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Ohio Power Siting Board
180 E. Broad Street
Columbus, Ohio 43215-3793

Black Fork Wind Energy, LLC
Element Power US, LLC
Case # 10-2865-EL-BGN

Testimony given by: Alan K. Price

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PUCO

My name is Alan K. Price and I live at 7956 Remlinger Road Crestline, Ohio 44827.

I am testifying on my own behalf in this proceeding. Element Power is asking for a permit for Black Fork Wind Energy, LLC. I do not agree with Applicant and reside in this proposed project area.

I do not believe that a person can sign a Wind Energy Lease Agreement and hold an elected position at the same time. Our elected officials are put in office to represent the residence in their areas equally, without being bias. (Exhibit A - Wind Energy Lease Agreement) A Landowner signing this agreement, agrees to accept payment for the use of land. Then on page 9 of this agreement they agree to line 8.5. Requirement of Government Agencies. On page 12 of this agreement you will find line 9.4 Requirements of Governmental Agencies/Lenders. On these pages the Landowner is agreeing to side with the Lessee on decisions being made. On page 19 in the agreement you will find line 13.2 Confidentiality. In this section it is noted what a Landowner can say or do, only with permission from Lessee. I do not feel that Landowners signing an agreement such as this can be representing me, a non signer. (Exhibit B - Memorandum of Lease for Mark Fry) (Exhibit C Memorandum of Lease for Ambrose Metzger) (Exhibit D - Memorandum of Lease for Paul Schroeder) (Exhibit E - Memorandum of Lease for Thomas Rietschlin) . These memorandums for lease are between landowners and Wind Energy Companies. All four lease signers are elected officials. While speaking to Crawford County Commissioner Doug Weisenauer in his office, he stated that he has a lease agreement as a landowner.

I believe it would be a conflict of interest for a Landowner signing a Wind Energy Lease Agreement and holding an elected office position. A lease agreement limits it's signer in multiple ways. An elected official should only be limited by the laws of our government.

(Exhibit F – Crawford County Sheriff's Office) I have had to call the Sheriff on people for trespassing. These people work for the company who collect information and do maintenance

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on the meteorological tower north of my property. Even though I have a no trespassing sign and a no wind turbine sign at the end of my 900 foot drive, they continued to use my drive as a short cut. Even after verbally warning them, I ended up calling the Sheriff.

WIND ENERGY LEASE AGREEMENT

This **WIND ENERGY LEASE AGREEMENT** (this "**Agreement**") is made, dated and effective as of the Effective Date (defined below), by and between Landowner (defined below) and Black Fork Wind, LLC a Colorado Limited Liability Company ("**Lessee**").

1. Definitions. The following capitalized terms used in this Agreement have the meanings set forth below:

1.1 "Annual Alternative Rent." The greater of (a) Eight Dollars (\$8.00) per acre of the Property per Commercial Operation Year, or (b) Two Thousand Five Hundred Dollars (\$2,500.00) for each MW of rated nameplate capacity for each wind turbine installed on the Property per Commercial Operation Year.

1.2 "Commercial Operation Year." The period of time defined in Section 5.4.1.

1.3 "Development Activities." Those activities conducted by Lessee during the Development Period, as further described in Section 3.2.

1.4 "Development Payment(s)." Two Dollars (\$2.00) per acre of the Property for each of the first two (2) calendar years (or portion thereof following the Effective Date), increasing to Three Dollars (\$3.00) per acre of the Property for each of the third and fourth calendar years following the Effective Date, and then increasing to Four Dollars (\$4.00) per acre of the Property for each of the fifth, sixth and seventh calendar years thereafter during the Development Period.

1.5 "Development Period." The period commencing on the Effective Date and expiring on the date seven (7) years thereafter.

1.6 "Effective Date." _____.

1.7 "Extended Term." The thirty (30) year period commencing upon the Operations Date.

1.8 "Installation Fee." Two Thousand Five Hundred Dollars (\$2,500.00) for each megawatt ("MW") of rated nameplate capacity for each wind turbine installed on the Property by Lessee in any particular phase of construction.

1.9 "Landowner." _____, whose address for the purposes herein is _____.

1.10 "Lease Rate Chart."

<u>Extended Term Period</u>	<u>Lease Rate</u>
Commercial Operation Years 1-10	4%
Commercial Operation Years 11-20	5%
Commercial Operation Years 21-30	6%
First Renewal Term (if applicable)	See Section 5.6
Second Renewal Term (if applicable)	See Section 5.6

1.11 **"Met Tower Fee."** One Thousand Dollars (\$1000) per calendar year (or portion thereof) for each meteorological tower installed on the Property by Lessee during the Development Period.

1.12 **"Operations Date."** The date defined in Section 5.4.1.

1.13 **"Project."** The wind energy conversion facility described in Section 3.4.

1.14 **"Property."** The real property consisting of approximately _____ acres located in _____ County, State of Ohio, that is described in Exhibit A attached hereto and incorporated herein by this reference.

1.15 **"State."** The State of Ohio.

1.16 **"Windpower Facilities."** The equipment and other items described in Section 3.2.2.

2. Lease and Confirmation.

2.1 **Leasing Clause.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landowner, Landowner hereby leases the Property to Lessee.

3. Purpose of Lease; Permitted Uses.

3.1 **Purpose of Lease.** The lease created by this Agreement is solely and exclusively for wind energy purposes, and throughout the term of this Agreement, Lessee shall have the sole and exclusive rights to use the Property for wind energy purposes and to measure, utilize and convert all of the wind resources of the Property. For purposes of this Agreement, **"Wind Energy Purposes"** means: wind resource evaluation; wind energy development; converting wind energy into electrical energy; collecting and transmitting the electrical energy converted from wind energy; and any and all other activities related to the foregoing.

3.2 **Use of Property.** The rights granted to Lessee in this Agreement permit Lessee, without limitation, to do the following on the Property:

3.2.1 Extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analyses as Lessee deems necessary, useful or appropriate.

3.2.2 Construct, erect, install, reinstall, replace, relocate and remove from time to time, the following (collectively, the **"Windpower Facilities"**):

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

(b) wind turbines, steel towers, foundations and concrete pads, support structure, footings, anchors, fences and other fixtures and facilities, maintenance, security, office facilities, staging areas for the assembly of equipment, power generation facilities to be operated in

conjunction with large wind turbine installations, control buildings, laydown areas, crane pads, and related facilities and equipment;

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

(d) any other improvements, including roads, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the uses or activities permitted to Lessee hereunder; and

3.2.3 Use, maintain and operate the Windpower Facilities.

3.3 Ingress and Egress. This Agreement includes the right of ingress to and egress from the Windpower Facilities over and across the Property by means of any existing roads and lanes thereon, and by such other route or routes as Lessee may construct on the Property from time to time. Accordingly, Landowner hereby grants to Lessee, its licensees, subtenants, agents, invitees and assigns, a nonexclusive right-of-way and easement for the purpose of ingress to and egress from the Windpower Facilities over and across the Property by means of all existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time (the “**Access Easement**”). The Access Easement shall run with the Property, and shall inure to the benefit of and be binding upon Landowner and Lessee and their respective transferees, successors and assigns, and all persons claiming under them. In the event Lessee constructs road or lanes on the Property, it shall (a) provide for adequate drainage with respect thereto in order to ensure that the natural flow of water is not restricted in such a way as to cause ponding or standing water adjacent to the roads or lanes, and (b) deposit any top soil removed from the Property in a location on the Property mutually agreed upon by Landowner and Lessee.

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

3.5 Release of Unused Property. On the third anniversary of the Operations Date, Landowner and Lessee shall execute an amendment to this Agreement, releasing from this Agreement any acreage of the Property on which no Windpower Facilities have been constructed, as reasonably determined by Lessee, except that Section 9.2 of this Agreement shall continue to apply to any released Property for the remainder of the Extended Term and any Renewal Terms notwithstanding any such release. If Windpower Facilities have been constructed on each acre of the Property as of the third anniversary of the Operations Date, then no amendment of this Agreement shall be required.

