



ELMORE ALTERNATIVE ENERGY

Elmore County, Idaho

REQUEST FOR PROPOSALS **FOR ALTERNATIVE ENERGY LEASE** **OF STATE ENDOWMENT TRUST LAND**

DEADLINE TO SUBMIT COMPLETED REQUEST FOR
PROPOSAL – SEPTEMBER 1, 2020

1. INTRODUCTION

1.1 Background

Idaho Department of Lands (“IDL”) functions in 16 offices throughout the state and manages more than 2.4 million acres of State Endowment Trust Lands (the “Endowments”). The Endowments are managed under a Constitutional mandate for the Idaho State Board of Land Commissioners (“Land Board”) to maximize long-term financial returns to endowment beneficiaries. To learn more about our agency, mission, vision, and values, please visit our website at <https://www.idl.idaho.gov/about-us/>.

1.2 Objective

IDL is issuing this Request for Proposal (“RFP”) with the purpose of selecting one or more ground lease tenants for the property known as Elmore Alternative Energy, located in Elmore County, Idaho.

1.3 Proposed Leased Premises

The leased premises the subject of this RFP (“leased premises”), are state endowment lands and are more particularly described as follows:

Legal Description

Township 04S Range 08E,
SEC 3, S1/2
SEC 4, ALL
SEC 9, ALL
SEC10, ALL
SEC11, N1/2, N1/2S1/2, S1/2SW1/4, SW1/4SE1/4
SEC14, W1/2
SEC15, E1/2
SEC16, ALL
SEC21, ALL
SEC22, NE1/4
SEC23, NW1/4
SEC28, ALL
SEC33, ALL

The above described lands contain approximately 6,310 acres. A map of the proposed site is included as Attachment 3.

1.4 Project Manager

The project manager for this project is Joshua Purkiss. For information concerning the RFP, please direct your questions to him using the Questions or Modification Proposal Form (Attachment 1). His contact information is:

Joshua Purkiss, Real Estate Services Program Manager
Department of Lands, Director’s Office
300 N. 6th St, Suite #103
Boise, Idaho 83720
208-334-0257

jpurkiss@idl.idaho.gov

1.5 Instructions

It is the responsibility of each party submitting a proposal (“Proposer”) to follow the format required in the RFP. When preparing your response, provide complete answers and descriptions and submit your response on time.

1.6 Proposal Requirements

- Transmittal Letter which lists the full and complete legal name (including state of origin is legal entity) and address of the Proposer, and contact information for an authorized representative who can be contacted by the IDL concerning the proposal.
- If the Proposer is a corporation or other legal entity, or is signing on behalf of another individual, the person signing any proposal on behalf of any such legal entity or other individual must provide proof of authorization to sign on behalf of any such corporation, legal entity or individual. Proof of authorization might include statutory authority to sign in the capacity as an officer of a corporation, or as a member or manager of a limited liability company; by a resolution of the entity authorizing such individual, or by power of attorney.
- Detailed responses to sections 4.1, 4.2, 5.1, 5.2, & 6.1.
- Provide three hardcopy proposals and one digital copy to the Project Manager.
- Nonrefundable Application Fee of \$250

2. **RFP INFORMATION**

2.1 Authority

This RFP is issued under Title 58, chapters 1 and 3, Idaho Code (including §58-101), giving IDL the authority to act on behalf of the Land Board.

2.2 Costs of Preparing Proposal

It is the responsibility of the successful Proposer to finance, or obtain private financing for all costs associated with the design, construction, and operation of the proposal. The Proposer assumes the risk of loss in the submission of any proposal or its operation. IDL is not liable or responsible for any costs or consequential damages incurred by Proposers in proposal preparation, negotiations, or any other costs that may result from activities in connection with the proposal.

2.3 Questions or Modifications of the Lease Proposal

Questions about this RFP must be received in writing utilizing Attachment 1 submitted by email to jpurkiss@idl.idaho.gov. The deadline for receiving questions is 5:00 p.m., MST, on August 14, 2020

