

# Appendix A

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Letters of Consent

**MEMORANDUM OF LEASE**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Intermountain Wind, LLC  
Attn: Paul Martin  
P. O. Box 353  
Boulder, CO 80306

12/21/2015 8:00 AM  
Page: 1 of 6  
0961848 Bk:1280 Pg:274 Carbon WY Fees:\$39.00 User:CW

(Space Above for Recorder's Use Only)

**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE ("**Memorandum**") is made and entered into as of 15 Oct 2015, 2015, by (i) **BOULTER'S TWO RIVERS RANCH, LLC**, a Wyoming limited liability company located at 22019 County Road 54, Greeley, Colorado, 80631, and (ii) **WILLIAM P. BAILEY and DEBRA BAILEY**, husband and wife whose address is 26502 WCR 46, Kersey, Colorado, 80644 (collectively "**Landlord**"), and **INTERMOUNTAIN WIND, LLC**, an Idaho limited liability company ("**Tenant**").

1. **Lease.** For the terms and upon the provisions set forth in that Wind Energy Ground Lease of even date herewith between Landlord and Tenant (the "**Lease**"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain real property (the "**Premises**") located in Carbon County in the state of Wyoming, as more particularly described in Exhibit "A" attached hereto, together with all rights of ingress and egress and all other rights appurtenant to the Premises, as more particularly described in the Lease.

2. **Easements.** The Lease includes the grant of an Access Easement, a Transmission Easement, a Utility Easement, and Operations Easements. The general locations of the Easements and their exact location may be modified during any term of the Lease. The terms of the Easements are as stated herein and may be perpetual. Notwithstanding any other provision hereof, the Easements shall survive any expiration or termination of this Lease.

3. **Term.** The Initial Period of the Lease is fifteen (15) years, commencing on October 15, 2015. Following the Initial Period and subject to certain conditions, the Lease may be extended for an additional Operating Period of thirty-five (35) years. Tenant also has the option to further extend the Lease term for an additional fifteen (15) year Extension Period.

4. **Notice.** This Memorandum is prepared for the purpose of giving notice of the Lease and the Easements and in no way modifies the express



provisions of the Lease. This Memorandum shall continue to constitute notice of the Lease and the Easements, even if the Lease is subsequently amended, expires, or is terminated.


5. Successors and Assigns. Landlord and Tenant intend that the covenants, conditions and restrictions contained in the Lease and Easements shall be both personal to Landlord and Tenant and binding on their successors and assigns. Each successive owner of the Premises or of any portion thereof, and each Person having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Premises.

6. Counterparts. This Memorandum may be executed in one or more counterparts, each of which shall be an original instrument, but all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Memorandum of Lease has been executed as of the date first written above.

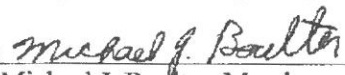
TENANT:

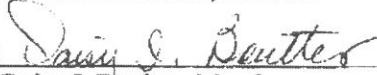
INTERMOUNTAIN WIND, LLC,  
an Idaho limited liability company

By:   
Paul S. Martin, Manager

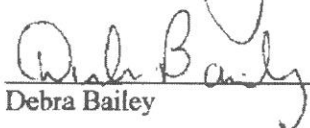
LANDLORD:

BOULTER'S TWO RIVERS RANCH,LLC, a  
Wyoming limited liability company

By:   
Michael J. Boulter, Member

By:   
Daisy I. Boulter, Member

  
William P. Bailey

  
Debra Bailey

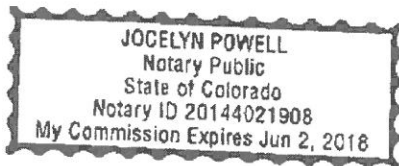
STATE OF Colorado  
County of Boulder ) ss.



12/21/2015 8:00 AM  
Page: 3 of 6  
0961848 Bk:1280 Pg:274 Carbon WY Fees:\$39.00 User:CW

On this 2 day of December, 2015, before me, Joelyn Powell, a notary public in and for said State, personally appeared Paul S. Martin, known or identified to me to be a Manager of INTERMOUNTAIN WIND, LLC, an Idaho limited liability company, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that said limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

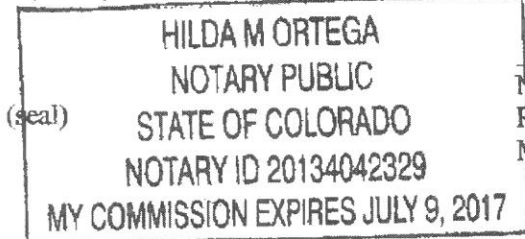


Joelyn Powell  
Notary Public  
Residing at: Boulder, CO  
My Commission Expires: 12/2/18

STATE OF Colorado  
County of Weld ) ss.

On this 5 day of November, 2015, before me, Hilda M. Ortega, a notary public in and for said State, personally appeared Michael J. Boulter, known or identified to me to be a Manager of BOULTERS TWO RIVERS RANCH, LLC, A Wyoming limited liability company, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that said limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Hilda M. Ortega  
Notary Public for Colorado  
Residing at: 2200 W West Greeley CO  
My Commission Expires: July 9, 2017



STATE OF Colorado )  
County of Weld ) ss.

12/21/2015 8:00 AM  
Page: 4 of 6  
0961848 Bk:1280 Pg:274 Carbon WY Fees:\$39.00 User: CW

On this 5th day of November, 2015, before me, the undersigned, a notary public, in and for said State, personally appeared WILLIAM P. BAILEY and DEBRA BAILEY, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Kathryn L. Brown  
Notary Public  
Residing at: 411 4th St Kersey CO 80644  
My Commission Expires: 03/26/2019  
NOTARY ID # 19874187085

**EXHIBIT A TO MEMORANDUM OF LEASE:  
LEGAL DESCRIPTION OF PREMISES**

**TOWNSHIP 22 NORTH, RANGE 78 WEST, 6<sup>TH</sup> P.M.,  
CARBON COUNTY WYOMING**

- Section 5: All the N1/2 lying West of the West Right of Way of Wyoming Highway 487 as described in Book 398, Page 17, recorded January 16, 1959, Records of Carbon County, Wyoming,  
EXCEPTING THEREFROM that tract as described in Final Judgment and Decree recorded September 24, 1982, in Book 755, Page 832, Records of Carbon County, Wyoming.
- Section 6: All, EXCEPTING TEREFROM that parcel of land as conveyed to Dunlap-Curry Enterprises, Inc., by Warranty Deed recorded August 24, 1979, in Book 702, Page 554, Records of Carbon County, Wyoming;  
AND FURTHER EXCEPTING THEREFROM that tract of land as conveyed to the Town of Medicine Bow, Wyoming, by Quitclaim Deed recorded August 26, 1987, in Book 829, Page 8, Records of Carbon County, Wyoming.
- Section 7: All of the N1/2 lying North of the Northerly Right of Way boundary of Wyoming Highway 30-287 as described in that Easement Deed recorded October 24, 1941, in Book 249, page 175; EXCEPTING THEREFROM those portions previously conveyed by Warranty Deed recorded October 28, 1911, in Book 109, Page 34; by Warranty Deed recorded August 31, 1948, in Book 287, Page 462; by Warranty Deed recorded November 17, 1971, in Book 569, Page 8, and by that Special Warranty Deed recorded April 7, 1978, in Book 675, Page 534, Records of Carbon County, Wyoming.

**TOWNSHIP 23 NORTH, RANGE 78 WEST, 6<sup>TH</sup> P.M.,  
CARBON COUNTY, WYOMING:**

- Section 3: All  
Section 5: All  
Section 6: W1/2  
Section 7: All  
Section 9: All  
Section 15: All  
Section 17: All, EXCEPTING THEREFROM that portion as conveyed in Warranty Deed to Vernon W. Scott and Vickie L. Scott, husband and wife, recorded November 14, 2005, in Book 1092, Page 0109, Records of Carbon County, Wyoming  
Section 19: All  
Section 20: E1/2  
Section 21: All, EXCEPTING THEREFROM that portion as conveyed in Warranty Deed to the County of Carbon, a political subdivision of the State of Wyoming, by Deed

recorded March 27, 1914, in Book 114, Page 32, Records of Carbon County,  
Wyoming

- Section 22: W1/2NE1/4, E1/2NW1/4, SW1/4  
Section 27: All  
Section 29: All  
Section 31: All  
Section 32: E1/2  
Section 33: All, EXCEPTING THEREFROM that portion as conveyed to Robert A Dey and  
Verda M. Dey, husband and wife, by Warranty Deed recorded November 30,  
1979, in Book 708, Page 605, Records of Carbon County, Wyoming  
Section 34: All, EXCEPTING THEREFROM that portion as conveyed to Robert A Dey and  
Verda M. Dey, husband and wife, by Warranty Deed recorded November 30,  
1979, in Book 708, Page 605, Records of Carbon County, Wyoming

Excepting from all land, any portion that may lie within a right of way for railroad purposes  
granted under an Act of Congress.



0961848 Bk:1280 Pg:274 Carbon WY Fees:\$39.00 User:CW

12/21/2015 8:00 AM  
Page:6 of 6

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Holland & Hart LLP  
555 17th Street, Suite 3200  
Denver CO, 80202  
Attn: Ashley Ewing

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

**ASSIGNMENT AND ASSUMPTION OF REAL PROPERTY INTERESTS**  
(Two Rivers Project)

This ASSIGNMENT AND ASSUMPTION OF REAL PROPERTY INTERESTS (Two Rivers Project) (this "Assignment"), dated as of February 1, 2018 (the "Effective Date"), is entered into by and between Intermountain Wind, LLC, an Idaho limited liability company ("Assignor"), and Two Rivers Wind LLC, a Wyoming limited liability company ("Assignee").

WHEREAS, Assignor holds certain right, title and interest in, to and under the agreement listed on Attachment A hereto (the "Assigned Land Contract"), covering certain real property situated in Carbon County, Wyoming, as described on Attachment A hereto;

WHEREAS, Assignor wishes to assign, and Assignee wishes to assume, the Assigned Land Contract on the terms and as further described below;

NOW THEREFORE in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

Section 1. Assignment. Assignor hereby transfers, assigns and conveys to Assignee, all of Assignor's right, title and interest under and in the Assigned Land Contract, together with its obligations, responsibilities and liabilities in, to and under the Assigned Land Contract, whether arising or incurred prior to, on, or after the Effective Date.

Section 2. Assumption. Assignee hereby takes, accepts and assumes as of the Effective Date, all of Assignor's right, title, and interest in each of the Assigned Land Contracts, and all of Assignor's obligations, responsibilities and liabilities in, to and under the Assigned Land Contract, whether arising or incurred prior to, on or after the Effective Date.

Section 3. Release. Notwithstanding anything to the contrary in the Assigned Land Contract, Assignee releases and forever discharges Assignor, as well as its members, managers, officers, employees, agents and representatives, from all further obligations arising under the Assigned Land Contract, and from all manner of actions, causes of action, suits, debts, damages, expenses, claims and demands whatsoever that any counterparty to the Assigned Land Contract has or may have against any of the foregoing entities, arising out of or in any way connected to

performance under the Assigned Land Contract whether arising or incurred prior to, on, or after the Effective Date.

