

WIND FARM EASEMENT AGREEMENT

1. **Parties.** This Wind Farm Easement Agreement ("**Agreement**") is made and entered as of the ____ day of _____, 2009 ("**Effective Date**"), by and between _____ ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), an affiliate of NextEra Energy Resources, LLC, a Delaware limited liability company, who are sometimes individually referred to as a "**Party**" and collectively as the "**Parties.**"

2. **Project.** This Agreement relates to the wind-powered electrical power generation and transmission project known as the "Jamestown Wind Energy Center" to be located in Stutsman County, North Dakota ("**Wind Farm**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit "A"** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Wind Farm shall include (i) the Easements referenced in Section 4 that are located on the Owner's Property, and (ii) the Improvements to be constructed on Owner's Property, including the Turbines referenced in Section 7.1. The Easements and Improvements are sometimes collectively referred to as the "**Operator Property.**"

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Easements referenced in Section 4 in accordance with the following terms and conditions.

3.1 **Option Term.** The initial period during which Operator may exercise the Option shall be for a term of thirty-six (36) months, commencing on the Effective Date and expiring on the date immediately preceding the third (3rd) anniversary of the Effective Date ("**Option Term**"). Operator shall have a single election to extend the Option Term for an additional twenty-four (24) months ("**Extended Option Term**") by written notice to Owner at any time prior to the third (3rd) anniversary of the Effective Date, which notice is accompanied by the Option Extension Payment (as defined in Section 3.2). References herein to the Option Term shall mean the initial thirty-six (36) month period and, to the extent exercised by Operator, also the Extended Option Term, unless the context otherwise expressly requires.

3.2 **Option Payment.** As initial consideration for the granting of the Option, Operator agrees to pay Owner the sum of _____ ("**Option Payment**") within sixty (60) days after the Effective Date. Additionally, Operator shall pay Owner the sum of _____ per year on or before each anniversary of the Effective Date during the Option Term unless Operator elects to discontinue the Option. If Operator wishes to extend the Option Term, Operator shall give Owner written notice thereof and pay Owner the sum of _____ ("**Option Extension Payment**") before the end of the initial Option Term. Thereafter, Operator shall pay to Owner the sum of _____ per year throughout the Extended Option Term on each subsequent anniversary of the Effective Date. If Operator shall fail to timely make the initial payment required within sixty (60) days of the Effective Date and/or any subsequent payment throughout the Option Term, Owner shall provide written notice to Operator of Operator's failure and Operator shall have the opportunity to cure such failure in the manner prescribed in Section 17.

3.3 **Use of Owner's Property.** During the Option Term, Operator and its employees, agents and contractors shall have a non-exclusive right to enter upon the Owner's Property and the right of ingress and egress over and across the Owner's Property for the purposes of (i) surveying the Owner's Property; (ii) performing such other tests and studies as Operator may desire in connection with the Option, including, without limitation, environmental, avian and cultural resource assessments, and geotechnical, foundation and soil tests; provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property as set out in Section 10.4.; and (iii) installing, maintaining, operating, inspecting and removing one or more wind monitoring devices and all associated activities (including the Met Towers referenced in Section 7.3), and including the performance of all tests and studies associated therewith. Operator shall submit the proposed location of any Met Towers on Owner's Property prior to the installation and Owner shall approve or disapprove of such location within five (5) days of Operator's submittal. If Owner fails to approve or disapprove of such location within such time period, then the location of the Met Tower shall be deemed approved. Owner shall not permit any other individual or entity except Operator or its affiliates to install a Met Tower on Owner's Property.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 8 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this Option to Operator without the consent or approval of any other party; and (iii) there are no other existing options, rights of first refusal, contracts to purchase, leases or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 5.1.1, which shall be a day that is the first day of a month and a day that is not sooner than thirty (30) days and not later than sixty (60) days after the date the Option Notice is given to Owner. On the Commencement Date, the Easements referenced in Section 4 shall automatically become effective, and Operator and Owner shall be subject to all of the terms and conditions of this Agreement with respect to such Easements and all rights and obligations relating thereto.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Easement Term referenced in Section 5.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements.**"

4.1 **Construction Easement.** (a) Owner grants Operator an irrevocable, exclusive easement for purposes of constructing, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on or off Owner's Property. This easement is referred to as the "**Construction Easement**" and the property subject to the burden of this easement is referred to as the "**Construction Easement Property.**" Operator may

exercise its right to use all or any part of the Construction Easement Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this Construction Easement is granted. After each use of the Construction Easement, Operator to the extent reasonably possible shall restore the Construction Easement Property to the condition it was in before Operator's use. To the extent reasonably possible, all topsoil and subsoil excavated from Owner's Property will be reserved and replaced on the Easement Properties after completion of construction of the Wind Farm. Any subsoil excavated and not replaced shall be removed from Owner's Property by Operator.