4. Development Period; Extended Term; Renewal Terms.

4.1 Term. Lessee’s rights under this Agreement continue throughout the Development Period. This Agreement shall be extended for the Extended Term upon the occurrence of

any of the following events: (i) written notice to Landowner from Lessee of the commencement of the Extended Term; (ii) the entry onto the Property of major construction equipment to build roads or staging areas for the Windpower Facilities; or (iii) the delivery onto the Property of wind turbines, tower sections or other materials to be used in connection with the construction of the Windpower Facilities (other than materials that may be used in connection with the building of roads or staging areas for the Windpower Facilities set forth in item (ii) above). During the Extended Term, Lessee and any Tenant or Assignee (as defined in Section 10.1 below) may, by notice to Landowner no later than thirty (30) days prior to the expiration of the Extended Term, elect to extend this Agreement for an additional ten-year period, commencing upon the expiration of the Extended Term (the "**First Renewal Term**"). Similarly, Lessee and any Tenant or Assignee may, by notice to Landowner no later than thirty (30) days prior to the expiration of the First Renewal Term, elect to extend this Agreement for a second ten-year period, commencing upon the expiration of the First Renewal Term (the "**Second Renewal Term**"). With respect to each extension of the term of this Agreement, Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum evidencing the extension, satisfactory in form and substance to Lessee.

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

5.1 Development Payment(s). In order to keep this Agreement in effect during the Development Period, Lessee shall pay Development Payments to Landowner as follows:

5.1.1 Within sixty (60) days after the Effective Date, Lessee shall pay Landowner the Development Payment for the first twelve (12) consecutive calendar months of the Development Period (with the calculation for the first month of the Development Period, if less than a full month, being prorated based on the number of days in that month).

5.1.2 Beginning on the first day of the calendar month in which the first anniversary of the Effective Date occurs, and continuing to and including the month during which the Operations Date occurs, Lessee shall annually pay Landowner the Development Payment due for that year within fifteen (15) days after the applicable anniversary of the Effective Date.

5.1.3 Development Payments will discontinue on the earlier of (i) the Operations Date, or (ii) any termination of this Agreement by Lessee. Lessee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Development Period upon thirty (30) days' written notice to Landowner. To the extent that Lessee terminates the Agreement during the Development Period, Landowner shall be entitled to retain all Development Payments previously paid to Landowner.

5.2 Met Tower Fee. During the Development Period, Lessee shall pay Landowner a Met Tower Fee for each meteorological tower, if any, installed on the Property by Lessee that operates during the Development Period (with the Met Tower Fee for the first year of the Development Period, if less than a full year, being prorated based on the number of days in that year). Met Tower Fee payments for each such meteorological tower will discontinue on the earlier of (i) the removal of the meteorological tower from the Property, or (ii) any termination of this Agreement by Lessee. The Met Tower Fee payment shall be due, if at all, within forty-five (45) days after the end of each calendar year during the Development Period.

5.3 Installation Fees. Lessee shall pay to Landowner a one-time Installation Fee for each wind turbine installed on the Property by Lessee in any particular phase of construction. No additional Installation Fee shall be due upon any replacement or repower of an existing turbine or installation of a wind turbine on a relocated turbine site within the boundaries of the Property during the

Extended Term, First Renewal Term, or Second Renewal Term. Each Installation Fee shall be paid fifty percent (50%) upon Commencement of Construction (as defined below) and fifty percent (50%) at the Operations Date. **"Commencement of Construction"** shall mean the commencement of work on the Property, consisting of the installation or construction of any wind turbines on the Property for the particular phase of construction, but shall not include surveying, wind measurement work, site clearing, the installation of fencing, the installation of temporary storage buildings or trailers, the placement of equipment or construction materials on the Property or construction or improvement of roads.

5.4 Payments During the Extended Term. In the event this Agreement is extended beyond the Development Period as provided in Section 4.1 above, Lessee shall make the following payments to Landowner as provided in Section 5.4.3:

5.4.1 Operating Fees. Commencing on the date that a wind turbine or other power generation facility is installed on the Property and begins delivering electricity on a commercial basis (*i.e.*, in quantities and for periods greater than required for testing) to utility transmission lines (the **"Operations Date"**), and for the remainder of the term of this Agreement, Lessee shall pay to Landowner an annual operating fee based on the Net Annual Electrical Generation of the wind turbines located on the Property (the **"Operating Fee"**); provided, however, that at any time during the Extended Term when wind turbines or other power generation facilities are not installed on the Property, Lessee shall pay to Landowner an annual fee (or the pro rata portion thereof) in the amount of Eight Dollars (\$8.00) per acre of the Property. The **"Net Annual Electrical Generation"** shall be calculated by dividing the total number of megawatt hours (**"MWh"**) of electricity generated by all wind turbines located on the Property connected to the same Revenue Meter (as defined below) during the applicable Commercial Operation Year (as measured by the meter located at each such wind turbine that is connected to such Revenue Meter) by the total number of MWh of electricity generated by all wind turbines included in the Project connected to such Revenue Meter during the same Commercial Operation Year (as measured by the meter located at each such wind turbine that is connected to such Revenue Meter). The Operating Fee shall be calculated by multiplying the Net Annual Electrical Generation by the Project Gross Revenues (as defined below) associated with such Revenue Meter for the same Commercial Operation Year; and multiplying that result by the Lease Rate for such Commercial Operation Year stated above in the Lease Rates Chart set forth in Section 1.10.

A **"Revenue Meter"** is a meter which determines the amount of electrical energy and capacity paid for by third parties; wind turbines in a Project may be connected to different Revenue Meters. The first **"Commercial Operation Year"** shall begin on the Operations Date, and shall expire on the next December 31, and each subsequent Commercial Operation Year shall commence on January 1 and expire on December 31 or the termination date of this Agreement. **"Project Gross Revenues"** with respect to any Revenue Meter means total monies received from utility companies and all other purchasers derived from: (i) the sale of electric energy and capacity produced, delivered to the grid less the cost of delivery (*e.g.*, Project costs for transmission and interconnection) and sold from wind turbines in the Project that are connected to such Revenue Meter; and (ii) the sale of other certificates or entitlements under present or future law or market conditions associated with the delivery to the grid of each unit of wind-powered electricity from wind turbines in the Project that are connected to such Revenue Meter, including, without limitation, any Carbon Offsets (as hereinafter defined). Project Gross Revenues do not include: (1) Production Tax Credits (defined as the renewable energy production tax credits described in Section 45 of the Internal Revenue Code, 1986, as amended (**"PTCs"**)), as determined with respect to the Federal tax liability of the owner of the wind turbines and associated equipment installed in connection with the Project, or any other federal tax, production or other credits

received by, or paid to, Lessee or its affiliates by any governmental entity or quasi-governmental entity, including, without limitation, any subsequently created federal renewable energy credits, carbon dioxide credits, emissions credits or any other federal income tax credits, or any state or local property tax credits or abatements; (2) grants from private or public entities; (3) amounts obtained by Lessee from financing activities, sales, leases, subleases or other dispositions of the Windpower Facilities, or this Agreement or other leases; (4) any amounts recovered from third parties arising out of the construction, repowering or repair of the Windpower Facilities (such as damages for breach of contract or liquidated damages for delays in completion or equipment performance); (5) amounts received as reimbursements or compensation for wheeling costs or other electricity transmission or delivery costs; or (6) any proceeds received by Lessee as a result of damage or casualty to the Windpower Facilities.

Example (for illustrative purposes only)

In the first full Commercial Operation Year, if:

- 16,000 MWh are measured at all turbines on the Property;
- 400,000 total MWh are measured from all turbines in the Project;
- \$11,850,000 in Project Gross Revenues is associated with the relevant Revenue Meter; and
- the Lease Rate is 4.0%;

then Operating Fees for such first Commercial Operation Year would be calculated as $((16,000 \div 400,000) \times \$11,850,000 \times 4.0\%)$ and would therefore equal \$18,960.

“Carbon Offsets” means any avoided emissions of any gas, chemical or other substance into the air, soil or water attributable to the Project or the generation, purchase, sale, or use of energy therefrom, such as carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases or chemical compounds, particulate matter, soot or mercury, that are subject to regulation or monitoring under any applicable law, any international treaty or law implementing the United Nations Framework Convention on Climate Change (the “UNFCCC”), the Kyoto Protocol to the UNFCCC, any state greenhouse gas legislation or any similar international, foreign, federal, state or local program.

5.4.2 **Annual Alternative Rent.** If, for any Commercial Operation Year (or portion thereof), the Operating Fees required pursuant to Section 5.4.1 are less than the Annual Alternative Rent, then Lessee shall pay Landowner the Annual Alternative Rent stated in Section 1.1 in lieu of any Operating Fees, notwithstanding anything to the contrary in this Agreement.