Section 4. Representations and Warranties. Each party represents, covenants, and warrants to the other that (i) it is duly organized and validly existing under the laws of the State of its organization, (ii) it has the requisite power and authority to enter hereinto and to perform according to the terms hereof, and (iii) it has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby. Except as set forth in the foregoing sentence, conveyance of the Assigned Assets to Assignee hereunder is made “as is, where is” without warranties, express or implied, in fact or in law.

Section 5. Miscellaneous.

a. *Titles and Captions.* All section or paragraph titles or captions in this Assignment are for convenience only, shall not be deemed part of this Assignment, and in no way define, limit, extend or describe the scope or intent of any provision hereof.

b. *Counterparts.* This Assignment may be executed in any number of counterparts (including by means of facsimile or other electronic signature), each of which when executed, shall be deemed to be an original and all of which together will be deemed to be one and the same instrument binding upon all of the parties. Delivery of an executed counterpart of a signature page to this Assignment by facsimile or other electronic signature shall be effective as delivery of a manually executed counterpart of this Assignment.

c. *Governing Law.* This Assignment shall be governed by, and construed in accordance with, and any claims brought in connection herewith shall be adjudicated under, the laws of the State of New York, without giving effect to conflicts of law provisions thereof.


d. *Further Assurances.* Assignor agrees to execute, acknowledge and deliver to the Assignee all such other additional instruments, notices, and other documents as necessary to more fully and effectively grant, convey and assign to the Assignee the Assigned Land Contract conveyed hereby and intended so to be.

[REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY –  
SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed and delivered effective as of the date first written above.

**ASSIGNOR:**


**INTERMOUNTAIN WIND, LLC**

By:   
Name: Paul S. Martin  
Title: Manager

State of Colorado  
County of Boulder

The foregoing instrument was acknowledged before me this 13 day of February 2018 by Paul S. Martin as the Manager of Intermountain Wind, LLC, an Idaho limited liability company.

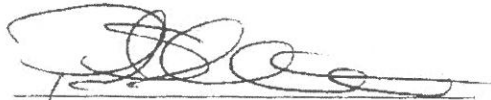
WITNESS my hand and official seal.

Signature  (Seal)

MARIETTA ELIZABETH RAMIREZ  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20174041870  
MY COMMISSION EXPIRES OCTOBER 09, 2021

**ASSIGNEE:**

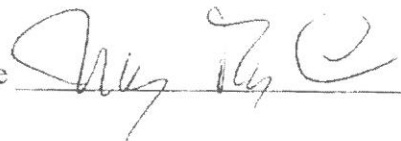
**TWO RIVERS WIND LLC**

By:   
Name: Paul S. Martin  
Title: Manager

State of Colorado  
County of Boulder

The foregoing instrument was acknowledged before me this 13 day of February 2018 by Paul S. Martin as the Manager of Two Rivers Wind LLC, a Wyoming limited liability company.

WITNESS my hand and official seal.

Signature  (Seal)

MARIETTA ELIZABETH RAMIREZ  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20174041870  
MY COMMISSION EXPIRES OCTOBER 09, 2021

ATTACHMENT A  
to  
Assignment and Assumption of Real Property Interests  
(Two Rivers Project)

Assigned Land Contract

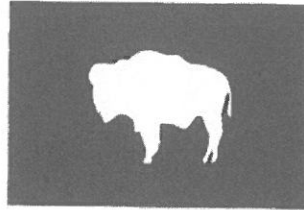
Wind Energy Ground Lease, by and between Boulter's Two Rivers Ranch, LLC, William Bailey, Dedra Bailey, and Intermountain Wind, LLC, dated as of October 15, 2015, and that certain Memorandum of Lease, by and between Boulter's Two Rivers Ranch, LLC, William P. Bailey and Dedra Bailey, and Intermountain Wind, LLC, dated October 15, 2015, and recorded in the official real property records of Carbon County, Wyoming on December 21, 2015 at Book 1280 Page 274, in connection with the real property described as follows:

T22N R78W 05 N2 LYING WEST OF THE WEST ROW OF HWY 487 SEE  
INSTRUMENT FOR EXCEPTIONS  
T22N R78W 06 ALL SEE INSTRUMENT FOR EXCEPTIONS  
T22N R78W 07 N2 LYING NORTH OF THE NORTHERLY ROW HWY 30-287 SEE  
INSTRUMENT FOR EXCEPTIONS  
T23N R78W 03 ALL  
T23N R78W 05 ALL  
T23N R78W 06 W2  
T23N R78W 07 ALL  
T23N R78W 09 ALL  
T23N R78W 15 ALL  
T23N R78W 17 ALL SEE INSTRUMENT FOR EXCEPTIONS  
T23N R78W 19 ALL  
T23N R78W 20 E2  
T23N R78W 21 ALL SEE INSTRUMENT FOR EXCEPTIONS  
T23N R78W 22 W2NE4  
T23N R78W 22 E2NW4  
T23N R78W 22 SW4  
T23N R78W 27 ALL  
T23N R78W 29 ALL  
T23N R78W 31 ALL  
T23N R78W 32 E2  
T23N R78W 33 ALL SEE INSTRUMENT FOR EXCEPTIONS  
T23N R78W 34 ALL SEE INSTRUMENT FOR EXCEPTIONS



WYOMING OFFICE OF STATE LANDS AND INVESTMENTS

122 West 25<sup>th</sup> Street  
Cheyenne, WY 82002  
Phone: 307.777.7333  
Fax: 307.777.2980  
holly.dyer@wyo.gov



MATTHEW H. MEAD  
Governor

BRIDGET HILL  
Director

March 5, 2018

Mr. Paul Martin  
Two Rivers Wind, LLC  
P.O. Box 353  
Boulder, CO 80306


**RE: Executed Lease WL-1702**

Dear Mr. Martin,

Please find enclosed a copy of the executed Wind Energy Lease Agreement between Two Rivers Wind, LLC and the State of Wyoming Board of Land Commissioners (WL-1702).

As always, do not hesitate to contact me with further questions.

Sincerely,

  
Holly Dyer  
Commercial Leasing Manager

Enclosure

*EFFECTIVELY MANAGING NATURAL RESOURCES AND FUNDS FOR CURRENT AND FUTURE GENERATIONS*

**WIND ENERGY LEASE AGREEMENT**

This Wind Energy Lease Agreement ("Lease Agreement", "Lease" or "Agreement") is effective ("Effective Date") as of the first day of the month in which the Board of Land Commissioners approved this Lease between the STATE OF WYOMING, BOARD OF LAND COMMISSIONERS (Owner), and TWO RIVERS WIND, LLC (Lessee), that date being August 10, 2017. In consideration of the payments and the performance by the parties of each of the provisions set forth herein, the parties agree as follows:

**Article 1**  
**DEFINITIONS**

1.1 Assignee. Any person or entity to whom Lessee has sold, conveyed, leased, assigned, licensed, mortgaged, encumbered or transferred, conditionally or unconditionally, this Lease Agreement, in whole or part, or any of Lessee's leasehold or other right, title or interest in the Property or any portion thereof, or Lessee Improvements or any portion thereof.

1.2 Commencement of Construction. The first date on which dirt is excavated for installation and construction of a foundation for any Wind Turbine Generator (WTG) on the Property.

1.3 Director. The Director of the Office of State Lands and Investments.

1.4 Environmental Laws. The *Resource Conservation and Recovery Act ("RCRA")*, 42 U.S.C. 6901 *et seq.*, and the *Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")*, 42 U.S.C. § 9601 *et seq.* (as the same may, from time to time, be hereafter amended, replaced, re-codified, modified or substituted) and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct, concerning any Hazardous Materials.

1.5 Existing Uses. Any rights to the surface or sub-surface covering some or all of the Property and existing prior to the Effective Date of this Lease Agreement, including but not limited to those granted by all existing mineral leases, grazing leases, special use leases, temporary use permits, easements or other rights granted by Owner or Owner's predecessor in title. Owner acknowledges that it has a procedure pursuant to Chapter 13 of the Rules of the Board of Land Commissioners (referred to herein as the "Board" or the "Board of Land Commissioners") in existence on the Effective Date of this Agreement, whereby Lessee may apply to Owner for closure of the Property to hunting during construction and future maintenance and repairs to Lessee Improvements on the Property.

1.6 Financial Assurances. Assurances may be accepted in any of the following forms at the discretion of the Director: (i) Surety bond with a corporate surety registered in Wyoming. (ii) Certificate of deposit in the name of the "Board of Land Commissioners", with a state or federally insured financial institution in Wyoming. The wind energy lessee shall be entitled to all interest payments. (iii) Other forms of surety as may be acceptable to the Director.

1.7 Force Majeure. Fire, earthquake, flood, or other casualty or accident; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any governmental agency or utility; or any other act or condition beyond the reasonable control of a party hereto.

1.8 Gross Revenues. During the Lease Term, all amounts actually received by Lessee from the sale of electrical energy generated on the Property net of proportional energy losses associated with the power collection system or utility interconnection, including the sale of credits for greenhouse gas reduction or the generation of renewable or alternative energy on the Property. If Lessee sells the production, energy, electricity or capacity from the Windpower Facilities to a person or entity affiliated with or in any way related to Lessee, then "Gross Revenues" shall mean all consideration paid for said production, energy, electricity or capacity, regardless of time or

place of receipt, under the first contract which is an arms' length bona fide transaction. "Gross Revenues" shall not include any proceeds received from the sale, lease, financing, or other disposition of any Windpower Facilities; any gross revenues generated from any Windpower Facilities not located on the Property; any production tax credits, investment tax credits, or other tax credits or benefits including any proceeds received by Lessee as a result of damage or casualty to the Project improvements; or any proceeds from the sale, lease, financing or other disposition of any interest in this Lease Agreement or any other Lessee Improvements (or any interest therein) or any rental or lump sum payment received by Lessee in exchange for Lessee assigning, subleasing, mortgaging, or otherwise transferring all or any interest of Lessee in this Lease Agreement.

1.9 Hazardous Materials. Asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation.

1.10 Initial Payments. The payments described in Paragraph 5.2.

1.11 Installation Fees. The payments described in Paragraph 5.3.

1.12 Leasehold Mortgage. Any mortgage, deed of trust or other security interest in this Lease Agreement, in any Sublease, or in any Windpower Facilities located on the Property.

1.13 Leasehold Mortgagee. Any person who is the beneficiary of any Leasehold Mortgage.

1.14 Lender Assignee. Any lender, creditor, or financing party who is an Assignee.

1.15 Lessee Improvements (on the Property). Windpower Facilities.

1.16 Meteorological Towers. Meteorological towers and all other wind measurement equipment including wind anemometers, wind vanes, guy-wired towers and loggers.

1.17 Minerals and Mineral Resources. Coal, oil, gas, uranium, or other minerals of any kind, including without limitation aggregate, gravel, and precious stones (including diamonds and jade).

1.18 Monetary Default. Failure to pay, when due, any Rent, real property taxes, insurance premiums on insurance coverage required under Paragraph 7.1, interest due, or other monetary obligation of Lessee under this Lease Agreement.

1.19 Name Plate Capacity. The megawatt capacity of any WTG installed (or to be installed), as determined by the manufacturer.

1.20 Non-Curable Default. Those Non-Monetary Defaults which by the nature of such defaults are not reasonably susceptible of being cured or performed by a Leasehold Mortgagee, excluding those events of default that are not reasonably susceptible to cure only because the time for cure has passed under the terms of this Lease Agreement following acquisition of Lessee's leasehold estate by the Leasehold Mortgagee or its assignee or designee.