(b) When installing, maintaining or removing the nacelle and rotor from any Turbine, whether located on or off of Owner's Property, this Construction Easement also shall permit Operator to: (1) (for the purpose of securing tag lines) travel on foot or in a pickup truck, SUV, small forklift or other similar vehicles onto Owner's Property up to seven hundred (700) feet in any direction from the center of the Access Easement; and (2) drive an erection crane on Owner's Property. Operator shall be permitted to maintain a 120 foot by 40 foot crane pad at each Turbine location on Owner's Property for purposes of constructing and maintaining the Wind Farm.

4.2 **Access Easement.** (a) Owner grants Operator an easement for unobstructed vehicular and pedestrian ingress to and egress from the Improvements, whether located on or off Owner's Property. This easement is referred to as the "**Access Easement**" and the property subject to the burden of this easement is referred to as the "**Access Easement Property.**" Operator shall have the right to travel over, across and along the Access Easement Property by means of existing roads and lanes, and by roads Operator or Owner may construct or improve from time to time on, over, and across the Access Easement Property.

(b) Owner reserves the right to use all roads on the Access Easement Property provided, however, that Owner shall not and shall not permit others to obstruct or damage the roads or in any other way interfere with Operator's rights under this Access Easement. If all or a part of the Access Easement Property constitutes a part of the width of a larger access easement straddling a property line between Owner's Property and the abutting property of another owner, then Owner and Operator grant the owner of the abutting property an easement over such portion of the Access Easement Property for ingress and egress to the abutting property for the conduct of farming activities on the abutting property.

4.3 **Turbine Easement.** Owner grants Operator an easement to construct, operate, replace, relocate, remove, and maintain a Turbine, Collection Facilities, together with associated roads and parking areas on Owner's Property. This easement is referred to as the "**Turbine Easement**" and each Turbine site subject to the burden of this easement is referred to as a "**Turbine Easement Property.**"

4.4 **Collection Easement.** Owner grants Operator an easement for the construction, operation, maintenance, replacement, relocation or removal of Collection Facilities on and under the Owner's Property. This easement is referred to as the "**Collection Easement**" and the property subject to the burden of this easement is referred to as the "**Collection Easement Property.**" Collection Facilities located on the surface of the Collection Easement Property shall be limited to above ground collection lines and junction boxes, if any; all other Collection

Facilities shall be buried at least forty-eight (48) inches beneath the surface of the Collection Easement Property.

4.5 **Wind Non-Obstruction Easement.** (a) Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed flow of wind currents over and across the Owner's Property ("**Wind Non-Obstruction Easement**"). Owner shall not engage in any activity on Owner's Property that might interfere with wind speed or wind direction over any portion of any Turbine or Met Tower Easement Properties, whether located on or off the Owner's Property; cause a decrease in the output or efficiency of any Turbine or accuracy of any meteorological equipment; or otherwise interfere with Operator's operation of the Wind Farm or exercise of any rights or the Easements granted in this Agreement ("**Interference**"). Owner reserves the right to erect structures on Owner's Property in compliance with all applicable laws and ordinances except as specifically limited in this Agreement. Owner must consult with and obtain Operator's prior written approval as to the location of all structures greater than forty (40) feet in height located one thousand (1000) feet or less from any Turbine or Met Tower. Approval shall be based on whether, in Operator's sole judgment, informed by appropriate professional engineering and meteorological opinions, the proposed structures at the proposed location are likely to cause Interference.

(b) This Wind Non-Obstruction Easement shall not be interpreted to prevent Owner from granting oil, gas, or coal exploration or production rights on Owner's Property, however no oil rigs or coal pits or other structures shall be located within three hundred (300) feet of any Turbine or within two hundred twenty-five (225) feet of any Met Tower except with Operator's prior written consent. Owner shall notify Operator as soon as Owner knows of oil, gas, or coal exploration or production plans. To the extent it does not interfere with the proposed coal exploration or production, Owner shall cooperate with Operator in the exercise of Owner's oil, gas and coal rights to minimize Interference. In the event any oil, gas and coal related activities are commenced on Owner's Property, Owner agrees not to object to an action by Operator against a third party to reasonably protect Operator's interests hereunder. In turn, Operator agrees not to interfere with Owner's right to surface damages from oil, gas and coal operations, exploration, or granting of pipeline easements, as long as any compensation that Owner may receive shall not diminish or adversely affect any compensation due to Operator for the Improvements.

4.6 **Overhang Easement.** Owner grants Operator an easement for the right and privilege to permit the rotors of Turbines located on adjacent properties to overhang a portion of the Owner's Property ("**Overhang Easement Property**") by no more than 110 feet at a height of at least 100 feet above the ground ("**Overhang Easement**"). Owner shall not interfere with the operation of Turbine rotors that overhang the Overhang Easement Property.

