



STATE OF IDAHO WIND ENERGY LEASE

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LESSEE OF RECORD

This Lease for Wind Energy Development and Production (Lease) is made and entered by and between the State of Idaho, acting by and through the Idaho State Board of Land Commissioners (Lessor) and _____ (Lessee), collectively referred to herein as the "Parties." This Lease consists of this Cover Sheet and each of the attachments identified below. In consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. This Lease shall commence on _____ (Commencement Date) and continue until the anniversary of the Commencement Date occurring _____ years from the Commencement Date (Expiration Date).

2. Lessor does hereby lease and demise unto the Lessee, at the rate and for the use specified herein, the lands described in Attachment B (Demised Premises) subject to the terms, covenants, restrictions and conditions described in Attachment A, which is incorporated by this reference as if set forth in full and are hereby agreed to by Lessee and Lessor. The Demised Premises may be adjusted by Lessor to reflect the plans approved by Lessor pursuant to this Lease. Such adjustments shall be attached to this Lease as an amendment.

3. Lessee shall pay Rent pursuant to the terms set forth in Attachment A in the following amounts:

a. During Phase 1, as more particularly described in Attachment A, in the amount of _____ (Phase 1 Rent).

b. During Phase 2, as more particularly described in Attachment A, in the amount in the amount of _____ (Phase 2 Rent).

c. An Installation Fee, as more particularly described in Attachment A, of _____ times the number of megawatts of Nameplate Capacity for each wind energy turbine installed on the Demised Premises (Installation Fee)

d. During Phase 3, as more particularly described in Attachment A, in the amount that is the greater of the following (Phase 3 Rent).

i. _____ times the Nameplate Capacity for each wind energy turbine installed on the Demised Premises, regardless of whether such wind energy turbine is operating ("Capacity Fee");

ii. _____ percent of the Gross Revenues during the prior Lease Year ("Production Fee"); or,

iii. _____ per acre of the Demised Premises ("Acreage Fee").

e. During Phase 4, as more particularly described in Attachment A, in the amount of _____ (Phase 4 Rent).

4. In addition to the insurance amounts described in Article 9 of Attachment A, Lessee shall maintain insurance pursuant to the terms set forth in Attachment A in the following amounts:

a. Lessee shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance as more particularly described in Article 9, with a combined limit of not less than _____ dollars (\$_____) each occurrence. If such CGL insurance, or any umbrella policy, contain a general aggregate limit, it shall apply separately to the Demised Premises and shall not be less than _____ dollars (\$_____). Collectively, such insurance amounts are referred to as the “CGL Insurance Amounts.”

b. Lessee shall obtain, at Lessee’s expense, and keep in effect during the term of the this Lease, First Party Environmental and Third Party Pollution Liability Insurance as more particularly described in Article 9, with a combined single limit per occurrence not less than _____ million dollars (\$____,000,000,000), or the equivalent. Annual aggregate limit shall not be less than _____ million dollars (\$____,000,000,000). Collectively, such insurance amounts are referred to as the “Environmental/Pollution Insurance Amounts.”

5. Attachments to this Cover Sheet, which are attached hereto and incorporated herein by this reference as if set forth in full, are as follows:

- Attachment A - Terms Covenants Restrictions and Conditions
- Attachment B – Description of the Demised Premises

Idaho Department of Lands
Terms Covenants Restrictions and Conditions
for the
Lease for Wind Energy Development and Production

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ARTICLE I - DEFINITIONS

The following terms, except where the context indicates otherwise, shall have the respective meanings set forth below. Terms defined on the Cover Sheet attached hereto shall have the meanings set forth on such Cover Sheet.

“Commencement Date” shall mean the date of execution of the Lease by all parties, subject to approval of Lease by Idaho State Board of Land Commissioners.

“Cover Sheet” shall mean the terms and signatures attached to these Terms, Covenants, Restrictions and Conditions for the Lease for Wind Energy Development and Production.

“Default Rate” shall mean the rate established by the Idaho State Treasurer for money due on a judgment under Idaho Code section 28-22-104(2).

“Environmental Law” shall mean any federal, state, or local statute, rule, regulation, ordinance, order or decree relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, presently in effect or that may be promulgated in the future and as may be amended from time to time, including but not limited to the statutes listed below:

- Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.*;
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*;
- Clean Air Act, 42 U.S.C. § 7401, *et seq.*;
- Federal Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. § 1251, *et seq.*;
- Federal Insecticide, Fungicide, and Rodenticide Act (Federal Pesticide Act of 1978), 7 U.S.C. § 136, *et seq.*;
- Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*;
- Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*; and
- Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*

“Government Approvals” shall mean any authorization, approval, consent, waiver, exception, license, filing, registration, ruling, permit, tariff, certification, exemption, and any other action or requirement by or with any Governmental Authority relating to the construction of the Project or the Lessee’s execution, delivery, or performance of this Lease.

“Gross Annual Revenues” shall mean the aggregate total revenue actually received by Lessee or a sub-lessee during a calendar year from the following: the sale, to any purchaser, of electrical energy generated by Wind Energy Facilities on the Demised Premises; the sale of credits of any kind to any purchaser, including green tags, renewable energy credits or certificates, tradable renewable certificates, greenhouse gas reduction credits, and renewable energy credits; revenues resulting from Lessee’s installation of low voltage ride through equipment; payment received from any purchaser that are based on curtailed energy rather than sold energy; the gross proceeds

or other cash benefits received in connection with or under or derived from any legal agreement, compromise, settlement, judgment or arrangement for or relating to the sale, use or other disposition of electricity generated or capable of being generated from the Demised Premises; proceeds from Lessee's business interruption insurance required under the terms of this Lease, where such proceeds represent lost income from the production and conversion of electrical energy on the Demised Premises. Gross Annual Revenues shall not include: any proceeds received from the sale, lease, financing, or other disposition of any Wind Energy Facilities or Improvements; production tax credits, investment tax credits and any other tax credits arising from this Lease. If Lessee provides or sells electrical energy generated by Wind Energy Facilities on the Demised Premises to Lessee for internal uses or to a subsidiary or affiliate of Lessee, the revenue for the purposes of calculating Gross Annual Revenues shall be calculated using a sale price that is not less than the then prevailing commercial rates during the year immediately preceding the anniversary of the Commencement Date on which Rent under this Lease is due.

"Hazardous Substances" shall mean any chemicals, materials, substances, pollutants or contaminants, including, without limitation, petroleum, crude oil, petroleum wastes, motor fuels and lubricants, radioactive material, hazardous wastes, toxic substances, asbestos, PCBs, leaded paint or any other material similarly defined or listed as hazardous, toxic, dangerous, or similar term, in any Environmental Law.

"Improvements" shall mean any building, structure, improvement and tenement of every kind and description now or hereafter erected or placed on the Demised Premises, and all materials intended for construction, reconstruction, alteration and repair of such Improvement now or hereafter erected or placed thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the Demised Premises.

"Lease" shall mean the Cover Sheet and all attachments identified thereon, including these Terms, Covenants, Restrictions and Conditions for the Lease for Wind Energy Development and Production.

"Lease Year" shall mean the period between 12:00 on the Commencement Date or the anniversary of the Commencement Date, as applicable, and 11:59 on the next anniversary of the Commencement Date.

"Nameplate Capacity" shall mean the total nominal electric capacity, expressed in megawatts, assigned to each wind energy turbine installed on the Demised Premises by the manufacturer of such wind energy turbine or as determined in writing by the parties.

"Production Area" shall mean the portion of the Demised Premises specified in the Development Plan described in Article VI as directly engaged in the production of wind energy, the conversion of wind energy to electrical energy, or the transmission or storage of electrical energy.

"Prorate or Proration" shall mean apportionment of Rent, fees, or costs based upon the percentage of the Lease Year remaining before the next anniversary of the Commencement Date.

“Rent” shall mean collectively the amounts to be paid by Lessee to Lessor under the Cover Sheet, Article V and any amounts deemed to be Additional Rent under subsection 5.7 of this Lease.

“State” shall mean the State of Idaho and its departments, boards, commissions and agencies.

“Supporting Area” shall mean the portion of the Demised Premises specified in the Development Plan described in Article VI as generally supporting Lessee’s activities on the Demised Premises and being used by Lessee but not in use for the production of wind energy, the conversion of wind energy to electrical energy, or the transmission or storage of electrical energy.

“Undeveloped Area” shall mean the portion of the Demised Premises specified in the Development Plan described in Article VI as not being a Production Area or a Supporting Area and not being used under this Lease by Lessee for any purpose.

“Use Agreement” shall mean: an agreement to sell electrical energy converted from wind energy on the Demised Premises to a third party; an agreement or all required governmental permissions or agreements to distribute electrical energy converted from wind energy on the Demised Premises through a federal power marketing agency or as a utility regulated by a state government or, a plan to use the electrical energy converted from wind energy on the Demised Premises for internal purposes of the Lessee.

“Wind Energy Purposes” shall mean determining the feasibility of converting wind energy on the Demised Premises to electrical energy; constructing, installing, using, replacing, relocating, maintaining, and removing Wind Energy Facilities from the Demised Premises; collecting and transmitting electrical energy converted from wind energy on the Demised Premises; and, administrative purposes necessarily related to the foregoing activities.

“Wind Energy Facilities” shall mean wind turbines, overhead and underground electrical transmission lines, electric transformers, energy storage equipment, meteorological towers, wind measurement equipment, control buildings, maintenance yards, roads, telecommunications equipment and lines, and power generation facilities operated in conjunction with converting wind energy into electrical energy.