5.4.3 **Payment.** Lessee shall make quarterly payments of Annual Alternative Rent on each March 31, June 30, and September 30 after the Operations Date, provided that if the Operations Date does not occur at the beginning of a quarter, the payment at the end of the first quarter of the Extended Term shall be prorated for the actual number of days in such quarter. No later than each January 15, Lessee shall determine whether Operating Fees or Annual Alternative Rent was due for the immediately preceding Commercial Operation Year and pay the amount due no later than January 31, less all Annual Alternative Rent already paid for that year. Lessee shall provide Landowner with a copy of its calculation of applicable Operating Fees and Annual Alternative Rent with each January payment. With each quarterly payment, Lessee also shall provide Landowner with Lessee’s good faith estimate of the

payments likely to come due under this Agreement over the next 12-month period. Landowner acknowledges that the estimates are only estimates and constitute no representation or warranty of Lessee as to actual results, and Landowner is not justified in relying on such estimates in any way.

5.4.4 Inspection Rights. Landowner or its designated representative(s) shall have the right upon ten (10) days' notice, during normal business hours and at Lessee's office, to inspect all of Lessee's records and documents related to the determination of payments made pursuant to the terms of this Agreement, including any records of readings of meters maintained for the purpose of measuring electrical generation by the Windpower Facilities. If payments are found by such inspection to have been understated by more than four percent (4%), then Lessee shall pay the reasonable cost of such inspection as well as the additional amount due and owing by Lessee to Landowner plus interest at ten percent (10%) per annum; otherwise the cost of such inspection shall be paid by Landowner. Lessee promptly shall pay Landowner any unpaid amounts, and Landowner promptly shall refund any overpaid amounts, revealed by such inspection.

5.4.5 Building Rent. In addition to the payment of Operating Fees or Annual Alternative Rent, Lessee shall pay Landowner annual rent for all buildings constructed by Lessee on the Property ("**Building Rent**"). Building Rent shall be paid in quarterly installments, concurrently with the payments required under Section 5.4.3. Building Rent shall be established annually by agreement of the parties on a per-square-foot basis determined from the market rent for agricultural land in the general area of the Property. In the event the parties cannot agree in good faith on the Building Rent, the matter shall be resolved by an experienced real estate professional with at least ten years' experience with agricultural land values in _____ County, Ohio, in the same manner as provided for resolution of the Lease Rate during any Renewal Terms as set forth in Section 5.6, and the professional's decision shall be binding on the parties.

5.4.6 Alternative Use of Power. If, at any time during the term of this Agreement, Lessee or any Assignee or Tenant utilizes electricity generated from the wind turbines on the Property for any purpose other than immediate sale or delivery of the electricity to the grid "alternative use" (e.g., storage of electricity, or powering of a hydrogen converter), then Lessee or the Assignee or Tenant, and Landowner shall renegotiate the payment structure to Landowner under this Agreement in good faith to conform to similar market transactions for electricity not used for immediate sale or delivery to the grid.

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

5.6 Determination of Lease Rate During Renewal Terms. In the event this Agreement is extended for the First Renewal Term or the Second Renewal Term as provided in Section 4, the parties shall meet and confer in good faith prior to the first day of the applicable Renewal Term to determine the Lease Rate to apply during that Renewal Term. In the event the parties cannot agree on a Lease Rate in good faith, the parties shall refer the matter to a real estate professional with at least ten years' experience in the valuation of wind energy lease agreements, and the decision of the professional shall be final and binding upon the parties. In the event the parties cannot agree on a professional, each party shall select a professional meeting the foregoing qualifications and the two professionals shall meet

to select a third professional meeting the foregoing qualifications, whose decision as to the Lease Rate shall be final and binding upon the parties.

5.7 Interest on Overdue Payments. Interest shall accrue on any payments not made when due under this Section 5 at the rate of 12% per annum.

6. Ownership of Windpower Facilities. Landowner shall have no ownership or other interest in any Windpower Facilities installed on the Property or any environmental attributes produced therefrom, including, without limitation, any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Windpower Facilities or the electric energy, capacity or other generator-based products produced therefrom. The manner of operation of the Windpower Facilities, including, but not limited to, decisions on when to conduct maintenance, is within the sole discretion of Lessee.

7. Taxes. Lessee shall pay any increase in the real property taxes levied against the Property directly attributable to the installation of Windpower Facilities on the Property, including any reclassification of the Property as a result of the installation of the Windpower Facilities on the Property or the execution of this Agreement by the parties, to the extent that such increase is not separately assessed to Lessee and paid directly by Lessee to the taxing authorities. Landowner and Lessee shall work together to request that the taxing authorities provide a separate assessment and tax statement for the portion of the real property taxes levied against or allocated to the Windpower Facilities located on the Property. If the taxing authorities agree to provide a separate assessment and tax statement for the portion of the real property taxes levied against or allocated to the Windpower Facilities, Lessee agrees to pay such real property taxes directly to the taxing authorities, and Landowner agrees to pay the remainder of the real property taxes levied against or allocable to facilities installed by Landowner or others for Landowner on the Property and the underlying value of the Property. Lessee shall not be liable for taxes attributable to facilities installed by Landowner or others on the Property, or to the underlying value of the Property itself, or any income taxes assessed on Landowner's income derived from this Agreement. It is a condition to Landowner's right to payment or reimbursement of any such increased taxes hereunder that Landowner submit the real property tax bill to Lessee within sixty (60) days after Landowner receives the bill from the taxing authority. Lessee shall have the right to pay its portion of the real property taxes directly to the applicable taxing authority. Landowner shall pay its portion of the real property taxes, and if Landowner fails to do so, Lessee shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to the taxing authority and may offset the amount of such payments from amounts due Landowner under this Agreement. Lessee may contest the legal validity or amount of any such taxes for which it is responsible under this Lease, and may institute such proceedings as it considers necessary, provided that Lessee shall bear all expenses in pursuing such contest or proceeding. Landowner agrees to render to Lessee, at no out-of-pocket cost or expense, all reasonable assistance in contesting the validity or amount of any such taxes, including joining in the signing of any reasonable protests or pleading that Lessee may deem advisable to file.

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

8.1 Landowner Activities. Landowner expressly reserves the right to use the Property for all purposes other than wind energy development to the extent such use by Landowner does not, currently or in the future, interfere with Lessee's operations hereunder or enjoyment of the rights hereby granted. Lessee shall make reasonable efforts not to disturb Landowner's activities on the Property to the extent such activities are consistent with Lessee's rights under this Agreement. Lessee shall consult with Landowner on its site development plan prior to construction of any Windpower

Facilities, showing Landowner the proposed location of wind turbines, roads and electric power lines, before making Lessee's final decisions as to location of Windpower Facilities on the Property, but Lessee shall make all final siting decisions in its sole and absolute discretion; provided, however, that Lessee shall not install any wind turbines within twelve hundred and fifty (1250) feet of any private residence on the Property. Lessee shall post the access roads it constructs going to the Windpower Facilities as being private roads only for use by authorized personnel in connection with the Windpower Facilities. Landowner may use or cross such roads only to the extent that Landowner does not interfere with Lessee's rights under this Agreement.

8.2 Oil and Gas. Lessee's operations on the Property shall not materially interfere with the operations of Landowner's lessees pursuant to any existing oil and gas or grazing leases, as disclosed pursuant to Section 9.1, affecting the Property and existing and in effect as of the Effective Date.

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

8.4 Indemnity. Lessee will indemnify Landowner, its successors, assigns and agents against liability for physical damage to property and for physical injuries or death to Landowner, Landowner's property or the public, to the extent caused by Lessee's willful misconduct or negligent construction, operation or removal of Windpower Facilities on the Property, except to the extent such damages, injuries or death are caused or contributed to by the negligence or willful misconduct of Landowner or Landowner's tenants, invitees or permittees. The reference to property damage in the preceding sentence does not include any damages to crops (which are governed solely by the provisions of Section 8.8 below) or any losses of rent, business opportunities, profits and the like that may result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Windpower Facilities pursuant to this Agreement. Landowner also authorizes Lessee, at Lessee's sole expense, to take reasonable safety and security measures to reduce the risk of damage to the Windpower Facilities or the risk that the Windpower Facilities will cause damage, injury or death to people, livestock, other animals and property, including without limitation, fencing around the perimeter of the Windpower Facilities as Lessee may deem necessary or appropriate to secure or enclose the same, without unduly burdening Landowner's use of the Property.