1.21 Non-Monetary Default. Any event of Default other than a Monetary Default.

1.22 Operations Date. The (i) first day that the Project converts the wind energy moving across the Property to electricity with the Windpower Facilities located on the Property and sells and delivers such electrical energy to a purchaser such as a utility or cooperative, other than the sale of "test power" ahead of commercial operations, or (ii) if no power purchase agreement or hedge agreement for the sale of power produced by the Project is entered into by Lessee, then the first day that such electrical energy is delivered into a wholesale market. Lessee estimates that the Operations Date shall occur in calendar years 2020 to 2026. The term "test power", as used in Section 1.22(i) above, shall mean that electrical energy produced by the Project and used or purchased by Lessee for the sole purpose of performing testing of the Project prior to commercial

operation and prior to the sale of electricity to an arms-length purchaser or the delivery of electrical energy into a wholesale market.

1.23 Operations Fees. The payments described in Paragraph 5.4.

1.24 Property. Owner's property as described in Paragraph 2.1.

1.25 Removal Date. The date on which any Windpower Facilities installed on the Property are completely removed from the Property in accordance with Article 11.

1.26 Removal Period. A period of 12 months following the later of (i) the expiration or termination of this agreement or (ii) the receipt of any necessary approvals for the removal of Lessee Improvement. In the event this Lease Agreement is terminated as a result of an event of default by Lessee under Paragraph 10.1 or Lessee's termination rights provided in Paragraph 13.6 the Removal Period shall be a period of 12 months following the later of (i) the expiration or termination of this agreement or (ii) the receipt of any necessary approvals for the removal of Lessee Improvement.

1.27 Rents. Collectively Initial Payments, Installation Fees, and Operating Fees (subject to the minimum fee described in Paragraph 5.5) as provided for in this Lease Agreement.

1.28 Repowering. Any expansion of or change in a Windpower Facility which results in a change in the generating capacity.

1.29 Sublessee. Any person or entity with whom Lessee has entered into a sublease for all or a portion of the Property.

1.30 Transmission Facilities. Substations, underground or aboveground electric transmission lines (including towers, wires, and cables), or interconnection and switching facilities from which Lessee or others that generate energy may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy.

1.31 Wind Energy Development. The exclusive right, subject to Paragraph 13.5, to the free and unobstructed flow of wind to and across the Property, and converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities directly related thereto including access across the Property and the following activities and the following phases:

(a) Initial phase - Determining the feasibility of wind energy conversion and other power generation on the Property by (i) installing, operating, maintaining, repairing and removing Meteorological Towers and wind measurement equipment necessary to study the wind resource on the Property, including wind speed, wind direction and other meteorological data; and (ii) undertaking geotechnical reviews, environmental assessments, surveying, title examination, site engineering, soil sampling and other activities for determining the suitability of the Property for a Wind Energy Project.

(b) Construction phase - constructing, installing, replacing, relocating, removing and repowering from time to time, and maintaining Windpower Facilities on the Property, including the right to maintain and use a line or lines of towers, with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables on, along and in the Property in connection with Windpower Facilities, whether located on the Property, on adjacent property or elsewhere.

(c) Operation phase - Capturing and converting the wind resources of the Property including the right to use and operate Windpower Facilities on the Property and permitting the rotors of the WTGs located on adjacent properties to overhang the Property, as long as, the WTG spacing of any rotors overhanging the Property is supported with scientific data

and the Lessee has maximized the number and spacing of wind turbines located on the Property.

(d) Undertaking any other activities, whether accomplished by Lessee or a third party authorized by Lessee to act on its behalf, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing phases.

1.32 Wind Energy Project/Project. Any and all Lessee improvements (i.e. all WTGs, Transmission Facilities, structures, equipment, machinery, wire, conduit, fiber, cable, poles, materials and property of every kind and character constructed, installed and/or placed on, above or below the Property or other property by or on behalf of Lessee) that are constructed, developed or operated on the Property or on other property as an integrated system to generate, via wind, and deliver electrical power.

1.33 Windpower Facilities. WTGs, overhead and underground electrical distribution and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with large wind turbine installations, roads, meteorological towers and wind measurement equipment, control buildings, maintenance yards, and related facilities and equipment that are necessary for Wind Energy Development on the Property.

1.34 WTG. Any wind turbine generator or wind machine designed for the generation of electrical power from wind power, including without limitation, the associated towers, blades, nacelles, support structures, guy wires, braces and directly related equipment.

## Article 2 PROPERTY

2.1 Description. For good and valuable consideration, the receipt of which is hereby Acknowledged, Owner hereby leases to Lessee, and Lessee leases from Owner on the terms and conditions set forth below, the real property (the Property) of Owner located in the County of Carbon, State of Wyoming. Lessor considers the wind (wind resource, wind energy, or wind right) an unseverable interest in the surface estate and the right to use the wind for Wind Energy Development is included in the Lease Agreement. The Property consists of approximately 640 acres of land and is described as:

Section 16, Township 23N, Range 78W, 6<sup>th</sup> P.M., Carbon County, Wyoming

The Property is graphically depicted in the map attached hereto as **Exhibit "1."**

2.2 Disclaimer of Warranties. Lessee acknowledges that **OWNER HAS MADE NO EXPRESS WARRANTIES WITH REGARD TO THE PROPERTY and TO THE MAXIMUM EXTENT PERMITTED BY LAW, LESSEE WAIVES THE BENEFIT OF ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF HABITABILITY, OR FITNESS (OR SUITABILITY) FOR LESSEE'S PARTICULAR PURPOSE. BY EXECUTING THIS LEASE AGREEMENT AND OTHERWISE OCCUPYING THE PROPERTY, LESSEE SHALL BE DEEMED TO HAVE ACCEPTED THE SAME IN ITS "AS IS" CONDITION AS SUITABLE FOR THE PURPOSE HEREIN INTENDED.**

## Article 3 USE AND OCCUPANCY OF PROPERTY

3.1 Uses. The Property leased under this Lease Agreement is leased to Lessee for Wind Energy Development on the Property and shall be used by Lessee only for those purposes. Lessee shall have the exclusive right to use the Property for Wind Energy Development as defined in Paragraph 1.31. Subject to Paragraph 8.1, nothing herein shall obligate the Lessee to construct, install or operate any Transmission Facilities or Windpower Facilities on the property.

3.2 Access License. Owner hereby grants to Lessee permission, for a term consistent with the Lease Term, to utilize the Property for ingress to and egress from Windpower Facilities and Transmission Facilities within the Project, or to access a public right of way or easement providing access to the Project by means of roads and lanes already existing on the Property, or otherwise by such route or routes as Lessee may construct from time to time. If there is no existing route on the Property for ingress to and egress from Windpower Facilities and Transmission Facilities within the Project, then Lessee shall have the right to cross the Property using the most direct route that minimizes the impact to the Property. This access license shall run with the Property and shall inure to the benefit of and be binding upon Owner and Lessee and their respective transferees, successors, and assigns, and all persons claiming under them for the duration of this Lease Agreement. This access license shall automatically terminate upon the expiration or termination of this Lease Agreement.

3.3 Transmission Easement. In the event Lessee wishes to establish or modify one or more Transmission Facilities on the Property, Lessee shall apply, to Owner, for an easement pursuant the Rules of the Board of Land Commissioners. Lessee shall be required to follow all of Owner's applicable rules and regulations in force at the time Lessee applies for said Easement.

3.4 Easement Upon Termination. In the event of termination of this Lease Agreement pursuant to Article 10 of this Lease Agreement, Lessee may apply for any new easements pursuant to the Rules of the Board of Land Commissioners.

3.5 Repair and Maintenance. Owner shall not be required to make any repairs to the Property or Lessee Improvements located on the Property during the Lease Term.

3.6 Installation of Additional Improvements. Other than the activities permitted in this Article 3 of this Lease Agreement, Lessee shall not cause any improvements to be installed on the Property without first obtaining the written consent of Owner. Lessee shall submit any application for Owner's consent to additional improvements on the Property in accordance with all applicable state statutes, rules, and regulations.

3.7 Interference with Existing Uses. Lessee's use of the Property for Wind Energy Development, including, without limitation, its installation and operation of Windpower Facilities, shall not unreasonably disturb any Existing Uses of the Property.

3.8 Post-Construction Reclamation. Upon the completion of the construction of the Lessee Improvements, all Property disturbed by Lessee, its agents, contractors, and/or employees, and not required for continuing operations of the Windpower Facilities, shall be restored to a condition and forage density reasonably similar to its original condition and forage density. Reclamation shall include, as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion, to ensure the establishment of suitable grasses and forbs, and to control noxious weeds and pests. The post-construction reclamation requirements under this Paragraph are separate and apart from the requirements found in Article 11 below.

3.9 Roads. Lessee may use existing roads located on the Property in connection with the Windpower Facilities and the rights granted herein. If existing roads on the Property do not have sufficient load bearing capacity to support Lessee's operations, Lessee shall improve such roads, at its sole cost and expense, so that they have sufficient capacity to support Lessee's operations. Lessee shall use commercially reasonable efforts to improve existing two track roads instead of building new roads, but to the extent that such two track roads as improved are not sufficient in Lessee's determination for use in connection with the Wind Energy Development, Lessee shall have the right to build new roads in such locations on the Property as needed for Wind Energy Development. Lessee shall endeavor to construct new roads or to improve existing roads between and among the Windpower Facilities to minimize the number of new roads and the amount of surface acreage over which such roads are constructed. Lessee shall consult with and obtain approval from Owner, such approval not to be unreasonably withheld, conditioned or delayed, prior to improving existing roads or building any new roads in order to identify the locations for new roads or the roads to be improved. Lessee shall maintain roads on the Property in good condition and repair to the extent used by Lessee for Wind Energy Development.



**Article 4**  
**TERM**

4.1. Term. This Lease Agreement shall be for a term commencing on the Effective Date and continuing until the fortieth (40<sup>th</sup>) anniversary of the Effective Date (the "Term" or "Lease Term"). At the conclusion of the Lease Term, Lessee and Owner may renegotiate this Lease Agreement provided the total term of the lease renewal does not exceed seventy-five (75) years and that Lessee complies with the Rules of the Board of Land Commissioners in effect at the time of renegotiation. In such event, Owner and Lessee shall enter into a new wind energy lease agreement evidencing the additional lease term. Any new wind energy lease agreement shall contain the terms and conditions (including the total Rents to be paid under such new lease term) agreed to by Owner and Lessee.

4.2. Termination for Failure to Develop. Owner may terminate this Lease Agreement or any portion of this Lease Agreement without being deemed in default and without further liability to Lessee if:

(a) Lessee shall fail to commence construction of the Windpower Facilities within ten years (10) years of the Effective Date.

4.3. New Sublessee Agreement. Any Sublessee shall have the right to enter a new wind energy lease agreement evidencing such additional lease term, on all or part of the Property, as provided in this Article, if such Sublessee's right to enter into such new wind energy lease agreement is provided for in a sublease that has specifically been approved in advance by Owner.

4.4. New Memorandum of Recording. With respect to any additional lease term, Owner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum evidencing the additional lease term, satisfactory in form and substance to Owner and Lessee.