ARTICLE II- DEMISED PREMISES

2.1 Lessor’s Demise.

2.1.1 Demise.

Upon the terms and conditions hereinafter set forth, and in consideration of the payment of the Rent and the prompt performance by the Lessee of the covenants and agreements to be kept and performed by the Lessee, the Lessor does lease, let, and demise to the Lessee and the Lessee hereby leases from the Lessor, the Demised Premises.

2.1.2 Conditions of Demise.

The demise is made subject to the following:

A. The Demised Premises is demised and let subject to the rights of any parties in possession thereof and the state of the title thereof as of the Commencement Date, to any state of facts which an accurate survey or physical inspection thereof might show, to all conditions, restrictions, and limitations now appearing of record, to all laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction, and to the existing encumbrances, if any. Lessee has examined the title to the Demised Premises and has found the same satisfactory.

B. The Lessee's proper performance of all the terms and conditions contained in this Lease.

2.1.3 No Representation.

Lessee acknowledges that neither Lessor, nor any agent or designees of the Lessor, has made any representation or warranty with respect to the leased site or concerning the suitability of the leased site for the uses intended by the Lessee. Lessee acknowledges that it has accepted the leased site in an "AS IS CONDITION," accepting any and all known or unknown faults therein subject only to the terms of subsection 2.4 below regarding Lessee's due diligence.

2.2 Lessee's Use of the Demised Premises.

2.2.1 Permitted Uses.

Lessee's use of the Demised Premises shall be for Wind Energy Purposes and subject to the reservations in subsection 2.3.

2.2.2 No Waste or Nuisance.

Lessee shall not use the Demised Premises in any manner that would constitute waste or a nuisance, nor shall the Lessee allow the same to be committed thereon. Lessee shall not excavate or remove material from the Demised Premises nor deposit material upon the Demised Premises other than as is necessary for the construction of Wind Energy Facilities or Improvements on the Demised Premises according to the approved Development Plan. Excavation or deposit of material for construction of Wind Energy Facilities or Improvements on the Demised Premises shall be limited to excavation or deposit at the location of Wind Energy Facilities or Improvements and only such excavation or deposit necessary to prepare the location of the Wind Energy Facilities or Improvements for placing the Wind Energy Facilities or Improvements thereon. Only clean, non-contaminated, natural fill material may be brought onto the Demised Premises. Material excavated in preparing a location for Wind Energy Facilities or Improvements must be removed from the Demised Premises unless such material can be used in preparing the location of other Wind Energy Facilities or Improvements on the Demised Premises. Material may not be excavated from the Demised Premises solely for the purpose of providing material to another location on the Demised Premises or elsewhere.

2.2.3 Compliance with Law.

Lessee shall at all times comply with all laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, or licenses which now or at any time hereafter may be materially applicable to the Demised Premises or any part thereof, or to any adjoining waterways, roads, sidewalks, streets, or walkways or to any material use or condition of the Demised Premises or any part thereof; provided, however, that with respect to local planning and zoning ordinances, in accordance with Idaho Code section 58-302(3), Lessee and Lessor shall consult with the county commissioners of the county in which the Demised Premises are located before leasing the lands, and the use that is the subject of this Lease shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable.

2.3 Lessor's Reservations.

The Lessor expressly reserves and excepts the following rights from the Lease; provided, however, that Lessor shall not grant permission for the installation or construction by others of structures, vehicles, or objects on the surface of the Demised Premises or on premises adjoining the Demised Premises and owned by Lessor that cause or may reasonably be expected to cause an obstruction to wind on the Demised Premises.

2.3.1. Right of Entry

To enter upon the Demised Premises, or any portion thereof, during the term of this Lease for any purpose including the purpose of inspecting the Demised Premises.

2.3.2. Resources and Fee Title

All rights for timber, oil and gas, geothermal rights, mineral rights, easements and rights-of-way and fee title to the Demised Premises.

2.3.3. Grant of Easements

To grant easements and leases over the Demised Premises, providing said easements and leases do not conflict with the use of the Lessee or with the permitted Wind Energy Facilities or Improvements installed and maintained or operated by the Lessee upon the Demised Premises. Lessor shall coordinate with the Lessee before processing any easement or lease applications on the Demised Premises. This Lease is subject to any lease, right-of-way or easement previously granted over the Demised Premises.

2.3.4. Changes in Use for the Protection Health and Safety

To require that changes be made in the use under this Lease, or to the Wind Energy Facilities or Improvements on the Demised Premises, including to the sanitation or other facilities, for the protection of public health, safety, preservation of property or water quality.

2.3.5. Other Leases

To issue other permits or leases for oil, gas, geothermal and mineral resources, grazing, or any other grant of authority or lease of the Demised Premises, if such other grant or lease does not materially interfere with Lessee's authorized use under this Lease.

2.3.6. Reservation of Water Interests

To reserve as Lessor's sole property any and all water from any source arising on or placed in beneficial use on the Demised Premises and to hold water rights for any beneficial use that may develop as a result of this Lease.

2.3.7. Right of Access Across the Demised Premises

Rights of access across the Demised Premises for Lessor and its assigns on existing roads, or on alternative roads provided by Lessee.

2.3.8. Timber and Forest Management

This Lease is made subject to all present and future timber sale contracts and reforestation or other forest management contracts. Except as specifically approved by Lessor in writing, this Lease does not authorize the Lessee to cut any timber growing on the Demised Premises. Any unauthorized use of such timber by the Lessee or with his knowledge or consent, shall work a forfeiture of this Lease without notice, and said Lessee shall be responsible for treble damages attributable to said timber value and all other damages.

2.3.9. Sale and Exchange

The Lessor reserves the right to sell or exchange all or any portion of the Demised Premises subject to the terms of this Lease.

2.3.10. Public Use

Lessee must allow the general public the right to use the lands described in the Lease for any lawful use authorized by the State Board of Land Commissioners for lands owned by the State, except for any such use which is incompatible with the Lessee's use under the terms of this Lease and further excepting exclusive use areas approved by Lessor pursuant to section 6.2. However, nothing in this Lease authorizes or purports to authorize trespass on private lands to reach State-owned lands. Public use of State lands authorized by the State Board of Land Commissioners shall not be restricted without prior written approval of the Lessor, provided however, nothing in this Lease shall be deemed a limitation on Lessor's authority to control public use of the Demised Premises where such use is authorized by the State Board of Land Commissioners. This Lease is not an exclusive control lease as described under Idaho Code § 36-1603(b).

2.3.11. Harvest of Seed

Lessor reserves the right to harvest seed from plants on the Demised Premises. Lessor will coordinate the harvesting activities with Lessee to minimize impacts on Lessee's operations.

2.3.12. Closure of Roads

Lessor reserves the right to close roads for road protection, water quality protection, wildlife and fish protection, administrative purposes or any other reason deemed necessary by Lessor. Planned road closures will be reviewed with Lessee prior to action by Lessor.

2.3.13. Closure of Operations for Safety and Fire Suppression

Lessor shall have the right, upon such notice as is reasonable in the circumstances, to require Lessee to close operations on the Demised Premises where necessary to protect the public safety or for fire suppression on the Demised Premises or adjacent lands.

2.4 Lessee's Due Diligence.

2.4.1 Obligations and Contingencies Prior to Phase 1.

Lessee shall have a period of sixty (60) days after the Commencement Date (Due Diligence Period) to complete the due diligence items described below in this subsection 2.4.1. During such period Lessee shall obtain and review, or waive its right to obtain and review, the following:

A A survey (the "Survey") of the Demised Premises prepared by a licensed land surveyor satisfactory to Lessee. Lessor shall receive a copy of any Survey prepared by Lessee, or on its behalf, free of charge. Lessee shall pay the cost of the Survey.

B A commitment for title insurance (the "Title Report") insuring Lessee's leasehold interest on the Demised Premises by a recognized, reputable title company in the amount of five hundred thousand dollars (\$500,000) (or such lesser amount as Lessee may choose), insuring Lessee that, as of the Commencement Date, the leasehold interest in the Demised Premises created pursuant to this Lease is vested in Lessee. Lessor shall receive a copy of any Title Report prepared by or on behalf of Lessee free of charge. The cost of such Title Report shall be paid by Lessee.

C A Level I environmental site assessment of the Demised Premises (the "Environmental Report"). Lessor shall receive a copy of any Environmental Report prepared by or on behalf of Lessee free of charge. The cost of the Environmental Report shall be paid by Lessee.

2.4.2 Right of Review and Cancellation.

Prior to the expiration of the Due Diligence Period, Lessee shall give Lessor written notice of any objection of Lessee to any matter disclosed by the Survey, the Title Report, or the Environmental Report to which Lessee objects (Disapproved Matter). If Lessee does not object to a matter disclosed by the Survey, the Title Report, or the Environmental Report within the Due Diligence Period, such matter shall be deemed to have been approved by Lessee. If Lessee gives notice of objection as to any such matter within the Due Diligence Period, Lessor shall have the option to immediately cancel the Lease, or if Lessor elects (without, however, Lessor having any obligation to do so), Lessor shall have a reasonable time period (the "Cure Period") following receipt of notice of objection from Lessee, not to exceed 90 days, to attempt to eliminate, cure, or otherwise remediate, at Lessor's cost, such Disapproved Matters. Notice of Lessor's election to attempt to cure shall be given to Lessee within fifteen (15) days following receipt of Lessee's notice of objection. If Lessor does not eliminate, cure, or otherwise remediate such Disapproved Matters within the Cure Period, Lessee's sole and exclusive remedy shall be to cancel this Lease by giving written notice of cancellation to Lessor on or before ten (10) days after expiration of the Cure Period. If Lessee does not elect to cancel on or before ten (10) days after expiration of the Cure Period, Lessee shall be deemed to have elected to waive any uncured matters, and the Lease shall continue in full force and effect. In the event this Lease is cancelled by Lessor in response to notice of a Disapproved Matter or by Lessee by reason of Lessor's

failure to cure a Disapproved Matter within the Cure Period, Rent paid by Lessee shall be refunded.

