Those receiving funding will be notified around late February.
- I have received some emails recently that Florida Creek modeling might finally be nearing completion and the project can pick back up after stagnating for the past year.
- Transferred aerial imagery request to LQP engineer for a County highway road project near Boyd. The engineer had to repair their FTP site so on about the 10<sup>th</sup> try and 5 hours of uploading it finally worked.

**WCA:** Mitch Enderson

- Had a potential violation reported for cleaning in a county road ditch. The landowner filled out an after-the-fact permit as they had acquired permit approval from the County highway engineer and did not realize they also needed a WS permit. Upon review of the site and pictures of the maintenance it was determined minimal sediment excavation had occurred and most of the clearing was vegetation. Additionally, it would not benefit the ditch to excavate further as there is a field crossing that acts as the control to the wetland outlet. Therefore, through discussion with our BWSR wetland specialist, we did not feel a violation had occurred and the maintenance to be exempt.

- Helped work on a No-Loss joint application for maintenance of a portion of County Ditch 5 Branch 8. After surveying completed this summer and discussing with Houston Engineering, it was agreed that only vegetation removal is needed in the type 3 wetland portion of the branch, thus not requiring mitigation. After discussion with the other TEP members on the application, our BWSR specialist said the plan sounds fine, he just recommended that there should be more as built survey shots taken afterwards to reference for future maintenance and the spoil should be verified as vegetation only. It was asked if the LGU Board should make a formal decision on this. After discussion, it was tabled until the February meeting.
- Met with SWCD & NRCS staff in Madison as they had questions about banking/mitigating that they haven't dealt with before.
- Final credit release for HRM bank site has been requested. We will have a TEP call next week to discuss.

**Ditch Specialist:** Cindy Brehmer

- We have been busy collecting and entering payments for the group 2 Redetermination of Benefits. We had more payments come in December.
- The combination spreadsheets for CD #13 & Lateral A-M; CD 20 & Br 2 CD 20; & CD44 and Lat B CD4 for the tax system were received the middle of December. I spent a few days entering additional information on the spreadsheet to get it ready to upload into the tax system. Once the spreadsheets were uploaded and balanced in the tax system I was able to start posting all the payments that I have taken in from the ditch assessments. This was a big project as I had to enter each payment by each 40 acre in the parcel. Once I had entered all the payments I worked with MCIS (software company) to generate a report to balance all the ditch assessments to make sure all payments have been applied to the correct parcel.
- I ran an account listing out of the accounting system that shows total payments by ditch code and balanced it to ensure I had entered the correct account numbers when receipting in. Once all of the payments and balancing were completed I started working on the audit spreadsheets that Tiffany uses for the audit and Angie uses to balance for special assessments by township.
- I will be filing the lien reports with the recorder next week for the multi-year assessments.
- I have also been learning how to do some of the Watershed financials, starting with payroll, so there are two people who are trained in this for the Watershed.

**OTHERS:** None

**TREASURER'S REPORT:** Manager Andrew Weber read the Treasurers' report.

Manager Andrew Weber motioned to transfer \$10,000 from the park deposit account into the park expense account, seconded by Manager David Craigmile. Upon vote, motion passed 5-0.

CD #1 at Dawson Coop Credit Union is up for renewal on January 18, 2023. Manager Andrew Weber will call around for the rates. Discussion followed.

Manager Michael Frank motioned to move the CD #1 funds to the bank with the highest interest rate, seconded by Manager David Craigmile. Upon vote, motion passed 5-0.

Manager David Craigmile motioned to approve the secretary report as read, seconded by Manager Andrew Weber. Upon vote, motion passed 5-0.

The following warrants were presented for approval:

		<u>Number</u>	<u>Vendor</u>	<u>Details</u>	<u>12/07/2022 to 01/05/2023</u>
<b><u>General Klein Account:</u></b>					
6222	Houston Engineering			1W1P Consulting work	\$5,129.50
6223	Yellow Medicine SWCD			Sept-December YM SWCD 1W1P	<u>\$7,680.00</u>
				<b>TOTAL</b>	<b>\$12,809.50</b>
<b><u>Park Expense Account:</u></b>					
1582	Canby Print Shop			2023 park forms	\$74.51
1583	City of Canby			sewer for park	\$657.00
1584	LQP County Environmental			park cell phone	\$41.15

1585	Ag Plus Cooperative	gas	\$38.65
1586	Vlaminck Electric Inc	#5 bad breaker, replaced outlet	\$121.96
1587	Frontier Communications	park phone, fax, internet	\$347.34
1588	Ag Plus Cooperative	gas	\$24.39
1589	Olson Sanitation Inc.	December trash	\$19.89
1590	Cleveland Chevrolet	park pickup service	\$70.83
1591	C.A.S. Plumbing & Heating	quarterly softener rent	\$43.28
1592	Canby True Value	ice melt	\$18.00
1593	Lincoln Pipestone Rural Water	December water @ park	\$34.89
1594	Kockelman Construction	December snow removal	\$524.00
1595	Lyon-Lincoln Electric Coop	December park electricity	\$714.02
Transfer	to General	1/5/23 park payroll	<u>\$2,274.24</u>
<b>TOTAL</b>			<b>\$5,004.15</b>

**UPB GENERAL ACCT:**

22199-22204	semi-monthly payroll	December 1-15 payroll	\$9,137.49
22205	Darrel Ellefson	per diem, mileage	\$352.64
22206	Michael Frank	per diem, mileage	\$280.87
22207	Andrew Weber	per diem, mileage	\$230.88
22208	David Craigmile	per diem, mileage, expense	\$608.07
22209	John Cornell	per diem, mileage	\$390.87
4409	LQP-YB Liability Acct	semi-monthly pera	\$1,861.18
4410	LQP-YB Liability Acct	Federal withholding	\$3,051.06
23001-23006	semi-monthly payroll	December 16-31 payroll	\$9,192.68
23007	Park payroll	December park payroll	\$2,274.24
4411	Rinke Noonan Attorney's @ Law	monthly retainer, CD #42 improvement	\$2,212.00
4412	Department of Ag	Jared's 2023 pesticide license	\$10.00
4413	Mike Anderson	cost-share beaver dam removal Hamlin, 27	\$250.00
4414	Pehrson Excavating	tree snag removal, Providence, 25	\$800.00
4415	LQP County Auditor/Treasurer	Roxor license	\$36.00
4416	Quill Corporation	toner cartridges for 2023 calendars	\$456.78
4417	Roger Ellefson	mileage reimbursement	\$16.25
4418	City of Madison	shop electricity, garbage, sewer	\$102.82
4419	LQP County Auditor/Treasurer	2022 annual CADY support	\$81.54
4420	LQP County Auditor/Treasurer	2022 yearly phone bill – 3 lines	\$429.00
4421	LQP County Auditor/Treasurer	December postage	\$60.78
4422	LQP-YB Liability Acct	Federal withholding	\$3,423.64
4423	LQP-YB Liability Acct	State withholding	\$1,020.00
4424	LQP County Auditor/Treasurer	Health insurance	\$9,167.86
4425	LQP County Auditor/Treasurer	Eye/Dental/Aflac/LTD insurances	\$688.78
4426	LQP-YB Liability	monthly/semi-monthly PERA 1/5/23	\$2,287.99
4427	Minnesota Revenue	December 22 sales & use tax	\$15.00
4428	Quill Corporation	cardstock, file pockets, copy paper	\$138.45
4429	LQP Coop Oil Company	put ROXOR tire on rim	<u>\$28.42</u>
<b>TOTAL</b>			<b>\$48,605.29</b>

**DITCH ACCT**

**TOTAL      \$-0-**

Manager Andrew Weber motioned to approve the warrants as presented, seconded by John Cornell. Upon roll call vote, motion passed 5-0.

**Secretary's Report:** Trudy Hastad reviewed Secretary report #634.

Manager Andrew Weber motioned to approve meeting minutes #634, seconded by Manager John Cornell. Upon roll call vote, motion passed 5-0.

**Administrator Report/Old & New Business:** Trudy Hastad

- Set the 2023 fee schedule & committee appointments. Recommended:

## 2023 LQP-YB Watershed District Fee Schedule

Follow the Lac qui Parle County fee schedule except as follows:

Manager Compensation:	\$125 meeting/day; \$20/hour for business other than meetings not to exceed \$125/day.
Mileage:	Federal mileage rate
Meals:	Not to exceed \$42/day
Nuisance Beavers:	\$20/beaver; 75% cost-share for dam removal not to exceed \$250/dam. Maximum 2023 budget of \$5,000 (must be trapped in the Watershed)
Official papers:	Western Guard, Dawson Sentinel, Canby News, Hendricks Pioneer
Official radio:	KLQP-FM 92.1

### LQP-YB Ditch Buffer Non-compliance fines:

Month 0-6	\$50.00 per parcel per month
Month 7-12	\$200.00 per parcel per month
Months 13-18	\$200.00 per parcel per day
Month 19-24	\$500.00 per parcel per day

Passports - set by Federal Government

### Committee Appointments:

1W1P Policy Committee:	Manager David Craigmile
Area II:	Manger Darrel Ellefson, Michael Frank
Drainage Committee:	Manager Darrel Ellefson

Manager David Craigmile motioned to approve the 2023 Fee Schedule, seconded by Manager Andrew Weber. Upon vote, motion passed 5-0.

- Set the 2023 Watershed Board meeting schedule. Official meeting date is the 1<sup>st</sup> Tuesday of the month at 4:30 p.m. except the month of July due to the 4<sup>th</sup> holiday, and November due to elections.

### 2023 Watershed Board Meeting Schedule

January 3, 2023	July 11, 2023
February 7, 2023	August 1, 2023
March 7, 2023	September 5, 2023
April 4, 2023	October 3, 2023
May 2, 2023	November 8, 2023
June 6, 2023	December 5, 2023

Manager Andrew Weber motioned to accept the 2023 meeting schedule, seconded by Manager John Cornell. Upon vote, motion passed 5-0.

- Discussed the new pasture/hayland leases. The watershed typically advertises and has bid opening at the February meeting. The managers reviewed the current FSA maps and discussed some changes to some of the property. The Lazarus Creek track in Section 9, Fortier Township was discussed with the managers taking the 19.6 acre cropland and seeding to an alfalfa/grass mix in the spring of 2023; and bidding Section 9 and section 10 as separate parcels; the boy scout camp in Norman 16 & 17 will be reduced to 39.76 acres with a alfalfa/grass mix seeded in spring of 2023; & Norman 17 - 12.05 acres not bid as will be developed for trails. The managers discussed having Attorney John Kolb draw up the new contracts and will be leased for three years with the following language incorporated into the lease:

- 1.) 1 cow 1 calf pair per 2- acre parcel along with grazing plan (must contact office the date cattle are being put on the pasture, and the date they are being taken off pasture).
- 2.) attorney fee's paid by person who violates lease
- 3.) some type of enforcement with penalty if there are violation of the lease
- 4.) weeds are responsibility of renter
- 5.) fencing to be repaired by renter, if left unfixed will be repaired by Watershed at renters expense.

- The Managers set the bid opening for the pasture/hayland at 6:00 p.m. on February 7, 2023. Hastad will make sure Attorney Kolb will have to time to draw up the contracts.
- Discussed the retirement of park manager Ron Fjerkenstad on June 1, 2023. The Board will start advertising the end of February with interviews to be held in March 2023.
- The Canby Fireman Association will be holding their annual fishing tournament on Del Clark Lake January 27 & 28, 2023.
- Presented and discussed the proposed wind tower lease with Avangrid Renewables also known as Flying Cow Wind, LLC. Attorney Kolb had reviewed the lease and gave approval for the execution of a wind energy development lease agreement with Flying Cow Wind, LLC and conveyance of a wind energy easement over certain property owned by the Lac qui Parle-Yellow Bank Watershed District.