**Article 5**  
**RENT**

5.1. Rent. In consideration of the rights granted hereunder, Lessee shall pay Owner the Rents provided herein, without notice or demand, for the use and occupancy of the Property during the Term of this Lease Agreement.

5.2. Initial Payments. From the Effective Date of this Lease Agreement up to and including the calendar month preceding the Operations Date, Lessee shall pay Owner \$7.50 per acre per year, payable annually in advance.

5.3. Installation Fees. A one-time installation fee equal to \$2,000.00 per megawatt ("MW") of installed capacity of any WTG or other power generation facilities to be built in any particular phase of construction, based on such facilities' Name Plate Capacity including any Repowering of such facilities. Each Installation Fee shall be paid fifty percent (50%) upon Commencement of Construction of such facilities and fifty percent (50%) at the Operations Date.

5.4. Operating Fees. From the Operations Date and until any Windpower Facilities installed on the Property are completely removed from the Property in accordance with Article 11, Lessee shall pay to Owner a quarterly operating fee which shall be the greater of (a) or (b):

(a) Gross Revenue Operating Fee. Four percent (4%) of Lessee's Gross Revenues until the 10-year anniversary of the first day of the calendar quarter of the Operations Date, and Five (5%) from the 10-year anniversary of the first day of the calendar quarter of the Operations Date until the 15-year anniversary of the first day of the calendar quarter of the Operations Date, and Five (5%) from the 15-year anniversary of the first day of the calendar quarter of the Operations Date until the 20-year anniversary of the first day of the calendar quarter of the Operations Date, and Five (5%) from the 20-year anniversary of the first day of the calendar quarter of the Operations Date until the expiration of the Term.

Example: If the Operations Date was 05-08-2009, the 10-year anniversary of the first day of the calendar quarter of the Operations Date would be 04-01-2019.

(b) Base Operating Fee. \$700.00 per calendar quarter for each MW of installed capacity of WTG or other power generation facilities so installed in or prior to such calendar quarter, adjusted for inflation as provided in this Paragraph 5.4. For the purposes of calculating the Base Operating Fee under this Paragraph, the Base Operating Fee shall be adjusted triennially by the increase or decrease in the Consumer Price Index ("CPI") as follows: The base for computing the increase or decrease in the CPI for purposes of this paragraph shall be the Consumer Price Index - All Urban Consumers, U.S. City Average, All Items (1982-84 Base = 100) published by the United States Department of Labor, Bureau of Labor Statistics (the "Index") for the month prior to the Effective Date of this Lease Agreement (the "Beginning Index"). The adjustment shall be effective on January 1 of the calendar year starting with the Operations Date and the Base Operating Fee shall be determined by multiplying \$700.00 by a fraction, the numerator of which is the Index published for the month of December prior to each triennial adjustment and the denominator of which is the Beginning Index. If the Index is changed so that the base year differs from that used to calculate the Beginning Index, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Lease Term, such other government Index or computation by which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. The amounts payable hereunder for a calendar quarter shall be prorated for each MW of installed capacity of Windpower Facilities for which the Operations Date or Removal Date occurs during such quarter, based on the number of days in such quarter following the Operations Date or prior to the Removal Date.

For purposes of determining payments in accordance with the Gross Revenue Operating Fee, when electricity produced by WTGs on the Property and other properties within the Project are delivered to a common meter, the number of kilowatt hours of electricity generated on the Property shall be determined monthly in accordance with the following formula:

$$(CM) \left( \frac{P}{PCM} \right) = TKW$$

CM is the total number of kilowatt hours available for sale at the common meter.

P is the total number of kilowatt hours generated on the Property as measured by individual meters at each WTG.

PCM is the total number of kilowatt hours generated on the Property and other properties within the Project as measured by individual meters at each WTG

TKW is the total number of kilowatt hours generated by Lessee for use in determining the Gross Revenue Operating Fee

(c) In conjunction with each quarterly Operating Fee made to Owner, Lessee shall furnish to Owner a statement setting forth the amount of Gross Revenues received by Lessee during each calendar quarter and the Operating Fee due Owner for such calendar quarter.

(d) Payments of the Operating Fee shall be made quarterly and shall be due within thirty (30) days of the end of each calendar quarter.

5.5 Minimum Fee. In no event shall the quarterly Operating Fee under Paragraph 5.4 of this Lease Agreement be less than \$7.50 per acre (prorated for partial quarters and adjusted for inflation based on the consumer price index as described in paragraph 5.4(b) ) for any calendar quarter during the Term of this Lease Agreement after the Operations Date through the Removal Date.



Article 6  
ADDITIONAL AMOUNTS

6.1 Additional Amounts. In addition to the Rents provided above, Lessee shall also pay the additional amounts described herein.

6.2 Surface Impact Payments. Prior to surface disturbance, a surface impact payment shall be negotiated with the existing surface lessee of the Property and paid pursuant to the Rules and Regulations of the Board of Land Commissioners.

6.3 Financial Assurances. The Board shall require a bond as a condition of a wind energy Lease sufficient to assure compliance with all terms and conditions of the Lease. The bond amount shall be reduced by the anticipated salvage value of the Lessee Improvements. Any bond posted with respect to this Lease may be used by the Board for payment for costs of reclamation on the Property and for compliance with all other terms and conditions of this Lease and rules pertaining to this Lease. Any such bond shall not apply to reclamation on any other properties comprising the Project.

The initial amount shall be an Engineer's Estimate of the cost of satisfying Lessee's removal and surface restoration obligations, as provided in Article 11, and such amount shall be increased by 15% every ten (10) years (beginning with the tenth anniversary of the Bond) until the conclusion of the Lease Term. The Bond shall remain in effect until one year after the expiration of the Lease Term. The term "Engineer's Estimate" as used herein means an estimate of costs for decommissioning and site reclamation for the Property made by a licensed professional engineer which includes: (i) a general discussion of assumptions, including equipment, timeframes, backup calculations, procedures, methods and any other considerations used in developing the cost estimates; (ii) a description of the decommissioning activities to be performed; and (iii) a description of the reclamation activities to be performed.

Upon a showing of costs established by an Engineer's Estimate, additional bonding to cover risks not anticipated at the time of this original Lease may be required at any time by the Director, subject to the process outlined in Chapter 6 of the Rules of the Board of Land Commissioners, provided the Director first gives the Lessee 60 days written notice stating the reasons for and the amount of the additional bond. The bond, if approved by the Board, will remain in place until the unanticipated risk is diminished.

Bonds may be accepted in any of the following forms at the discretion of the Director:

1. Surety bond with a corporate surety registered in Wyoming.
2. Certificate of deposit in the name of the "Board of Land Commissioners", with a state or federally insured financial institution in Wyoming. The wind energy lessee shall be entitled to all interest payments.
3. Other forms of surety as may be acceptable to the Director.

In the event the Project is required to be permitted by the Wyoming Industrial Siting Council, the Director may consult with the Wyoming Department of Environmental Quality, Industrial Siting Division to determine whether the bond coverage required by the Industrial Siting Council for the Property is sufficient to protect Owner's interests and meet the security required under this Lease.

6.4 Interest. If Lessee shall fail to pay Owner any sum to be paid by Lessee to Owner hereunder within thirty (30) days after such payment is due, interest on the unpaid amount shall accrue at a rate of eighteen percent (18%) per annum, from the date payment was due until the date payment is made. Any such late charge shall be in addition to all other rights and remedies available to Owner hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Owner's remedies in any manner. Following the dishonor of any check presented for payment, Owner shall have the right, at Owner's option, to require all further payments to be made by certified check, money order or wire transfer. For purposes of this Paragraph, any adjustment payment made by Lessee to correct a prior underpayment shall be treated as due on the date such underpayment was originally due; provided, however, any adjustment payment made by Lessee as the result of an independent audit conducted at Lessee's expense shall not be subject to a late charge as described herein.

6.5 Taxes. Lessee shall be responsible for and pay all taxes, assessments, and any other fees or charges of any type, which may be levied against or assessed by reason of (i) Lessee's leasehold interest hereunder or Lessee's use of the Property, and (ii) the Lessee Improvements and Lessee's, Assignee's, or Sublessee's equipment located on the Property. Lessee, Assignees and Sublessees shall not be responsible for the payment of any taxes, assessments, or other fees or charges of any type, which may be levied against or assessed by reason of (i) the value of the unimproved Property, and (ii) any improvements or equipment installed on the Property by Owner or lessees other than Lessee, Sublessees, or Assignees.

#### Article 7 INSURANCE AND INDEMNITY

7.1 Insurance. Lessee shall provide, at its expense, coverage against claims arising out of Lessee's, Sublessee's, or their respective contractors' and agents' occupation and use of the Property under this Lease Agreement for bodily injury and death, and from damage to or destruction of property of others, but excluding loss of use thereof, with minimum combined single limits of Five Hundred Thousand Dollars (\$500,000.00) per claimant and One Million Dollars (\$1,000,000.00) per occurrence, accident or incident, which has a commercially reasonable deductible.

(a) Owner shall be named as an additional insured by an endorsement of Lessee's general liability policy for the Lease Term, upon Commencement of Construction.

(b) It is understood and agreed that Lessee's policies are primary and not contributory. All insurance certificates shall be submitted to Owner before the Commencement of Construction. All insurance certificates provided by Lessee must include a clause stating that the insurance may not be canceled, amended or allowed to lapse until the expiration of at least thirty (30) days advance written notice to Owner.

(c) Lessee will report to Owner any physical damage to the Property caused by Lessee's use of the Property for Wind Energy Development, other than impacts that occur in the normal course of construction or operation of Lessee Improvements. Lessee will also advise Owner of any threatened or pending liability claim arising from Lessee's use of the Property for Wind Energy Development.

7.2 Indemnity. Lessee shall release, indemnify, and hold harmless the State of Wyoming, Owner, the Office of State Lands and Investments, and their officers, agents, employees, successors and assigns from any cause of action, or claims or demands to the extent arising out of Lessee's failure to perform any of Lessee's duties and obligations under this Lease Agreement. The foregoing release and indemnity shall not include losses of rent, business opportunities, profits and the like that may result from Owner's loss of use of the portion of the Property occupied by Windpower Facilities pursuant to this Lease Agreement. Further, the foregoing release and indemnity shall not extend to property damage or personal injuries allegedly attributable to risks of known and unknown dangers associated with electrical generating facilities, such as electromagnetic fields, unless such property damage or personal injuries are alleged by a third party in a claim or legal action against Owner. Owner instructs Lessee to take reasonable safety measures that are considered standard in the wind industry to reduce the risk that its operations and the Lessee Improvements will cause harm or injury to people, property, livestock or other animals.

#### Article 8 REPRESENTATIONS, WARRANTIES, AND COVENANTS

8.1. Lessee's Representations, Warranties, and Covenants. Lessee hereby represents, warrants, and covenants to Owner that:

(a) Lessee's Authority. Lessee has the unrestricted right and authority to execute this Lease Agreement and to perform or otherwise satisfy all obligations of Lessee described under this Lease Agreement. Each person signing this Lease Agreement on behalf of

Lessee has been authorized to do so by all required member and/or manager consent. When signed by Lessee, this Lease Agreement shall constitute a legal, valid and binding Lease Agreement enforceable against Lessee in accordance with its terms.