2.4.3 Limitation on Activities.

Until such time as Lessee has completed Lessee's Due Diligence, and Lessor has cured, or Lessee has waived any Disapproved Matters, Lessee's actions on the Demised Premises shall be limited to those necessary for Lessee's Due Diligence.

Article III – Term and Termination

3.1 Lease Term

This Lease shall commence on the Commencement Date and expire on the Expiration Date unless earlier terminated as provided herein.

3.2 Use of Phases

The term of this Lease shall be separated into phases more particularly described in Article IV. These phases may vary in time or occur simultaneously for different portions of the Demised Premises as more particularly described in the Development Plan produced pursuant to subsection 6.2. If different phases occur simultaneously, Rent shall be apportioned by as set forth in subsection 5.5.

3.3 Maximum Phase Terms

Phase 1 shall not exceed the periods set forth in Article IV. Failure of Lessee to conclude a phase prior to its maximum period without the prior written approval of Lessor shall be a default under this Lease.

3.4 Termination

3.4.1 Termination by Lessee.

A. During Phase 1 of this Lease, Lessee may terminate this Lease by giving Lessor written notice of termination. Upon termination during Phase 1, Lessee shall not be entitled to refund or credit of the Rent paid by Lessee under subsection 5.1 of this Lease.

B. During Phase 2 of this Lease, Lessee may terminate this Lease by giving Lessor written notice of termination and completing all Lessee's obligations under the Decommissioning and Reclamation Plan accepted by Lessor under Article IV. Upon termination during Phase 2, Lessee shall not be entitled to refund or credit of the Rent paid by Lessee under subsection 5.2 of this Lease.

C. During Phase 3 of this Lease, Lessee may terminate this Lease by giving Lessor written notice of termination and completing all Lessee's obligations under the Decommissioning and Reclamation Plan accepted by Lessor under Article IV. Lessee shall pay to Lessor, as a condition of termination, a termination fee of one thousand dollars (\$1,000) per megawatt of Nameplate Capacity for each turbine taken out of production at the premises.

3.4.2 Termination by Lessor for Lessee's Default.

A. Lessee shall be in default hereunder if any one or more of the following occurs:

1. Lessee fails to pay when due any installment of Rent, or any other sum due hereunder;
2. Lessee fails to observe or perform any other of the covenants, agreements, conditions or undertakings herein contained to be kept, observed and performed by Lessee under this Lease when the same become due;
3. Proceedings in bankruptcy or for liquidation, reorganization or rearrangement of Lessee's affairs are instituted by or against the Lessee;
4. A receiver or trustee is appointed for all or substantially all of the Lessee's business or assets;
5. A trustee is appointed for Lessee after a petition has been filed for Lessee's reorganization under the United States Bankruptcy Code, or if this lease be rejected under §365 of the United States Bankruptcy Code;
6. Lessee shall make an assignment for the benefit of its creditors; or
7. Lessee's failure to complete a phase as more particularly described in subsection 3.3.

B. The following cure periods shall apply to Lessee's default under this Lease.

1. As to any failure referred to in subsection 3.4.2(A)(1) above, Lessee shall be allowed 15 days from the date of notice thereof to effect a cure by payment in full of such Rent or other sum due hereunder.
2. As to any failure referred to in 3.4.2(A)(2) and (7) above Lessee shall be allowed the period specified in this Lease for cure, or if no period is specified, Lessee shall be allowed 30 days from the date of notice thereof to effect a cure, provided however, in the case of any curable failure referred to in 3.4.2(A)(2) above which cannot with diligence be cured within the applicable cure period, if Lessee shall commence to cure within the applicable cure period and thereafter to prosecute continuously to complete the curing of such failure with diligence, the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence.
3. As to an occurrence of any event described in 3.4.2(A)(3), (4) or (5) above, but only if such is the result of action brought against Lessee and without Lessee's concurrence, Lessee shall be allowed a period of sixty (60) days from the commencement of proceedings to have the same dismissed and any receiver or trustee appointed thereunder discharged.

4. All default and grace periods shall be deemed to run concurrently and not consecutively.

C. In the event of any default by Lessee, if not cured within the applicable cure period, if any, Lessor, at its election, may enforce, by judicial action or otherwise, any one, or any combination, of any and all remedies available at law or in equity, or without limitation of any such remedies, any one, or any combination, of the following:

1. Lessor may terminate this Lease, re-enter upon all or any part of the Demised Premises, either with or without process of law, Lessee hereby waiving any demand for possession, and remove Lessee and any persons or property from the Demised Premises, and Rent shall become due thereupon and be paid up to the time of such re-entry, dispossession or termination;

2. Lessor may re-let the Demised Premises or any part or parts thereof, either in the name of Lessor or otherwise, for a term or terms, which may at Lessor's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this Lease; and

3. Lessor may collect from Lessee damages for the failure of Lessee to observe and perform said Lessee's covenants herein contained, and any deficiency between the Rent hereby reserved or covenanted to be paid under this Lease, and the net amount, if any, of the rents collected on account of the lease or leases of the Demised Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease.

D. The failure of Lessor to re-let the premises or any part or parts thereof shall not release or affect Lessee's liability for damages. In computing such damages there shall be added to the said deficiency such expenses as Lessor may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage, advertising and for keeping the Demised Premises in good order or for preparing the same for re-letting. Any such damages shall be paid in installments by Lessee on the Rent day specified in this Lease and any suit brought to collect the amount of the deficiency for any period shall not prejudice in any way the rights of Lessor to collect the deficiency for any subsequent period by a similar proceeding. Lessor, in putting the Demised Premises in good order or preparing the same for re-letting may, at Lessor's option, make such alterations, repairs, or replacements to the Demised Premises as Lessor, in Lessor's sole judgment, considers advisable and necessary for the purpose of re-letting the Demised Premises, and the making of such alterations, repairs, or replacements shall not operate or be construed to release Lessee from liability hereunder as aforesaid. Lessor shall in no event be liable in any way whatsoever for failure to re-let the Demised Premises, or in the event that the Demised Premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Lessee be entitled to receive any excess, if any, of such net rents collected over the sums payable by Lessee to Lessor hereunder. In the event of a breach or threatened breach by Lessee of any of the covenants or provisions hereof, Lessor shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy, shall not preclude Lessor from any other remedy, in law or in equity. Lessee hereby expressly

waives any and all rights of redemption granted by or under any present or future laws in the event of Lessee being evicted or dispossessed for any cause, or in the event of Lessor obtaining possession of Demised Premises, by reason of the violation by Lessee of any of the covenants and conditions of this Lease, or otherwise.

3.5 Surrender by Lessee Upon Expiration of Lease Term or Upon Termination.

Upon expiration of the Lease Term or if sooner terminated, Lessee shall peaceably surrender and deliver up the Demised Premises to Lessor.

3.6 Reclamation of Demised Premises.

Prior to or upon expiration or termination of this Lease, Lessee shall complete reclamation of the Demised Premises in accordance with the Decommissioning and Reclamation Plan accepted by Lessor.

3.7 Holding Over.

If Lessee or any successor in interest of Lessee should remain in possession of the Demised Premises after expiration or termination of the Lease term without executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all the covenants, terms, provisions and obligations of this Lease. Nothing contained herein shall be construed as Lessor's permission for Lessee to hold over or as limiting Lessor's remedies against Lessee, and if the Demised Premises are not surrendered at the end of the Lease Term, Lessee shall indemnify Lessor for, from and against any loss or liability resulting from delay by Lessee in so surrendering the Demised Premises, including without limitation, any claims made by any succeeding Lessee based on such delay.

Article IV – Lease Phases

4.1 Phase 1 - Research and Analysis

Phase 1 shall commence upon the completion of Lessee's due diligence as more particularly described in subsection 2.4.

4.1.1 Phase 1 Activities.

During Phase 1 of this Lease, Lessee shall engage in the activities and submit all the requirements set forth in this subsection 4.1.1. All such activities and requirements shall be conducted at Lessee's sole cost and expense. Lessee shall make available for Lessor's inspection all wind data collected and all environmental studies conducted during Phase 1.

A. Lessee shall conduct all studies necessary for the development of Wind Energy Facilities on the Demised Premises. Studies may include the installation of wind measurement equipment.

B. Lessee shall conduct environmental studies required to obtain permits, licenses, permissions, consents and approvals for subsequent phases of this Lease, including, if required, avian interaction and migration pattern studies.

C. Lessee shall obtain all required permits, licenses, permissions, consents and approvals for subsequent phases of this Lease and shall provide copies of such permits, licenses, permissions, consents and approvals to Lessor.

D. Lessee shall provide to the Lessor evidence of one or more Use Agreements acceptable to the Lessor.

E. Lessee shall submit to the Lessor the Development Plan more particularly described in subsection 6.2.

F. Lessee shall submit to the Lessor a Decommissioning and Reclamation Plan security more particularly described in subsection 6.3 and Article VIII.