Manager Frank moved, seconded by Manager Weber for the adoption of the attached resolution (attachment #2) authorizing the Board's President and Secretary to execute a wind energy development lease and easement agreement and short form agreement. After discussion the question was called on passage of the resolution and upon a vote the resolution passed with a vote of 5 yeas and 0 nays.

- H2Overviewers contacted Administrator Hastad to see if the Watershed Board would like to do Redetermination of Benefits on the Watershed Ditches. They have been doing ROB's on all of the LQP County ditches. There rates will be going up, and if the Watershed District wanted to do their WS ditches they would draw up a contract with the old rates. Discussion followed with the Board passing on this offer.
- Hastad reminded the managers to watch their mail for the Campaign Finance U& Public Disclosure Board notification and importance of filling it out and sending it back in.
- Updated on the CD #42 improvement project.

**PERMITS:**

13813 – renew	Brian Croatt	Baxter, 3	seepage, main tile	01/05/23 DC
13814	Doug DeJong	Baxter, 18	seepage, main tile	01/05/23 DC
13815	Kevin Olson	Arena, 34	clean ditch	01/05/23 DE
13816	Jesse Vlaminc/MN DOT	Madison, 20 & 29	installing culvert & storm sewer	01/05/23 DE

**Permits Denied:**

Manager David Craigmile motioned to approve the permits, seconded by Manager Andrew Weber. Upon roll call vote, motion passed 5-0.

Meeting adjourned at 7:21 p.m.

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Darrel Ellefson, Chairman

Attest:

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David Craigmile, Secretary

The next regularly scheduled meeting of the Lac qui Parle-Yellow Bank Watershed District is Tuesday, February 7, 2023 at 4:30 p.m. in the LQP County Commissioner Room, Courthouse, Madison, MN.

ATTACHED 1

**Resolution to Adopt and Implement  
the Lac qui Parle – Yellow Bank  
Comprehensive Watershed Management Plan**

**Whereas,** Lac qui Parle – Yellow Bank Watershed District (WD) entered into a planning agreement Memorandum of Agreement to develop the Lac qui Parle – Yellow Bank Comprehensive Watershed Management Plan (Plan); and

**Whereas,** The WD has been an active participant in the development of the Lac qui Parle – Yellow Bank Comprehensive Watershed Management Plan (Plan); and

**Whereas,** The WD recommended the Lac qui Parle – Yellow Bank Policy Committee submit the Plan for State approval on December 15, 2022; and

**Whereas,** Lac qui Parle – Yellow Bank Policy Committee submitted the Plan for State approval on January 6, 2023; and

**Whereas,** Minnesota Statutes §103B.101, subd. 14 allows a watershed management plan developed or amended, approved, and adopted, according to chapter 103D to be replaced with a comprehensive watershed management plan but only to the geographic area of the Plan and consistent with the One Watershed, One Plan suggested boundary map.

**Now, Therefore, Be it Resolved,** contingent on BWSR approval, Lac qui Parle – Yellow Bank Watershed District hereby adopts and will begin implementation of the Plan for the area of Lac qui Parle – Yellow Bank Watershed identified within the Plan and serve as a substitute for the county local water management plan as per 103B for the duration of the State approved Plan.

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**CERTIFICATION**

**STATE OF MINNESOTA**

**Lac qui Parle – Yellow Bank Watershed District**

I do hereby certify that the foregoing resolution is a true and correct copy of a resolution presented to and adopted by Lac qui Parle – Yellow Bank Watershed District at a duly authorized meeting thereof held on the fifth of January, 2023.

  
\_\_\_\_\_  
Trudy Hastad, Administrator

STATE OF MINNESOTA  
LAC QUI PARLE-YELLOW BANK WATERSHED DISTRICT

Regarding the execution of a wind energy development lease agreement with Flying Cow Wind, LLC, and conveyance of a wind energy easement over certain property owned by the Lac qui Parle-Yellow Bank Watershed District:

Manager Frank moved, seconded by Manager Weber, for the adoption of the following resolution authorizing the Board's President and Secretary to execute a wind energy development lease and easement agreement and short form agreement.

WHEREAS, Flying Cow Wind, LLC (Flying Cow) is the successor in interest to Global Winds Harvest, Inc., two which the Lac qui Parle-Yellow Bank Watershed District (District) conveyed a wind energy development lease and easement agreement in 2016; and

WHEREAS, the Flying Cow has chosen to cancel the 2016 lease and easement agreement in favor of a new lease and easement agreement; and

WHEREAS, Flying Cow is in the business of developing, erecting and operating wind energy conversion systems and power generation facilities for the production of electrical energy for sale to utility companies, power marketers, power exchanges and other users; and

WHEREAS, the District is the owner of real property (Property) over which an easement is desired by Flying Cow for the production of wind energy; and

WHEREAS, the Property is located in Yellow Medicine County, Minnesota, and is particularly described in the proposed easement agreement and memorandum of easement; and

WHEREAS, the Property was acquired by the District as part of a flood control project known as "LQP-25 (Lazarus Creek) Floodwater Retention Project" (Project); and

WHEREAS, funding for the acquisition of the Property did not involve bond funding by the State of Minnesota, but came from local taxation by the District under authority of Minnesota Statutes Chapter 103D; and

WHEREAS, since funding for the acquisition of the Property did not involve bond funding by the State of Minnesota, the property is not considered "State Bond Financed Property"; and

WHEREAS, the purpose and function of the Project on the Property is to impound and meter storm and flood waters from a 21.1 mile drainage area in order to prevent flooding in downstream reaches of Lazarus Creek (the "Purpose"), said Purpose being articulated in the "Operation and Maintenance Plan for Lac qui Parle-Yellow Bank Watershed District LQP-25 (Lazarus Creek) Floodwater Retention Project" dated October 14, 1998; and

WHEREAS, subject to the Purpose, the District has lawful authority to convey an interest in the Property as described in the easement agreement; and



WHEREAS, the actions and activities allowed on the Property under the proposed easement agreement and memorandum of easement will not interfere with the Project or its Purpose.

THEREFORE, having considered the proposed wind energy development lease and easement agreement and short form agreement in light of the Project or its Purpose, the District Board of Managers finds that execution of the proposed instruments is beneficial to the District, promotes the general purpose and priorities of the District, is consistent with the District's Watershed Management Plan, will generate income beneficial to the District's residents, and will promote the general welfare of the District.

FURTHER, the Board authorizes its President to execute the easement agreement and memorandum of easement and directs the Secretary to attest to the President's signature.

After discussion the question was called on passage of the resolution and upon a vote the resolution passed with a vote of 5 yes and 0 no.

Dated: January 5 2023

By

  
David Craigmile

Secretary, Board of Managers

**PREPARED BY:**

Flying Cow Wind, LLC  
Attention: Land Management  
2701 NW Vaughn Street, Suite 300  
Portland, OR 97210  
Telephone: 503.796.7000

**AFTER RECORDING RETURN TO:**

Winthrop & Weinstine  
Attn: Krista A. Bengtson Cook  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Telephone: 612.604.6629

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(Space above this line for Recorder's use only)

**SHORT FORM OF WIND ENERGY LEASE AND WIND LEASE AGREEMENT**

This SHORT FORM OF WIND ENERGY LEASE AND WIND LEASE (this "Short Form") is made effective as of \_\_\_\_\_, 2022 (the "Effective Date"), by and among **Lac qui Parle – Yellow Bank Watershed District**, a Minnesota political corporation ("Landowner"), whose address is 600 6<sup>th</sup> Street, Madison, MN 56256 and **Flying Cow Wind, LLC**, a Delaware limited liability company ("Lessee"), whose address is 2701 NW Vaughn Street, Suite 300, Portland, Oregon 97210, in light of the following facts and circumstances:

Landowner and Lessee entered into that certain Wind Energy Lease and Wind Lease Agreement of even date herewith (the "Lease Agreement"), pursuant to which Landowner has leased to Lessee the real property of Landowner (the "Property") located in **Yellow Medicine County**, Minnesota, as more particularly described in Exhibit A attached hereto, and which Lease Agreement and said Exhibit A are hereby incorporated herein as if fully set forth in this Short Form. Landowner and Lessee have executed and acknowledged this Short Form for the purpose of providing public and constructive notice of the Lease Agreement. Capitalized terms not otherwise defined in this Short Form shall have the meanings provided in the Lease Agreement. In the event of any conflict or inconsistency between the provisions of this Short Form and the provisions of the Lease Agreement, the provisions of the Lease Agreement shall control. Nothing in this Short Form shall be deemed to amend, modify, change, alter, amplify, limit, interpret or supersede any provision of the Lease Agreement or otherwise limit or expand the rights and obligations of the parties under the Lease Agreement and the Lease Agreement shall control over this Short Form in all events.

**NOW, THEREFORE**, Landowner and Lessee hereby agree as follows, effective as the Effective Date:

1. **New Lease**

**1.1 Lease of Property.** Landowner leases the Property to Lessee on the terms, covenants and conditions stated in the Lease Agreement. The lease created by the Lease Agreement is exclusively for wind energy purposes, as defined in the Lease Agreement, and Lessee shall have the exclusive right to use the Property for wind energy purposes, together with certain related access and easement rights and other rights related to the Property as more fully described in the Lease Agreement. Lessee shall have no right to use the Property for agricultural purposes. Reference is hereby made to the Lease Agreement for a complete description of the respective rights and obligations of the parties regarding the Property and the covenants, conditions, restrictions and easements affecting the Property pursuant to the Lease Agreement.

**1.2 Grant of Wind Easement.** Among other things, any obstruction to the free flow of the wind by Landowner or persons other than Lessee or a Tenant or Assignee or persons claiming through or under Lessee or a Tenant or 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 Effective Date of this Agreement shall be allowed to remain and Lessee may not require their removal. Landowner may not place or plant any trees, structures or improvements on the Property after the Effective Date of this Agreement which may, in Lessee's sole judgment, impede or interfere with the flow of wind to any Site or the Windpower Facilities, unless Landowner has received prior written approval from Lessee for any such trees, structures or improvements. The provisions of this Section 2.2 shall survive the termination of the Lease Agreement for the full term thereof.

**2. Term.** The Lease Agreement shall be for a term commencing on the Effective Date and continuing initially until the fifth (5th) anniversary of the Effective Date (the "**Development Period**"). During this Development Period, Lessee shall have the right to study the feasibility of wind energy conversion on the Property and to exercise its other rights under the Lease Agreement. Lessee may extend the Development Period for an additional two (2) year period. If Lessee or any Assignee or Tenant either (i) installs one or more wind turbines on the Property, and any such wind turbine generates electricity during the Development Period, or (ii) pays Landowner the first Annual Alternative Rent Payment prior to the expiration of the Development Period, then the Lease Agreement shall automatically be extended for a term of thirty (30) years (the "**Extended Term**"). Lessee and any Tenant or Assignee shall have the right to extend the term of the Lease Agreement beyond the Extended Term for up to two (2) additional ten (10) year renewal periods as provided in the Lease Agreement.