4.7 **Noise Easement.** Owner grants Operator an irrevocable, non-exclusive easement for the right and privilege to generate and maintain audible noise levels in excess of fifty (50) dbA on and above the Noise Easement Property at any or all times of the day or night ("**Noise Easement**"). The "**Noise Easement Property**" shall mean the Owner's Property except those portions within a 200-foot radius circle (or lesser distance with Owner's prior written consent) centered on the inside of each presently existing, occupied residence on the Owner's Property. If noise levels emanating from the Turbines exceed fifty (50) dbA without the Owner's written

consent as measured within 200 feet (or lesser agreed distance) from the inside of a presently existing residence on Owner's Property by an independent professional applying commonly accepted measurement instruments and standards, Operator shall reduce the noise level to 50 dbA at 200 feet (or lesser agreed distance) from the residence. Measures to be taken by Operator may include installing insulation or sound deadening material in the offending Turbine(s); installing landscaping, insulation, and sound deadening material at the residence; or, changing the operation of the Turbine(s) to reduce noise output.

4.8 **Met Tower Easement.** Owner grants Operator an easement to construct, operate, replace, relocate, remove, and maintain a Met Tower and Collection Facilities on Owner's Property. This easement is referred to as the "**Met Tower Easement**" and each Met Tower site subject to the burden of this easement is referred to as a "**Met Tower Easement Property.**"

4.9 **Location of Easements.** The locations and routes of the Improvements (as such term is defined in Section 7) for which the Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the Owner's Property during the Option Term. Along with the Option Notice, Operator shall deliver to Owner a proposed plan of development showing the contemplated locations and routes of the Improvements, which shall serve as the **Exhibit "B"** to this Agreement. Prior to installing any Improvements on Owner's Property, Operator shall coordinate the location of the Improvements with Owner to minimize any disruption or inconvenience to Owner and the uses of Owner's Property reserved to Owner in Section 10.4. During the final development and construction of the Wind Farm, such locations and routes may need to be amended. Following construction of the Wind Farm, Operator shall provide Owner an "as-built" survey of all Improvements on Owner's Property, which shall serve as **Exhibit "C"** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Easements are not materially different and impose no greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes appropriate actions to minimize any disruption or inconvenience to Owner and the uses of the Owner's Property reserved to Owner in Section 10.4.

5. **Term of Agreement.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1; and the Easement Term referenced in Section 5.1.

5.1 **Easement Term.**

5.1.1 **Easement Term.** The term of the Easements ("**Easement Term**") and the effective date thereof shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The Easement Term shall end ninety-nine (99) years after the Commencement Date, unless terminated as provided in this Agreement.

5.1.2 **Delays During Easement Term.** At Operator's option, the Easement Term may be extended for a period of time equal to the period of time during which operation of the Wind Farm is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) **“Regulatory Suspension”** shall mean the enactment or application of any law, order, rule, or regulation of the Public Utility Commission of North Dakota, Federal Energy Regulatory Commission, or other local, state, or federal government authority having jurisdiction over the Wind Farm or Operator, or the failure of any such governmental authority to issue an approval or permit pursuant to any such law, order, rule, or regulation, which results in the delay, interruption, or suspension of the production, sale or transmission of electricity from the Turbines; and

(ii) **“Force Majeure”** shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, slowdowns, picketing, boycotts or strikes), flood, earthquake, storm, fire, lightning, explosion, power failure or power surge, vandalism, theft, the cutting of power, transmission or other lines, wires or cables to the Wind Farm by persons other than Wind Farm employees, epidemic, war, revolution, riot, civil disturbance, sabotage, change in law or applicable regulation subsequent to the Commencement Date and action or inaction by any federal, state or local legislative, executive, administrative judicial agency or body which in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

The Parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that they are unable to so perform or are prevented from performing by a Force Majeure, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure; (iii) the non-performing Party uses good faith and commercially reasonable efforts to remedy its inability to perform; and (iv) as soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, each party shall give prompt written notification thereof to the other Party.

5.2 **Termination by Operator.** Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator’s notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 7.7; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof terminated by Operator, subject to the obligations and liabilities referenced in items (i) through (iii) above that shall continue to be applicable to the terminated portion of this Agreement. Owner and Operator agree to execute an amendment to this Agreement evidencing such partial termination.

6. **Payments.** If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit "D"** as consideration for the Easements and Operator's other rights and interests in the Owner's Property.

7. **Improvements.** Operator shall have the right, at its sole cost and expense, to construct, install, maintain, use, operate, repair, replace, relocate and remove all facilities, structures, equipment, machinery, wires, conduit, cables, poles, materials and property of every kind and character required for the construction and operation of portions of the Wind Farm on the Owner's Property, including, but not limited to, the Turbines, Collection Facilities, Met Towers, and Roadway Improvements referenced in Sections 7.1 through 7.4 (collectively, the "**Improvements**").

7.1 **"Turbines"** shall mean any wind turbine generator or wind machine designed for the generation of electrical power from wind power, including without limitation, the associated towers, support structures, guy wires, braces and directly related equipment.