8.5 Requirement of Governmental Agencies. Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Windpower Facilities. Through appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Landowner where appropriate or required, Lessee shall have the right to contest the validity or applicability to the Property or Windpower Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Landowner shall cooperate in every reasonable way in such contest, provided Lessee reimburses Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Lessee has approved such expense in advance, such approval not to be unreasonably withheld. Any such contest or proceeding, including any maintained in the name of Landowner, shall be controlled and directed by

Lessee, but Lessee shall protect Landowner from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

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

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

8.8 Crop Damage. Lessee shall pay Landowner One Thousand Five Hundred Dollars (\$1500.00) per acre (prorated for fractional portions) for any and all portions of the Property that are taken out of commercial crop production or grazing during the construction of the Windpower Facilities and any and all crops that are removed or damaged as a direct result of Lessee's construction of Windpower Facilities on the Property. Portions of the Property shall be deemed to have been taken out of commercial crop production or grazing only to the extent Lessee's construction of Windpower Facilities on the Property materially interferes with Landowner's ability to farm or graze such portions of the Property during the growing or grazing season in which such construction occurs, assuming that Landowner was actually farming or grazing such portions of the Property immediately prior to Lessee's commencing construction of the Windpower Facilities on the Property. Payment shall be made no later than sixty (60) days after the Operations Date, and after payment is made, Lessee shall not be responsible to pay Landowner any losses of income, rent, business opportunities, profits or other losses arising out of Landowner's inability to grow crops, graze or otherwise use the Property as a result of the existence or operations of the Windpower Facilities on the Property, except for Building Rent as provided in Section 5.4.4.

8.9 Road Payment and Location. Lessee shall pay Landowner _____ (\$____) per rod for any new roads that Lessee constructs on the Property. Such payments for any new roads shall be due and payable within forty-days (45) following the end of the calendar year in which Lessee begins construction of such new roads on the Property. For purposes of determining the amount Lessee owes to Landowner pursuant to this paragraph, Lessee will provide Landowner with a site plan diagram showing, in reasonable detail, the location of all new roads and gathering and transmission lines constructed by Lessee on the Property, and shall update such site plan diagram as necessary (but not more frequently than annually) to reflect any additional new roads or transmission and gathering lines constructed by Lessee. Landowner and any of its lessees may use any and all roads on the Property, whether existing as of the Effective Date or constructed on the Property by Lessee. Notwithstanding anything contained in this Section 8.9 to the contrary, while Lessee shall be responsible for repairing road damage caused by Lessee's operations on the Property, Lessee shall not have responsibility for maintenance of existing roads on the Property that it does not utilize or for repairing damage to any roads caused by parties other than Lessee (it being understood and agreed that Landowner shall promptly cause the same to be repaired and/or replaced at Landowner's sole cost and expense). Lessee agrees that that should it improve or construct roads on the Property for the purpose of accessing wind turbine sites that are not located on the Property, Lessee shall make a good faith, commercially reasonable effort to construct any such roads along the applicable parcel boundary line(s) located on the Property. Lessee shall construct all such

road(s) in accordance with local and state rules, regulations or laws as promulgated by the state of Ohio or any of its agencies having jurisdiction.

8.10 Conservation Reserve Program. To the extent exercise of this Agreement causes the removal or disqualification of all or any portion of the Property from the U.S. Department of Agriculture Conservation Reserve Program in effect as to the Property ("**Conservation Reserve Program**"), Lessee shall reimburse Landowner for any penalties incurred by Landowner in connection with such removal or disqualification, documented to Lessee's reasonable satisfaction. Lessee's obligation to reimburse Landowner pursuant to this Section shall not apply to any portion of the Property not enrolled in the Conservation Reserve Program as of the commencement of construction, nor shall it require reimbursement of revenue that would have otherwise been earned by Landowner under the balance of the term of Landowner's Conservation Reserve Program contracts.

8.11 Decommissioning of Windpower Facilities. Lessee shall have the right at any time to relocate, remove, replace or otherwise alter any Windpower Facilities, machinery, fixtures and other improvements placed by it on the Property. Within twelve (12) months following the expiration or earlier termination of this Agreement, Lessee, at its sole cost and expense, shall decommission the Windpower Facilities, which shall include (collectively, the "**Decommissioning**") the removal of all towers and turbines, the removal of all other above-grade facilities to not less than Five (5) feet below grade or as otherwise required by the State or County in which the Property is located, and the burying of all tower foundations and the reseeded of areas where the tower pads were located with native grasses and/or natural vegetation. Lessee may leave all roads on the Property in their then existing condition.

8.12 Removal Security. Within one hundred and eighty days (180) following (i) the twentieth (20th) anniversary of the Operations Date, (ii) the occurrence of an uncured default by Lessee hereunder or the repudiation of this Agreement, or (iii) the earlier termination or expiration of this Agreement during the Extended Term, Lessee, at its sole cost and expense, shall obtain and deliver to Landowner a financial instrument acceptable to Landowner, in form and substance reasonably satisfactory to Landowner, securing performance of Lessee's Decommissioning obligations under Section 8.11 (the "**Removal Security**"). Lessee shall not be required to provide Removal Security to Landowner if Lessee or a sub-lessee or Assignee (defined below) commits in writing by notice to Landowner, on or by the twenty (20th) anniversary of the Operations Date, to repower or otherwise redevelop the turbines on the Property with new turbines at the end of the Extended Term (a "**Redevelopment Notice**"). Once in place, Lessee shall keep the Removal Security in force throughout the remainder of the Extended Term and any Renewal Term provided that Lessee has not delivered a Redevelopment Notice to Landowner, in which case, such Removal Security shall not be required until the tenth (10th) anniversary of the commencement of operations of such repowered or redeveloped turbines, and then, provided by Lessee in accordance with the terms of this Section (with each reference to the "Operations Date" being deemed to be a reference to the date of commencement of operations of such repowered or redeveloped turbines).

8.13 Drainage Tile. Prior to the commencement of any trenching operations or other activities undertaken by Lessee in connection with the construction of the Windpower Facilities on the Property, Lessee agrees that it shall retain the services of a contractor reasonably acceptable to Landowner, and shall permit a representative of Landowner to be present during trenching operations on the Property (at no cost to Lessee), with knowledge of drainage tile systems to advise Lessee with respect to repair, reconnection and replacement of Landowner's drainage tiles that may be cut or otherwise damaged during such construction. Any drainage tiles cut or otherwise damaged as a direct result of Lessee's construction of Windpower Facilities on the Property shall be properly repaired, reconnected and/or replaced by Lessee, at no cost to Landowner and to the satisfaction of Landowner, within a reasonable period of time. Lessee shall provide Landowner with 24-hour advance notice of any trenching operations on the Property that may affect the drainage tile systems located therein.

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

9.1 Landowner's Authority. Landowner is the sole owner of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. As of the Effective Date and except as disclosed on Exhibit C hereto, Landowner has not: (a) leased any portion of the Property to any third party; (b) encumbered any portion of the Property with any lien (whether evidencing a monetary indebtedness or otherwise), easement, restriction or other encumbrance; or (c) granted any other right to or interest in the Property to any third party. No rights to convert the wind resources of the Property or to otherwise use the Property for wind energy purposes have been granted to or are held by any party other than Lessee. Each person signing this Agreement on behalf of Landowner is authorized to do so, and all persons having any ownership or possessory interest in the Property (including spouses) are signing this Agreement as Landowner. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms.

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

9.3 Title Review and Cooperation; Further Assurances. Landowner shall cooperate with Lessee to obtain nondisturbance, subordination and other title curative agreements from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Landowner's fee title to the Property, including, but not limited to, those listed on Exhibit C hereto, to the extent necessary to eliminate any actual or potential interference by any such person or entity with any rights granted to Lessee under this Agreement. If Lessee and Landowner are unable to obtain such agreements from any third party holding an interest in the Property, Lessee, and any Assignee or Tenant, in addition to any other rights provided for herein, shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to such third party and may offset the amount of such payments from amounts due Landowner under this Agreement. Landowner shall also provide Lessee with any further assurances and shall take all actions and/or execute any documentation, including estoppel certificates or consents to assignments, that may be reasonably necessary for recording purposes or otherwise reasonably requested by Lessee to effectuate the purposes and terms of this Agreement.