4.1.2 Conclusion of Phase 1.

Phase 1 of this Lease shall conclude upon: the receipt by the Lessor of copies of all required permits, licenses, permissions, consents and approvals for commencement of development under Phase 2 of this Lease; Lessor's acceptance of a Use Agreement; Lessor's acceptance of the Decommissioning and Reclamation Plan; Lessor's acceptance of the Development Plan; and, provision of the security required by Article VIII. Lessor's acceptance of a Use Agreement and required plans shall be in writing.

4.1.3 Maximum Phase 1 Length.

Unless extended by Lessor in writing, Phase 1 of this Lease shall not extend longer than twenty-four (24) months.

4.2 Phase 2 – Development

Phase 2 of this Lease shall commence upon the conclusion of Phase 1 of this Lease.

4.2.1 Phase 2 Activities.

During Phase 2 of this Lease, Lessee shall engage in construction of the Wind Energy Facilities and related Improvements on the Demised Premises as more particularly described in the Development Plan accepted by Lessor. All costs and expenses of construction and development in Phase 2 and all subsequent additions and modifications to the Wind Energy Facilities and related Improvements shall be at the sole cost and expense of Lessee. If the Lessor, in good faith, believes that Lessee has violated or failed to obtain any Government Approval necessary for activities during Phase 2 of this Lease, Lessor shall have the right, without limitation, to require Lessee to cease activities related to such violation until the violation has been remedied to the satisfaction of Lessor in its sole discretion.

4.2.2 Conclusion of Phase 2.

Phase 2 of this Lease shall conclude upon:

A. Submission to the Lessor of copies of all easements for connecting lines, transmission lines, substations, and other improvements outside the Demised premises necessary to carry out the Use Agreement submitted under Phase 1 of this Lease or subsequently submitted and accepted by the Lessor.

B. Submission to the Lessor of “as built” drawings showing the exact location of all completed Wind Energy Facilities and Improvements on the Demised Premises;

C. Delivery of electrical energy converted from wind energy on the Demised Premises under the Use Agreement submitted under Phase 1 of this Lease or subsequently submitted and accepted by the Lessor.

4.2.3 Partial Transition to Phase 3.

Lessee may submit the items required in subsection 4.2.2 for the conclusion of Phase 2 of this Lease for individual Wind Energy Facilities or groupings of Wind Energy Facilities; provided, that conclusion of Phase 2 of this Lease for such individual or groupings of Wind Energy Facilities must be consistent with the Use Agreement submitted under Phase 1 of this Lease or subsequently submitted and accepted by the Lessor.

4.2.4 Maximum Phase 2 Length.

Unless extended by Lessor in writing, Phase 2 of this Lease shall not extend longer than thirty-six (36) months.

4.3 Phase 3 – Operation

Phase 3 of this Lease shall commence upon the conclusion of Phase 2 of this Lease.

4.3.1 Phase 3 Activities.

During Phase 3 of this Lease, Lessee shall engage in the production and delivery of electrical energy converted from wind energy on the Demised Premises under the Use Agreement submitted under Phase 1 of this Lease or subsequently submitted and accepted by the Lessor. If the Lessor, in good faith, believes that Lessee has violated or failed to obtain any Government Approval necessary for activities during Phase 3 of this Lease, Lessor shall have the right, without limitation, to require Lessee to cease activities related to such violation until the violation has been remedied to the satisfaction of Lessor in its sole discretion.

4.3.2 Modifications to Facilities and Improvements in Phase 3.

No material modifications to the Demised Premises or to the accepted Development Plan may be made without the Lessor’s prior written consent. Lessor reserves the right to approve all modifications, at its discretion, including, but not limited to, design, location, and construction. Lessee shall submit a revised Development Plan to Lessor prior to modifying the Wind Energy Facilities or Improvements during Phase 3. Modifications to the Wind Energy Facilities or Improvements shall not remove the Production Areas subject to such modifications from the requirements, including the payment of Rent, applicable to Phase 3 of this Lease without the prior written consent of Lessor. Lessee shall submit updated drawings showing subsequent modifications to the Wind Energy Facilities and Improvements on the Demised Premises as such modifications are completed.

4.3.3 Conclusion of Phase 3.

Phase 3 of this Lease shall conclude upon:

A. Written notice by either party of termination of this Lease as more particularly set forth in subsection 3.4;

B. Failure of Lessee to convert fifty percent (50%) of the Nameplate Capacity of the wind energy turbines installed on the Demised Premises for a period of one hundred twenty (120) days, unless such failure arises from: replacement of Wind Energy Facilities and Improvements under a Development Plan accepted by Lessor; replacement of Wind Energy Facilities and Improvements as a result of casualty or loss; or force majeure under subsection 15.3.

C. Failure of Lessor to deliver fifty percent (50%) or more of the Nameplate Capacity of the wind energy turbines installed on the Demised Premises under the Use Agreement submitted under Phase 1 of this Lease or subsequently submitted and accepted by the Lessor for a period of one hundred twenty (120) days, unless such failure arises from: replacement of Wind Energy Facilities and Improvements under a Development Plan accepted by Lessor; replacement of Wind Energy Facilities and Improvements as a result of casualty or loss; or force majeure under subsection 15.3; or

D. Upon the date set forth in the Decommissioning and Reclamation Plan accepted by Lessor.

4.4 Phase 4 – Decommissioning and Reclamation

Phase 4 of this Lease shall commence upon the conclusion of Phase 3 of this Lease or upon earlier termination as more particularly described in subsection 3.4. Phase 4 of this Lease shall conclude upon the full performance by Lessee of the Decommissioning and Reclamation Plan as reasonably determined by Lessor. If the Lessor, in good faith, believes that Lessee has violated or failed to obtain any Government Approval necessary for activities during Phase 4 of this Lease, Lessor shall have the right, without limitation, to require Lessee to cease activities related to such violation until the violation has been remedied to the satisfaction of Lessor in its sole discretion.

4.5 Transition of Supporting and Undeveloped Areas

Supporting Areas and Undeveloped Areas shall be transitioned into Phases 2 and 3 concurrently with the first Production Area transitioning to such phase. Supporting Areas and Undeveloped Areas shall be transitioned into Phase 4 concurrent with the last Production Area transitioning to such phase. A Production Area may not be transitioned or converted to a Supporting Area without the prior written permission of Lessor.

Article V – Rent

5.1 Phase 1 Rent

During Phase 1, Lessee shall pay in advance Phase 1 Rent annually on the Commencement Date and on each anniversary of the Commencement Date. Lessee shall not receive any refund of Phase 1 Rent at termination of the Lease. If Lessee proceeds to Phase 2 prior to the expiration of a full year, Lessee shall be entitled to a credit in the amount of a Prorated portion of the Phase 1 Rent paid by Lessor toward Phase 2 Rent.

5.2 Phase 2 Rent

During Phase 2, Lessee shall pay in advance Phase 2 Rent annually on each anniversary of the Commencement Date and any Installation Fee. Lessee shall not receive any refund of Phase 2 rent or Installation Fees at termination of the Lease. If Lessee proceeds to Phase 3 prior to the expiration of a full year, Lessee shall be entitled to a credit in the amount of a Prorated portion of the Phase 2 rent paid by Lessor toward Phase 3 rent. Lessee shall not be entitled to Proration of the Installation Fee.

5.3 Phase 3 Rent

During Phase 3, Lessee shall pay in advance Phase 3 Rent.

During Phase 3, the Capacity Fee and the Acreage Fee shall be adjusted annually based on the increase, if any, in the Producer Price Index, Electric Power Generation, published by the United States Department of Labor, Bureau of Labor Statistics (hereinafter referred to as the "Price Index") for the preceding calendar year or, if there shall be no such Price Index, then by the successor or the most nearly comparable successor index thereto designated by the Lessor. The Capacity Fee and the Acreage Fee shall be adjusted by multiplying each fee by a fraction, the numerator which shall be the Price Index for the preceding calendar year and the denominator of which shall be the Price Index for the calendar year immediately prior to the preceding calendar year. For example, the Capacity Fee for 2006 is:

$$\text{Capacity Fee for 2005} \quad \times \quad \frac{\text{Price Index for 2005}}{\text{Price Index for 2004}}$$

The fractional value of will be rounded to two (2) decimal places. No adjustment will be made if the Price Index does not increase based upon such calculation.

In connection with each annual rent payment in Phase 3, Lessee shall provide to Lessor a signed statement setting forth the amount of Gross Annual Revenues received by Lessee during the prior Lease Year and the rent due to Lessor arising from such Gross Annual Revenues. Phase 3 rent shall be paid within thirty (30) days of each anniversary of the Commencement Date; provided, however, that if Phase 3 initially begins on a date other than the anniversary of the Commencement Date, rent for the initial period shall be Prorated. Rent shall not be Prorated if Lessee proceeds to Phase 4 prior to the expiration of a full year and Lessee shall not be entitled to a credit against Phase 4 rent or a refund of rents paid for such year.

5.4 Phase 4 Rent

During Phase 4, Lessee shall pay in advance Phase 4 Rent annually on each anniversary of the Commencement Date. Rent shall be Prorated if Lessee completes Phase 4 prior to the expiration of a full Lease Year and Lessee shall be entitled to a refund of rents paid for such year. Completion of Phase 4 for the purpose of such Proration shall occur on the last day of the month in which Lessee fully completes all requirements in the Decommissioning and Reclamation Plan.