7.2 **"Collection Facilities"** shall mean all Improvements whose purpose is to deliver electrical power generated by the Turbines to an electrical power grid or other system, including without limitation transformers and overhead and underground electrical collection lines and interconnection facilities.

7.3 **"Met Tower"** shall mean towers used primarily to gather and transmit meteorological data relating to the Wind Farm, and includes the tower's foundations, guy wires, meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

7.4 **"Roadway Improvements"** shall mean all improvements that may be necessary to construct, maintain and repair any new and existing roadways and other means of ingress and egress over, across and along the Access Easement, including paving or surfacing of the roadways with asphalt, gravel or other roadway materials, and the construction and installation of culverts, bridges, drainage ditches, gates, cattle guards and similar structures and facilities.

7.5 **Ownership of Improvements.** All Improvements shall at all times remain the property of Operator, and Owner shall have no right, title or interest therein. All Improvements constructed or placed on the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

7.6 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this agreement to be filed against the Operator Property. Operator shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security that Owner may reasonably request, or remove such lien from the Operator Property in the manner provided by applicable law.

7.7 **Removal of Improvements.** Upon full or partial termination of any of the Easements, Operator shall remove all physical material pertaining to the Improvements from the affected Operator Property to a depth of thirty-six inches (36") beneath the soil surface, and restore the area formerly occupied by the Improvements to substantially the same physical

condition that existed immediately before the construction of the Improvements (the "**Removal Obligations**"). If Operator fails to complete its Removal Obligations within twelve (12) months of full or partial termination of the applicable Easement, Owner may do so, in which case Operator shall reimburse Owner for costs of fulfilling Operator's Removal Obligations incurred by Owner

8. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

8.1 **Authority.** Owner is the sole owner of the Owner's Property and has the unrestricted right and authority to sign this agreement and to grant Operator the Easements and other rights granted in this agreement. When signed by both parties, this agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

8.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the Owner's Property, or create any prior claim or right that would preclude or interfere with Operator's rights and interests under this Agreement and the Easements.

8.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

8.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

8.4.1 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof ("**Owner Mortgage**") any notice that payments are overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 12.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

8.4.2 **Subordination, Non-Disturbance and Attornment Agreement.** Within thirty (30) days after Owner receives the Option Notice, Owner shall deliver to Operator an executed and duly acknowledged Subordination, Non-Disturbance and Attornment Agreement ("**SNDA**") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Operator shall, at its sole cost and expense, record each such SNDA in the Official Records of the County in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect the rights granted to Operator hereunder,

and off-set all amounts expended in such efforts against the Annual Installment Payments and any other amounts due hereunder or in respect hereof.

9. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties:

9.1 **Physical Condition.** Owner has no actual knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which could, with the passage of time, or the giving of notice, constitute a violation of any currently applicable governmental law, ordinance, order, rule or regulation.

9.2 **Legal Restrictions.** Without having made any specific investigation thereof, and without undertaking to do so, Owner has no actual knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the Owner's Property pursuant to this Agreement. This Agreement does not violate any contract, agreement, instrument, judgment or order to which Owner is a party or which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

9.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator prompt notice thereof.

9.4 **Survival.** The representations and warranties set forth in this Section 9 shall survive the execution and delivery hereof.

10. **Use, Operation and Maintenance.**

10.1 **Exclusive Use by Operator.** Subject to the limitations in Sections 10.3 and 10.4, Operator shall have the exclusive right (i) to use and possess the Operator Property in connection with the Wind Farm and other similar wind-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the wind resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Wind Farm, including, without limitation, the storage of towers, materials and equipment during the installation and construction of the Turbines and other Improvements; development and operation of communications systems; and site tours of the Wind Farm for visitors and other interested parties.

10.2 **No Required Installation or Operation.** Nothing in this Agreement shall be interpreted as imposing on Operator any obligation to install Turbines or other Improvements on the Owner's Property, or to operate the Wind Farm on the Owner's Property. Operator shall have the sole discretion to determine if and when any Turbines and other Improvements may be constructed on Owner's Property, and if and when to commence the operation of the Wind Farm on the Owner's Property.

10.3 **Limitations on Use During Option Term.** During the Option Term, Operator's use and possession of the Owner's Property shall be limited to the uses described in Section 3.3. During such Option Term, the only Improvements that may be constructed or installed on the Owner's Property are the Met Towers.

10.4 **Uses Reserved by Owner.** Owner expressly reserves the right to continue conducting business operations on the Owner's Property as currently conducted for the term of this Agreement, including oil, gas and coal production, ranching and agricultural uses, and all recreational uses, provided that no such other use interferes in any way with Operator's use of the Operator Property under this Agreement, including the joint use of the roadways now or hereafter located on the Access Easement. Owner's reserved rights are further made subject to the following conditions, requirements and limitations:

10.4.1 **Oil, Gas & Coal Production.** Owner agrees to provide Operator with current information concerning the status and location of all oil, gas and coal exploration and production activities on the Owner's Property. Any new oil, gas and coal leases or renewals of existing oil, gas and coal leases entered into by Owner must include a surface use agreement that will prevent oil, gas and coal exploration and production activities from interfering with Operator's use of the Operator Property.