(b) Development Efforts. Upon Lessee's receipt of all necessary land use approvals, building permits, environmental impact reviews, and other governmental permits and approvals required for the financing, construction, installation, maintenance and operation of Lessee Improvements on the Property and other nearby properties, and expiration of any applicable appeals periods without the filing of any appeal, subject to Lessee's right to terminate this Lease Agreement under Section 13.6. Lessee shall use commercially reasonable efforts to install all of the WTGs on the Property as are so approved, using a reasonably diligent schedule for such installations in view of the other WTGs to be installed in the Project.

8.2. Owner's Representations, Warranties, and Covenants. Owner hereby represents, warrants, and covenants as follows:

(a) Owner's Authority. Owner is the sole owner of the Property and has the unrestricted right and authority to execute this Lease Agreement and to grant to Lessee the rights granted hereunder. Each person signing this Lease Agreement on behalf of Owner is authorized to do so. When signed by Owner, this Lease Agreement constitutes a legal, valid and binding agreement enforceable against Owner in accordance with its terms.

(b) Owner's Cooperation. Owner shall assist and fully cooperate with Lessee, at no out-of-pocket cost or expense to Owner, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of Windpower Facilities, including execution of applications for such approvals. Owner's cooperation shall be required only to the extent of Owner's standing as record title owner of the property, but not in Owner's capacity as the State of Wyoming.

(c) Existing Uses. The only Existing Uses on the Property as of the Effective Date as shown in State records are those defined in Paragraph 1.6 above and listed on Exhibit 2 attached hereto, copies of which will be provided to Lessee upon request.

#### Article 9 ASSIGNMENT AND SUBLEASING

9.1 Assignments and Subleases. Lessee may assign this Lease Agreement and sublease the Property for Wind Energy Development.

(a) In the event Lessee assigns less than this entire Lease Agreement, then (i) the Assignee and Owner will enter into a new lease agreement, under terms and conditions identical to those found in this Lease Agreement except that the provisions regarding Rent shall only apply to the portion of the Property and/or Lessee Improvements covered by the new lease agreement, and Owner shall not disturb the Assignee's continued use and enjoyment of the Property, or portion of the Property, for the full Term of this Lease Agreement, as set forth in Article 4 of this Lease Agreement, or such shorter term as the Assignee may otherwise be entitled pursuant to the new lease agreement, and (ii) Lessee and Owner shall amend this Lease Agreement to reflect such partial assignment.

(b) An Assignee or a Sublessee shall have all of the rights and benefits of Lessee under and pursuant to this Lease Agreement. For the purposes of this Article, a merger, consolidation, or change in the ownership of Lessee shall not be considered an assignment or sublease of this Lease Agreement.

(c) In the event of an assignment or sublease by Lessee, Lessee agrees to comply with Owner's rules, regulations, procedures, and any applicable laws regarding assignment or sublease of wind energy leases in effect at the time of assignment or sublease. Such rules, regulations, procedures, and applicable laws in effect at the time of assignment or sublease

will supersede the provisions provided for in this Lease Agreement to the extent the provisions conflict. In the event that Owner's or the Director's consent or approval is required under any such rules, regulations, procedures or laws, in connection with any proposed assignment or sublease, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

9.2 Assignee/Sublessee Rights and Obligations. Any Assignee or Sublessee shall only have the rights and benefits provided under this Lease Agreement, and none shall have any obligation or liability under this Lease Agreement, except to the extent provided in the form of assignment, conveyance or sublease document that is approved by Owner. No rights, benefits or obligations shall arise prior to the time that an assignment, conveyance or sublease has been approved by Owner. Any assignment or conveyance permitted hereunder shall release Lessee from obligations accruing after the date that liability is assumed by the Assignee. Lessee shall remain obligated under this Lease Agreement in the event of a sublease or in the event of a partial assignment to the extent the Lessee retains a leasehold interest in the Property.

9.3 Right to Cure Defaults/Notice of Defaults/Right to New Lease.

(a) To prevent termination of this Lease Agreement or any partial interest therein, any Assignee, Lender Assignee, or Sublessee shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any or every other act or thing required of Lessee or anything necessary to cure any default and to prevent the termination of this Lease Agreement. As a condition to exercising any rights or remedies as a result of any alleged default by Lessee or a Sublessee, Owner shall give written notice of the default, in accordance with this Lease Agreement, to each Assignee, Sublessee and Lender Assignee, concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. If there is more than one Sublessee, all Sublessees shall collectively designate not more than two (2) Sublessees to receive all notices from Owner with respect to this Lease Agreement. All such designations must be made in writing to the Owner and must be signed by all Sublessees. Owner's written notice to the two Sublessees so designated by Lessee shall satisfy Owner's obligation hereunder to give written notice of a default to each Sublessee. Each Assignee, Sublessee and any Lender Assignee shall have the same amount of time to cure a default as is given to Lessee pursuant to this Lease Agreement, which cure period for each such Sublessee shall commence to run with the end of the cure period given to Lessee in this Lease Agreement.

(b) If a Sublessee holds an interest in less than all of this Lease Agreement, the Property, or the Windpower Facilities, any default under this Lease Agreement shall be deemed remedied, as to such partial interest, and Owner shall not disturb such partial interest, if the Sublessee shall have cured its pro rata portion of the default by paying the fees attributable to the Windpower Facilities in which Sublessee holds an interest.

(c) In the event of an uncured default by Lessee or in the event of a termination of this Lease Agreement by agreement, by operation of law or otherwise, each Sublessee, Assignee, and Lender Assignee shall have the right to request, that Owner, grant and enter into, a new lease, substantially identical to this Lease Agreement. If Sublessee, Assignee, or Lender Assignee shall have performed all unsatisfied obligations of Lessee under this Lease Agreement that relate to that portion of the Property in which Sublessee, Assignee, or Lender Assignee has an interest, and following due and proper compliance with Owner's rules, regulations, procedures, and any applicable statutes, Owner shall not unreasonably withhold, condition or delay granting and entering into such new lease. Additionally, Owner shall not disturb, the continued use and enjoyment by such Sublessee, Assignee or Lender Assignee of the Property, or portion of the Property, for the remaining Term of this Lease Agreement, as set forth in Article 4 of this Lease Agreement, or such shorter term as said Sublessee may otherwise be entitled pursuant to its sublease that was approved by Owner.

(d) Further, in the event of an uncured default by Lessee or in the event of a termination of this Lease Agreement by agreement, by operation of law or otherwise, Owner hereby

agrees, provided the form of sublease approved by Owner so provides, that, if and for so long as:

- (i) a Sublessee is not in default under the Sublease (beyond any period given Lessee under this Lease Agreement to cure such default),
- (ii) such Sublessee attorns to Owner,
- (iii) the terms and conditions of the Sublease have been approved by Owner and do not contravene the terms and conditions of this Lease Agreement, and
- (iv) Sublessee shall satisfy all of its unsatisfied obligations from the date of default or termination, as applicable

Owner shall (A) recognize such Sublease, (B) not diminish nor interfere with such Sublessee's possession of the portion of the Property covered by the Sublease or with any Term extension or renewal rights in the Sublease, and (C) not disturb such Sublessee's occupancy of such portion of the Property for the remaining Lease Term of this Lease Agreement or such shorter term as such Sublessee may be entitled under the sublease. The rights granted in the foregoing sentence shall also be available to a Lender Assignee that has rights in and to the Property.

9.4 Acquisition of Interest. The acquisition of all or any portion of Lessee's leasehold interest in the Property or the Lessee Improvements or this Lease Agreement by another person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof or any conveyance in lieu thereof, shall not require the advance consent of Owner or constitute a breach of any provision or a default under this Lease Agreement, and Owner shall recognize the person as the Lessee's proper successor upon and following due and proper compliance with Owner's procedures.

9.5 New Lease. If this Lease Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or this Lease Agreement is terminated as result of any default (as provided in Article 10), and within sixty (60) days after such rejection or termination Lessee, or an Assignee, Lender Assignee, or Sublessee shall have arranged to the reasonable satisfaction of Owner for the payment of all fees or other charges due and payable by Lessee as of the date of such rejection or termination and the performance of all other unsatisfied obligations of Lessee up to the date of termination or rejection, then Owner will, upon compliance with all applicable rules, regulations, procedures, and laws, execute and deliver to Lessee, or such Assignee, Lender Assignee, or Sublessee, a new lease to the Property. Owner shall not unreasonably withhold, condition or delay executing and delivering such new lease which (i) shall be for a term equal to the remainder of the Lease Term, before giving effect to such rejection or termination, (ii) shall contain the same covenants, agreements, terms, provisions, and limitations as this Lease Agreement (except for any requirements that have been fulfilled by Lessee prior to rejection or termination of this Lease Agreement) and (iii) shall include only that portion of the Property in which Lessee or such other Assignee or Sublessee had an interest on the date of rejection or termination.

9.6 Extended Cure Period. If any Non-Monetary Default by Lessee, or an Assignee, Lender Assignee, or Sublessee under this Lease Agreement, cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of Lessee's or another Assignee's or Sublessee's interest in this Lease Agreement, any such Non-Monetary Default shall be deemed remedied if:

- (a) Within sixty (60) days for Lessee, or within ninety (90) days for Assignee, Lender Assignee, or Sublessees, after receiving notice from Owner as set forth in Paragraph 9.3 hereof, the Lessee, or an Assignee, Lender Assignee, or a Sublessee, shall have acquired possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in this Lease Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and



- (b) Lessee, or the Assignee, Lender Assignee, or Sublessee, shall be in the process of diligently prosecuting any such proceedings to completion; and
- (c) After gaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in this Lease Agreement, Lessee, or an Assignee, Lender Assignee, or Sublessee, performs all other obligations as and when the same are due in accordance with the terms of this Lease Agreement; and
- (d) Owner shall continue to receive all amounts due under this Lease Agreement.

In the event any of these conditions are not fully satisfied at any time, then the extended cure provision shall automatically terminate and Owner may proceed to terminate this Lease Agreement and exercise any other remedies available at law or equity in accordance with Paragraph 10.2. If Lessee, or an Assignee, Lender Assignee, or Sublessee, is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee, or any defaulting Assignee or Sublessee from commencing or prosecuting the proceedings described above, the sixty-day period or ninety-day period, specified above, shall be extended for the period of such prohibition.

9.7 Estoppel Certificates. Owner shall execute such estoppel certificates, certifying that no default then exists under this Lease Agreement, and the Lease Agreement is then in full force and effect, if such be the case, all payments due under the Lease Agreement to Owner have been paid and are current, as to any amendments to the Lease Agreement and confirming the Effective Date of the Lease Agreement, and otherwise as Lessee or an Assignee, Lender Assignee, or Sublessee may reasonably request from time to time.

#### **Article 10** **DEFAULT AND LESSOR'S REMEDIES**

10.1 Events of Default. The following events shall be deemed to be events of default by Lessee under this Lease Agreement; provided, that Assignees, Lender Assignees, Sublessees and Leasehold Mortgagees shall have the right to cure any default under this Lease Agreement after notice from Owner pursuant to Paragraphs 9.3 and 12.2:

- (a) Lessee shall fail to pay any amount payable under this Lease Agreement within thirty (30) days of when due;
- (b) Lessee shall fail to comply with any other term, provision or covenant of this Lease Agreement within sixty (60) days after notice from Owner to Lessee, specifying Lessee's failure to comply; provided, however, that if the nature of Lessee's obligation is of such a nature that it cannot reasonably be cured within such 60-day period, Lessee shall not be deemed to be in default so long as Lessee commences curing such failure within such 60-day period and diligently prosecutes the same to completion; and
- (c) Lessee shall do or permit to be done anything that creates a lien upon the Property and such lien is not removed or bonded around within sixty (60) days after written notice thereof from Owner to Lessee.