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

approval not to be unreasonably withheld. Landowner shall make available to Lessee copies of all field tiling surveys, environmental, geotechnical and other site assessments, surveys, plans and other such records of Landowner to the extent such information relates directly to the proposed Windpower Facilities.

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

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

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

10. Assignment; Subleases; Cure.

10.1 Assignees and Tenants. Lessee and any Assignee (as defined below) shall have the right, without need for Landowner's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: finance Windpower Facilities; grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more Assignees or Tenants (as defined below) for use of the Property for wind energy purposes; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees or Tenants this Agreement, or any right or interest of Lessee in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Windpower Facilities that Lessee or any other party may now or hereafter install on the Property. An "Assignee" is any of the following: (i) any one or more parties involved in financing or refinancing of any Windpower Facilities, including, without limitation, any lender to or investor in Lessee or in any Windpower Facilities; (ii) any purchaser or lessee of any of the Windpower Facilities, or any purchaser of all or substantially all of the membership interests in Lessee or of all or any portion of Lessee's interest in this Agreement; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate of Lessee, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company; or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee's or Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. A "Tenant" is any person who succeeds to the leasehold interest of Lessee as an Assignee or to whom a sublease is conveyed by Lessee or an Assignee. Lessee or an Assignee that has assigned an interest under this Section, or that has conveyed a sublease, will give notice of such assignment or sublease (including the address of the assignee or sublease thereof for notice purposes) to Landowner, provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of

not binding Landowner with respect to such assignment or sublease until such notice shall have been given.

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

10.3 Right to Cure Defaults/Notice of Defaults/Right to New Lease. To prevent termination of this Agreement or any partial interest herein, Lessee, or any Assignee or Tenant, shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee, Tenant or Lessee hereunder or necessary to cure any default and to prevent the termination of this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, an Assignee or a Tenant, Landowner shall give written notice of the default to each Assignee and each Tenant, concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. Each such Assignee and each such Tenant shall have the same amount of time to cure said default as is given to Lessee pursuant to this Agreement, which cure period for each Assignee and each Tenant shall commence to run with the end of the cure period given to Lessee in this Agreement. If Lessee or an Assignee or Tenant holds an interest in less than all of the rights and interests under this Agreement, the Property or the Windpower Facilities, any default under this Agreement shall be deemed remedied as to Lessee's or such Assignee's or Tenant's partial interest, and Landowner shall not disturb such partial interest, if Lessee or the Assignee or Tenant, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Windpower Facilities in which Lessee or the Assignee or Tenant, as the case may be, holds an interest. In the event of an uncured default by Lessee, or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, each Assignee of a partial interest in this Agreement, and each Tenant who is a sublessee of Lessee or of an Assignee of Lessee, shall have the right to demand, and the Landowner shall grant and enter into, a new lease, substantially identical to this Agreement, by which such Assignee of a partial interest in the rights and interests under this Agreement, or such Tenant by a sublease, shall be entitled to, and Landowner shall not disturb, the continued use and enjoyment by such Tenant or Assignee of the Property, or portion of the Property, for the full term of this Agreement, as set forth in Section 4 of this Agreement, or such shorter term as said Assignee or Tenant may otherwise be entitled pursuant to its assignment or sublease. Further, in the event of an uncured default by Lessee or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, Landowner hereby agrees that, if and for so long as (i) a Tenant who is a sublessee of Lessee or of an Assignee is not in default under the sublease (beyond any period given Lessee, an Assignee or a Tenant under this Agreement to cure such default), (ii) such Tenant attorns to the Landowner, and (iii) the terms and conditions of the Tenant's sublease do not contravene the terms and conditions of this Agreement, Landowner shall (a) recognize such sublease, (b) not diminish nor interfere with such Tenant's possession of the portion of the Property covered by the sublease or with any term extension or renewal rights in the sublease, and (c) not disturb such Tenant's occupancy of such portion of the Property for the full term of this Agreement or such shorter term to which such Tenant may be entitled under the sublease. A Tenant which is, or in the future becomes, a sublessee of Lessee, or a sublessee of an Assignee, is an intended third party beneficiary of the provisions of this Section 10.3 and entitled to enforce this provision.

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

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

10.6 Extended Cure Period. If any default by Lessee or an Assignee or Tenant under this Agreement cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of Lessee's or another Assignee's or Tenant's interest in this Agreement, then any such default shall be deemed remedied if (i) within sixty (60) days after receiving notice from Landowner as set forth in Section 12.2 hereof, either Lessee or an Assignee or Tenant shall have acquired possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in this Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; (ii) Lessee or the Assignee or Tenant, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (iii) after gaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in this Agreement, Lessee or the Assignee or Tenant performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If Lessee or an Assignee or Tenant is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee or any defaulting Assignee or Tenant, as the case may be, from commencing or prosecuting the proceedings described above, the 60-day period specified above for commencing such proceeding shall be extended for the period of such prohibition.

10.7 Certificates, etc. Landowner shall execute such estoppel certificates (certifying as to such matters as Lessee or any Assignee or Tenant may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment and/or nondisturbance agreements as Lessee or any Assignee or Tenant may reasonably request from time to time.

11. Lender Protection. Lessee and any Assignee or Tenant may, at any time and without the consent of Landowner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "Lender") one or more mortgages, trust deeds or similar security interests in all or any part of its interests under this Agreement, or in the Property or the Windpower Facilities (a "Mortgage"). In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its

Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 11, upon delivery to Landowner of notice of its name and address.

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

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

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

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

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

11.2.4 Neither the bankruptcy nor the insolvency of Lessee, an Assignee or any Tenant shall be grounds for terminating this Agreement as long as the rent and all other monetary charges

payable by such Lessee, Assignee or Tenant hereunder are paid by the Lender in accordance with the terms of this Agreement.

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

11.3 New Lease to Lender. If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landowner shall give prompt written notice to the Lenders. Landowner shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Property with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, shall be upon the same terms, covenants, conditions and agreements as contained in this Agreement, and shall be subject to all existing subleases entered into pursuant to this Agreement, provided that the subtenants are not then in default. Upon the execution of any such new lease, the Lender shall (i) pay Landowner any amounts which are due Landowner from Lessee, the Assignee or Tenant, (ii) pay Landowner any and all amounts which would have been due under this Agreement (had this Agreement not been terminated) from the date of termination to the date of the new lease, (iii) perform all other obligations of Lessee and/or the Assignee or Tenant under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee, the Assignee or Tenant that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations which constitute Non-Curable Defaults. Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landowner. The provisions of this Section 11 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new lease, such Lender may use and enjoy the Property without hindrance by Landowner or any person or entity claiming by, through or under Landowner, provided that all of the conditions for a new lease as set forth in this Section are complied with.

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

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

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

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

12. Default and Termination.

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

12.2 Landowner's Right to Terminate. Except as qualified by Section 10 and by Section 11, Landowner shall have the right to terminate this Agreement if (i) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, including without limitation non-payment of any sums due hereunder, (ii) Landowner simultaneously notifies Lessee and all Lenders, Assignees and Tenants in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Lessee, or within one hundred twenty (120) days in the case of all Assignees and Tenants, receive the written notice, or, if cure will take longer than 60 days for Lessee or 120 days for any Assignee or any Tenant, Lessee, or an Assignee or Tenant on Lessee's behalf, has not begun to diligently take measures to cure the default within the relevant time period and thereafter diligently prosecute the cure to completion.

12.3 Effect of Termination. Upon termination of this Agreement, whether as to the entire Property or only as to part, Lessee shall (i) upon written request by Landowner, execute and record a quitclaim deed to Landowner of all of Lessee's right, title and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and (ii) as soon as practicable thereafter, remove all Windpower Facilities from the Property or portion as to which this Agreement was terminated, exclusive of any continuing right established pursuant to this Agreement to survive the term of this Agreement, and restore the soil surface to a condition reasonably similar to its original condition. If Lessee fails to remove such Windpower Facilities within twelve (12) months of termination of this Agreement, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and

actual costs of removal incurred by Landowner, less any salvage value of the Windpower Facilities received by Landowner, within thirty (30) days after receipt of an invoice from Landowner.