10.4.2 **Ranching & Agricultural Uses.** Owner and Operator agree to cooperate with each other in a manner that allows Owner to continue the current ranching and agricultural uses of the Owner's Property in a manner that does not unreasonably interfere with Operator's use of the Operator Property.

10.4.3 **Hunting.** If Owner hunts and/or discharges firearms on and near the Operator Property, Owner shall take such precautions as are reasonable to ensure the safety of Operator's site personnel and the protection of Improvements on the Operator Property during and after construction of the Wind Farm.

10.4.4 **Recreational Uses.** Owner may allow Owner's guests to use the Operator Property, except the Turbine and Met Tower Properties, for recreational purposes except at times or under circumstances that adversely affect public health and safety or operation and safety of the Improvements. If Owner uses snowmobiles in the vicinity of the Operator Property, it shall take such reasonable precautions so as to ensure the safety of Owner's guests, Operator's site personnel, and the protection of Improvements on the Operator Property during and after construction of the Wind Farm.

10.5 **Permits and Approvals.** Operator shall be responsible, at its sole cost and expense, for obtaining any governmental permits and approvals necessary for the construction and operation of the Wind Farm and the construction and operation of the Improvements. Owner shall cooperate with Operator as necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications, provided that Operator shall reimburse Owner for all its reasonable out-of-pocket expenses directly incurred in connection with such cooperation.

10.6 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the Operator Property, including all federal,

state, and local laws and regulations. Operator shall have the right, in its sole discretion and at its sole expense, in Operator's name or Owner's name, to contest the validity or applicability to the Owner's Property and the Operator Property of any law, ordinance, statute, order, regulation, property assessment or the like made by any governmental agency or entity. Operator shall control any such contest and Owner shall cooperate with Operator in every reasonable way in such contest, at no out-of-pocket expense to Owner. Operator shall not hold Owner liable for the violation of a federal, state, or local law or regulation caused by Operator's use of the Operator Property.

10.7 **No Interference.** During the Term of this Agreement, Owner covenants and agrees that neither Owner nor its agents, lessees, invitees, guests, licensees, successors or assigns will (i) interfere with, impair or prohibit the free and complete use and enjoyment by Operator of all rights granted by this Agreement; (ii) take any action which will interfere with or impair the availability, accessibility, flow, frequency, or direction of air and wind over and above the Owner's Property; (iii) take any action which will in any way interfere with or impair the transmission of electric, electromagnetic or other forms of energy to or from the Owner's Property; or (iv) take any action which will interfere with or impair Operator's access to the Owner's Property and the Operator Property for the purposes specified in this Agreement.

10.8 **Care and Appearance.** Operator, in its exercise of the easement and other rights granted hereunder shall, at all times, maintain the Owner's Property and the Improvements in a reasonably neat, clean and presentable condition, consistent with its current usage. Operator shall not willfully or negligently damage or destroy the Owner's Property and shall keep the Owner's Property clean and free of debris created by Operator, its contractors, or others brought on to the Owner's Property by Operator. Operator shall not use the Owner's Property for storage, except for materials, construction equipment and vehicles directly associated with construction or maintenance of the Improvements on the Owner's Property or adjacent properties that are part of the Wind Farm.

10.9 **Fences and Gates.** Within a reasonable time following Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator.

10.10 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Access Easement for the joint use thereof by Operator and Owner for ingress and egress over, across, and along the Access Easement; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the roadway caused by Owner or any person using the roadway with Owner's permission, other than Operator.

10.11 **Remediation of Glare and Shadow Flicker.** Operator agrees that should Owner experience problems with glare or shadow flicker in Owner's house associated with the presence of the Turbines on Owner's Property or adjacent properties, Operator will promptly investigate

the nature and extent of the problem and the best methods of correcting any problems found to exist. Operator at its expense, with agreement of Owner, will then promptly undertake measures such as tree planting or installation of awnings necessary to mitigate the offending glare or shadow.

11. **Taxes.**

11.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("Taxes") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 11.2 (Taxes, excepting Operator's Taxes, "**Owner's Taxes**").

11.2 **Operator's Taxes.** Subject to timely receipt from Owner of the relevant statement for Taxes pursuant to this Section 11.2, Operator shall pay to Owner prior to delinquency the amount of any increase in the Taxes levied against the Owner's Property attributable to the taxable value of the Operator Property ("**Operator's Taxes**"). Operator shall not be responsible for Taxes attributable to improvements installed by Owner or others on the Owner's Property. Owner shall submit the annual statement for Taxes to Operator within a reasonable time after the date Owner receives the statement from the taxing authority. Operator may elect to have the statement for Taxes sent directly to Operator. In such event, Operator shall pay all Operator's Taxes to the appropriate taxing authority prior to delinquency, and Owner shall pay to Operator Owner's Taxes prior to delinquency (or Operator may pay Owner's Taxes and offset such amount against the Payments). If Operator receives such statement directly, Operator shall submit a copy of the statement for Taxes to Owner within thirty (30) days after the date Operator receives the statement from the taxing authority.