**3. Ownership.** Landowner shall have no ownership or other interest in any Windpower Facilities installed on the Property or any environmental attributes produced therefrom, including without limitation any and all credits, benefits, emissions reductions, offsets and

allowances of any kind, howsoever entitled, attributable to the Windpower Facilities or the electric energy, capacity or other generator-based products produced therefrom.

**4. No Interference.** Among other things, the Lease Agreement provides that Landowner's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or in the future, impede or interfere with: (i) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Windpower Facilities, whether located on the Property or elsewhere; (ii) the flow of wind, wind speed or wind direction over the Property; (iii) access over the Property to Windpower Facilities, whether located on the Property or elsewhere; or (iv) the undertaking of any other activities of Lessee permitted under the Lease Agreement. In no event during the term of the Lease Agreement shall Landowner construct, build or locate or allow others to construct, build or locate any wind energy conversion system, wind turbine or similar project on the Property.

**5. Successors and Assigns.** The Lease Agreement and any easement or rights granted Lessee therein shall burden the Property and shall run with the land. Landowner may not assign the rights and obligations of the Lease Agreement unless the new titleholder accepts all the terms and conditions of the Lease Agreement and has acquired the fee interest in the real property. The Lease Agreement shall inure to the benefit of and be binding upon Landowner and Lessee and, to the extent provided in any assignment or other transfer under the Lease Agreement or this Lease Short Form, any Assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them

**6. Governing Law.** This Lease Short Form shall be governed by and interpreted in accordance with the laws of the State of Minnesota.

**7. Multiple Counterparts.** This Lease Short Form may be executed by different parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall constitute one and the same instrument.

**(SIGNATURE PAGES TO FOLLOW)**

IN WITNESS WHEREOF, the Landowner and Lessee have caused this Short Form to be executed and delivered by their duly authorized representatives as of the Effective Date.

LANDOWNER:

LAC QUI PARLE-YELLOW BANK  
WATERSHED DISTRICT, a Minnesota political  
corporation

By: [Signature]

Name: Darrel Ellerson, Chairman

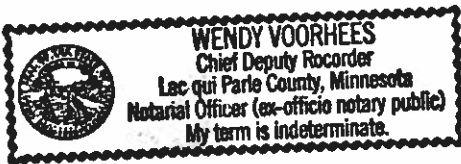
Its: Chairman

STATE OF MINNESOTA )  
COUNTY OF Lac qui Parle ) ss.

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of January, 2022 by Wendy Voorhees the Notary of Lac qui Parle-Yellow Bank Watershed District, a Minnesota political corporation on behalf of the political corporation.

In witness whereof, I hereunto set my hand and official seal.

Notary Signature: [Signature]  
Notary Public for: Lac qui Parle County Courthouse  
My Commission expires: \_\_\_\_\_  
Commission No.: \_\_\_\_\_



**IN WITNESS WHEREOF**, Landowner and Lessee have caused this Short Form to be executed and delivered by their duly authorized representatives as of the Effective Date.

**LESSEE:**

**FLYING COW WIND, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF OREGON**                    )  
  )ss  
**COUNTY OF MULTNOMAH**        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_ and \_\_\_\_\_, as Authorized Representatives of Flying Cow Wind, LLC, a Delaware limited liability company, on behalf of such limited liability company.

In witness whereof, I hereunto set my hand and official seal.

Notary Signature : \_\_\_\_\_  
Notary Public for : \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
Commission No.: \_\_\_\_\_

**EXHIBIT "A"**

**Description of the Property**

All that real property located in Yellow Medicine County, Minnesota, described as follows:

**Parcel 1:**

The South Half of the Southwest Quarter (S ½ of SW ¼) of **Section 14**, Township 114 North, Range 46 West, Yellow Medicine County, Minnesota.

AND

All that part of the Northeast Quarter and the Northwest Quarter of the Southwest Quarter of **Section 14**, Township 114 North, Range 46 West of the 5th Principal Meridian described as follows:

Beginning at the Southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 14; thence North 87°29'07" West along the South line of the Northeast Quarter and the Northwest Quarter of the Southwest Quarter of said Section 14 for 1675.10 feet to a fence line; thence North 00°58'05" West for 563.36 feet; thence South 89°32'09" East for 752.86 feet to a fence corner; thence South 01°04'01" West for 202.47 feet to a fence corner; thence South 89°03'39" East for 941.05 feet to the East line of the Northeast Quarter of the Southwest Quarter of said Section 14; thence South 00°58'07" West for 412.88 feet to the point of beginning, containing 18.468 acres.

AND

Southeast Quarter (SE ¼) of **Section 14**, Township 114 North, Range 46 West, Yellow Medicine County, Minnesota.

PID: 04-014-3020

**Parcel 2:**

All that part of **Section 9**, Township 114 North, Range 46 West described as follows:

Beginning at the Southeast corner of said Section 9; thence along the South line of said Section 9, on an assumed bearing of South 89° 40' 36" West for 3,026.12 feet; thence North 17° 21' West for 1,264.40 feet; thence North 46° 51' West for 690.60 feet; thence North 01° 33' 09" West for 532.26 feet; thence North 80° 05' 48" East for 703.75 feet; thence South 23° 54' 16" East for 1,126.26 feet; thence North 81° 17' 37" East for 493.32 feet; thence North 81° 13' 58" East for 592.56 feet; thence North 10° 32' 26" West for 908.66 feet; thence North 70° 17' East for 1,933.60 feet to the East line of said Section 9; thence Southerly along the East line of said Section 9 for 2,996.53 feet, more or less, to the point of beginning, containing 172.70 acres, more or less.

PID: 04-009-4010

**Parcel 3:**

That part of the West Half of the Southwest Quarter (W ½ of SW ¼) of **Section 10**, Township 114, Range 46 West, Yellow Medicine County, Minnesota described as follows:

Beginning at the west quarter corner of said Section 10, thence South 01 degrees 01 minutes 54 seconds East, assumed bearing along the west line of said Section 10, a distance of 2142.38 feet; thence North 62 degrees 07 minutes 35 seconds East a distance of 370.00 feet, thence North 88 degrees 14 minutes 50 seconds East a distance of 480.00 feet; thence North 57 degrees 28 minutes 32 seconds East a distance of 268.11 feet; thence North 00 degrees 53 minutes 48 seconds West a distance of 1468.50 feet; thence North 36 degrees 45 minutes 00 seconds East a distance of 36.00 feet; thence South 89 degrees 33 minutes 15 seconds East a distance of 264.00 feet to a point on the east line of the said West Half of the Southwest Quarter; thence North 00 degrees 53 minutes 48 seconds West, along said west line, a distance of 320.00 feet to a point on the east-west quarter line of said Section 10; thence South 89 degrees 47 minutes 27 seconds West, along the said east-west quarter line, a distance of 1329.03 feet to the point of beginning.  
Said tract contains 49.31 acres more or less.

PID: 04-010-3020



## WIND ENERGY LEASE AND WIND EASEMENT AGREEMENT

This **WIND ENERGY LEASE AND WIND EASEMENT AGREEMENT** (this “**Agreement**”) is made, dated and effective as of the Effective Date (defined below), by and between Landowner (defined below) and **FLYING COW WIND, LLC**, a Delaware limited liability company (“**Lessee**”).

WHEREAS, the Property was acquired by Landowner as part of a flood control project known as “LQP-25 (Lazarus Creek) Floodwater Retention Project” (the “**Project**”);

WHEREAS, funding for the acquisition of the Property by Landowner did not involve bond funding by the State of Minnesota, but came from local taxation by the Landowner under authority of Minnesota Statutes Chapter 103D;

WHEREAS, since funding for the acquisition of the Property by Landowner did not involve bond funding by the State of Minnesota, the Property is not considered “State Bond Financed Property”;

WHEREAS, the purpose and function of the Project on the Property is to impound and meter storm and flood waters from a 21.1 mile drainage area in order to prevent flooding in downstream reaches of Lazarus Creek (the “**Purpose**”), said Purpose being articulated in the “Operation and Maintenance Plan for Lac qui Parle-Yello Bank watershed District LQP-25 (Lazarus Creek) Floodwater Retention Project” dated October 14, 1998; and

WHEREAS, Landowner and Lessee acknowledge that the conveyance herein is subject to and cannot frustrate the Purpose.

1. **Basic Provisions.** The following terms used in this Agreement have the meanings set forth below:

1.1.	“Landowner”	<b>Lac qui Parle – Yellow Bank Watershed District</b> , a Minnesota political corporation
1.2.	“Property”	The real property consisting of approximately <b>Five Hundred and 62 Hundredths (500.62) acres</b> located in <b>Yellow Medicine County</b> , State of Minnesota, that is described in <u>Exhibit A</u> attached hereto and incorporated herein by this reference.
1.3.	“Effective Date”	_____, 2022
1.4.	“Development Period”	The period commencing on the Effective Date and expiring on the date which is seven (7) years thereafter.
1.5.	“Development Period Payments”	Annual payment the greater of One Thousand Eight Hundred Dollars (\$1,800.00) per parcel or Four dollars (\$4.00) an acre and One Thousand Dollars (\$1,000.00) of the Property leased by Lessee under this Agreement; see <u>Section 5.1</u> for payment terms.

1.6.	"Operational Rate"	<p>Annual payments of Six Thousand Dollars (\$6,000.00) per Megawatt of name plate capacity installed on the Property.</p> <p>The Operational Rate shall be adjusted upward annually, commencing after the declaration of commercial operation, by an amount equal to either (a) two and one-half percent (2.5%), if the increase in the Consumer Price Index for the Midwest Region of the Bureau of Labor Statistics, as published by the United States Department of Labor, Bureau of Labor Statistics (the "Midwest CPI") for the prior year is less than 3.5%, or (b) the amount of the increase in the Midwest CPI for the prior year, if such increase is greater than or equal to 3.5%, with each such increase being determined on a compounded basis.</p> <p>Such amount is payable, with the Annual Alternative Rent payment, if, when and as provided in Sections 5.4 and 5.5.</p>
1.7.	"Installation Fee"	<p>Five Thousand Dollars (\$5,000.00) per Megawatt of wind turbine capacity installed on the Property by Lessee in any particular phase of construction.</p>
1.8.	"Extended Term"	<p>The thirty (30) year period commencing upon the date described in <u>Section 4</u> of this Agreement.</p>
1.9.	"Annual Alternative Rent Payment"	<p>An annual payment during the Extended Term in an amount equal to a One Hundred Five Dollars (\$105.00) per acre payment for the acres constituting the Property, subject to the same upward adjustment provided in respect of the Operational Rate under Section 1.6 above.</p>
1.10.	"Met Tower Fee"	<p>An annual payment equal to Three Thousand Dollars (\$3,000.00) per year for each meteorological tower installed on the Property by Lessee.</p> <p>The Met Tower Fee shall be adjusted upward by the same annual amount as is applicable to the Operational Rate under <u>Section 1.6</u> above, on a compounded basis, commencing the year after the first Met Tower Fee is payable pursuant to <u>Section 5.2</u>.</p>
1.11	"Project"	<p>The Property and the surrounding real property, leased or owned by Lessee, which has or will have Windpower Facilities installed, which together make up a larger wind energy project, that will, from time to time, share structural and transmission components, ingress and egress, utility access, and other support, with the Windpower Facilities located on the Property while the Windpower Facilities on the Property or surrounding property are under development, being repaired, or operated; Lessee shall determine the boundaries of any Project in its sole but reasonable discretion.</p>

2. **Lease and Confirmation.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landowner, Landowner hereby leases the Property to Lessee.