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

13. Miscellaneous.

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

13.2 Confidentiality. Landowner shall maintain in the strictest confidence, for the benefit of Lessee, any Assignee or Tenant, all information pertaining to the financial terms of or payments under this Agreement, Lessee’s site or product design, methods of operation, methods of construction, power production or availability of the Windpower Facilities, and the like, whether disclosed by Lessee, any Assignee or Tenant, or discovered by Landowner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landowner or its employees or agents; or (ii) was already known to Landowner at the time of disclosure and which Landowner is free to use or disclose without breach of any obligation to any person or entity. Landowner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any Assignee or Tenant. Notwithstanding the foregoing, Landowner may disclose such information to Landowner’s lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Landowner regarding this Agreement; any prospective purchaser of the Property who has made a written offer to purchase or otherwise acquire the Property that Landowner desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Landowner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee. Landowner shall get Lessee’s written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Agreement, the wind power project to be constructed on the Property by Lessee, or any other existing wind power project owned or operated by Lessee. The provisions of this Section shall survive the termination or expiration of this Agreement.

13.3 Successors and Assigns. The Agreement shall burden the Property and shall run with the land. This Agreement shall inure to the benefit of and be binding upon Landowner and Lessee and, to the extent provided in any assignment or other transfer under Section 10 hereof, any Assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to “Lessee” in this Agreement shall be deemed to include Lessee’s successors and any Assignees and Tenants, which hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest.

13.4 Memorandum of Lease. Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum of the lease evidenced by this Agreement, in substantially the form set forth in Exhibit D. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

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

If to Landowner:

LANDOWNER NAME
INSERT ADDRESS
INSERT ADDRESS

Telephone No. _____

If to Lessee:

Black Fork Wind, LLC
Attn: Chief Operating Officer
1560 Broadway, Suite 2100
Denver, CO 80202
Telephone No. (303) 831-4673

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

13.6 Entire Agreement; Amendments. This Agreement and the Exhibits hereto constitute the entire agreement between Landowner and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, the Project or any other matter referenced herein not expressly set forth in this Agreement, or in a subsequent writing signed by both parties, is null and void. This Agreement shall not be modified or amended except in a writing signed by all parties hereto. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

13.7 Legal Matters.

13.7.1 This Agreement shall be governed by and interpreted in accordance with the laws of the State. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the state court located in the county in which the Property is situated, or if none, then a state court nearest the county and within the state in which the Property is situated.

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

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

13.8 Attorneys' Fees. Lessee shall reimburse Landowner for Landowner's legal fees and directly incurred and paid by Landowner in connection with the review, negotiation and execution of this Agreement by Landowner, up to a maximum amount of _____ (\$XXXX.00), payable within thirty (30) days of Lessee's receipt of the executed Agreement and written documentation reasonably satisfactory to Lessee reflecting Landowner's payment of such legal fees.

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

13.10 Tax Credits. If, under applicable law, the holder of a leasehold interest in the nature of that held by Lessee, an Assignee or a Tenant under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Landowner and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive.

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

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

13.13 Construction and Interpretation. The headings of the articles, sections and paragraphs of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part thereof. Unless the context requires otherwise, references in this Agreement to Sections, subsections or Exhibits refer to the Sections, subsections and Exhibits of or attached to this Agreement. Unless the context requires otherwise, references to a "party" or "parties" refer to Landowner or Lessee, or all of them, as the context may require. The word "including" shall be construed in its inclusive sense, and not in limitation, whether or not language of non-limitation (such as "without limitation") is used with reference thereto. All provisions of this Agreement have been negotiated by Landowner and Lessee at arms' length. This Agreement shall not be construed for or against either party by reason of the authorship or alleged authorship of any provision hereof or by reason of the status of the respective parties as Landowner or Lessee.

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

LESSEE

Black Fork Wind, LLC
a Colorado Limited Liability Company

By: _____

Printed Name: _____

Title: _____

LANDOWNER:

[LANDOWNER NAME]

Printed Name: _____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____ 200__, by
Craig Ambler, as Chief Operating Officer of Black Fork Wind, LLC a Colorado limited liability
company, on behalf of such company.

[SEAL]

Notary Public for Colorado
My commission expires: _____
Commission No.: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____
200__, by _____.

[SEAL]

Notary Public for _____
My commission expires: _____
Commission No.: _____

STATE OF _____)
) ss.
COUNTY OF _____)

“EXHIBIT A”

Description of Property

All that real property located in _____ County, Ohio, described as follows:

“EXHIBIT B”

Map

“EXHIBIT C”

Liens or Encumbrances on the Property

"EXHIBIT D"

Form of Memorandum of Lease

Recording requested by and
when recorded, mail to:

Black Fork Wind, LLC
c/o Samuel Gary Jr. & Associates, Inc.
1560 Broadway, Suite 2100
Denver, CO 80202
Attn: Chief Operating Officer

(Space Above for Recorder's Use Only)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("**Memorandum**") is made and entered into as of _____, 200__, by and between _____ whose address for the purposes hereof is _____ ("**Landowner**"), and **Black Fork Wind, LLC a Colorado limited liability company** whose address for the purposes hereof is 1560 Broadway, Suite 2100, Denver, Colorado 80202 ("**Lessee**").

1. **Lease.** For the term and upon the provisions set forth in that Wind Energy Lease Agreement of even date herewith between Landowner and Lessee (the "**Agreement**"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, Landowner hereby leases to Lessee, and Lessee hereby leases from Landowner, that certain real property (the "**Property**") located in the County of _____, State of Ohio, as more particularly described in Exhibit A attached hereto, together with all rights of ingress and egress and all other rights appurtenant to the Property, as more particularly described in the Agreement.

2. **Notice.** This Memorandum is prepared for the purpose of giving notice of the Agreement and in no way modifies the express provisions of the Agreement. This Memorandum shall continue to constitute notice of the Agreement, even if the Agreement is subsequently amended.

3. **Term.** The initial term of the Agreement is eight (8) years, commencing on _____. After the initial term, and subject to certain conditions, the Agreement may be extended for an additional term of thirty (30) years, which Lessee has the additional option to further extend for two (2) additional, ten (10) year terms.

4. **Successors and Assigns.** Landowner and Lessee intend that the covenants, conditions, and restrictions contained in the Agreement shall be both personal to Landowner and Lessee and binding on their successors and assigns. Each successive owner of the Property or of any portion thereof, and each person or entity having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Property.

5. **Counterparts.** This Memorandum may be executed in counterparts, each of which shall be deemed to be an original copy hereof, but all of which, when taken together, shall be deemed to constitute one and the same instrument.

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

LESSEE:

LANDOWNER:

Black Fork Wind, LLC

[LANDOWNER NAME]

By: _____
Craig Ambler, Chief Operating Officer

[LANDOWNER NAME]

EXHIBIT A TO MEMORANDUM OF LEASE
LEGAL DESCRIPTION OF PROPERTY

**ATTACHED TO AND MADE A PART OF THAT CERTAIN MEMORANDUM
OF LEASE** dated _____, 200__, by and between
_____, as Landowner, and Black Fork Wind, LLC as Lessee.

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____ 200__, by Craig Ambler, as Chief Operating Officer of Black Fork Wind, LLC a Colorado limited liability company, on behalf of such company.

[SEAL]

Notary Public for Colorado
My commission expires: _____
Commission No.: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____
200__, by _____.

[SEAL]

Notary Public for _____
My commission expires: _____
Commission No.: _____

STATE OF _____)
) ss.
COUNTY OF _____)

3842995_9.DOC

Exhibit B

Form of Memorandum of Lease

BK: 1890 PG: 415

Document prepared by and
Recording requested by and
when recorded, mail to:

Black Fork Wind LLC
c/o Samuel Gary Jr. & Associates, Inc.
1560 Broadway, Suite 2100
Denver, CO 80202
Attn: Chief Operating Officer

200900001395
Filed for Record in
RICHLAND
SARAH M DAVIS
02-09-2009 At 01:22 PM.
LEASE 68.00
DR Book 1890 Page 415 - 421

200900001395
GARY ENERGETICS
1560 BROADWAY
SUITE 2100
DENVER CO 80202

(Space Above for Recorder's Use Only)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of November 15, 2008, by and between Mark Fry aka Mark R. Fry and Susan Fry aka Susan L. Fry, husband and wife, whose address for the purposes hereof is 5672 Champion Road, Shelby, OH 44875 ("Landowner"), and Black Fork Wind, LLC whose address for the purposes hereof is 1560 Broadway, Suite 2100, Denver, Colorado 80202 ("Lessee").