11.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

11.4 **Operator's Right to Contest.** Operator may contest the legal validity or amount of any Operator's Taxes for which it is responsible under this Agreement, and may institute such proceedings as it considers necessary, provided that Operator shall bear all expenses in pursuing such contest or proceeding. With respect to any Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such Taxes unless the proceeding in which it contests such Taxes shall operate to prevent or stay the collection of the Taxes so contested or unless Operator removes any such lien by bonding or otherwise. Owner agrees to render to Operator all reasonable assistance in contesting the validity or amount of any such Taxes, including joining in the signing of any reasonable protests or pleading which Operator may deem advisable to file; provided, however, that Operator shall reimburse Owner for its reasonable out-of-pocket expenses, including reasonable attorneys' fees incurred in connection with providing such assistance.

12. **Mortgage of Operator Property.**

12.1 **Right to Mortgage.** Operator may, upon notice to Owner, but without requiring Owner's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Operator Property. These various security interests in all or a part of the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee.**" Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 12, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner; provided that failure to give this notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner to provide such Operator Mortgage notice until the Operator and its address is given to Owner.

12.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee shall have the right to cure any default as Operator, and/or the right to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 12.3. Failure by Owner to give an Operator Mortgagee notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

12.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 12.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

12.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the Operator Property is held solely for security purposes, shall have no obligation or liability under this Agreement unless and until the Operator Mortgagee succeeds to absolute title to the Operator Property and the rights of Operator under this Agreement. An Operator Mortgagee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such absolute title.

12.5 **Certificates & Other Documents.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. Owner and Operator shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Operator or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

12.6 **Operator Mortgagee's Right to Enforce Mortgage & Assign.** Each Operator Mortgagee shall have the right, in its sole discretion: (i) to assign its Operator Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the Operator Property and to perform all obligations to be performed by Operator under this Agreement, or to cause a receiver to be appointed to do so; and (iv) to acquire all or any portion of the Operator Property by foreclosure or by an assignment in lieu of foreclosure and thereafter, without Owner's consent, to assign or transfer all or any portion of the Operator Property to a third party. Any Operator Mortgagee or other party who acquires Operator's interest in the Operator Property pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Operator by this Agreement which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

12.7 **New Agreement.** If the Operator Property is foreclosed upon or there is an assignment in lieu of foreclosure, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Operator or any Operator Mortgagee or other purchaser at a foreclosure sale shall have arranged to the reasonable satisfaction of Owner for the payment of all Annual Installment Payments or other charges due and payable by Operator as of the date of such event, then Owner shall execute and deliver to Operator or such Operator Mortgagee or other purchaser at a foreclosure sale, or to a designee of one of these parties, as the case may be, a new agreement ("New Agreement") 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 Operator or any Operator Mortgagee or other purchaser at a foreclosure sale prior to rejection or termination of this Agreement); and (iii) shall include that portion of the Operator Property in which Operator or such other Operator Mortgagee or other purchaser at a foreclosure sale had an interest on the date of rejection or termination. If more than one Operator Mortgagee makes a written request for a New Agreement pursuant to this provision, the New Agreement shall be delivered to the Operator Mortgagee requesting such New Agreement whose Operator Mortgage has lien priority, and the written request of any other Operator Mortgagee whose lien is subordinate shall be void and of no further force or effect. The provisions of this Section 12 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 12 were a separate and independent contract made by Owner, Operator and each Operator Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such New Agreement, such Operator Mortgagee or other purchaser at a foreclosure sale may use and enjoy the Operator Property without hindrance by Owner or any person claiming by, through or under Owner; provided that all of the conditions for the New Agreement as set forth above are complied with.

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

Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as any Operator Mortgage remains outstanding, this Agreement shall not be modified or amended, and Owner shall not accept a surrender, cancellation or release of all or any part of the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

13. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, leases, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 13, Operator shall give notice to Owner of such Assignment (including the interest conveyed by the Assignment and address of the Assignee for notice purposes) to Owner; provided Operator's failure to give such notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner with respect to such assignment or conveyance until such notice is given. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee.

14. **Hazardous Materials.**

14.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation. Owner represents and warrants that, except as disclosed to Operator in writing, to the best of Owner's knowledge, no underground storage tanks and no Hazardous Materials are or were located on the Owner's Property during or prior to Owner's ownership of the Owner's Property. Owner shall not violate in a material way any Environmental Law relating to the Owner's Property.