5.5 Apportionment of Rent During Simultaneous Phases

Except for the installation fee, rent shall be Prorated as provided in this section when the Demised Premises are transitioned separately under the Development Schedule more particularly

described in subsection 6.2.4. Rent for Production Areas, Supporting Areas and Undeveloped Areas in phases shall be based upon the percentage of the Demised Premises encompassed by the Production Areas, Supporting Areas and Undeveloped Areas in each phase. Supporting Areas and Undeveloped Areas shall be transitioned for the purposes of calculating Rent as provided in subsection 4.5.

5.6 Lessee's Records.

Lessee shall keep full, complete and proper books, records and accounts of Gross Annual Receipts as would be normally examined and required to be kept by an independent accountant pursuant to accepted auditing standards used when performing an audit of Lessee's business to verify the accuracy of Lessee's statements of Gross Annual Receipts. All such books, records and accounts shall be kept for a period of at least seven (7) years following the end of each Lease Year. Within three (3) years after the end of any Lease Year, Lessor, its agents and employees, upon at least seven (7) days' prior written notice, may examine and inspect all of the books and records relating to the Demised Premises (including income tax returns) for the purpose of investigating and verifying the accuracy of any prior statement of Gross Annual Receipts. If the results of the audit show that Lessee's statement or statements of Gross Annual Receipts for any period has been understated, then, within ten (10) days of the determination of such deficiency, Lessee shall pay any applicable deficiency to Lessor, together with interest thereon at the Default Rate, from the date such payment should originally have been made until the date actually paid, provided however, this provision for payment of a deficiency shall not be deemed a waiver of any default remedies available to Lessor as a result of such deficiency. If the results of the audit show that Gross Annual Receipts for the audit period have been understated by five percent (5%) or more, Lessee shall also pay Lessor the cost of the audit.

5.7 Additional Rent

All sums due from Lessee to Lessor hereunder other than the phase rents described above, including sums due as the result of payments made by Lessor on Lessee's behalf, shall be deemed Additional Rent and shall be due and payable upon demand if no other time for payment therefor is set forth in this Lease.

5.8 Payment

All Rent shall be paid in lawful money of the United States of America forwarded to the Lessor at the address for notices under this Lease or as otherwise directed by the Lessor in writing. All Rent due hereunder shall be paid to Lessor without offset or netting of any costs or expenses paid or incurred by Lessee, whether or not such payments were for obligations or to fulfill duties of Lessor. If any payment of Rent is not made to Lessor on or before the date the same is due hereunder, Lessee shall pay to Lessor as a late payment fee an amount equal to the greater of \$25.00 or one percent (1%) of the amount due. In the event payment is not made within one month after the same becomes due, Lessee shall pay an additional one percent (1%) of the Rent amount due for each subsequent month until such Rent is paid in full. Payment of the late payment fee hereunder shall be in addition to applicable interest at the Default Rate. The amount of Rent, late charge, and interest shall constitute a lien in favor of the State of Idaho against all of the Lessee's property on the Demised Premises, including but not limited to Wind Energy Facilities and Improvements.

Article VI – Plans

6.1 Plans Generally.

Lessor shall provide a Development Plan and a Decommissioning and Reclamation Plan as more particularly set forth below in accordance with the schedule set forth in Article IV. The Development Plan and Decommissioning and Reclamation Plan may be submitted as a single plan with the information required by this Lease or as separate plans.

6.2 Development Plan

The Development Plan shall describe all Wind Energy Facilities and Improvements to be constructed on the Demised Premises and all activities to be conducted on the Demised Premises. The Development Plan shall include the following components:

6.2.1 Exploratory Activities.

The type, location, and schedule of all exploratory activities which have and will occur on the Demised Premises, including soil testing, surveys, and wind inventory activities.

6.2.2 Facilities and Improvements.

The location and specifications of all Wind Energy Facilities and Improvements on the Demised Premises. Information concerning wind turbines shall include numbers, type, size, manufacturer, model and foundation design. Information concerning the construction of roads on the Demised Premises shall identify all gates and culverts and identify road construction materials proposed to be acquired from the Demised Premises.

6.2.3 Areas of Exclusive Lessee Use.

The portion(s) of the Demised Premises that Lessee proposes to hold for its exclusive use and to exclude the public and other lessees of Lessor from accessing. Lessor shall describe the basis for excluding the public and other lessees of Lessor from such portions of the Demised Premises. Where desired by Lessee, Lessee shall describe proposed development setbacks on adjoining property owned by Lessor and the basis for such setbacks.

6.2.4 Development Schedule.

The schedule of construction and development on the Demised Premises. If Lessor includes partial transitions of the Demised Premises to phases of this Lease, the Development Plan shall set forth the portions of the Demised Premises to be transitioned separately, the power generation projected for each phase, the planned schedule for the partial transitions, and the contingencies and factors that determine the timing of each transition. Lessee shall further include a pictorial and numerical apportionment of the Demised Premises into Production Areas to be transitioned separately, Supporting Areas and Undeveloped Areas.

6.2.5 Government Approvals.

A complete and accurate list of all Government Approvals that are necessary for the commencement of construction under Phase 2 and operation under Phase 3. Lessee shall certify such list to be complete and accurate. In the event that additional Government Approvals necessary for the commencement of construction under Phase 2 or operation under Phase 3 come to the attention of either party to this Lease, that party shall immediately notify the other party in writing and the Development Plan shall be amended accordingly.

6.2.6 Vegetation and Soil Management.

A description of the means whereby Lessee will maintain the natural vegetation, control erosion, and control noxious weeds on the Demised Premises. The description shall also include the means whereby Lessee will ensure that Lessee's activities on the Demised Premises do not adversely impact the waters on or adjoining the Demised Premises.

6.2.7 Surveys.

A list of all environmental, biological, habitat, and cultural resources survey data, including archeological and historic surveys concerning the Demised Premises conducted by or on the behalf of Lessee. Upon Lessor's request, Lessee shall provide copies of such surveys to Lessor. The surveys submitted to Lessor must include the study protocol, survey locations and complete results.

6.3 Decommissioning and Reclamation Plan

The Decommissioning and Reclamation Plan shall set forth the means whereby Lessee shall restore the Demised Premises in accordance with the reclamation plan following construction or modification of Wind Energy Facilities and Improvements and upon the expiration or termination of this Lease. The Decommissioning and Reclamation Plan shall address all planned construction of Wind Energy Facilities and Improvements by Lessee and any other planned alteration of the Demised Premises. No construction of any Wind Energy Facilities or Improvements and no alteration of the Demised Premises, nor any change in such construction or alteration, shall occur until the same is addressed and accepted in the Decommissioning and Reclamation Plan. The Decommissioning and Reclamation Plan shall include a complete and accurate list of all Government Approvals that are necessary for the activities under such plan. Lessee shall certify such list to be complete and accurate. In the event that additional Government Approvals necessary for the activities under Decommissioning and Reclamation Plan come to the attention of either party to this Lease, that party shall immediately notify the other party in writing and the Decommissioning and Reclamation Plan shall be amended accordingly.

6.4 Plan Reviews.

The Development Plan and the Decommissioning and Reclamation Plan shall call for an annual operating review during which time Lessee shall disclose to the Lessor any construction or alteration of the Demised Premises planned by Lessee during the ensuing year. The Lessor may require modification to approved plans to ensure that the plan, and the corresponding amount of Lessee's security, adequately addresses such planned construction or alteration. In any event, Lessor may review a plan at intervals of three (3) years and require reasonable modifications therein based on the nature and extent of Lessee's alteration of the Demised Premises and the work reasonably necessary to restore the Demised Premises to its natural state.

Article VII – Title to Wind Energy Facilities and Improvements, Removal, Use, and Required Maintenance

7.1 Title.

7.1.1 Title During Term and Upon Expiration or Early Termination

Title to any Wind Energy Facilities and Improvements constructed by or at the request of Lessee shall remain in Lessee during the term of this Lease. Upon the Expiration Date or earlier termination of this Lease pursuant to subsection 3.4.1, all Wind Energy Facilities and Improvements shall be removed by Lessee and the Demised Premises restored to conditions similar to when this Lease was first issued, as nearly as is reasonably practical, all at Lessee's sole cost and expense and pursuant to the approved Decommissioning and Reclamation Plan.

7.1.2 Title Upon Termination for Default

Upon termination prior to the Expiration Date for default by Lessee and at Lessor's option, title to the Wind Energy Facilities and Improvements shall revert by operation of law to the ownership of Lessor. Lessee shall prepare and record any such legal documents that the Lessor may require to evidence such ownership in Lessor. In the event Lessor leases the land to a new lessee for continued generation of electrical energy using the Wind Energy Facilities and Improvements within twenty-four (24) months of such early termination, Lessor shall require the new lessee to pay the prior Lessee the value of those Wind Energy Facilities or Improvements which Lessee was authorized to place on the Demised Premises and which Lessor did not require Lessee to remove. The value of the Improvements shall be as agreed between Lessee and the new lessee or, if they are unable to agree, shall be determined through an appraisal that determines the current value of the Improvements. Lessee and the new lessee shall each be responsible for one-half of the cost of such appraisal. Improvement payments shall be first applied towards any rent due Lessor before being disbursed to Lessee. Lessor by reason of this subsection does not hereby agree or become obligated to pay any such value to Lessee, such obligation shall be solely on the subsequent lessee. Upon payment to Lessee, title to such Wind Energy Facilities and Improvements shall vest in the new lessee, subject to the terms of the State's lease with the new lessee.