2.4 Confidential Information Exempt from Disclosure

All proposals and submitted materials become public records and the property of IDL. Public records are subject to the Idaho Public Records Law (Idaho Code §§ 74-101 et seq.); and, potentially subject to public disclosure pursuant to a public records request in accordance with the Idaho Public Records Law. In order for information in the proposal or

submitted materials to be exempt from disclosure, the information must qualify as an express exemption set forth in the Idaho Public Records Law, specifically I.C. §§ 74-105 through 74-112. The most common information which may be exempt from public disclosure under a public records request are “trade secrets” as defined in I.C § 74-107(1). All confidential information exempt from disclosure must be specifically listed on the Dedicated Confidential Exhibit Form (Attachment 2), and must specifically identify the type of exemption claimed and the statutory reference in the Idaho Public Records Law authorizing such exemption; and, in addition, must provide a specific reference to where any such information is contained in the proposal. It shall be the Proposer’s responsibility to see that all exempt confidential information is properly listed and identified on the Dedicated Confidential Exhibit. As such, all information in the proposal, other than the exempt confidential information listed on the Dedicated Confidential Exhibit Form which shall be redacted, shall be subject to a public records request. Any claim by the Proposer that confidential information is exempt from disclosure, including a claim that such information constitutes a trade secret, will be reviewed by IDL’s legal counsel. All information deemed not to be subject to a valid exemption under the Idaho Public Records Law shall be subject to a public records request. Upon receipt of a valid public records request, IDL will attempt to notify the Proposer prior to responding to the public records request. If IDL believes any claimed exempt confidential information does not appear to qualify as exempt from disclosure contrary to Proposer’s belief, or if any legal action is brought seeking to require the disclosure of any such claimed exempt information, then prior to IDL’s disclosure of any such information to the public records request, IDL will notify Proposer of such potential conflict; and if Proposer still believes that any such information is exempt from disclosure, it shall be incumbent on Proposer to obtain, within ten (10) days of the public records request, a protective order or other appropriate order from a court of competent jurisdiction enjoining IDL’s duty to disclose any such claimed confidential information in response to a public records request until such issue may otherwise be litigated or otherwise determined by said court. See Attachment 2 for more details.

2.5 Lease Format and Term

After a proposal is selected by IDL, or more than one proposal is selected in the event the proposals and proposed uses may be compatible, IDL shall draft a lease acceptable to IDL, with input from any such Proposer; provided however, that the terms and conditions of any lease (including a term of up to 49 years, which term may be divided into development, construction, production and decommission phases) offered by IDL shall ultimately be determined by IDL in its sole discretion. A sample lease agreement is attached as Exhibit 4 to this RFP. Once a lease is finalized, IDL will submit the lease to IDL’s advertisement, application and auction process in accordance with Idaho Constitution, Art IX, § 8; and I.C § 58-310. Following IDL’s application and auction process, IDL may issue a lease to the successful applicant or successful bidder.

2.6 Compatibility with Lease Terms

Prior to offering a lease, IDL reserves the right to request additional information and data from Proposer in order to ascertain the proposal’s compatibility with the terms of the lease

and to modify or impose specific lease terms and conditions based on Proposer, the proposed use, or the proposal.

2.7 Interviews

Proposers selected for final evaluation may be required to present their proposal and answer questions to clarify their proposal to ensure mutual understanding.

2.8 Evaluation

Proposals not provided in the correct format or incomplete proposals will complicate the evaluation and comparison process and may, therefore, be declared non-responsive. The evaluation process is further explained in section 7.

2.9 Auction

Any interested applicant that is qualified to participate in the auction, will be required to pay the application fee to participate in the auction.

If there are no conflict applicants or competitive bidders after the auction is advertised, the lease terms may be considered final and the lease may be issued.

2.10 Land Board

IDL reserves the right to present any selected proposal and lease, as well as the results from any auction, to the Land Board for approval at a regular monthly meeting. This requirement may delay or halt the awarding of a proposal or lease execution. If a proposal or lease is not approved by the Land Board, the bid deposit will be refunded to the Proposer.

2.11 Contract Execution

An alternative energy lease will be drafted with input from the highest scoring Proposer if it is determined to be in the best interests of the Endowments as determined by the IDL and/or the Land Board. The highest scoring Proposer will be provided 60 days to provide input into the draft of the lease and accept the terms of the lease. If the highest scoring Proposer does not agree to, and execute, the final lease document within 60 days, then IDL may, in its discretion, move to the next highest scoring Proposer, extend the time period for negotiating the lease, cancel the RFP, or put the RFP out for rebid. If multiple proposals are compatible, then IDL may choose more than one proposal if IDL believes such proposals are in the best interests of the Endowments; IDL would work with each such Proposer to develop such leases.

2.12 Environmental Impacts

Proposer guarantees that all items provided by Proposer in the response and performance of this RFP meet or exceed all applicable federal, state and local laws, rules, regulations and ordinances, including, but not limited to, all applicable requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection Agency, or other applicable regulatory agencies; and Proposer agrees to defend and hold harmless the State and IDL for any such reliance thereon.