3. **Purpose of Lease; Permitted Uses.**

3.1 **Purpose of Lease.** Subject to the Purpose, the lease created by this Agreement is solely and exclusively for wind energy purposes, and throughout the term of this Agreement, Lessee shall have the sole and exclusive rights to use the Property for wind energy purposes and to convert all of the wind resources of the Property. Lessee shall have no right to use the Property for agricultural purposes. For purposes of this Agreement, "wind energy purposes" means: wind resource evaluation; wind energy development; converting wind energy into electrical energy; collecting and transmitting the electrical energy converted from wind energy; and any and all other activities related to the foregoing.

3.2 **Permitted Uses of Property by Lessee.** The rights granted to Lessee in this Agreement permit Lessee, without limitation, to do the following, in each case except as might interfere with the Purpose:

3.2.1 Extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analysis on, above, and under the Property as Lessee deems necessary, useful or appropriate.

3.2.2 Construct, erect, install, reinstall, replace, relocate and remove from time to time, the following "**Windpower Facilities**" on the Property, on adjacent property or elsewhere:

(a) meteorological and wind measuring equipment, including but not limited to anemometer towers and all necessary and proper appliances and fixtures for use in connection with said towers, to determine the feasibility of wind energy conversion on the Property, on adjacent property or elsewhere or to monitor the same;

(b) wind turbines, steel towers, foundations and concrete pads, support structure, footings, anchors, fences and other fixtures and facilities, maintenance, security, office and/or guest facilities, staging areas for the assembly of equipment, power generation facilities to be operated in conjunction with large wind turbine installations, control buildings, crane pads, and related facilities and equipment;

(c) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures or underground and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy; and

(d) any other improvements, including roads, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate to

accomplish any of the foregoing.

**3.2.3 Use, maintain, repair, and operate Windpower Facilities on, above, or under the Property, on adjacent property or elsewhere.**

**3.3 Uses During Development Period.** During the Development Period, Lessee's permitted activities shall include, but are not limited to the following: extracting soil samples, performing geotechnical tests, and conducting such other tests, studies, inspections and analysis on the Property as Lessee deems necessary, useful or appropriate, as well as constructing, erecting, installing, relocating and removing from time to time meteorological and wind measuring equipment, including but not limited to anemometer towers and all necessary and proper appliances and fixtures for use in connection with said towers, to determine the feasibility of wind energy conversion on the Property, on adjacent property or elsewhere, together with rights of ingress and egress pursuant to Section 3.4. The Development Period shall automatically convert to the Extended Term upon the Operations Date of the Windpower Facilities on the Property.

**3.4 Ingress and Egress.** This Agreement includes the right of ingress of and egress from the Windpower Facilities (whether located on the Property, on adjacent property or elsewhere) over, across, and under the Property by means of any existing roads and lanes thereon, and by such other route or routes as Lessee may construct on the Property from time to time.

**3.5 Survival of Covenants.** The covenants, conditions, rights and restrictions in favor of Lessee under this Agreement and Lessee's reliance on and benefit from those covenants, conditions, rights and restrictions may necessarily be a portion of a larger wind energy project, which will, from time to time, share structural and transmission components, ingress and egress, utility access, and other support, with the Windpower Facilities located on the Property; accordingly, the covenants, conditions, rights and restrictions in favor of Lessee pursuant to this Agreement shall not be deemed invalid or inoperative or otherwise be disregarded while any portion of the Windpower Facilities on the Property or an adjacent property are under development, being replaced, or operational.

**3.6 Grant of Wind Easement.** Subject to the Purpose, any obstruction to the free flow of the wind by Landowner or persons other than Lessee or a Tenant or Assignee (as defined in Section 10.1 below) or persons claiming through or under Lessee or a Tenant or 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 Effective Date of this Agreement shall be allowed to remain and Lessee may not require their removal unless Lessee is willing to pay for the removal of such trees that

interfere with the operation and maintenance of the Project. Landowner may not place or plant any trees, structures or improvements on the Property after the Effective Date of this Agreement which may, in Lessee's sole judgment, impede or interfere with the flow of wind to any Site or the Windpower Facilities, unless Landowner has received prior written approval from Lessee for any such trees, structures or improvements. The provisions of this Section 3.6 shall survive the termination of this Agreement for the full term hereof. Notwithstanding anything to the contrary, Landowner may place one small wind generator with a height of no greater than one hundred feet on the Property so long as it is located more than five hundred feet from the location of any Site and pose no interference with any other part of the Windpower Facilities located on the Property or elsewhere in the Project.

4. **Development Period; Extended Term; Renewal Terms.** Lessee's rights under this Agreement shall continue initially throughout the Development Period. If Lessee or any Assignee or Tenant (as defined in Section 10.1 below) either (i) installs one or more wind turbines on the Property, and any such wind turbine generates electricity during the Development Period, or (ii) pays Landowner the first Annual Alternative Rent Payment prior to the expiration of the Development Period, then this Agreement shall automatically be extended for the Extended Term of thirty (30) years. In the event of any such extension for the Extended Term, the thirty (30) year Extended Term shall commence on the first to occur of (i) the Operations Date (as defined in Section 5.4 below), or (ii) the date Lessee pays the first Annual Alternative Rent Payment (as defined in Section 5.5 below). During the Extended Term, Lessee and any Tenant or Assignee (as defined in Section 10.1 below) may, by notice to Landowner no later than thirty (30) days prior to the expiration of the Extended Term, elect to extend this Agreement for an additional ten (10) year period commencing upon the expiration of the Extended Term (the "**First Renewal Term**"). Similarly, Lessee and any Tenant or Assignee may, by notice to Landowner no later than thirty (30) days prior to the expiration of the First Renewal Term, elect to extend this Agreement for a second ten (10) year period commencing upon the expiration of the First Renewal Term (the "**Second Renewal Term**"). With respect to each extension of the term of this Agreement, Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum evidencing the extension, satisfactory in form and substance to Lessee.

5. **Payments.** Lessee will pay Landowner the following amounts:

5.1 **Development Period Payments.** In order to keep this Agreement in effect during the Development Period, Lessee shall pay Landowner annual Development Period Payments the greater of One Thousand Eight Hundred Dollars (\$1,800.00) per parcel or Four dollars per acre and One Thousand Dollars (\$1,000.00) for the Property leased by Lessee under this Agreement. The first Development Period Payment shall be due within sixty (60) days after the Effective Date, and each subsequent annual Development Period Payment shall be due within sixty (60) days after each anniversary of the Effective Date. Development Period Payments will automatically discontinue the earlier of (i) the Operations Date, (ii) the date Lessee delivers the first Annual Alternative Rent Payment to Landowner, or (iii) any termination of this Agreement. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Development Period upon thirty (30) days written notice to Landowner.

**5.2 Met Tower Fee.** Lessee shall pay Landowner an annual payment of Three Thousand Dollars (\$3,000.00) for each meteorological tower, if any, installed on the Property by Lessee that operates during the term of this Agreement (the "Met Tower Fee"). Lessee's obligation to pay the Met Tower Fee for each such meteorological tower will automatically discontinue upon the removal of the meteorological tower from the Property. The Met Tower Fee shall be due, if at all, within sixty (60) days after the end of each calendar year. The Met Tower Fee shall automatically adjust annually during the Extended Term and, if applicable, the First Renewal Term and the Second Renewal Term, as shown on the Met Tower Fee in Section 1.10 above.

**5.3 Installation Fees.** Lessee shall pay to Landowner a one-time Installation Fee in the amount of Five Thousand Dollars (\$5,000.00) for each megawatt of wind turbine capacity installed on the Property by Lessee in any particular phase of construction, including new turbines installed after the initial Operations Date which are not replacements or relocations of existing turbines. No additional Installation Fee shall be due upon any replacement or repower of an existing turbine during the Extended Term, First Renewal Term, or Second Renewal Term for any Windpower Facilities that are within 20 feet of the original location. Any Windpower Facilities relocated beyond the original 20 feet footprint shall be subject to the payments specified under Section 5.2, 5.3 and 5.7 of this Agreement, as applicable. Landowner shall not be entitled to Installation Fees for any overhang of turbine blades from a wind turbine located on adjacent property. Each Installation Fee shall be paid fifty percent (50%) upon Commencement of Construction (as defined below) and fifty percent (50%) at the Operations Date (as defined in Section 5.4 below). "Commencement of Construction" shall mean the commencement of work consisting of the installation or construction of any wind turbines on the Property for the particular phase of construction, but shall not include survey or wind measurement work, site clearing, the installation of fencing, temporary storage buildings or trailers, placement of equipment or construction materials on the Property or construction of roads.

**5.4 Operational Rate.** If and when a wind turbine is installed on the Property and such wind turbine generates electricity (the "Operations Date"), and for so long as each wind turbine so installed remains on the Property until its physical removal therefrom, Lessee shall pay to Landowner, on an annual basis, the Operational Rate based on the total number of installed name plate capacity located on the Property, per the calculation described below, in addition to the Alternative Annual Rent Payment described in Section 5.5 below. The annual Operational Rate will be calculated by multiplying (i) the installed capacity located on the Property (MW) by (ii) Six Thousand Dollars (\$6,000.00). The Operational Rate shall automatically adjust annually during the Extended Term and, if applicable, the First Renewal Term and the Second Renewal Term, as shown on the Operational Rate in Section 1.6 above.

The Operational Rate payable in respect of the year in which the Operations Date occurs shall be paid in full within sixty (60) days after the Operations Date. Thereafter, during the remainder of the Extended Term and, if applicable, the First Renewal Term and Second Renewal Term, Operational Rate payments shall be paid annually within sixty (60) days after the beginning of each applicable calendar year. Annual Operational Rate payments for any partial years shall be prorated. For purposes of this Section 5.4, the first calendar year of the Extended Term

will commence on the Operations Date and shall end on December 31 of that year in which the Operations Date occurs. Furthermore, to the extent wind turbine blades overhang the Property from an adjacent property, Landowner shall not be entitled to Installation Fees, Operational Rate payments or Annual Alternative Rent Payment solely as a result of such overhang.

**5.5 Annual Alternative Rent.** If Lessee does not install one or more wind turbines on the Property prior to the end of the Development Period, Lessee shall nevertheless have the right to extend the term of this Agreement for the Extended Term, the First Renewal Term, and the Second Renewal Time by paying to Landowner, prior to the expiration of the Development Period, an annual payment during the Extended Term in an amount equal to a One Hundred Five Dollars (\$105.00) per acre payment for the acres referenced in Section 1.2, subject to the same upward adjustment as is set forth in Section 1.6 for the Operational Rate (the "**Annual Alternative Rent Payment**"). Whether or not Lessee has installed one or more wind turbines on the Property (at which time Operational Rate payments shall be payable pursuant to Section 5.4, in addition to Annual Alternative Rent Payments under this Section 5.5), Annual Alternative Rent Payments shall be paid annually within sixty (60) days after the end of each calendar year of the Extended Term, the First Renewal Term and the Second Renewal Term. For purposes of this Section 5.5, the first calendar year of the Extended Term will commence on the date Lessee pays Landowner the first Annual Alternative Rent Payment and shall end on December 31 of that year. Annual Alternative Rent Payments for partial years shall be prorated.

**5.6 Payments to Landowner.** Lessee shall only be obligated to pay Landowner its share of the payments under this Agreement directly attributable to their interest, as it may appear on the title to the Property. Landowner may not sever or assign the payments under this Agreement to a third party without transferring the real property interest in the Property as well.