7.2 Removal

Without Lessor's prior written approval, Lessee shall not remove Wind Energy Facilities or Improvements from the Demised Premises other than as is necessary for replacement of worn out or outdated Wind Energy Facilities or Improvements, and Lessee shall continue to maintain and restore or replace worn out Wind Energy Facilities or Improvements on the Demised Premises sufficient to maintain the operations contemplated under the approved Development Plan. Any permitted encumbrance of the Wind Energy Facilities or Improvements shall be subject to the terms of this Article IV.

7.3 Use and Operation of Improvements

Use and operation of the Wind Energy Facilities and Improvements on the Demised Premises shall be in conformance with the use of the Demised Premises set forth in subsection 2.2 of this Lease. Use and operation of the Wind Energy Facilities and Improvements shall comply with all applicable federal, state and local laws and rules and safety standards.

7.4 Maintenance of Improvements

During the Lease Term, Lessee, at its sole cost and expense, shall keep and maintain all of the Wind Energy Facilities and Improvements and all additions thereto, in good condition and repair and shall make all necessary repairs, replacements and renewals, whether structural or non-

structural, foreseen or unforeseen, ordinary or extraordinary, in order to maintain such state of repair and condition; it being the intention of the parties that Lessor shall have no liability for any of the foregoing, that Lessor shall obtain possession of the Improvements at the end of the Lease Term, and that the Improvements will be in good repair and condition at said time, reasonable wear and tear excepted and insured casualty loss excepted; provided, however, that Lessee shall not be required to restore, repair or replace any Wind Energy Facilities and Improvements that are at or near the end of their useful life, other than as is necessary to maintain the operations contemplated by the Development Plan. Lessee, at Lessee's expense, shall be responsible for all improvements, additions, alterations, maintenance, and repairs necessary or appropriate such that the Demised Premises and all Wind Energy Facilities and Improvements thereon are in compliance with law. Lessee waives any provisions of law that may require any duty of repair by Lessor or permit Lessee to make repairs at the expense of Lessor.

7.5 Repair and Replacement of Damaged Improvements.

7.5.1 Continuation of Lease.

No loss or damage by fire or any other cause resulting in either partial or total destruction of the Demised Premises, or of any Wind Energy Facilities or Improvements now or hereafter located in, upon or on the Demised Premises, or any fixtures, equipment or machinery used or intended to be used in connection with the Demised Premises or the Wind Energy Facilities or Improvements thereon, shall operate to terminate this Lease or to relieve or discharge Lessee from the payment of any Rent, or other amounts payable hereunder, as rent or otherwise, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Lessee.

7.5.2 Restoration.

In case of any damage by fire or any other cause resulting in either partial or total destruction of any Wind Energy Facilities or Improvements now or hereafter located in, upon or on the Demised Premises, or any fixtures, equipment or machinery used or intended to be used in connection with the Demised Premises or the Wind Energy Facilities or Improvements, Lessee shall, at its expense and whether or not the insurance proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, promptly commence and complete the restoration, replacement or rebuilding of the Wind Energy Facilities or Improvements, fixtures, equipment or machinery, as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

7.5.3 Application of Insurance Proceeds.

Insurance proceeds on account of any damage to or destruction of the Demised Premises or any part thereof shall be applied first to restoration of the Wind Energy Facilities and Improvements, and any fixtures, equipment or machinery associated therewith. Lessor may elect to require that insurance proceeds be paid into a depository chosen by Lessor and held pending payment of the costs and expenses of restoration.

Article VIII – Performance Security

8.1 Security Generally.

8.1.1 Format and Renewal.

All bonds, letters of credit and deposits shall be in a form acceptable to Lessor, conditioned upon the Lessee's good faith compliance with all laws and rules of the State of Idaho, all provisions of this Lease, and all terms and conditions imposed by the State. All bonds shall be issued by an Idaho qualified U.S. Bonding Corporation subject to Lessor's approval, and shall provide for notice to Lessor prior to any cancellation or lapse of the bond. Upon failure of the Lessee to maintain bonds, letters of credit and deposits in full force at all times during the life of this Lease, Lessor shall have the right to cancel this Lease. A substitute bond, a new credit, or an extension of the expiration date of the existing bond or credit must be received by Lessor thirty (30) days before the expiration of the bond or credit. Failure to provide this replacement thirty (30) days prior to the expiration of the credit shall constitute a material breach of this Lease and shall be grounds for Lessor to present said credit for payment or to make demand under said bond. Presentation of credit for payment or demand and payment under a bond shall in no way limit the liability or obligations of Lessee or the rights and remedies of Lessor. The form of bonds and letters of credit shall be presented to Lessor for acceptance prior to issuance of such bonds or letters of credit.

8.1.2 Adjustment of Security Amount.

At intervals of no less than one (1) year after approval of the Development Plan and the Decommissioning and Reclamation Plan, as applicable, Lessor may revise the estimate of the cost of development or reclamation in accordance with the approved plan to reflect then current costs and prices for the work and materials necessary for work under the plan. Within thirty (30) days of receipt of such revised estimate, Lessee shall then cause the existing security to be adjusted to reflect the amount of the revised estimate.

8.2. Construction Security.

Lessee shall furnish good and sufficient payment and performance bonds, letters of credit, or a cash deposit, each in the full contract amount, for each contract for construction of Wind Energy Facilities and Improvements on the Demised Premises, which security shall be in favor of Lessor to protect Lessor against loss due to Lessee's failure to complete such construction in accordance with the Development Plan or Lessee's failure to pay contractors, subcontractors and others who may provide goods and services to Lessee. The period of liability of the security shall not be terminated until the completion of construction of all Wind Energy Facilities and Improvements to be constructed on the Demised Premises under the applicable contract for construction and the expiration of the timeframe under applicable law for filing of lien claims with respect to such construction has expired.

8.3 Operating Security.

Prior to the commencement of Phase 3 of this Lease, Lessee shall furnish a good and sufficient corporate security bond, letter of credit or a cash deposit satisfactory to the Lessor in the amount of one year's annual Rent due or projected to be due during Phase 3. The amount of security during Phase 3 shall be adjusted annually, in Lessor's discretion, to reflect changes to annual Rent.

8.4 Decommissioning and Reclamation Security.

Upon approval of the Decommissioning and Reclamation Plan, Lessee shall furnish a good and sufficient letter of credit, bond or cash deposit in the amount equal to the Lessor's reasonable estimate of the cost of reclamation in accordance with the approved Decommissioning and Reclamation Plan. The period of liability of the letter of credit, bond or cash deposit shall not be terminated until all terms and conditions of the approved Decommissioning and Reclamation Plan have been completed, and the security is released in writing by the Director of the Department of Lands.

Article IX - Insurance and Indemnification

9.1 Insurance

9.1.1 Required Insurance

For the duration of this Lease and until all work specified in this Lease is completed, Lessee shall have and maintain, at Lessee's expense, the types of insurance set forth below and shall comply with all limits, terms and conditions of such insurance. By requiring the insurance herein, Lessor does not represent that coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed as a limitation on Lessee's liability under the indemnities granted to Lessor in this Lease.

A. Commercial General and Umbrella Liability Insurance. Lessee shall maintain commercial general liability (CGL) in the CGL Insurance Amounts. Lessee waives all rights against Lessor and any additional insured for recovery of damages to the extent these damages are covered by the CGL or commercial umbrella liability insurance maintained pursuant to this Lease. CGL insurance and any umbrella policy shall:

1. Be in a form and from an insurance company satisfactory to Lessor and shall cover liability for bodily injury, property damage, and personal injury arising from Lessee's use and/or occupation of the Leased Premises including, without limitation, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract; and,

2. Include the State of Idaho, the Board of Land Commissioners, the Idaho Department of Lands, and their officers, agents, and employees respectively as additional insureds, and such status as an additional insured shall be evidenced by an endorsement acceptable to Lessor. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, and non-contributory with, any additional insured.

B. Builders Risk/Installation Floater Insurance. During the course of any construction or alteration of Wind Energy Facilities or Improvements on the Demised Premises by Lessee, Lessee shall maintain in force, at its own expense, Builders Risk/Installation Floater Insurance, including soft costs and any offsite locations, on an all risk of direct physical loss form, including earthquake and flood (if reasonably available), for an amount equal to the full amount of the construction contract. Any deductible amount shall not exceed fifty thousand

dollars (\$50,000) for each loss, except earthquake and flood deductibles shall not exceed 2 percent (2%) of the value at risk at the time of each loss or fifty thousand dollars (\$50,000) for each loss, whichever is more. The policy shall include, as an additional insured, the Lessor as its interests may appear and such status as an additional insured shall be evidenced by an endorsement acceptable to Lessor.

C. Property Insurance. Lessee shall throughout the term of this Lease, at its own expense, keep and maintain in full force and effect commercial property insurance covering the Wind Energy Facilities and Improvements located on the Demised Premises. Commercial property insurance shall, at a minimum, cover all perils insured under the ISO Special Causes of Loss Form. The amount insured shall equal the full estimated replacement cost of the property insured. Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as otherwise appropriate under the particular policy form. Lessor shall be included as a loss payee under the commercial property insurance, and such status as an additional insured shall be evidenced by an endorsement acceptable to Lessor. During Phase 3 of this Lease, Lessee shall purchase, as part of Lessee's property insurance, business income, business interruption, extra expense or similar coverage, for actual loss sustained. In no event shall the Lessor be liable for any business interruption or other consequential loss sustained by Lessee, whether or not it is insured, other than such loss as is caused by the negligence of Lessor, its employees, officers, directors, or agents.