10.2 Remedies. Upon the occurrence of any event of default by Lessee, but subject to the rights of Assignees, Lender Assignees, Sublessees and Leasehold Mortgagees to cure any default under this Lease Agreement, Owner may enforce the provisions of this Lease Agreement in any manner provided by law or in equity, including, without limitation, the termination of this lease, which shall require that Owner comply with the requirements of this Lease and the lease cancellation proceedings as provided in Chapter 1 of the Rules of the Board of Land Commissioners.

- (a) Termination of this Lease Agreement. At Owner's option, and after satisfaction of applicable laws, rules and regulations, Owner may terminate this Lease Agreement and, in

such event, Lessee shall surrender the Property to Owner upon expiration of the Removal Period. If upon any such termination of this Lease Agreement Lessee fails to surrender the Property upon expiration of the Removal Period, Owner may enter upon and take possession of the Property by any lawful means, and lock out, expel, or remove Lessee without being guilty in any manner of trespass, without liability for any damage or loss occasioned thereby, and without prejudice to any remedies available to Owner for possession of the Property, collection of amounts due, breach of contract, or otherwise. In such event, Lessee agrees to pay to Owner on demand the following: (i) any unpaid Rents and other sums due and payable under this Lease Agreement; and (ii) reasonable attorneys' fees and costs incurred in connection with the collection of amounts due under this Lease Agreement, the enforcement and termination of this Lease Agreement, expenses of restoring the Property in accordance with Paragraph 11.1, and interest on all such amounts due in accordance with Paragraph 6.4.

10.3 Non-Exclusive Remedies. Pursuit of any one remedy shall not preclude pursuit of any other remedy herein provided or any other remedy provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rents or other sums due to Owner hereunder or of any damages accruing to Owner by reason of Lessee's violation of any of the terms, provisions, and covenants herein contained. Owner's acceptance of Rents following an event of default shall not be construed as Owner's waiver of any such event of default. Additionally, no affirmative waiver by Owner of any event of default or any violation or breach of the terms, provisions and covenants contained in this Lease Agreement shall be deemed or construed to constitute a waiver of any other violation or default. No payment by Lessee or on behalf of Lessee or receipt by Owner of any amount less than the amounts due by Lessee hereunder shall be deemed to be anything other than on account of the amounts due by Lessee, nor shall any endorsement or statement on any check or document accompanying any payment be deemed an accord and satisfaction.

## Article 11 RECLAMATION

11.1 Removal of Lessee Improvements. Upon the expiration or termination of this Lease Agreement, Lessee shall, within the Removal Period, satisfactorily accomplish each of the following items:

- (a) Remove from the Property all above-ground and below-ground Lessee Improvements, all in a manner which minimizes injury to the Property, by:
  - (i) removal of all concrete footings, foundations, and other fixtures to a depth of not less than four (4) feet below the surface grade; and
  - (ii) hauling away and disposing of, in a lawful manner, all removed concrete and other waste materials.
- (b) Reclaim and restore the Property disturbed by Lessee, or any permitted Sublessees or Assignees, to a condition and forage density reasonably similar to its condition and forage density on the Effective Date, consistent with the uses permitted by this Lease Agreement, by reseeding any disturbed soil surface with suitable flora and restoring the terrain and contour to as close as reasonably practicable to their condition as of the Effective Date, and, as reasonably required, all leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion, to ensure the establishment of suitable grasses and forbs, and to control noxious weeds and pests. Lessee shall have the right to ingress and egress to the Property and the right to occupy the Property during the Removal Period in order to perform its obligations under this Article 11.

11.2 Failure to Remove. If Lessee fails to remove from the Property the Lessee Improvements, equipment, or any other personal property, within the Removal Period, or such longer period as Owner may provide by express written extension, Owner may do so, in which case Lessee shall reimburse Owner for all reasonable costs of removal and restoration incurred by Owner. Lessee agrees and acknowledges that in the event it fails to remove the Lessee Improvements (and any other improvements approved by Owner), equipment or any other personal

property within the Removal Period (or any written extension granted by Owner), then Lessee shall forfeit ownership of the Lessee Improvements (and any other improvements approved by owner), equipment, or any other personal property and shall not be entitled to any portion of the proceeds Owner may realize from the sale of the Lessee Improvements, equipment, or any other personal property.

## Article 12 ENCUMBRANCES

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

12.2 Leasehold Mortgage. Provided that Owner receives a "Notice of Security Interest in State Lease" or other advance written notice of a Leasehold Mortgage in accordance with all State laws, rules, regulations and Owner's procedures then any Leasehold Mortgagee shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Article, and Owner's consent shall not be required for Lessee to grant a Leasehold Mortgage in Lessee's leasehold rights under this Lease. No Leasehold Mortgage shall encumber or affect in any way the interest of Owner or Owner's fee interest in and to the Property.

12.3 Leasehold Mortgagee's Right to Possession, Acquire, and Assign. A Leasehold Mortgagee shall have the absolute right:

- (a) to assign its security interest;
- (b) to enforce its lien and acquire title to the leasehold estate by foreclosure or any other lawful means and thereafter to assign or transfer the leasehold estate to a third party;
- (c) to take possession of and operate the Property, the Lessee Improvements or any portion thereof and to perform all obligations to be performed by Lessee or a Sublessee hereunder, or to cause a receiver to be appointed to do so; and
- (d) to acquire title to the leasehold estate by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party.

Owner's consent shall not be required for the acquisition of the encumbered leasehold or subleasehold estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure. Upon the Leasehold Mortgagee's acquisition of the leasehold estate, whether by foreclosure or assignment in lieu of foreclosure, Leasehold Mortgagee shall have the right to assign said acquired leasehold estate provided the Leasehold Mortgagee and proposed assignee (as applicable) shall first satisfy each of the following conditions: (i) any such assignee shall assume all of Lessee's obligations under this Lease Agreement; (ii) Leasehold Mortgagee and/or any proposed assignee shall have satisfied, to Owner's reasonable satisfaction, every obligation of Lessee, except Non-Curable Defaults, if any, existing under this Lease Agreement which remains unsatisfied at the time of the proposed assignment; and (iii) Leasehold Mortgagee and any such assignee shall satisfy all applicable State laws, rules, regulations and Owner's procedures relating to assignment of leases on State lands.

12.4 Leasehold Mortgagee's Notice of Default/Opportunity to Cure. As a condition to exercising any rights or remedies as a result of any alleged default by Lessee, Owner shall give written notice of the default to each Leasehold Mortgagee concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. If there is more than one Leasehold Mortgagee, all Leasehold Mortgagees shall collectively designate not more than two (2) Leasehold Mortgagees to receive notice from Owner on behalf of all Leasehold Mortgagees with respect to this Lease Agreement and Owner's provision of notice to said two designated Leasehold Mortgagees shall be deemed to be notice to all Leasehold Mortgagees. In



the event the Owner gives such a written notice of default, the following provisions shall apply to each Leasehold Mortgagee:

(a) The Leasehold Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee after Lessee's receipt of notice of default, plus, in each instance, the following additional time periods: (i) thirty (30) days, for a total of sixty (60) days after receipt of the notice of default in the event of any Monetary Default; and (ii) sixty (60), for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any Non-Monetary Default, provided that such 120-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Leasehold Mortgagee to perfect its right to cure such Non-Monetary Default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Leasehold Mortgagee acts with reasonable and continuous diligence. The Leasehold Mortgagee shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Owner shall not terminate this Lease Agreement prior to expiration of the cure periods available to a Leasehold Mortgagee as set forth above.

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

(c) Any Leasehold Mortgagee or other party who acquires Lessee's leasehold interest pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee by this Lease Agreement incurred or accruing after such Leasehold Mortgagee or other party no longer has ownership of the leasehold estate.

(d) Neither the bankruptcy nor the insolvency of Lessee shall be grounds for terminating this Lease Agreement as long as the Rents and all other monetary charges payable by Lessee hereunder are paid by the Leasehold Mortgagee and all other obligations of Lessee which the Leasehold Mortgagee is capable of performing continue to be performed all in accordance with the terms of this Lease Agreement.

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

12.5 New Lease to Mortgagee. If this Lease Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, the Owner will upon written request from any Leasehold Mortgagee within ninety (90) days after any such event and upon any such Leasehold Mortgagee's compliance with all applicable rules, regulations, procedures, and

laws, enter into a new lease of the Property (and Owner shall not unreasonably withhold, condition or delay entering into such new lease), on the following terms and conditions:

(a) The terms of any new lease shall commence on the date of rejection or disaffirmation and shall continue for the remainder of the Lease Term, at the same Rent and subject to the same terms and conditions set forth in this Lease Agreement. Such new lease shall be subject to all existing subleases on the date of rejection or disaffirmation, provided the Sublessees are not then in default.

(b) Any new lease shall be executed within thirty (30) days after the conclusion of the ninety (90) day period in which Leasehold Mortgagees may request the execution of a new lease, provided said Leasehold Mortgagee: (i) pays to Owner all Rents and other monetary charges payable by Lessee under the terms of this Lease Agreement up to the date of execution of the new lease, as if this Lease Agreement had not been rejected or disaffirmed, less the Rents and other payments actually collected by Owner from Sublessees or other occupants of the Property and previously or thereafter applied against such Rent obligation; and (ii) performs all other obligations of Lessee under the terms of this Lease Agreement except for any non-curable defaults, if any; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee and would have accrued under this Lease Agreement up to the date of commencement of the new lease, except those obligations which constitute non-curable defaults, if any. Any new lease granted the Leasehold Mortgagee shall enjoy the same priority as this Lease Agreement over any lien, encumbrance or other interest created by Owner.

(c) At the option of the Leasehold Mortgagee, the new lease may be executed by a designee of such Leasehold Mortgagee without the Leasehold Mortgagee assuming the burdens and obligations of Lessee thereunder.

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

(e) If more than one Leasehold Mortgagee makes a written request for a new lease pursuant hereto, the new lease shall be delivered to the Leasehold Mortgagee requesting such new lease whose Leasehold Mortgage is prior in lien, and the written request of any other Leasehold Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(f) The provisions of this Section shall survive the rejection or disaffirmation of this Lease Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Owner, Lessee and such Leasehold Mortgagee, and, from the effective date of such rejection or disaffirmation of this Lease Agreement to the date of execution and delivery of such new lease, such Leasehold Mortgagee may use and enjoy said Property without hindrance by Owner or any

person claiming by, through or under Owner; provided that all of the conditions for a new lease as set forth herein are complied with.

12.6 Leasehold Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Lease Agreement to the contrary, the parties agree that so long as there exists an unpaid Leasehold Mortgage, this Lease Agreement shall not be materially modified or amended and Owner shall not accept a surrender of the Property or any part thereof or a cancellation or release of this Lease Agreement from Lessee prior to expiration of the Term without the prior written consent of the Leasehold Mortgagee. This provision is for the express benefit of and shall be enforceable by each Leasehold Mortgagee.

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

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

### Article 13 MISCELLANEOUS

13.1 Ownership of Windpower Facilities. Owner shall have no ownership or other interest in the Lessee Improvements installed on the Property.