**5.7 Collection Systems and Road Payment.** Landowner shall receive a one-time payment for (i) underground collection systems (including communication lines) installed on the Property by the Lessee (the "Underground Collection Lines" and such payment called the "Underground Collection Payment"); (ii) overhead collection systems (including communication lines) installed on the Property by the Lessee (the "Overhead Collection Lines" and such payment called the "Overhead Collection Payment"); and (iii) roads installed on the Property by the Lessee (the "Road Payment" and together with the Underground Collection Payment and the Overhead Collection Payment, the "R&C Payment").

The Underground Collection Payment shall be in an amount equal to the number of linear feet of Underground Collection Lines (measured from the centerline) installed by the Lessee, multiplied by Two Dollars (\$2.00).

The Overhead Collection Payment shall be in an amount equal to the number of linear feet of Overhead Collection Lines (measured from the centerline) installed by the Lessee, multiplied by Four Dollars (\$4.00).

The Road Payment shall equal the number of linear feet of road corridors installed by Lessee (as measured from the centerline) multiplied by Four Dollars (\$4.00).

The R&C Payment shall be made at any time within sixty (60) days after the completion of construction of the roads, Underground Collection Lines, and Overhead Collection Lines. In no event shall any delay in payment warrant additional damages by Landowner, nor shall it be deemed a default or breach of this Lease.

**5.8 No Representation.** Other than those representations and warranties set forth in Section 8 below, Lessee has neither made, nor makes, any representations or warranties, verbally, in any written estimates of production, in this Agreement or otherwise, concerning the likelihood that Lessee will install Windpower Facilities on the Property or that any Windpower Facilities installed on the Property will generate electricity sufficient to create any entitlement in Landowner to Operating Fees during any period of time. Landowner acknowledges that the operation of any Windpower Facilities actually installed on the Property is subject to adverse weather, lack of wind, equipment failures and other events beyond the control of Lessee which may interrupt or prevent electricity generation.

**5.9 Power Line Payment.** As additional consideration for the rights granted Lessee by Landowner in Section 3.2.2(c), Lessee shall, if Lessee constructs an overhead power line(s) ("**Power Line**") on the Property pursuant to Section 3.2.2(c), pay Landowner an annual payment equal to (a) One Thousand Dollars (\$1,000) per one-half (1/2) mile for a single or double circuit 115kV (or larger) Power Line or (b) Five Hundred Dollars (\$500) per one-half (1/2) mile for a single or double circuit 34.5kV Power Line located on the Property (the "**Annual Payment**") during the term of the Lease. The Annual Payment will be prorated for partial one-half miles. The first Annual Payment shall be due sixty (60) days after completion of construction of the Power Line in its entirety on the Property, and thereafter an Annual Payment shall be due on each anniversary of the date of completion of construction of the Power Line in its entirety on the Property. Lessee's obligation to pay Annual Payments to Landowner shall automatically discontinue upon the termination of the Lease by Lessee. In no event shall Landowner be entitled to an Annual Payment under this Section 5.8 in an amount in excess of \$1,000 per 1/2 mile, even if both a double circuit 115kV (or larger) Power Line and a 34.5kV Power Line are both located on the Property provided they are on the same structures.

As an example for a double circuit 115kV (or larger) Power Line, if the double circuit 115kV (or larger) Power Line located on the Property is 2,640 feet long (1/2 mile), the Annual Payment due Landowner would be \$1,000, calculated as follows: multiply \$1,000 by 1 for an Annual Payment of \$1,000. As another example, if the double circuit 115kV (or larger) Power Line located on the Property is 7,920 feet long (1½ miles), the Annual Payment due Landowner would be \$3,000, calculated as follows: multiply \$1,000 by 3 for an Annual Payment of \$3,000.

As an example, for a 34.5kV Power Line, if the 34.5kV Power Line located on the Property is 2,640 feet long (1/2 mile), the Annual Payment due Landowner would be \$500, calculated as follows: multiply \$500 by 1 for an Annual Payment of \$500. As another



example, if the 34.5kV Power Line located on the Property is 7,920 feet long (1½ miles), the Annual Payment due Landowner would be \$1,500, calculated as follows: multiply \$500 by 3 for an Annual Payment of \$1,500.

6. **Ownership of Windpower Facilities.** Landowner shall have no ownership or other interest in any Windpower Facilities installed on the Property or any environmental attributes produced therefrom, including without limitation any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Windpower Facilities or the electric energy, capacity or other generator-based products produced therefrom; provided, however, that Landowner shall retain the right to apply for and receive carbon credits attributable to any improvements made by Landowner which are located on the Property. The manner of operation of the Windpower Facilities, including but not limited to decisions on when to conduct maintenance, is within the sole discretion of Lessee.

7. **Taxes.** Lessee shall pay any increase in the real property taxes levied against the Property directly attributable to the installation of Windpower Facilities on the Property, including any reclassification of the Property as a result of the Windpower Facilities or this Agreement, to the extent that such increase is not separately assessed to Lessee and paid directly by Lessee to the taxing authorities. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Landowner where appropriate or required, Lessee shall have the right to contest the amount of the increased assessed value. Landowner shall cooperate in every reasonable way in such contest, provided Lessee reimburses Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expense in advance. Lessee shall not be liable for taxes attributable to facilities installed by Landowner or others on the Property, or to the underlying value of the Property itself. It is a condition to Landowner's right to payment or reimbursement of any such increased taxes hereunder that Landowner submit the real property tax bill to Lessee within ten (10) days after Landowner receives the bill from the taxing authority. Lessee shall have the right to pay its portion of the real property taxes directly to the taxing authority. Landowner shall pay its portion of the real property taxes, and if Landowner fails to do so, Lessee shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to the taxing authority and may offset the amount of such payments from amounts due Landowner under this Agreement.

8. **Lessee's Representations, Warranties and Covenants.** Lessee hereby represents, warrants and covenants to Landowner as follows:

8.1 **Landowner Activities.** Landowner expressly reserves the right to use the Property for purposes of hunting, ranching and farming to the extent such use by Landowner does not, currently or in the future, interfere with Lessee's operations hereunder or enjoyment of the rights hereby granted, and so long as Landowner co-ordinates any hunting activities with Lessee to ensure the safety of all employees, contractors, representatives and agents of Lessee on the Property. Lessee shall make reasonable efforts not to disturb Landowner's activities on the Property to the extent such activities are consistent with Lessee's rights under this Agreement. Lessee shall consult with Landowner on its site development plan prior to construction of any Windpower Facilities, showing Landowner

the proposed location of wind turbines, roads and electric power lines, before making Lessee's final decisions as to location of Windpower Facilities on the Property, but Lessee shall make all final siting decisions in its sole and absolute discretion; provided, however, that (i) access roads between Windpower Facilities shall be approximately sixteen feet (16') wide, (ii) single-collector line corridors shall be approximately twenty-five feet (25') wide, (iii) double-collector line corridors shall be approximately fifty feet (50') wide, in each case as may reasonably be determined by Lessee based on environmental, operational and cost considerations and (iv) all underground collection lines buried beneath drain tile shall be buried to a depth of one (1) foot below such drain tiles, but in no event to a depth greater than five (5) feet beneath the surface. Lessee shall post the access roads it constructs going to the Windpower Facilities as being private roads only for use by authorized personnel in connection with the Windpower Facilities. Landowner may use or cross such roads only to the extent that Landowner does not interfere with Lessee's rights under this Agreement.

**8.2 Insurance.** Lessee shall, at its expense, maintain a commercial general liability insurance policy insuring Lessee and Landowner against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than Five Million Dollars (\$5,000,000.00) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Certificates of such insurance evidencing the coverages required by this Agreement shall be provided to Landowner at Landowner's reasonable request. Lessee shall have the right to use a qualified program of self-insurance to meet the insurance requirements.

**8.3 Indemnity.** Lessee will indemnify Landowner against liability for physical damage to property and for physical injuries or death to Landowner, Landowner's property or the public, to the extent caused by Lessee's construction, operation or removal of Windpower Facilities on the Property, except to the extent such damages, injuries or death are caused or contributed to by the negligence or willful misconduct of Landowner or Landowner's tenants, invitees or permittees. The reference to property damage in the preceding sentence does not include any damages to crops (which are governed solely by the provisions of Section 8.7 below) or any losses of rent, business opportunities, profits and the like that may result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Windpower Facilities pursuant to this Agreement. Landowner authorizes Lessee, at Lessee's sole expense, to take reasonable safety and security measures 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, including without limitation, fencing around the perimeter of the Windpower Facilities as Lessee may deem necessary or appropriate to secure or enclose the same, without unduly burdening Landowner's use of the Property.

**8.4 Requirement of Governmental Agencies.** Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Windpower Facilities, including without limitation any bonding, security and other requirements of any applicable governmental body relating to Lessee's decommissioning obligations hereunder, including without limitation under Section 12.3. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Landowner where appropriate or required,

Lessee shall have the right to contest the validity or applicability to the Property or Windpower Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity; provided, however, that no such contest is reasonably likely to have a material adverse impact on Landowner. Landowner shall cooperate in every reasonable way in such contest, provided (i) Lessee reimburses Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expense in advance and (ii) Landowner shall have no obligation to cooperate in any contest of any matter relating to decommissioning obligations if Landowner reasonably believes that such contest could reasonably have a material adverse impact on Landowner. Any such contest or proceeding, including any maintained in the name of Landowner, shall be controlled and directed by Lessee, but Lessee shall protect Landowner from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment. Without limiting the generality of the foregoing, Lessee shall install and employ an FAA-approved lighting mitigation system, such as an aircraft detection lighting system (ADLS), light intensity dimming solution (LIDS) or other FAA-approved mitigation method.

**8.5 Construction Liens.** Lessee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Lessee's use of the Property pursuant to this Agreement; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond around such lien pursuant to applicable law.

**8.6 Hazardous Materials.** Lessee shall not violate, and shall indemnify Landowner against, any violation by Lessee or Lessee'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.

**8.7 Crop Damage.** (a) During initial construction, Lessee shall pay Landowner crop damage on a per acre basis (prorated for fractional portions), for any and all portions of the Property that are taken out of commercial crop production during the construction of the Windpower Facilities (including by reason of soil compaction) and any and all crops that are removed or damaged as a direct result of Lessee's construction of Windpower Facilities on the Property. Portions of the Property shall be deemed to have been taken out of commercial crop production only to the extent Lessee's construction of Windpower Facilities on the Property materially interferes with Landowner's ability to farm such portions of the Property in which such construction occurs, assuming that Landowner was actually farming such portions of the Property immediately prior to Lessee's commencing construction of the Windpower Facilities on the Property. Such crop damage shall be paid one time per growing season in which such construction and crop damage occur.

Crop damage will equal "Amount of damaged acres" multiplied by "Average yield in the

County of Property” multiplied by “Price” multiplied by 1.10. For any “Amount of damaged acres” that are taken out of production by reason of soil compaction, the crop damage payment due under this Section 8.7(a) shall be determined for the year in which such damage occurs and for the immediately following two (2) years, and such amount shall be payable in a single lump-sum payment within sixty (60) days after the declaration of commercial operation of the Project. If Landowner and Lessee agree that there is a method more accurate than the method described in the preceding sentence to determine fair payment for the above described crop damage, then the Landowner and Lessee shall use said method to determine the payment due for crop damage suffered by Landowner instead of the calculation articulated within this Section 8.7(a).

“Amount of damaged acres” shall be based on Landowner’s reasonable estimate as reasonably reviewed and agreed by Lessee’s representative.