1. **Lease.** For the term and upon the provisions set forth in that Wind Energy Lease Agreement of even date herewith between Landowner and Lessee (the "Agreement"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, Landowner hereby leases to Lessee, and Lessee hereby leases from Landowner, that certain real property (the "Property") located in the County of Richland, State of Ohio, as more particularly described in Exhibit A attached hereto, together with all rights of ingress and egress and all other rights appurtenant to the Property, as more particularly described in the Agreement.
2. **Notice.** This Memorandum is prepared for the purpose of giving notice of the Agreement and in no way modifies the express provisions of the Agreement. This Memorandum shall continue to constitute notice of the Agreement, even if the Agreement is subsequently amended.
3. **Term.** The initial term of the Agreement is seven (7) years, commencing on 11/15/08. After the initial term, and subject to certain conditions, the Agreement may be extended for an additional term of thirty (30) years, which Lessee has the additional option to further extend for two (2) additional, ten (10) year terms.
4. **Successors and Assigns.** Landowner and Lessee intend that the covenants, conditions, and restrictions contained in the Agreement shall be both personal to Landowner and Lessee and binding on their successors and assigns. Each successive owner of the Property or of any portion thereof, and each person or entity having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Property.
5. **Counterparts.** This Memorandum may be executed in counterparts, each of which shall be deemed to be an original copy hereof, but all of which, when taken together, shall be deemed to constitute one and the same instrument.




BK: 1890 PG: 416

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

LESSEE:

Black Fork Wind LLC

By: 
Craig Ambler, Chief Operating Officer

LANDOWNER:


Mark Fry, aka Mark R. Fry

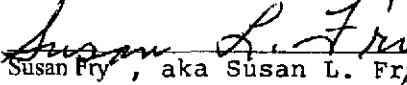

Susan Fry, aka Susan L. Fry

Exhibit C



BK: 1890 PG: 466

Form of Memorandum of Lease

Document prepared by and
Recording requested by and
when recorded, mail to:

Black Fork Wind LLC
c/o Samuel Gary Jr. & Associates, Inc.
1560 Broadway, Suite 2100
Denver, CO 80202
Attn: Chief Operating Officer

200900001404
Filed for Record in
RICHLAND
SARAH N DAVIS
02-09-2009 At 01:22 pm.
LEASE 52.00
OR Book 1890 Page 466 - 470

200900001404
GARY ENERGETICS
1560 BROADWAY
SUITE 2100
DENVER CO 80202

(Space Above for Recorder's Use Only)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of **November 18, 2008**, by and between Ambrose Metzger and Betty S. Metzger, husband and wife, whose address for the purposes hereof is 4220 Hummel Road, Shelby, OH 44875 ("**Landowner**"), and **Black Fork Wind, LLC** whose address for the purposes hereof is 1560 Broadway, Suite 2100, Denver, Colorado 80202 ("**Lessee**").

1. **Lease.** For the term and upon the provisions set forth in that Wind Energy Lease Agreement of even date herewith between Landowner and Lessee (the "**Agreement**"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, Landowner hereby leases to Lessee, and Lessee hereby leases from Landowner, that certain real property (the "**Property**") located in the County of Richland, State of Ohio, as more particularly described in Exhibit A attached hereto, together with all rights of ingress and egress and all other rights appurtenant to the Property, as more particularly described in the Agreement.
2. **Notice.** This Memorandum is prepared for the purpose of giving notice of the Agreement and in no way modifies the express provisions of the Agreement. This Memorandum shall continue to constitute notice of the Agreement, even if the Agreement is subsequently amended.
3. **Term.** The initial term of the Agreement is seven (7) years, commencing on **November 18, 2008**. After the initial term, and subject to certain conditions, the Agreement may be extended for an additional term of thirty (30) years, which Lessee has the additional option to further extend for two (2) additional, ten (10) year terms.
4. **Successors and Assigns.** Landowner and Lessee intend that the covenants, conditions, and restrictions contained in the Agreement shall be both personal to Landowner and Lessee and binding on their successors and assigns. Each successive owner of the Property or of any portion thereof, and each person or entity having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Property.
5. **Counterparts.** This Memorandum may be executed in counterparts, each of which shall be deemed to be an original copy hereof, but all of which, when taken together, shall be deemed to constitute one and the same instrument.

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

LESSEE:

Black Fork Wind LLC

By: _____

Craig Ambler, Chief Operating Officer

LANDOWNER:

Ambrose Metzger
Ambrose Metzger

Betty S. Metzger
Betty Metzger aka Betty S.
Metzger



BK: 1890 PG: 467



BK: 1918 PG: 125

Exhibit D

Form of Memorandum of Lease

Document prepared by and
Recording requested by and
when recorded, mail to:

Black Fork Wind LLC
c/o Samuel Gary Jr. & Associates, Inc.
1515 Wynkoop, Suite 700
Denver, CO 80202
Attn: Chief Operating Officer

200900007639
Filed for Record in
RICHLAND
SARAH M DAVIS
06-30-2009 At 01:09 pm.
LEASE 44.00
OR Book 1918 Page 125 - 128

200900007639
GARY ENERGETICS
MICHELLE JACKSON
1515 WYNKOOP STE 700
DENVER CO 80202

(Space Above for Recorder's Use Only)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of **March 5, 2009**, by and between **Paul Schroeder and Miriam Schroeder, husband and wife**, whose address for the purposes hereof is 4941 Settlement East Road, Shelby, Ohio 44875 and **The Dale L. Schroeder Revocable Trust, dated June 26, 2000 and The Linda M. Schroeder Revocable Trust, dated June 26, 2000**, herein represented by Dale L. Schroeder and Linda M. Schroeder as co-trustees, whose address for the purposes herein is 4671 Stein Road, Shelby, Ohio 44875 ("**Landowner**"), and **Black Fork Wind, LLC** whose address for the purposes hereof is 1560 Broadway, Suite 2100, Denver, Colorado 80202 ("**Lessee**").

1. **Lease.** For the term and upon the provisions set forth in that Wind Energy Lease Agreement of even date herewith between Landowner and Lessee (the "**Agreement**"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, Landowner hereby leases to Lessee, and Lessee hereby leases from Landowner, that certain real property (the "**Property**") located in the County of Richland, State of Ohio, as more particularly described in Exhibit A attached hereto, together with all rights of ingress and egress and all other rights appurtenant to the Property, as more particularly described in the Agreement.

2. **Notice.** This Memorandum is prepared for the purpose of giving notice of the Agreement and in no way modifies the express provisions of the Agreement. This Memorandum shall continue to constitute notice of the Agreement, even if the Agreement is subsequently amended.

3. **Term.** The initial term of the Agreement is seven (7) years, commencing on March 5, 2009. After the initial term, and subject to certain conditions, the Agreement may be extended for an additional term of thirty (30) years, which Lessee has the additional option to further extend for two (2) additional, ten (10) year terms.

4. **Successors and Assigns.** Landowner and Lessee intend that the covenants, conditions, and restrictions contained in the Agreement shall be both personal to Landowner and Lessee and binding on their successors and assigns. Each successive owner of the Property or of any portion thereof, and each person or entity having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Property.

5. **Counterparts.** This Memorandum may be executed in counterparts, each of which shall be deemed to be an original copy hereof, but all of which, when taken together, shall be deemed to constitute one and the same instrument.




BK: 1918 PG: 126

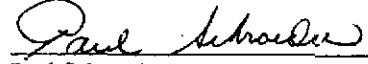
IN WITNESS WHEREOF, this Memorandum of Lease has been executed as of the date first written above.