2.13 State's Rights Reserved

IDL reserves the right to reject any and all bids if the proposal is not in the best interest of the State and the Endowments, and the right to reoffer the tract for lease if the bids received are not acceptable to the IDL and the Land Board.

3. LIMITATIONS

3.1 Lease Proposal Limitations

- a. The use of the leased premises must not reduce the value of the leased premises.
- b. The storage or disposal of any toxic, hazardous or deleterious substances must comply with all applicable federal, state and local laws, rules, regulations and ordinances.
- c. The use of the leased premises must comply with all applicable federal, state and local laws, rules, regulations and ordinances. It is the sole responsibility of Proposer to ensure that the proposal and proposed use of the leased premises meet all applicable federal, state and local laws, rules, regulations and ordinances.
- d. If Proposer is awarded and executes the lease, then Proposer, as "lessee", will be solely responsible for all costs and expenses incurred or to be incurred in the design, development, construction, operation, and maintenance of any and all improvements upon the leased premises. Neither IDL, the Land Board, the state of Idaho, nor any other board or agency of the state will be held liable or responsible for any costs or expenses incurred or to be incurred, including, but not limited to, the costs and expenses incurred or which may be incurred in the preparation of any proposal, negotiation for lease, procurement of financing, or operations under the lease.
- e. If site development results in excess native materials (topsoil, fill dirt, boulders, etc.), IDL may, within the terms of the lease agreement: 1) reserve those materials and require transport of materials to a designated stockpile area on nearby state endowment land; 2) establish a market price and sell the material for use elsewhere; or, 3) require lessee to remove the material for off-site disposal.
- f. Lessee will be responsible for the payment of all taxes, assessments, levies, fees, and other charges assessed or levied upon the leasehold interest or upon any property owned by lessee, in addition to any applicable income and beneficial use taxes. Lessee will also be responsible for payment of any and all Special Improvement District (SID) or Rural Improvement District (RID) fees that may be assessed.
- g. Any proposal not meeting these limitations or other criteria set out in this offering may be rejected as non-responsive at the discretion of IDL or the Land Board.
- h. IDL reserves the right to waive technical defects in this RFP in its discretion.

- i. Upon expiration or cancellation of the lease, IDL reserves the right to require lessee to remove and or reclaim all improvements constructed on the parcel during the term of the lease, at the expense of lessee.
- j. Prior to the commencement of the construction phase of the lease, lessee will be required to post bonds, sureties, guarantees, or a letter of credit sufficient to ensure that the commercial uses and activities will be conducted as proposed, with no harm to the financial interests of the endowment beneficiaries. Leases that include the use of a hazardous substance must be bonded to ensure cleanup of the hazardous substance in the event of a spill or other contamination event that assures the protection of public health, safety, and welfare of the environment in a manner that protects the long-term financial interest of the endowment beneficiaries.
- k. IDL reserves the right to request additional information and data from Proposer to ascertain Proposer's capabilities and desire to develop the leased premises. Any request for information by IDL to Proposer is to assist IDL to better understand the proposal. Such a request for additional information shall not be considered to constitute a binding agreement or commitment by IDL in any manner.

4. QUALIFICATIONS

4.1 Statement of Qualifications

Each Proposer shall list and describe Proposer's business entity structure, including its officers, members, managers, general partners, managing entity, and key employees that will directly oversee the development, operation, and maintenance of the proposed project. The proposal shall include a separate statement of qualifications for each of such individual and key employee, as well as the primary duties of each key employee. Each statement of qualifications must discuss the person's training, experience, and education that relates to the proposed project. Proposer may provide names and addresses of references. In any instance where a proposal indicates that separate legal entities will possess combined management, fiscal, or legal responsibilities, Proposer shall describe the legal relationship between the entities, including any such entity's structure, including its officers, members, managers, general partners, managing entity, and key employees that will directly oversee the development, operation, and maintenance of any portion of the proposed project, as well as the statements of qualifications set forth above. In addition, if Proposer is a legal entity, then Proposer shall identify the state of origin, provide a copy of any organizational document, articles of incorporation, operating agreement, or other similar documentation, including, but not limited to, certificates of authority to do business in Idaho, and any applicable certificates of good standing with the Secretary of State's office in Idaho as well as any other state in which any such business entity originated.

4.2 Financial Ability and Cash Flow Analysis

Before accepting any proposal for an alternative energy lease and prior to the execution of any such lease, IDL shall establish to its satisfaction, the financial capability of Proposer and the legal authority of Proposer to conduct business in the state.