“Average yield in the County of Property” shall be based on the average yield for the latest 3 years of the applicable crop in the County as published by the National Agricultural Statistical Service through the website ([www.nass.usda.gov](http://www.nass.usda.gov)), or if unavailable, another publicly available information source for average yields in the County.

“Price”, shall be based on the future price of the actual crop damaged for December delivery during the year that crop damages occur, and will be the closing price of that year’s December futures quoted on the 15<sup>th</sup> of the month in which the damages occur as posted by the Chicago Board of Trade, or if unavailable another publicly available information source.

(b) After initial construction is complete, Lessee shall be responsible to pay Landowner any losses of income, rent, business opportunities, profits or other losses arising out of the damage by the Lessee of any crops growing on the Property as a result of the existence or operations of the Windpower Facilities to the extent, but only to the extent that such damage occurs outside the boundaries of the access roads and Windpower Facilities installed on the Property pursuant to this Agreement or otherwise outside the graveled area surrounding the base of any Windpower Facilities installed on the Property. It is the intention of the parties that compensation under Section 1.6 includes a payment for crop damage incidental to such existence and operation. Such crop damage, if any, occurring after initial construction is complete, will equal “Amount of damaged acres” multiplied by “Average yield in the County of Property” multiplied by “Price” multiplied by 1.10. If Landowner and Lessee agree that there is a method more accurate than the method described in the preceding sentence to determine fair payment for the above described crop damage, then the Landowner and Lessee shall use said method to determine the payment due for crop damage suffered by Landowner instead of the calculation articulated within this Section 8.7(b).

“Amount of damaged acres” shall be based on Landowner’s reasonable estimate as reasonably reviewed and agreed by Lessee’s representative.

“Average yield in the County of Property” shall be based on the average yield for the latest 3 years of the applicable crop in the County as published by the National Agricultural Statistical Service through the website ([www.nass.usda.gov](http://www.nass.usda.gov)), or if unavailable, another publicly available information source for average yields in the County.

“Price”, shall be based on the future price of the actual crop damaged for December delivery during the year that crop damages occur, and will be the closing price of that year’s December futures quoted on the 15<sup>th</sup> of the month in which the damages occur as posted by the Chicago Board of Trade, or if unavailable another publicly available information source

**8.8 Tile Repair.** Lessee shall make commercially reasonable repair, (including replacement of damaged tile as necessary), of any tile damage that Lessee’s construction or operation activities cause on the Property. All farm drainage tile on the Property which is damaged by Lessee because it intersects Lessee’s underground electrical wires and cable shall be repaired and/or replaced by a contractor, qualified in farm drainage. Landowner shall have the right to inspect all tile repairs and connections prior to backfill, provided Landowner is immediately available to do so. If Landowner is not available, Lessee’s contractor shall provide Landowner with digital photographs of the repair.

**9. Landowner’s Representations, Warranties and Covenants.** Subject to the Purpose, Landowner hereby represents, warrants and covenants to Lessee as follows:

**9.1 Landowner’s Authority.** Landowner’s title to the Property is as it appears in the official land title records office of the county in which the Property is located and, except for liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, fractured interest, mineral, oil or gas rights, options to purchase, claims and disputes which are (i) disclosed in the official land title records office of the county in which the Property is located and recorded at least six (6) months prior to the Effective Date, or (ii) disclosed in writing by Landowner to Lessee prior to the Effective Date, Landowner is the sole owner of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. No rights to convert the wind resources of the Property or to otherwise use the Property for wind energy purposes have been granted to or are held by any party other than Lessee. Each person signing this Agreement on behalf of Landowner is authorized to do so, and all persons having any ownership or possessory interest in the Property (including spouses) are signing this Agreement as Landowner. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms. Furthermore, subject to the Purpose, Landowner is not aware of any ordinances or statutes which would prohibit wind development on the Property. No proceedings in bankruptcy have ever been instituted by or against the Landowner, nor has Landowner made, at any time, an assignment for the benefit of creditors.

**9.2 No Interference.** Except as reasonably necessary to the Purpose, Landowner’s activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or in the future, impede or interfere with: (i) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Windpower Facilities, whether located on the Property or elsewhere; (ii) the flow of wind, wind speed or wind direction over the Property; (iii) access over the Property to Windpower Facilities, whether located on the Property or elsewhere; or (iv) the undertaking of any other activities of Lessee permitted under this Agreement. In no event during the term of this Agreement shall Landowner construct, build or locate or allow others to construct, build or locate any wind energy conversion system, wind turbine or similar project on the Property.

**9.3 Title Review and Cooperation.** Landowner shall cooperate with Lessee to obtain nondisturbance, subordination and other title curative agreements from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Landowner's fee title to the Property to the extent necessary to eliminate any actual or potential interference by any such person or entity with any rights granted to Lessee under this Agreement. If Lessee and Landowner are unable to obtain such agreements from any third party holding an interest in the Property, Lessee, and any Assignee or Tenant, in addition to any other rights provided for herein, shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to such third party and may offset the amount of such payments from amounts due Landowner under this Agreement. Landowner shall also provide Lessee with any further assurances and shall execute any estoppel certificates, affidavits, consents to assignments or additional documents that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee or any title insurance company (the "Title Company") that provides title insurance for any wind energy project that includes the Property ("Title Policy"). The representations and warranties set forth in Sections 9.1, 9.8 and this 9.3 are also made to the Title Company for the purpose of inducing the Title Company to issue the Title Policy without exception for claims arising from the matters referred to in said sections. Landowner hereby holds Title Company harmless from any loss or damage which it may sustain under the Title Policy as a result of any false representation or warranty in any of said sections.

**9.4 Requirements of Governmental Agencies/Lenders.** Landowner shall assist and fully cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of Windpower Facilities, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expenses in advance. Landowner shall make available to Lessee copies of all field tiling surveys, environmental, geotechnical and other site assessments, surveys, plans and other such records of Landowner to the extent such information relates directly to the proposed Windpower Facilities.

**9.5 Indemnity.** Landowner will defend, indemnify and hold harmless Lessee for, from and against liability for physical damage to property (including, without limitation, Lessee's roads) and for physical injuries or death to Lessee or its tenants, invitees, contractors or the public, to the extent caused by the operations, activities, negligence or willful misconduct of Landowner or its invitees, permittees or tenants.

**9.6 Hazardous Materials.** Landowner shall not violate, and shall indemnify Lessee for, from and against any violation (past, present or future) by Landowner or Landowner'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.

**9.7 Quiet Enjoyment.** Landowner covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire term without hindrance or interruption by Landowner or any person lawfully or equitably claiming by, through, under or superior to Landowner subject to the terms of this Agreement.

**9.8 Possession and Construction.** Landowner's possession of the Property has been peaceful and undisturbed. To Landowner's knowledge, Landowner's title to the Property has never been disputed or questioned. Landowner does not know of any facts by reason of which Landowner's title to, or possession of, the Property might be disputed or questioned, or by reason of which others might claim title to the Property or any portion thereof, or any easement over, across or under the same. No parties other than Landowner are entitled to possession or occupancy of the Property or any portion thereof other than: \_\_\_\_\_ . If left blank, Landowner represents and warrants that no other parties other than Landowner are entitled to possession or occupancy of the Property of any portion thereof. Any work done, services rendered, or materials supplied in connection with repairs, improvements or similar activity at the Property within one hundred twenty (120) days before the Effective Date have been paid for in full.

**10. Assignment; Subleases; Cure.**

**10.1 Assignees and Tenants.** Lessee and any Assignee (as defined below) shall have the right, without need for Landowner's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: finance Windpower Facilities; grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more Assignees or Tenants (as defined below); or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees or Tenants this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Windpower Facilities that Lessee or any other party may now or hereafter install on the Property. An "Assignee" is any of the following: (i) any one or more parties involved in financing or refinancing of any Windpower Facilities, including, without limitation, any lender to or investor in Lessee or in any Windpower Facilities; (ii) any purchaser or lessee of any of the Windpower Facilities, or any purchaser of all or substantially all of the membership interests in Lessee or of all or any portion of Lessee's interest in this Agreement; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company; or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee's voting stock or ownership interests or Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. A "Tenant" is any person who succeeds to the leasehold interest of Lessee as an Assignee or to whom a sublease is conveyed by Lessee or an Assignee. A Lessee or an Assignee that has assigned an interest under this Section, or that has conveyed a sublease, will give notice of such assignment or sublease (including the address of

the assignee or sublease thereof for notice purposes) to Landowner, provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Landowner with respect to such assignment or sublease until such notice shall have been given.

**10.2 Assignee/Tenant Obligations.** No Assignee or Tenant which does not directly hold an interest in this Agreement, and no Assignee or Tenant which holds an interest in or lien on or security interest in this Agreement for security purposes, shall have any obligation or liability under this Agreement prior to the time that such Assignee or Tenant directly holds an interest in this Agreement or, in the case of an interest, lien or security interest for security purposes, the holder thereof succeeds to absolute title to such interest, in this Agreement. Any such Assignee or Tenant shall be liable to perform obligations under this Agreement only for and during the period such Assignee or Tenant directly holds such interest or absolute title. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee or Tenant.

**10.3 Right to Cure Defaults/Notice of Defaults/Right to New Lease.** To prevent termination of this Agreement or any partial interest therein, Lessee, or any Assignee or Tenant, shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee, Tenant or Lessee hereunder or necessary to cure any default and to prevent the termination of this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, an Assignee or a Tenant, Landowner shall give written notice of the default to each Assignee and each Tenant, concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. Each such Assignee and each such Tenant shall have the same amount of time to cure said default as is given to Lessee pursuant to this Agreement, which cure period for each Assignee and each Tenant shall commence to run with the end of the cure period given to Lessee in this Agreement. If Lessee or an Assignee or Tenant holds an interest in less than all the rights and interests under this Agreement, the Property or the Windpower Facilities, any default under this Agreement shall be deemed remedied, as Lessee's or such Assignee's or Tenant's partial interest, and Landowner shall not disturb such partial interest, if Lessee or the Assignee or Tenant, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Windpower Facilities in which Lessee or the Assignee or Tenant, as the case may be, holds an interest. In the event of an uncured default by Lessee, or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, each Assignee of a partial interest in this Agreement, and each Tenant who is a sublessee of Lessee or of an Assignee of Lessee, shall have the right to demand, and the Landowner shall grant and enter into, a new lease, substantially identical to this Agreement, by which such Assignee of a partial interest in the rights and interests under this Agreement, or such Tenant by a sublease, shall be entitled to, and Landowner shall not disturb, the continued use and enjoyment by such Tenant or Assignee of the Property, or portion of the Property, for the full term of this Agreement, as set forth in Section 4 of this Agreement, or such shorter term as said Assignee or Tenant may otherwise be entitled pursuant to its assignment or sublease. Further, in the event of an uncured default by Lessee or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or



otherwise, Landowner hereby agrees that, if and for so long as (i) a Tenant who is a sublessee of Lessee or of an Assignee is not in default under the sublease (beyond any period given Lessee, an Assignee or a Tenant under this Agreement to cure such default), (ii) such Tenant attorns to the Landowner, and (iii) the terms and conditions of the Tenant's sublease do not contravene the terms and conditions of this Agreement, Landowner shall (a) recognize such sublease, (b) not diminish nor interfere with such Tenant's possession of the portion of the Property covered by the sublease or with any term extension or renewal rights in the sublease, and (c) not disturb such Tenant's occupancy of such portion of the Property for the full term of this Agreement or such shorter term to which such Tenant may be entitled under the sublease. A Tenant which is, or in the future becomes, a sublessee of Lessee, or a sublessee of an Assignee, is an intended third-party beneficiary of the provisions of this Section 10.3 and entitled to enforce this provision.