14.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

14.3 **Operator's Indemnity Regarding Hazardous Materials.** Operator shall indemnify, defend, protect and hold Owner harmless from any liability based on: (i) the release

of Hazardous Materials in, on, under or about the Owner's Property caused by Operator or its employees, agents, or contractors, or (ii) the violation by Operator or its employees, agents, or contractors of any Environmental Law. The indemnity obligations set forth herein shall be in addition to those set forth in Section 15, and shall survive termination of this Agreement.

15. **Indemnity.**

15.1 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, including reasonable attorneys' fees (collectively "**Liability**"), resulting from the Improvements, the Wind Farm, the operation thereof, or the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Liability is not due to any negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

15.2 **Indemnity by Owner.** Owner shall defend, indemnify, protect, and hold Operator harmless from and against all Liability resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees; provided, however, that such Liability is not due to any negligence, willful misconduct, or breach by Operator, its agents, contractors, or employees.

15.3 **Survival.** The obligations of the Parties under this Section 15 shall survive expiration or other termination of this Agreement.

16. **Confidentiality.** THIS AGREEMENT INCLUDES CONFIDENTIAL AND PROPRIETARY INFORMATION RELATING TO OPERATOR AND THE WIND FARM. IN ADDITION, FROM TIME TO TIME OPERATOR MAY DELIVER TO OWNER ADDITIONAL CONFIDENTIAL AND PROPRIETARY INFORMATION RELATING TO THE WIND FARM ("**ADDITIONAL INFORMATION**"). OWNER AND OPERATOR MUTUALLY AGREE NOT TO PROVIDE COPIES OF THE AGREEMENT OR ADDITIONAL INFORMATION OR DISCLOSE THE TERMS OF THE AGREEMENT OR ADDITIONAL INFORMATION, IN WHOLE OR IN PART, TO ANY PERSON OR ENTITY, EXCEPT AS EXPRESSLY AUTHORIZED IN THIS SECTION 16. OPERATOR AUTHORIZES OWNER TO PROVIDE COPIES OF THE AGREEMENT AND ADDITIONAL INFORMATION AND DISCLOSE THE TERMS THEREOF TO OWNER'S FAMILY, ATTORNEY, ACCOUNTANT, FINANCIAL ADVISOR AND ANY EXISTING OR PROSPECTIVE MORTGAGEE, LESSEE, OR PURCHASER, SO LONG AS THEY LIKEWISE AGREE NOT TO PROVIDE COPIES OF THE AGREEMENT OR ADDITIONAL INFORMATION OR DISCLOSE THE TERMS THEREOF TO ANY UNAUTHORIZED PERSON OR ENTITY. OWNER AUTHORIZES OPERATOR TO PROVIDE COPIES OF THE AGREEMENT AND DISCLOSE THE TERMS THEREOF TO OPERATOR'S EMPLOYEES, AGENTS, CONTRACTORS, ATTORNEYS, AND ANY EXISTING OR PROSPECTIVE MORTGAGEES, LESSEES, OR PURCHASERS, SO LONG AS THEY LIKEWISE AGREE NOT TO PROVIDE COPIES OF THE AGREEMENT OR ADDITIONAL INFORMATION OR DISCLOSE THE TERMS THEREOF TO ANY UNAUTHORIZED PERSON OR ENTITY.

17. **Default and Remedies.**

17.1 **Operator Payment Default.** If Operator shall fail to pay any amounts set forth in Exhibit "D" which failure continues for more than thirty (30) days from receipt of written

notice from Owner that such amount is due, then Operator shall be in default ("**Operator Payment Default**") and Owner shall have the following remedies:

17.1.1 **Collection of Payments.** With or without terminating this Agreement, Owner may file a lawsuit against Operator to collect any unpaid amounts set forth in **Exhibit "D"** together with interest thereon that accrues during the continuance of the Operator Payment Default, calculated at a rate ("**Default Rate**"), which is the lesser of (i) the prime interest rate at The Chase Manhattan Bank (or its successor) plus two percent (2%) per annum, or (ii) the maximum lawful rate. Owner shall also be entitled to recover all court costs and reasonable attorneys' fees that may be incurred by Owner in collecting such amounts.

17.1.2 **Terminate Agreement.** Owner may not terminate this Agreement because of any Operator Payment Default without first giving Operator written notice of its intention to terminate the Agreement ("**Termination Notice**"), to be effective on a date to be specified by Owner that is at least thirty (30) days after the date of the Termination Notice. If, by the date specified in the Termination Notice, Operator fails to pay the amount required to cure the Operator Payment Default (including interest at the Default Rate that accrues during the continuance of the Operator Payment Default, Owner's termination of this Agreement shall become effective on the date specified in the Termination Notice. Upon such termination, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination (including the amount owed by Operator with respect to the Operator Payment Default and interest payable with respect thereto); (ii) the removal of the Improvements by Operator pursuant to Section 7.7; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Owner's right to terminate this Agreement pursuant to this Section 17.1.2 is subject to and conditioned upon Owner giving any Operator Mortgagee written notice and opportunity to cure the Operator Payment Default as provided in Section 12.2. If Operator fails to operate the Wind Farm for a period of three (3) years, then Owner may terminate this Agreement unless Operator pays to Owner an Annual Installment Payment of \$2.50 per acre, which is the amount set forth in **Exhibit D** that Operator is obligated to pay Owner in the event that Operator does not install any Improvements on Owner's Property.