13.2 Net Lease. Lessee and Owner acknowledge and agree that Owner shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with the ownership, construction, operation, maintenance, repair or reconstruction of the Lessee Improvements.

13.3 Requirements of Governmental Agencies. Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders, and regulations of any governmental agency applicable in connection with its possession of, construction upon and use of the Property. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, the validity or applicability to the Property or Windpower Facilities of any law, ordinance, statute, order, regulation, property assessment, or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Owner will not interfere in such contest provided, however, this provision shall not apply to any law, ordinance, statute, order, regulation, property assessment, or the like that is applicable to all state trust lands or the Owner's fiduciary obligations with respect to those lands. Any such contest or proceeding shall be controlled and directed by Lessee; provided, however, in the event Owner is required to be a party in any such proceeding under applicable law or is requested to be a party by Lessee, it may control and direct its participation in such proceeding at no out-of-pocket expense to either party.

13.4 Hazardous Materials.

(a) Lessee's use, possession, or control of the Property shall not cause the contamination or pollution of any environmental medium, including soil, surface waters, groundwaters, sediments, and surface and subsurface strata, ambient air or any other environmental medium in, on, or under, the Property, by any waste, pollutant, or contaminant in violation of Environmental Laws. Lessee shall use the degree of care required by applicable Environmental Laws to prevent its contamination or pollution of the Property. Lessee and its Sublessees, contractors or agents shall not bring on the Property

any Hazardous Materials, except in compliance with Environmental Laws or in ordinary products commonly used in connection with the permitted use of Property and stored in the proper manner and quantities and in accordance with all applicable Environmental Laws. Any such products, including but not limited to oils or solvents, which become a regulated waste when spent shall be manifested and removed for offsite disposal at an authorized facility in accordance with applicable law. Lessee shall not engage in or allow any activity on the Property that requires a solid or hazardous waste management permit without specific prior written approval from Owner.

(b) Lessee's violation of the foregoing prohibition shall constitute a material breach and default hereunder and Lessee shall indemnify, hold harmless and defend Owner from and against any claims, damages, penalties, liabilities, and costs (including reasonable attorney's fees and court costs) caused by or arising out of (i) a violation of the foregoing prohibition; or (ii) the release or disposal of any Hazardous Materials on, under, or about the Property by Lessee or its agents, directors, officers, servants, employees, contractors, invitees, customers, guests or licensees. In conformance with the requirements of applicable law, Lessee shall clean up, remove, remedy and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials in, on, under, or about the Property, by Lessee or its agents, directors, officers, servants, employees, contractors, invitees, customers, guests or licensees. Lessee shall immediately give Owner written notice of any breach or suspected breach of this Paragraph 13.4, upon learning of the presence or any release of any Hazardous Materials, or upon receiving notice from any governmental agency pertaining to Hazardous Materials which may affect the Property. The obligations of Lessee hereunder shall survive the expiration or earlier termination, for any reason, of this Lease Agreement.

(c) Owner represents that, to Owner's actual knowledge, without duty of inquiry or investigation, (i) there is no environmental contamination, pollution, or similar condition in or under the Property and there has been no environmental contamination, pollution or similar activity at the Property, and (ii) Owner currently has no liability under any environmental law in connection with the Property, and (iii) Owner has not received any notice of any environmental liability or any alleged violation of any law involving protection of the environment or Hazardous Materials with respect to the Property.

#### 13.5 No Interference: Compatible Use of the Property.

(a) Owner's activities and any grant of rights to the Property, all granted under one or more grazing lease, mineral lease, special use lease, temporary use permits, or easement that Owner makes to any person or entity subsequent to the Effective Date shall not (i) unreasonably interfere with Lessee's construction, installation, maintenance, removal, or operation of the Lessee Improvements, located on the Property; Lessee's access over the Property to such Lessee Improvements; or the undertaking of any other activities permitted by this Lease Agreement; or, (ii) require Lessee to relocate or remove any of Lessee's Improvements located on the Property.

(b) No transfer of Mineral ownership, Mineral rights, or the creation of any agency or representative relationship whatsoever, is intended or granted to Lessee by or through this Lease Agreement. This Lease Agreement is subject to any and all Existing Uses which now cover some or all of the Property. Owner recognizes that Lessee, and its Assignees and Sublessees, cannot undertake Wind Energy Development, including but not limited to the commitment to develop, construct and operate Lessee Improvements on the Property, if there is or may occur any development or exploitation of Mineral Resources on or under the Property which would in any way interfere with or adversely affect the Wind Energy Development or the free flow of wind across the Property. Therefore, in order to permit Lessee's use of the Property for Wind Energy Development and Lessee Improvements, and to permit Owner to enter into future mineral leases in such a manner as to permit both activities to be pursued simultaneously, Owner and Lessee have agreed:

(i) Upon the issuance of any new mineral leases or sales or exchanges of minerals under the Property during the Term of this Lease Agreement, Owner will

include the following stipulations in any such new lease or sale or exchange as a term and condition to any such lease or sale or exchange that any buyer or lessee or other party to the Minerals transaction:

(A) A pre-dated wind energy lease exists on the surface of this parcel/lease/property and as such, any party granted a mineral lease hereon shall use the surface of this parcel/lease/property in a manner that reasonably accommodates the enjoyment of, and avoids impairment of, the pre-existing wind energy lease.

(B) Lessee shall limit any drilling, mining or other extraction activity for the production of leased minerals from the parcel/lease/property to occur only in those areas on the surface of the parcel/lease/property that are at least five-hundred (500) feet from any wind turbine generator or proposed wind turbine generator of the wind lessee on the property.

(ii) With regard to new leases or sales or exchanges of Minerals under the Property, Lessee and Owner each commit to work cooperatively together to ensure that Owner can benefit from the exploitation of the Mineral Resources under the Property and to ensure that Lessee can undertake Wind Energy Development with reasonable certainty that the exploitation of Owner's Mineral Resources will not interfere with or adversely affect such Wind Energy Development or the free flow of wind across the Property.

(c) Lessee acknowledges receipt of information from Owner indicating whether there are Existing Uses on the Property which are listed in Exhibit 2 attached to this Lease Agreement; the Existing Uses are the only rights granted by Owner, which now cover or encumber some or all of the Property leased by Lessee for Wind Energy Development. Lessee is responsible for reviewing records of the Mineral Leasing Division of the Office of State Lands and Investments to determine if there has, in the past, been active mining activity and any reclamation thereof. Lessee is responsible for contacting the Department of Environmental Quality to determine if the Property is included in an approved mining plan, and obtaining a complete and current copy of said mining plan, including all amendments thereto, a description of the land covered thereby, and a description of any surface or underground facilities or structures installed or removed thereunder.

(d) Lessee has had and will have a full opportunity to investigate the status of the Existing Uses and the past, present, and any future (or potential) mining activities under the Existing Uses; and Lessee enters into and accepts this Lease Agreement and Lessee's rights are subject to the Existing Uses. Lessee shall advise Owner of the planned or contemplated Wind Energy Development and Lessee Improvements on the Property that are over or near to the land covered by Existing Uses, and Owner shall, after consultation with the lessees under Existing Uses, notify Lessee in writing, whether or not, in the opinion of said lessees, the use and exploitation of Existing Uses is anticipated to interfere with or adversely affect the Wind Energy Development and Lessee Improvements described in Lessee's notice to Owner or the free flow of wind across the Property.

13.6 Lessee's Right to Terminate. Lessee shall have the right to terminate this Lease Agreement, or any part thereof, effective upon 30 days written notice to Owner from Lessee and Lessee shall also provide notice of termination to every Assignee, Lender Assignee, Sublessee and Leasehold Mortgagee having an interest in this Lease Agreement, the Lessee Improvements, or the Property at the time of notice.

13.7 Force Majeure. If performance of this Lease Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use reasonable efforts to avoid or remove such causes of nonperformance and shall immediately continue performance hereunder whenever such causes are removed.



13.8 Successors and Assigns. This Lease Agreement shall inure to the benefit of and be binding upon Owner and Lessee and, to the extent provided in any assignment, sublease or other transfer under Paragraph 9.1 hereof, any Assignee, Sublessee and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to Lessee in this Lease Agreement shall be deemed to include Assignees, Lender Assignees, and Sublessees, as applicable, which, following due and proper compliance with Owner's procedures, hold a direct ownership interest in this Lease Agreement and actually are exercising rights under this Lease Agreement to the extent consistent with such interest.

13.9 Memorandum of Lease. Owner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum of this Lease Agreement satisfactory in form and substance to Lessee and Owner. This Lease Agreement shall not be recorded. Following due and proper compliance with its rules, regulations and procedures, Owner shall consent to the recordation of the interest of an Assignee or Sublessee in the Property.

13.10 Notices. All notices or other communications required or permitted by this Lease Agreement, including payments to Owner, shall be in writing and shall be deemed given when personally delivered to Owner, Lessee, Assignee, Lender Assignee, Sublessee or a Leasehold Mortgagee, if any. In lieu of such personal service, notice shall be deemed given five (5) days after deposit in the United States mail, first class, postage prepaid, certified, and addressed as follows (provided, however, that payments to Owner shall only be deemed made when said payment is actually received by Owner):

If to Owner:

State of Wyoming  
Office of State Lands and  
Investments  
122 West 25th Street,  
Herschler Building  
Cheyenne, WY 82002-0600  
Attn: Assistant Director, Surface  
Leasing

If to Lessee:

Two Rivers Wind, LLC  
P.O. Box 353  
Boulder, CO 80306  
Attn: Paul Martin

If to any Assignee, Lender Assignee, Sublessee, or Leasehold Mortgagee:

To be provided when applicable.

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

13.11 Entire Agreement; Amendments. This Lease Agreement constitutes the entire agreement between Owner and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Lease Agreement, or any other matter referenced herein not expressly set forth in this Lease Agreement or a subsequent writing signed by both parties is null and void. This Lease Agreement shall not be modified or amended except in a writing signed by both parties. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party. Provided that no material default in the performance of Lessee's obligations under this Lease Agreement shall have occurred and remain uncured, Owner shall cooperate with Lessee in amending this Lease Agreement from time to time to include any provision that may be reasonably requested by Lessee, Assignee, Lender Assignee, or Sublessee for the purpose of implementing the provisions

contained in this Lease Agreement or for the purpose of preserving the security interest of any Assignee or Leasehold Mortgagee; provided, that Lessee shall obtain the prior written consent of every Leasehold Mortgagee and every relevant Assignee, Lender Assignee, and Sublessee to the requested amendment.

13.12 Legal Matters. The construction, interpretation and enforcement of this Lease Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Lease Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming. The parties acknowledge and agree that they have each participated in the drafting of this Lease Agreement, and therefore, any rule of construction to the effect that ambiguities are to be resolved against the party drafting a contract shall not be employed in the interpretation of this Lease Agreement and is hereby waived.

13.13 Partial Invalidity. Should any provision of this Lease Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Lease Agreement, the parties agree that in no event shall the Term of this Lease Agreement or any Transmission Easement be longer than the longest period permitted by applicable law.