**10.4 Acquisition of Interest.** Except as otherwise provided in Section 10.1 above, the acquisition of all or any portion of Lessee's or an Assignee's or Tenant's interest in the Property or the Windpower Facilities or this Agreement by another Assignee or Tenant or any other person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof or any conveyance in lieu thereof, shall not require the consent of Landowner or constitute a breach of any provision or a default under this Agreement, and upon such acquisition or conveyance Landowner shall recognize the Assignee or Tenant, or such other party, as Lessee's or such other Assignee's or Tenant's proper successor.

**10.5 New Lease.** If this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or this Agreement is terminated as result of any incurable default, and within sixty (60) days after such rejection or termination Lessee or any Assignee or Tenant shall have arranged to the reasonable satisfaction of Landowner for the payment of all fees or other charges due and payable by Lessee or other Assignees or Tenants as of the date of such rejection or termination, then Landowner shall execute and deliver to Lessee or such Assignee or Tenant, as the case may be, a new lease to the Property which (i) shall be for a term equal to the remainder of the term of this Agreement before giving effect to such rejection or termination, (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Lessee or any Assignee or Tenant prior to rejection or termination of this Agreement), and (iii) shall include that portion of the Property improved with Windpower Facilities in which Lessee or such other Assignee or Tenant had an interest on the date of rejection or termination.

**10.6 Extended Cure Period.** If any default by Lessee or an Assignee or Tenant under this Agreement cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of Lessee's or another Assignee's or Tenant's interest in this Agreement, then any such default shall be deemed remedied if (i) within sixty (60) days after receiving notice from Landowner as set forth in Section 12.2 hereof, either Lessee or an Assignee or Tenant shall have acquired possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in this Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and (ii) Lessee or the Assignee or Tenant, as the case may be, shall be in the process of diligently prosecuting any such proceedings to

completion; and (iii) after gaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in this Agreement, Lessee or the Assignee or Tenant performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If Lessee or an Assignee or Tenant is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee or any defaulting Assignee or Tenant, as the case may be, from commencing or prosecuting the proceedings described above, the 60-day period specified above for commencing such proceeding shall be extended for the period of such prohibition.

**10.7 Certificates, etc.** Landowner shall execute such estoppel certificates (certifying as to such matters as Lessee may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment and/or nondisturbance agreements as Lessee or any Assignee or Tenant may reasonably request from time to time. Landowner and Lessee shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Lessee, Landowner or any Assignee or Tenant for the purpose of implementing the provisions contained in this Agreement or of preserving an Assignee's security interest.

**10.8 Landowner Transfers.** Landowner shall have the right to transfer Landowner's interest in all of the Property to any person or entity (a "Transferee") provided there is a concurrent transfer and/or assignment and assumption of Landowner's rights and obligations under this Agreement to the same Transferee as part of the same transaction. Further, Landowner shall have the right to transfer Landowner's interest in a portion of the Property to any person or entity; provided, however, that if Landowner transfers less than all of the Property to any person or entity (a "Partial Transferee") (i) Lessee shall have the right to receive, review, comment on and/or approve any applications for any such subdivision before the same are submitted to or filed with the applicable governmental body, and shall be entitled to receive prior written notice from Landowner of any public proceeding related thereto, (ii) any such subdivision shall not violate any zoning and/or subdivided land ordinances and regulations (including but not limited to any setback requirements) applicable to all or any portion of any Lessee's project located or to be located thereon, or on the Site, (iii) each such Partial Transferee must assume in a writing reasonably acceptable to Lessee all of Landowner's then-existing obligations under this Agreement to the extent same relate to the portion of the Property being transferred. In the event of such assumption, all references in this Agreement (as same may be bifurcated) to "Landowner" shall be deemed to include such Partial Transferee. Landowner shall have the right to mortgage the Property without the consent of Lessee, provided any such mortgage must be subordinate to and subject to this Agreement.

**10.9 No Severance.** Landowner shall have no right to sever the wind rights, or any payments to be made to Landowner pursuant to this Agreement, from Landowner's fee interest in the Property, by way of assignment, conveyance or otherwise, without Lessee's prior written consent. If Landowner receives a written, bona fide offer to purchase or take an assignment of (an "Offer") all or any portion of the payments to be made to Landowner hereunder (a "Payment Stream") that Landowner desires to accept, Landowner shall give Lessee prompt written notice of such Offer, and the material terms thereof, which notice will constitute an offer by Landowner to convey such Payment Stream to Lessee upon such material

terms. Lessee shall have the right to accept or reject such offer within thirty (30) days after its receipt of such notice from Landowner, and Landowner shall not accept the Offer or otherwise agree to convey such Payment Stream to any other party unless Lessee gives a prior written consent. If Lessee accepts Landowner's offer, it shall provide written notice thereof to Landowner during such thirty- (30-) day period, in which event the closing of Lessee's purchase of such Payment Stream shall occur at a time mutually agreed upon by Landowner and Lessee, but in any event within sixty (60) days after Lessee's notice of acceptance is given to Landowner. If Lessee does not (i) accept the offer from Landowner described herein, or (ii) give Landowner written notice that it consents to the conveyance by Landowner of a Payment Stream pursuant to an Offer delivered to Lessee, in each case within the thirty- (30-) day time period described above, Lessee shall be deemed to have not approved and rejected Landowner's conveyance of such Payment Stream pursuant to the terms of such Offer.

11. **Lender Protection.** Lessee and any Assignee or Tenant may, at any time and without the consent of Landowner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "Lender") one or more mortgages, trust deeds or similar security interests in all or any part of its interests under this Agreement (a "Mortgage"). In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 11, upon delivery to Landowner of notice of its name and address.

11.1 **Consent to Modification, Termination or Surrender.** So long as any Mortgage remains in effect, this Agreement shall not be modified, and Landowner shall not accept a surrender of any of the Property or a termination or release of this Agreement prior to expiration of all periods described in Section 4, without the prior written consent of all Lenders.

11.2 **Notice of Default; Opportunity to Cure.** As a precondition to exercising any rights or remedies for any alleged default under this Agreement, Landowner shall give written notice of the default to each Lender concurrently with delivery of such notice to Lessee, an Assignee or a Tenant, as applicable, specifying in detail the alleged default and the required remedy. In the event Landowner gives any such notice, the following provisions shall apply:

(a) The Lender shall have the same period after receipt of the default notice as is given to Lessee, the Assignee or Tenant to remedy or cause to be remedied the default plus, in each instance, (i) an additional thirty (30) days after receipt of the default notice in the event of any monetary default (meaning any failure to pay when due any rent, real property taxes, insurance premiums or other monetary obligation under this Agreement); and (ii) an additional thirty (30) days after receipt of the default notice in the event of any other type of 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 Lender to perfect its right to cure such default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Lender acts with reasonable and continuous diligence. Lenders shall have the absolute right to do any act or thing required to be performed by Lessee, an Assignee or any Tenant under

this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any rights under this Agreement as if done by Lessee, the Assignee or Tenant itself.

(b) During any period of possession of the Property by a Lender (or a receiver requested by such Lender) and/or during the pendency of any foreclosure proceedings instituted by a Lender, the Lender shall pay or cause to be paid the rent and all other monetary charges payable by Lessee, an Assignee or any Tenant which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Lessee's, an Assignee or any Tenant's leasehold estate by the Lender or its assignee or designee as a result of foreclosure or assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Lender or other party acquiring title to the leasehold estate shall, as promptly as reasonably possible, commence the cure of all other defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Lender or other party acquiring title to the leasehold estate shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("Non-Curable Defaults"). Non-curable defaults shall be deemed waived by Landowner upon completion of foreclosure proceedings or acquisition of Lessee's, Assignee's or Tenant's interest in this Agreement by such party.

(c) Upon the sale or other transfer of the leasehold interests acquired pursuant to foreclosure or assignment in lieu of foreclosure, the Lender or other acquiring party shall have no further duties or obligations hereunder.

(d) Neither the bankruptcy nor the insolvency of Lessee, an Assignee or any Tenant shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by such Lessee, Assignee or Tenant hereunder are paid by the Lender in accordance with the terms of this Agreement.

(e) Nothing herein shall be construed to extend this Agreement beyond periods contemplated in Section 4 or to require a Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and the Lender discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

**11.3 New Lease to Lender.** If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landowner shall give prompt written notice to the Lenders. Landowner shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Property with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, shall be upon the same terms, covenants, conditions and agreements as contained in this Agreement, and shall be subject to all existing subleases entered into pursuant to this Agreement, provided that the subtenants are not then in default. Upon the execution of any such new lease, the Lender shall (i) pay Landowner any amounts which are due Landowner from Lessee, the

Assignee or Tenant, (ii) pay Landowner any and all amounts which would have been due under this Agreement (had this Agreement not been terminated) from the date of termination to the date of the new lease, (iii) perform all other obligations of Lessee and/or the Assignee or Tenant under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee, the Assignee or Tenant that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations which constitute Non-Curable Defaults. Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landowner. The provisions of this Section 11 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new lease, such Lender may use and enjoy said Property without hindrance by Landowner or any person claiming by, through or under Landowner, provided that all of the conditions for a new lease as set forth in this Section are complied with.

**11.4 Subleases.** During any periods following termination of this Agreement thereafter in which any Lender is entitled to enter into a new lease of the Property pursuant to Section 11.3, Landowner will not terminate any sublease or the rights of any sublessee thereunder unless the sublessee is in default under such sublease. During such period, if the Landowner receives any rent and other payments due from sublessees, including any sublessees whose attornment Landowner has agreed to accept, Landowner will do so as agent of such Lender 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 Landowner. Upon the execution and delivery of a new lease with Lender, Landowner shall account to its counter-party under such new lease for the rent and other payments made under such subleases, and the counter-party shall then assign the rent and other payments due under such subleases to any Lenders under this Agreement. The collection of rent by Landowner acting as an agent pursuant to this Section 11.4 shall not be deemed an acceptance by Landowner for its own account of the attornment of any sublessee unless Landowner shall have agreed in writing with such sublessee that its subtenancy shall be continued following the expiration of any period during which a Lender may be granted a new lease, in which case such attornment shall take place upon the expiration of such period but not before. Landowner shall not be under any obligation to enforce any subleases.

**11.5 No Waiver.** No payment made to Landowner by any Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or a waiver of the Lender's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

**11.6 No Merger.** There shall be no merger of this Agreement, or of the leasehold estate or other interests created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or any such interests may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property, and all persons (including Lenders) having an interest in or under this Agreement and any portion of the fee estate shall join in a written instrument

effecting such merger and shall duly record the same.

**11.7 Further Amendments.** Upon request, Landowner shall (1) amend this Agreement to include any provision reasonably requested by a proposed Lender, provided such amendment does not materially impair Landowner's rights or substantially increase the burdens or obligations of Landowner under this Agreement, and (2) execute such estoppel certificates (certifying as to such matters as Lender may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case) and other additional instruments reasonably requested by any Lender to evidence the status of this Agreement and Lender's rights under this Agreement.

## **12. Default and Termination.**

**12.1 Lessee's Right to Terminate.** Lessee shall have the right to terminate this Agreement, and Assignees and Tenants shall have the right to terminate their respective interests in or under this Agreement, as to all or any part of the Property at any time, effective upon thirty (30) days' written notice to Landowner. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property.