17.2 **Other Operator Default.** The breach by Operator of any provision hereof, other than an Operator Payment Default and failure to operate the Wind Farm as set forth in Section 17.1 ("**Other Operator Default**"), may only result in a cause of action by Owner under applicable law and, other than as set forth in this Section 17.2 Owner hereby waives all other rights it may have, in law or in equity, to terminate this Agreement prior to the expiration of the Term. In the event of any such breach by Operator, Owner shall, at least thirty (30) days prior to commencing any cause of action, give written notice of the cause of breach to Operator, and any Operator Mortgagee (of which it has been notified in writing) concurrently, specifying in detail the alleged event of breach and the required remedy. If Operator does not cure or commence curing such breach within thirty (30) days of receipt of notice, the Operator Mortgagee shall have the absolute right to substitute itself for Operator and perform the duties of Operator hereunder for the purposes of curing such breach. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Operator Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Owner's Property to complete such performance with all the rights, privileges and obligations of Operator hereunder. Owner may cure any default by Operator after Operator's cure period has expired. If Owner at any time by reason of

Operator's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Owner shall be due immediately from Operator to Owner, together with interest on such sum calculated at the Default Rate.

17.3 **Owner Default.** Owner shall be in default of this Agreement if it shall fail to meet any of its obligations under the terms of this Agreement and shall not cure such default within thirty (30) days after receiving notice thereof from Operator (or if such default cannot be cured through the exercise of reasonable diligence within such thirty (30) day period, if Owner fails to commence corrective action within such thirty (30) day period and thereafter diligently prosecutes same to completion) ("**Owner Default**"). Upon the occurrence of an Owner Default, Operator shall have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever: (i) terminate this Agreement without being liable for prosecution or any claim of damages therefor; and (ii) pursue any and all other action or remedies that may be available to Operator at law or in equity, including but not limited to all loss or damage which Operator may suffer by reason of a termination of this Agreement and the loss of the value of the Operator Property.

18. **Notice.**

18.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

18.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner:

Telephone: _____

Notice to Operator:

Boulevard Associates, LLC
700 Universe Boulevard
Juno Beach, FL 33408-2657
Attention: Business Manager
Facsimile: (561) 691-7307

18.3 **Change of Recipient or Address.** Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

19. **Miscellaneous Provisions.**

19.1 **Successors & Assigns.** The terms and provisions of this Agreement shall run with the land and be binding on and inure to the benefit of the heirs, successors, assigns and

personal representatives of the Parties. Operator in its discretion may authorize other persons or entities to use the Operator Property for the purposes stated in this Agreement

19.2 **Memorandum.** Simultaneously with the execution of this Agreement, Owner and Operator agree to execute and acknowledge a memorandum of this Agreement satisfactory in form and substance to Operator and Owner and Operator may, at its expense, record the memorandum. Owner consents to the recordation of the interest of any Operator Mortgagee or Assignee in the Operator Property.

19.3 **Entire Agreement.** This Agreement and the attached Exhibits shall constitute the entire agreement between the Parties and supersedes all other prior writings and understandings.

19.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument signed by Owner and Operator and consented to by any Operator Mortgagee. The Parties hereto shall at all times hereafter execute any documents and do any further acts which may be necessary or desirable to carry out the purposes of this Agreement and to give full force and effect to each and all of the provisions hereof.

19.5 **Legal Matters.** This agreement shall be governed by and interpreted in accordance with the then existing laws of the State of North Dakota and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The parties agree to first attempt to settle any dispute arising out of or in connection with this agreement by good-faith negotiation. If the parties are unable to resolve amicably any dispute arising out of or in connection with this agreement, each shall have all remedies available at law or in equity including attorneys fees awarded to the prevailing party. **Each party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this agreement shall be to the Court.** Time is of the essence with regard to the terms and conditions of this agreement.

19.6 **Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law.

19.7 **Tax Credits.** If under applicable law Operator becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Operator's option, Owner and Operator shall amend this Agreement or replace it with a different instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive, so long as Owner's interests are not impaired.

19.8 **Approvals.** Whenever in this Agreement the approval or consent of either Party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld or delayed.

19.9 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

Owner

Operator

Boulevard Associates, LLC
a Delaware limited liability company

By:

Dean R. Gosselin, Vice President

EXHIBIT "A"

Legal Description of Owner's Property

HOLDING PAGE FOR EXHIBIT "B"

Preliminary Easement Plan
To be Delivered with Option Notice

HOLDING PAGE FOR EXHIBIT C

As Built Easement Plan