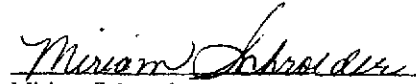
LESSEE:


Black Fork Wind LLC

By: 
Craig Ambler, Chief Operating Officer

LANDOWNER:


Paul Schroeder


Miriam Schroeder


The Dale L. Schroeder Revocable Trust and
The Linda M. Schroeder Revocable Trust
herein represented by Dale L. Schroeder, as
co-trustee

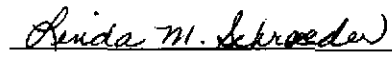

The Dale L. Schroeder Revocable Trust and
The Linda M. Schroeder Revocable Trust
herein represented by Linda M. Schroeder, as
co-trustee

Exhibit E

Book Page
OR 950 1269Form of Memorandum of Lease200900149628
Filed for Record in
CRAWFORD COUNTY, OHIO
KAREN J SCOTT
06-30-2009 At 02:26 pm.
LEASE 44.00
OR Book 950 Page 1269 - 1272

Document prepared by and
Recording requested by and
when recorded, mail to:

Black Fork Wind LLC
c/o Samuel Gary Jr. & Associates, Inc.
1515 Wynkoop, Suite 700
Denver, CO 80202
Attn: Chief Operating Officer

(Space Above for Recorder's Use Only)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of February 24, 2009, by and between Thomas E. Rietschlin and Debra A. Rietschlin, husband and wife, whose address for the purposes hereof is 6529 State Route 96, Tiro, OH 44887 ("**Landowner**"), and **Black Fork Wind, LLC** whose address for the purposes hereof is 1560 Broadway, Suite 2100, Denver, Colorado 80202 ("**Lessee**").

1. **Lease.** For the term and upon the provisions set forth in that Wind Energy Lease Agreement of even date herewith between Landowner and Lessee (the "**Agreement**"), all of which provisions are specifically made a part hereof as though fully and completely set forth herein, Landowner hereby leases to Lessee, and Lessee hereby leases from Landowner, that certain real property (the "**Property**") located in the County of Crawford, State of Ohio, as more particularly described in Exhibit A attached hereto, together with all rights of ingress and egress and all other rights appurtenant to the Property, as more particularly described in the Agreement.

2. **Notice.** This Memorandum is prepared for the purpose of giving notice of the Agreement and in no way modifies the express provisions of the Agreement. This Memorandum shall continue to constitute notice of the Agreement, even if the Agreement is subsequently amended.

3. **Term.** The initial term of the Agreement is seven (7) years, commencing on February 24, 2009. After the initial term, and subject to certain conditions, the Agreement may be extended for an additional term of thirty (30) years, which Lessee has the additional option to further extend for two (2) additional, ten (10) year terms.


4. **Successors and Assigns.** Landowner and Lessee intend that the covenants, conditions, and restrictions contained in the Agreement shall be both personal to Landowner and Lessee and binding on their successors and assigns. Each successive owner of the Property or of any portion thereof, and each person or entity having any interest therein derived through any owner thereof, shall be bound by such covenants, conditions and restrictions for the benefit of the Property.

5. **Counterparts.** This Memorandum may be executed in counterparts, each of which shall be deemed to be an original copy hereof, but all of which, when taken together, shall be deemed to constitute one and the same instrument.

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

LESSEE:

Black Fork Wind LLC

By: 
Craig Ambler, Chief Operating Officer

LANDOWNER:


Thomas E. Rietschlin


Debra A. Rietschlin


Eugene J. Rietschlin

EXHIBIT A TO MEMORANDUM OF LEASE
LEGAL DESCRIPTION OF PROPERTY

ATTACHED TO AND MADE A PART OF THAT CERTAIN MEMORANDUM OF LEASE dated February 24, 2009, by and between Thomas E. Rietschlin, et ux, as Landowner, and Black Fork Wind, LLC as Lessee.

All that real property located in Crawford County, Ohio, described as follows:

Tract 1:

That certain tract or parcel of land estimated to contain 70.00 acres, more or less, and being described as part of the East Half of the Northeast (E/2 of the NE/4) of Section 28, Township 21 North, Range 20 West, Vernon Township, Crawford County, Ohio.

Being more particularly described as:

Beginning for the same on the east line of said quarter section a distance of 170.3 feet south 0 degrees 40 minutes west of the northeast corner thereof; thence south 89 degrees 45 minutes west and parallel to the north line of said quarter section, a distance of 1340.4 feet; thence south 1 degree 07 minutes west a distance of 2267.1 feet to a stone monument; thence north 89 degrees 13.5 minutes east a distance of 1358.28 feet to the east line of said quarter section; thence north 0 degrees 40 minutes east along said east line 2254.1 feet to the place of beginning.

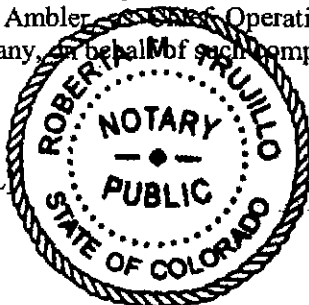
Being more particularly described in that certain Memorandum of Installment Contract, recorded May 26, 2006, and being recorded in Book 894 Page 266, of the Recorder's Office, Crawford County, Ohio.

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 8 day of April 2009, by Craig Ambler, Chief Operating Officer of Black Fork Wind, LLC a Colorado Limited Liability Company, on behalf of such company.

[SEAL]



Robert A. Rujiillo
Notary Public for Colorado
My commission expires: 9/15/2012
Commission No.: _____

STATE OF MISSOURI)
) ss.
COUNTY OF CRAWFORD)

The foregoing instrument was acknowledged before me this 24th day of February 2009, by Thomas E. Rietschlin. and Eugene J. Rietschlin.

[SEAL]

Debbie K. Steinhilber
Notary Public for Crawford Co., Ohio
My commission expires: Feb. 11, 2010
Commission No.: _____

STATE OF Ohio)
) ss.
COUNTY OF Crawford)

The foregoing instrument was acknowledged before me this 3rd day of March 2009, by Debra A. Rietschlin.

[SEAL]

J. Sebastian Berger
Notary Public for Ohio
My commission expires: _____
Commission No.: _____



J. SEBASTIAN BERGER
Attorney At Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 147.03 O.R.C.

200900149628
GARY ENERGETICS
ATTN: MICHELLE JACKSON
1515 WYNKOOP SUITE 700
DENVER CO 80202

Exhibit F

CRAWFORD COUNTY SHERIFF'S OFFICE

Enforcer Narrative Report

1-09-002704

046.08 - Trespass

Incident Date & Time. From: 12/12/2009 1059 To: 12/12/2009 1059

Printed On: 09/01/2011 10:26 AM



Narrative

Type

Initial Narrative

Author

TAYLOR, KEVIN RAY

Approving Officer

TAYLOR, KEVIN RAY

Narrative Entry Date: 12/12/2009

Subject:

Received a call from Price residence at 7956 Remlinger Rd. reference trespassing. Arrived and met with Alan Price and was advised that several subject drove through his property to get onto Sutter's property for a wind turbine in the field. Made contact with the foreman, Paul Hoadley who advised he would not drive through the Price's property again.(see dispatch narrative for company information)

CRAWFORD COUNTY SHERIFF'S OFFICE

Enforcer Narrative Report

1-09-002704

046.08 - Trespass

Incident Date & Time. From: 12/12/2009 1059 To: 12/12/2009 1059

Printed On: 09/01/2011 10:26 AM



Narrative

Type

Author

Approving Officer

Dispatch Narrative

CLINGMAN, AMY ELIZABE

Narrative Entry Date: 12/12/2009

Subject:

REPORT OF TRESPASSERS ON PROPERTY

ADV THERE ARE SIGNS STATING NO TRESPASSING AND NO WIND TURBINES

ADV THE SUBJS THERE ARE THERE IN REF TO THE TURBINES

ADV THEY CAME ACROSS HER PROPERTY TO GET TO THE LOCATION THEY ARE IN AND WILL COME ACROSS HER PROPERTY WHEN THEY LEAVE

ADV THEY ARE ABOUT 1500 FT BACK IN A FIELD AT THIS TIME

1720 ADV WOULD BE ON PORTABLE FOR A WHILE

SUBJECT IS EMPLOYED WITH ANEMONETRY SPECIALISTS IN ALTA IOWA

WERE ADV NOT TO USE HER DRIVE ANY MORE

WILL USE A FIELD ACCESS

Mailing List

**Petricoff, M Howard
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P.O. Box 1008
Columbus, OH. 43216-1008**

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Crestline, OH. 44827-9775**

**Gary Biglin
5331 State Route 61 South
Shelby, OH. 44875**

**Margaret and Nick Rietschlin
4240 Baker Road
Crestline, OH. 44827-9775**

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Tiro, OH. 44887**

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**Thomas Karbula
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**Ohio Farm Bureau Federation
Chad A. Endsly
280 N. High Street
P.O. Box 182383
Columbus, OH. 43218**

**Alan and Catherine Price
7956 Remlinger Road
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180 E. Broad Street, 6th Floor
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