D. Automobile and Umbrella Liability Insurance. Lessee shall maintain during the term of this Lease, at Lessee's expense, automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than one million (\$1,000,000) each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned auto).

E. Environmental Impairment/Pollution Insurance. Lessee shall obtain, at Lessee's expense, and keep in effect during the term of the this Lease, First Party Environmental and Third Party Pollution Liability Insurance covering the Lessee's liability for bodily injury, property damage and any environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by the Lessee, arising out of Lessee's use and possession of the Demised Premises. Environmental and Pollution Insurance shall be maintained in the Environmental/Pollution Insurance Amounts.

F. Workers Compensation and Umbrella Liability Insurance. Lessee and its subcontractors, if any, shall maintain all statutorily required Workers Compensation coverage. Coverage shall include Employer's Liability, at minimum limits of \$100,000/\$500,000/\$100,000. Lessee must maintain coverage issued by a surety licensed to write workers' compensation insurance in the state of Idaho or from a surety issued an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission.

9.1.2 Lessee's Insurance Policy Requirements.

All insurance required under this Article shall be with companies licensed and admitted in Idaho and approved for this Lease by Lessor. Lessor's general requirements for such approval include a Best's rating of A- or better. Prior to taking occupancy or commencing construction and at least annually thereafter, Lessee shall furnish Lessor with a certificate of insurance executed by a duly authorized representative of each insurer, and a copy of any applicable policy or policy endorsement showing compliance with the insurance requirements set forth above. All policies required under this Article shall be written as primary policies and not contributing to or in excess of any coverage Lessor may choose to maintain. Lessee shall provide Lessor with certificates of insurance and policy endorsements as follows:

<u>Coverage</u>	<u>Evidence of Coverage</u>
CGL	<ul style="list-style-type: none">• Policy Endorsement and copy of policy evidencing each required coverage
Builders Risk/Installation Floater Insurance	<ul style="list-style-type: none">• Policy Endorsement and copy of policy evidencing each required coverage
Property Insurance	<ul style="list-style-type: none">• Policy Endorsement and copy of policy evidencing each required coverage
Automobile Liability	<ul style="list-style-type: none">• Certificate of Insurance evidencing required coverage
Environmental Impairment/Pollution Insurance	<ul style="list-style-type: none">• Certificate of Insurance evidencing required coverage
Workers Compensation/ Employers Liability Insurance	<ul style="list-style-type: none">• Certificate of Insurance evidencing required coverage

All certificates and policies shall provide for ninety (90) days' written notice to Lessor prior to cancellation or material change of any insurance referred to therein. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not effect coverages provided to Lessor, the State of Idaho, the Board of land Commissioners and the Idaho Department of Lands, its officers and employees. Failure of Lessor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Lessor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Lessee's obligation to maintain such insurance. Lessee shall provide certified copies of all insurance polices required above within ten (10) days of Lessor's written request for said copies. If Lessees' liability policies do not contain the standard ISO separation

of insured provision, or a substantially similar clause, they will be endorsed to provide cross-liability coverage.

9.1.3 Payment of Premiums – Policy Renewals - Lessor’s Right to Purchase

The Lessee shall pay premiums and be responsible for all deductibles for all of the insurance policies it is required to carry under the terms of this Lease, and shall deliver to the Lessor evidence of such payment before the payment of any premiums become in default. The Lessee shall also cause renewals of expiring policies and shall furnish Lessor with certificates showing such renewed policies at least ten (10) days before the policy’s expiration date. If Lessee fails to maintain the insurance as set forth herein, Lessor shall have the right but not the obligation to purchase said insurance at Lessee's expense.

9.2 Indemnification by Lessee

During the entire term of the Lease, the Lessee will indemnify and hold harmless the Lessor, including without limitation, Lessor’s respective affiliates, officers, agents and employees against any and all losses, claims, actions, debts, demands, obligations, judgments for damages, or injury to persons or property which may be made against the Lessor, Lessor’s respective affiliates, officers, agents and employees or against its title in the Premises, arising out of, or in connection with, any alleged act or omission of the Lessee or any person claiming under, by, or through the Lessee. If it becomes necessary for the Lessor to defend any action seeking to impose any such liability, the Lessee will pay the Lessor all costs of court and attorneys’ fees incurred by the Lessor in effecting such defense in addition to all other sums that the Lessor may be called upon to pay by reason of the entry of a judgment against it in the litigation in which such claim is asserted.

Article X - Permitted Mortgages

10.1 Improvements Mortgage

Lessee shall have the right to subject only the Wind Energy Facilities and Improvements, or any part thereof, to one or more mortgages or deeds of trust, as security for construction or permanent mortgage loans related to the construction of Wind Energy Facilities and Improvements (“Permitted Mortgages”) provided that:

a. Such mortgage and all rights required under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Lease and in addition subject to all rights and interests of Lessor except as otherwise provided in this Lease;

b. Lessee shall give Lessor prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage and with a copy of any amendment or other modification or supplement to such documents;

c. Such mortgage contains a statement which disclaims any interest or lien against Lessor’s fee interest in the Demised Premises and which provides that Lessor shall have no liability whatsoever in connection with said mortgage or the instruments and obligations secured thereby; and,

d. Such mortgage provides that, in the event of any assignment of such mortgage or in the event of a change of address of the mortgagee, notice of the new name or address shall be provided to Lessor.

Only the Permitted Mortgages allowed by this Article are authorized, and in no event shall the Wind Energy Facilities and Improvements, or any part thereof, be otherwise encumbered by Lessee.

10.2 Default Notice

Lessor shall serve a copy of any notice of default under this Lease on a mortgagee identified to Lessor pursuant to subsection 10.1. The mortgagee shall have thirty (30) days after service of notice of default within which, at mortgagee's election, either:

- a. To cure the default if it can be cured by the payment or expenditure of money; or,
- b. If mortgagee does not elect to cure by the payment or expenditure of money, or if the default cannot be cured, to cause the prompt initiation of foreclosure, or other remedies available to the mortgagee under the terms of the Permitted Mortgage, to prosecute it diligently to conclusion, and to perform and comply with all other covenants and conditions of this Lease requiring the payment or expenditure of money by Lessee until the leasehold estate shall be released or reconveyed from the effect of the Permitted Mortgage or until it shall be transferred or assigned pursuant to or in lieu of foreclosure.

If Lessee defaults under the terms of any Permitted Mortgage and the mortgagee acquires Lessee's leasehold estate interest under this Lease, whether by exercising its power of sale, judicial foreclosure, or an assignment in lieu of foreclosure, the mortgagee shall be liable to perform Lessee's obligations only as above provided and only until the mortgagee assigns or transfers the leasehold as permitted by this Lease. Lessor agrees to waive obligations of Lessee herein contained following the mortgagee's acquisition, for such period of time as it takes mortgagee to secure a new lessee for the Demised Premises meeting all the qualifications of a permitted assignee as provided herein, conditioned on the following:

- a. Payments of all Rent, taxes, assessments, and insurance premiums required by this Lease to be paid by Lessee are current, or are brought current by mortgagee, and are kept current;
- b. Payments of all utility charges and assessments required to be paid by Lessee are current, or are brought current by mortgagee, and are kept current; and
- c. The mortgagee performs all Lessee's obligations, if any, for maintaining the Demised Premises in good order and repair.

10.3 Debt service

Lessee shall submit satisfactory evidence to the Lessor that the Gross Revenues less rental payments under this Lease during Phase 3 will not be less than one hundred percent 100% of the

debt service on an amount to be advanced under the Permitted Mortgages. As used herein, “Debt Service” means the monthly installment of principal and interest necessary to amortize the loan.

10.4 Refinancing

The Lessee may refinance a Permitted Mortgage periodically provided that all of the following conditions are met:

a. The new mortgage must provide for a sufficient principal amount to pay all the expenses of refinancing and the unpaid principal balance of the then existing Permitted mortgage;

b. The holder or mortgagee of the new mortgage must be an institutional lender such as a bank, trust company, savings and loan association, insurance company, pension fund or title insurance company, or other commercial business authorized and licensed to make mortgage loans in Idaho and in the county in which the Demised Premises is located;

c. The new mortgage shall provide for self-liquidation by its maturity date as a result of the application of the amortization payments provided for therein, shall not have a term exceeding one (1) year prior to the expiration of this Lease, and shall not bear interest at a rate in excess of the then prevailing rate of interest on similar institutional financing; and,

d. The new mortgage given for refinancing shall comply with the provisions this Lease, including the terms of subsections 10.1 to 10.3.

If the new permanent mortgage complies with the above conditions, the Lessee may execute, acknowledge, and deliver the new mortgage for the purpose of subjecting Lessee’s respective interests in the Wind Energy Facilities and Improvements to the lien thereof, and the new mortgage shall cover and be a lien on the Wind Energy Facilities and Improvements.

Article XI Payment of Expenses, Utilities and Taxes

11.1 Lessee’s obligations

Lessee shall pay, before any fine, penalty, interest, or cost may be added, become due, or be imposed for nonpayment thereof, the following: all taxes, assessments, water and sewer rents, rates and charges, transit taxes, charges for public utilities, excises, levies, impact fees, licenses and permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature, which at any time during the term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on, the Demised Premises, or any Wind Energy Facilities or Improvements thereon, or any part thereof or any appurtenance thereto, or otherwise arising out of the rent and income received by the Lessee from subtenants, any use or occupation of the Demised Premises, and such franchises as may be appurtenant to the use of the Demised Premises, or any document to which the Lessee is a party creating or transferring an interest or estate in the Demised Premises.