**12.2 Landowner's Right to Terminate.** Except as qualified by Section 10 and by Section 11, Landowner shall have the right to terminate this Agreement if (i) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (ii) Landowner simultaneously notifies Lessee and all Lenders, Assignees and Tenants in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Lessee, or within one hundred twenty (120) days in the case of all Assignees and Tenants, receive the written notice, or, if cure will take longer than sixty (60) days for Lessee or one hundred twenty (120) days for any Assignee or any Tenant, Lessee, or an Assignee or Tenant on Lessee's behalf, has not begun diligently to undertake the cure within the relevant time period and thereafter diligently prosecutes the cure to completion.

**12.3 Effect of Termination.** Upon termination of this Agreement, whether as to the entire Property or only as to part, Lessee shall (i) upon written request by Landowner, execute and record a quitclaim deed to Landowner of all of Lessee's right, title and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and (ii) as soon as practicable thereafter, remove all above-ground Windpower Facilities, and all above-ground foundations to a depth of four (4) feet below grade from the natural surface of the Property or portion as to which this Agreement was terminated, exclusive of any continuing right established pursuant to this Agreement to survive the term of this Agreement, and restore the soil surface to a condition reasonably similar to its original condition. If Lessee fails to remove such Windpower Facilities within eighteen (18) months of termination of this Agreement (or such shorter time as may be required by any applicable governmental authority), Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and actual costs of removal incurred by Landowner, less any salvage value received by Landowner, within thirty (30) days after receipt of an invoice from Landowner. Notwithstanding anything herein to the contrary, including without limitation the

provisions of Section 8.7(b), during the period from the date of termination of this Agreement until the earlier of (i) 18 months thereafter, or (ii) completion of Lessee's decommissioning obligations hereunder, Lessee shall pay to Landowner crop damage payments, calculated as provided in Section 8.7(b) hereof, only for those portions of the Property that are within the boundaries of the access roads and Windpower Facilities installed on the Property pursuant to this Agreement, including those portions that are within the graveled area surrounding the base of any Windpower Facilities installed on the Property.

**12.4 Cumulative Remedies.** Subject to the other terms and conditions of this Agreement, each party shall have all rights and remedies available at law and in equity for any breach of this Agreement by the other party.

**13. Miscellaneous.**

**13.1 Force Majeure.** If performance of this 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 shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood or other casualty or accident; strikes or labor disputes; war, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a party hereto.

**13.2 Confidentiality.** Landowner shall maintain in the strictest confidence, for the benefit of Lessee, any Assignee or Tenant, all information pertaining to the financial terms of or payments under this Agreement, Lessee'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 Lessee, any Assignee or Tenant, or discovered by Landowner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landowner or its employees or agents; or (ii) was already known to Landowner at the time of disclosure and which Landowner is free to use or disclose without breach of any obligation to any person or entity. Landowner 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 Lessee, any Assignee or Tenant. Notwithstanding the foregoing, Landowner may disclose such information to Landowner's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Landowner regarding this Agreement; any prospective purchaser of the Property who has made a written offer to purchase or otherwise acquire the Property that Landowner desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Landowner 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 Lessee. Landowner shall get Lessee's written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Agreement, the wind power project to

be constructed on the Property by Lessee, or any other existing wind power project owned or operated by Lessee. The provisions of this Section 13.2 shall survive the termination or expiration of this Agreement.

**13.3 Successors and Assigns.** This Agreement shall burden the Property and shall run with the land. Landowner may not assign the rights and obligations of the wind lease unless the new titleholder accepts all the terms and conditions of the wind lease and has acquired the fee interest in the real property. This Agreement shall inure to the benefit of and be binding upon Landowner and Lessee and, to the extent provided in any assignment or other transfer under Section 10 hereof, any Assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to "Lessee" in this Agreement shall be deemed to include Assignees and Tenants, which hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest.

**13.4 Memorandum of Lease.** Landowner and Lessee shall execute in recordable form and Lessee shall then record a memorandum of the lease evidenced by this Agreement reasonably satisfactory in form and substance to Lessee and Landowner. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

**13.5 Notices.** All notices or other communications required or permitted by this Agreement, including payments to Landowner, shall be in writing and shall be deemed given when personally delivered, 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 Landowner:  
Lac qui Parle Yellow Bank  
Watershed District  
Court House, 600 6<sup>th</sup> Street  
Madison, MN 56256

If to Lessee:  
Flying Cow Wind, LLC  
Attn: Land Management  
2701 NW Vaughn Street, Suite 300  
Portland, OR 97210  
Telephone No.: (503) 796-7000

With copy to:  
Flying Cow Wind, LLC  
Attn: Contract Administration  
2701 NW Vaughn Street, Suite 300  
Portland, Oregon 97210  
Telephone No.: (503) 796-7000

If to any Assignee or  
Tenant:  
At the address indicated in the notice  
to Landowner provided under  
Section 10.1 hereof.



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

**13.6 Entire Agreement: Amendments.** This Agreement constitutes the entire agreement between Landowner and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, the Lease or any other matter referenced herein not expressly set forth in this Agreement, or in 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.

**13.7 Legal Matters.**

**13.7.1** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota. 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 federal court located in the county in which the Property is situated, or if none, then a federal court nearest the county in which the Property is situated.

**13.7.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LANDOWNER AND LESSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.**

**13.7.3 EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.**

**13.8 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

and unimpaired by the court's holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement be longer than the longest period permitted by applicable law.

**13.9 Tax Credits.** If under applicable law the holder of a leasehold interest in the nature of that held by Lessee, an Assignee or a Tenant 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 Lessee's option, Landowner and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive. Nothing herein shall restrict Landowner's right to apply for and receive carbon credits attributable to any improvements made by Landowner which are located on the Property, if any.

**13.10 No Partnership.** Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Agreement.

**13.11 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.

**13.12 Release of Information.** By its execution and delivery of this Agreement, Landowner hereby expressly authorizes the U.S. Department of Agriculture to release conservation reserve property, conservation easement and USDA loan location and acreage information pertaining to Property owned by Landowner within Exhibit A of this agreement to Flying Cow Wind, LLC, 2701 NW Vaughn Street, Suite 300, Portland, OR 97210.

**[Signature and Acknowledgment Pages Follow]**

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

LANDOWNER:

LAC QUI PARLE-YELLOW BANK  
WATERSHED DISTRICT, a Minnesota  
political corporation

By: *Darrel Ellefson*

Name: Darrel Ellefson

Its: President, Board of Managers

Attest:

By: *David Craigmile*

Name: David Craigmile

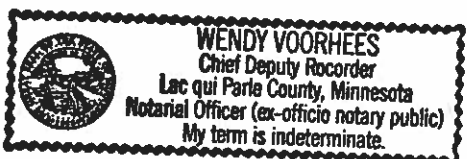
Its: Secretary, Board of Managers

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF Lac qui Parle )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of January, 2022 by Wendy Voorhees the Notary of Lac qui Parle-Yellow Bank Watershed District, a Minnesota political corporation on behalf of the political corporation.

In witness whereof, I hereunto set my hand and official seal.

Notary Signature: *Wendy Voorhees*  
Notary Public for: Lac qui Parle County Courthouse  
My commission expires: \_\_\_\_\_  
Commission No.: \_\_\_\_\_



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

**LESSEE:**

**FLYING COW WIND, LLC,**  
a Delaware limited liability company

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

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

**STATE OF OREGON** )  
 ) ss.  
**COUNTY OF MULTNOMAH** )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_ and \_\_\_\_\_, as Authorized Representatives of Flying Cow Wind, LLC, a Delaware limited liability company, on behalf of the limited liability company.

In witness whereof, I hereunto set my hand and official seal.

Notary Signature \_\_\_\_\_  
Notary Public for the State of Oregon  
My Commission expires:  
Commission No.:

This Instrument Was Drafted By:

Flying Cow Wind, LLC  
2701 NW Vaughn Street, Suite 300  
Portland, OR 97210

**EXHIBIT A**

**Description of the Property**

All that real property located in Yellow Medicine County, Minnesota, described as follows:

**Parcel 1:**

The South Half of the Southwest Quarter (S ½ of SW ¼) of **Section 14**, Township 114 North, Range 46 West, Yellow Medicine County, Minnesota.

AND

All that part of the Northeast Quarter and the Northwest Quarter of the Southwest Quarter of **Section 14**, Township 114 North, Range 46 West of the 5th Principal Meridian described as follows:

Beginning at the Southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 14; thence North 87°29'07" West along the South line of the Northeast Quarter and the Northwest Quarter of the Southwest Quarter of said Section 14 for 1675.10 feet to a fence line; thence North 00°58'05" West for 563.36 feet; thence South 89°32'09" East for 752.86 feet to a fence corner; thence South 01°04'01" West for 202.47 feet to a fence corner; thence South 89°03'39" East for 941.05 feet to the East line of the Northeast Quarter of the Southwest Quarter of said Section 14; thence South 00°58'07" West for 412.88 feet to the point of beginning, containing 18.468 acres.

AND

Southeast Quarter (SE ¼) of **Section 14**, Township 114 North, Range 46 West, Yellow Medicine County, Minnesota.

PID: 04-014-3020

**Parcel 2:**

All that part of **Section 9**, Township 114 North, Range 46 West described as follows:

Beginning at the Southeast corner of said Section 9; thence along the South line of said Section 9, on an assumed bearing of South 89° 40' 36" West for 3,026.12 feet; thence North 17° 21' West for 1,264.40 feet; thence North 46° 51' West for 690.60 feet; thence North 01° 33' 09" West for 532.26 feet; thence North 80° 05' 48" East for 703.75 feet; thence South 23° 54' 16" East for 1,126.26 feet; thence North 81° 17' 37" East for 493.32 feet; thence North 81° 13' 58" East for 592.56 feet; thence North 10° 32' 26" West for 908.66 feet; thence North 70° 17' East for 1,933.60 feet to the East line of said Section 9; thence Southerly along the East line of said Section 9 for

2,996.53 feet, more or less, to the point of beginning, containing 172.70 acres, more or less.

PID: 04-009-4010

**Parcel 3:**

That part of the West Half of the Southwest Quarter (W ½ of SW ¼) of **Section 10**, Township 114, Range 46 West, Yellow Medicine County, Minnesota described as follows:

Beginning at the west quarter corner of said Section 10, thence South 01 degrees 01 minutes 54 seconds East, assumed bearing along the west line of said Section 10, a distance of 2142.38 feet; thence North 62 degrees 07 minutes 35 seconds East a distance of 370.00 feet, thence North 88 degrees 14 minutes 50 seconds East a distance of 480.00 feet; thence North 57 degrees 28 minutes 32 seconds East a distance of 268.11 feet; thence North 00 degrees 53 minutes 48 seconds West a distance of 1468.50 feet; thence North 36 degrees 45 minutes 00 seconds East a distance of 36.00 feet; thence South 89 degrees 33 minutes 15 seconds East a distance of 264.00 feet to a point on the east line of the said West Half of the Southwest Quarter; thence North 00 degrees 53 minutes 48 seconds West, along said west line, a distance of 320.00 feet to a point on the east-west quarter line of said Section 10; thence South 89 degrees 47 minutes 27 seconds West, along the said east-west quarter line, a distance of 1329.03 feet to the point of beginning. Said tract contains 49.31 acres more or less.

PID: 04-010-3020

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