13.14 Right to Inspect Books and Production Records. Lessee shall, and shall require every affiliate of Lessee, any Assignee, Lender Assignee, and Sublessee to keep true, accurate and complete books, records, accounts, contracts and data sufficient to support and verify the calculation of all amounts due under this Lease Agreement, for a period of six (6) years after such amounts are due. Owner or any representative of Owner, including, without limitation, the Wyoming Department of Audit, shall have the right at all reasonable times and upon the provision of reasonable notice, to inspect such books, accounts, contracts, records, and any other relevant data in the possession or control of Lessee, any affiliate of Lessee, any Assignee and any Sublessee, and pertaining to the calculation of amounts due under this Lease Agreement, including, without limitation, statements, documents, records or other data, from third parties which verify price paid for, or quantity of, electricity generated by the Project, as applicable. Any such inspection and review shall take place at the office of Lessee or other entity whose records are being inspected and reviewed unless another location is otherwise agreed to by Owner and Lessee or other entity whose records are being inspected and reviewed. Lessee agrees that it shall require every affiliate, Assignee, Lender Assignee, and Sublessee to agree to and abide by the provisions of this Section with respect to any contract relating to the purchase and/or sale of power generated from the Project.

Without limiting the foregoing, at Owner's written request, no more than once a year and upon sixty (60) days notice to Lessee, Lessee shall either, at its election, (i) provide Owner with information that enables Owner to confirm that all amounts payable under this Lease Agreement have been properly paid since the last time any such information was provided to Owner, but not more than six (6) years before; or (ii) at Lessee's expense, obtain from an independent auditor, reasonably acceptable to the State of Wyoming and mutually agreeable to both Owner and Lessee, an audit report confirming whether all amounts due under this Lease Agreement have been properly paid since the last time any such information was provided to Owner, but not more than six (6) years before. If Lessee shall retain an independent auditor to provide an audit report, any such auditor shall have reasonable access to all books, accounts, contracts, records, and any other relevant data, in the possession or control of Lessee, any Assignee, Sublessee, or Leasehold Mortgagee or any affiliate of Lessee, any Assignee, Sublessee or Leasehold Mortgagee and pertaining to the calculation of amounts due under this Lease Agreement.

In the event that the independent auditor is unable to render an opinion confirming whether all amounts due under this Lease Agreement have been properly paid for the period under examination, the auditor shall report, in writing and within the deadline established for providing the audit report, the reasons why independent auditor was unable to render such opinion. Owner and Lessee agree that any third party auditor retained by Lessee shall keep all audit information confidential, to the maximum extent permitted by law.

13.15 Calibration. Lessee or the interconnecting utility shall test and calibrate the electric meters according to the acceptable standards in the industry, at the location at which

electricity generated on the Project is delivered to such utility (in accordance with the applicable interconnection agreement) and at the individual meters of the WTGs in the Project.

13.16 Sovereign Immunity. For the limited purpose that Lessee has a full and fair opportunity to enforce its contract rights arising under this Lease Agreement, Owner hereby waives any sovereign immunity defense it may otherwise enjoy in any judicial proceeding between Owner and Lessee, the subject matter of which is this Lease Agreement. Owner's waiver of immunity is expressly limited to Lessee and Lessee's permitted assigns (including Assignees, Lender Assignees, Sublessees and Leasehold Mortgagees) under this Lease Agreement and only as to those breach of contract claims that arise out of this Lease Agreement. Owner's limited waiver of immunity shall not apply to any third party claims, whether they arise by or through this Lease Agreement or otherwise. Except for the limited waiver of immunity set forth above, the State of Wyoming, the Wyoming Board of Land Commissioners and the Office of State Lands and Investments do not waive sovereign immunity by Owner entering into this Lease Agreement, and specifically retain immunity and all defenses available to them as sovereigns pursuant to WYO. STAT. ANN. § 1-39-104(a) and other state law.

13.17 Confidentiality. Owner is subject to the Wyoming Public Records Act (WYO. STAT. ANN. §§ 16-4-201 through -205) and any information provided to Owner under this Lease Agreement may be subject to disclosure. As such, Owner cannot represent that any information provided under this agreement will be kept confidential. However, if Lessee believes that information Lessee is providing falls within an exception to the Wyoming Public Records Act, Lessee may request that Owner keep such information confidential pursuant to such exception. If Owner agrees that such exception does apply, Owner will keep such information confidential.

13.18 Assignment in Connection with Transmission Lines. In connection with the exercise of the rights of Lessee hereunder, Lessee, upon due and proper compliance with Owner's procedures, shall have the right to grant to any utility the right to construct, operate and maintain electric transmission, interconnection and switching facilities on the Property.

13.19 Survey. Lessee shall have the right, but not the obligation, to order a survey of the property. If so ordered, the cost of the survey shall be paid by the Lessee.

13.20 Consents and Approvals. Whenever the consent or approval of either party is required under this Lease Agreement, each party agrees that such consent or approval shall not be unreasonably withheld, conditioned or delayed.

13.21 Siting. Prior to construction, Lessee shall submit to Owner a description of the location of all the Windpower Facilities, as defined in Article 1. The description shall include maps or drawings depicting the location, if such maps or drawings are readily available. If applicable, Lessee shall submit to Owner any industrial siting application that has been submitted or any permit that has been issued pursuant to Wyoming Statute 35-12-101 through 35-12-119.

13.22 BLM Grant. In the event that rights-of-way, access agreements, easements, or land use permits are needed from the Bureau of Land Management in order to access the Property for wind energy development, then such agreements are a requirement of this Lease. If Lessee fails to maintain such an agreement with the BLM, Owner may cancel this Lease Agreement following notice and opportunity to cure.



IN WITNESS WHEREOF, Owner and Lessee, acting through their duly authorized representatives, have executed this Lease Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2017 with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Lease Agreement.

"Owner"

"Lessee"

STATE OF WYOMING, BOARD OF LAND COMMISSIONERS

TWO RIVERS WIND, LLC

By: Bridget Hill  
Name: Bridget Hill  
Its: Director, Office of State Lands and Investments

By: [Signature]  
Name: Paul Martin  
Its: Manager

Attorney General Approval as to Form

[Signature]  
Megan Nichols, Senior Assistant Attorney General

ACKNOWLEDGMENTS

STATE OF WYOMING )  
County of Laramie ) ss.

The foregoing instrument was acknowledged before me by Bridget Hill, as Director, Office of State Lands and Investments, STATE OF WYOMING, this 7th day of March, 2017.

Witness my hand and official seal

(seal) 

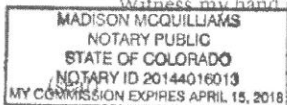
Barbara Anne Pace  
Title of Officer

My commission expires: May 8, 2019

STATE OF Colorado )  
County of Boulder ) ss.

The foregoing instrument was acknowledged before me by Paul Martin as Manager of Two Rivers Wind, LLC, this 4th day of January, 2018.

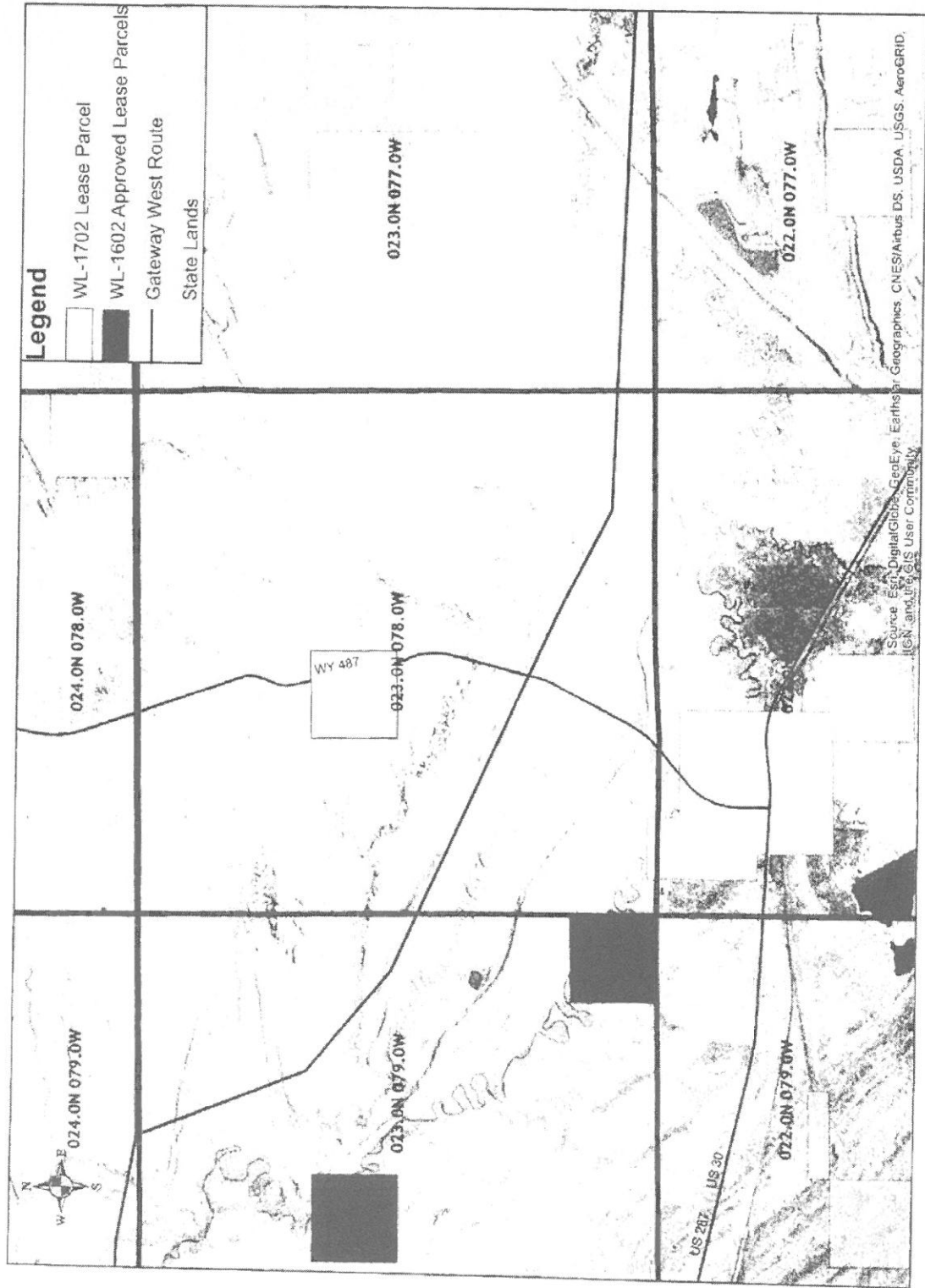
Witness my hand and official seal.



Madison McQuilliams  
Title of Officer

My commission expires: April 15, 2018

# WL-1702 Lease - Exhibit 1



TWO RIVERS WIND, LLC (INTERMOUNTAIN WIND) WL-1702 - Exhibit 2

TYPE	NAME	ADDRESS	CITY, STATE, ZIP	SECTION	TOWNSHIP	RANGE	NOTES
GZ-3-7186	Michael J. Boulter-Two Rivers LLC	22019 County Road 54	Greeley, CO 80631	16 23N	78W		NONE
WL							NONE
SUL							NONE
MIN							NONE
TUP							NONE
EAS-4959	Wyoming Department of Transportation	5300 Bishop Blvd.	Cheyenne, WY 82010				
EAS-00653N	Transportation Commission of Wyoming	5300 Bishop Blvd.	Cheyenne, WY 82010				
EAS-00776N	Hot Springs REA	PO Box 630	Thermopolis, WY 82443				