11.2 Mode of payment

The Lessee shall pay the taxes and other charges enumerated in this Article and deliver to the Lessor official receipts evidencing payment, at least thirty (30) days before the tax or obligation itself would become delinquent in accordance with the then applicable law governing such payments. If, however, the Lessee desires to contest the validity of any tax, tax claim or obligation, it may do so without being in default hereunder, provided it gives the Lessor written notice of its intention to contest the tax, claim or obligation, and also furnishes the Lessor with a bond made by a surety company qualified to do business in the State of Idaho, or pays cash to a recognized Escrow Agent in the County in which the Demised Premises is located, or as otherwise agreed in writing by Lessor, equal to one hundred sixty percent (160%) of the amount of the tax or obligation it intends to contest, conditioned to pay the tax or obligation when their validity has been determined. Lessee shall give Lessor the notice and post the bond (or cash equivalent) not later than sixty (60) days before the tax, item or obligation it proposes to contest would otherwise become delinquent.

11.3 Net Lease, Lessor Obligations Not Altered

This Lease is intended to be a "net lease" and Lessor shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with the ownership, construction, operation, maintenance, repair or reconstruction of Wind Energy Facilities or Improvements. Lessor is exempt from payment of federal and state and local taxes. Nothing herein shall require the Lessee to pay municipal, state, or federal income taxes or other tax of any nature or kind that may be assessed against the Lessor or Lessor's assigns.

11.4 Lessee's default

If Lessee fails, refuses, or neglects to make any payment required in this Article, the Lessor may do so. In that event, Lessee shall, upon Lessor's demand repay to it the amounts so paid, including reasonable attorneys' fees and all other expenses reasonably incurred because of or in connection with the payments, together with interest thereon at the Default Rate. The Lessor may collect or enforce any payment in the same manner as though it were an installment of Rent specifically required by the terms of the Lease to be paid by the Lessee, on the day when the Lessor demands repayment of or reimbursement therefor. However, the Lessor's election to pay the taxes or obligations shall not waive the Lessee's default.

Article XII - Liens

12.1 No Lien

The Lessee shall not subject the Lessor's interest in the Demised Premises to any mechanic's or material liens or other lien of any kind, except to the extent that the creation of such lien or liens is specifically authorized by a provision in this Lease.

12.2 Release of Lien

The Lessee shall not allow a lien or claim of any kind, except for Permitted Mortgages to be filed or claimed against the Lessor's interest in the Demised Premises during the continuance of this Lease. If such lien is claimed or filed, the Lessee shall cause the Demised Premises to be released from the claim within thirty (30) days after the Lessor is given written notice that a claim has been filed, or within thirty (30) days after the Lessor is given written notice of the

claim and transmits written notice of its receipt to the Lessee, whichever thirty (30) day period expires earlier. The Lessee will cause such release either by paying to the court the amount necessary to relieve and release the Premises from the claim, or in any other manner which, as a matter of law, will result, within the thirty (30) day period, in releasing the Lessor and its title from the claim.

Article XIII – Hazardous Materials

13.1 Hazardous Substances

Lessee will not cause or permit any Hazardous Substance to be brought upon, kept, used or generated by Lessee, its agents, employees, contractors or invitees on the Demised Premises, unless the use or generation of the Hazardous Substance is necessary for the prudent generation, conversion or transmission of electrical energy generated on the Demised Premises and no functional and reasonably economic nonhazardous substance or process which does not generate Hazardous Substances can be used in place of the Hazardous Substance or the process which generates the Hazardous Substances. Other than for maintenance of inventories necessary for the prudent generation, conversion or transmission of electrical energy generated on the Demised Premises, Lessee will not cause or permit long-term storage of Hazardous Substances on the Demised Premises.

13.2 Environmental Laws

With respect to the Demised Premises Lessee will at all times and in all respects comply with all Environmental Laws. Lessee's duty of compliance with Environmental Laws includes, without limitation, the duty to undertake the following specific actions:

a. Lessee will, at its own expense, procure, maintain in effect, and comply with all conditions of any and all Governmental Approvals required by all Environmental Laws, including, without limitation, permits required for discharge of appropriately treated Hazardous Substances into the ambient air or any sanitary sewers serving the Project; and

b. Except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, any and all Hazardous Substances to be treated or disposed by Lessee from the Leased Premises will be removed and transported solely by duly licensed transporters to a duly licensed treatment or disposal facility for final treatment or disposal.

Article XIV – Assignment and Subleasing

14.1 Prior Approval Required

Lessee shall not have the right to assign or sublease all or any part of this Lease without Lessor's prior written consent. Any attempted assignment or sublease shall be null and void and shall constitute a default under this Lease. Approval of assignment or sublease shall be in the sole discretion of Lessor. Lessor, in determining whether to consent to a requested assignment, may require submission of information concerning the proposed assignee or sublessee's experience and abilities to plan, develop, operate and decommission the Wind Energy Facilities and other Improvements.

14.2 Terms

Any assignment or sublease shall be subject to all terms of this Lease, including termination of Lessee's interest under this Lease, and shall require Lessor's prior written approval of the terms and conditions of the assignment or sublease. Lessee's making of any assignment, mortgage, pledge, encumbrance or subletting, in whole or in part, shall not relieve Lessee for the performance of every term, condition and obligation contained in this Lease unless a written release is granted by Lessor, which release shall be at Lessor's sole discretion.

14.3. Limited Consent

Any consent by Lessor herein contained or hereafter given to any act or assignment, shall be held to apply only to the specific transaction hereby or thereby approved. Such consent shall not be construed as a waiver of the duty of Lessee, or its successors or assigns, to obtain from Lessor a consent to any other or subsequent assignment, mortgage or encumbrance or as a modification or limitation of the right of Lessor with respect to the foregoing covenant by Lessee.

Article 15 - Miscellaneous

15.1 Governing Law

All of the rights and remedies of the parties shall be governed by the provisions of this instrument and by the laws of the State of Idaho. Any action brought to enforce this Lease can only be brought in Idaho State Court in the county where the Demised Premises is located or Ada County Idaho.

15.2 Cumulative Remedies

During the continuance of the Lease, the Lessor shall have all rights and remedies which this Lease and the laws of the State of Idaho assure to it. All rights and remedies accruing to the Lessor shall be cumulative; that is, the Lessor may pursue all rights that the law and this Lease afford to it, in whatever order the Lessor desires and the law permits without being compelled to resort to any one remedy in advance of any other.

15.3 Force Majeure

If the Lessor or Lessee is delayed, hindered, or prevented from performing any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive government laws or regulations, riots, insurrection, the act, failure to act or default of the other party, war, or other reason beyond its control, then performance of the act shall be excused for the period of the delay. In that event, the period for the performance of the act shall be extended for a period equivalent to the period of the delay. Lessee's financial condition shall not be an event of force majeure.

15.4 Officials, Agents, and Employees Not Personally Liable

In no event shall any official, officer, employee or agency of Lessor, or of the State of Idaho, be in any way liable or responsible for any covenant or agreement herein contained, whether expressed or implied, nor for any statement, representation or warranty made herein or in any way connected with this Ground Lease. In particular, and without limitation of the foregoing, no full-time or part-time agent or employee of Lessor shall have any personal liability or

responsibility hereunder, and the sole responsibility and liability for the performance of this Lease and all of the provisions and covenants herein contained pertaining to the Lessor shall rest in and be vested with the State of Idaho.

15.5 Covenants Running with Land; Binding Effect

All covenants, conditions, and obligations contained herein or implied by law are covenants running with the land and shall attach and bind and inure to the benefit of the Lessor and Lessee and their respective heirs, legal representatives, successors, and assigns, except as otherwise provided herein.

15.6 Non-waiver

No waiver of a breach of any covenant in this Lease shall be construed to be a waiver of any succeeding breach of the same covenant. No delay or failure by either party to exercise any right under this Lease, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

15.7 Written Modifications

No modification, release, discharge, change or waiver of any provision hereof shall be of any force, effect, or value unless signed in writing by the Lessor, or its duly authorized agent or attorney.

15.8 Entire Agreement

This Lease contains the entire agreement between parties. The execution hereof has not been induced by either party by representations, promises, or understandings not expressed herein. There are no collateral agreements, stipulations, promises, or undertakings whatsoever upon the respective parties in any way touching the subject matter of this instrument which are not expressly contained in it.

15.9 Notices

All notices between the parties in connection with this Lease shall be in accordance with its terms. Notice shall be given by registered or certified mail, deposited in the United States mails with postage prepaid. The notices shall be addressed as follows:

For the Lessor:

Idaho Department of Lands
300 North 6th Street, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050

For the Lessee:

As set forth on the Cover Sheet

Either party may change the place for giving notice by written notice in the manner set forth in this subsection.

15.10 Joint liability

If the Lessee consist of more than one person, such persons shall be jointly and severally liable on the covenants of this Lease.

15.11 Binding Effect

This Lease shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

15.12 Severability

In the event any provision of this Lease shall be held invalid or unenforceable according to law, the validity, legality or enforceability of the remaining provisions and the application thereof shall not in any way be affected or impaired.

15.13 Headings

Headings in this Lease are for convenience and reference only and shall not be used to interpret or construe its provisions.

15.14 Time of Essence

Time is expressly declared to be of the essence of this Lease.