The proposal must include:

1. Financial Ability of Proposer
 - a. Statement of net worth.
 - b. Profit and loss statement dated within 90 days of the RFP release date.
 - c. Disclosure of any past bankruptcy or loan defaults.
 - d. Operating agreement (when applicable)
2. Cash Flow Analysis
 - a. Pro forma forecasting income, costs and debt service, and earnings for the first ten years of the operation of the proposed project, along with a discussion of the economic assumptions upon which the projections are based.
3. Experience
 - a. Proposer shall provide evidence of experience in the field that is being proposed for the endowment land.
4. Project Commitment
 - a. Reasonable estimate of number of acres proposal may reasonably require. This information will be used by IDL to assess whether multiple projects can make use of the area of the leased premises, in which event any given lease may specify a smaller number of acres or area different than the total available acreage and area of the leased premises identified herein.
 - b. Describe the status of discussions or agreements for interconnection with Idaho Power and due diligence that has been committed to the development of the site.

5. PROPOSED DEVELOPMENT

5.1 Summary of Proposal

Proposer shall provide the following information in a summary of the proposal:

1. Description of proposed use;
2. Estimate of number of actual acres reasonably required for proposed use;
3. Compatibility of proposed project with surrounding uses;
4. Compatibility of proposed project with other alternative energy projects generally; and
5. Acknowledgment of responsibility for payment of all costs associated with developing the project on the leased premises.

5.2 Site Plan, Construction, and Operation

All proposed buildings, infrastructure, landscaping and other improvements to the leased premises must conform to all land use regulations of the appropriate jurisdictional authority. Proposals must be planned with adequate access, drainage, and storm water run-off retention to meet any jurisdictional authority's requirements.

1. Proposer shall include a map of the land that they desire to lease.
2. Proposer shall include conceptual plans of the following:
 - a. Proposed uses, location, and scale;

- b. Prelim location of buildings, heights, and proposed location of turbines or solar panels;
 - c. Location of roads and sidewalks;
 - d. Landscape and lighting plan;
 - e. All other infrastructure to be installed including, but not limited to, substation, laydown area, water, sanitary, and storm sewer, pipes, power transmission lines;
 - f. Phasing plan, to include development, construction, operation and decommissioning phase timeframes; and
 - g. Estimated cost of proposed improvements to the site.
3. Proposer shall include the proposed reclamation plan upon decommissioning of the site.

IDL retains site plan review, approval authority, and the right to require additional development standards above local standards, as per lease terms.

6. LEASE FEE

6.1 Proposed Lease Fees

1. Development Phase Rent - The minimum annual base rent during the Development Phase is calculated by applying the minimum lease rate per acre to the total lease area. A minimum annual rent escalator will apply to the account for changing land values and inflationary factors. A response to this section must include a fee schedule table similar to Attachment 5.
2. Construction Phase Rent – The minimum Construction Phase rent cannot be less than the Development Phase rent. The proposal shall include a Construction Phase annual rental fee on a per megawatt (MW) installed nameplate capacity of the turbines or solar panels.
3. Operation Phase Rent – The Operation Phase rent is the greater of the following:
 - a. Royalty rental fee based on a percent of gross annual revenues of the renewable energy facilities located on the proposed site.
 - b. Annual rental fee based on a set dollar amount per MW of installed nameplate capacity from energy generation facilities located on the proposed site. The annual rental fee per MW must include a rent escalator to account for changing land values and inflationary factors.
4. Decommission Phase – The minimum annual base rent during the Decommission Phase is calculated by applying the minimum lease rate percentage to the land value. The proposal shall include a Decommission Phase annual rental fee in the form of a percentage of the appraised value as described in section 6.2.

6.2 Market Value Appraisal

During the Decommission Phase, the new market value of the real estate is based on a new MAI appraisal of the land only. The appraisal will not include the value of the improvements.

7. PROPOSAL EVALUATION

7.1 Evaluation of Proposals

Proposals that are determined to be responsive (submitted by September 1, 2020 with all deliverables, in the correct format, and with all required information) will be evaluated to determine how closely the RFP meets IDL's requirements. Evaluation and scoring of RFP's will be conducted beginning September 3, 2020. A nonresponsive proposal will not be scored.

When the RFP's are evaluated, the points awarded for each component will be based on the Proposer's response to the RFP criteria. The total points awarded for each component will be added together to create the final scores. The evaluation components, including the maximum points that may be awarded, are as follows:

- | | |
|---|-----|
| 1. Statement of Qualifications, Training, Experience, Education, and Financial Ability of the company submitting the proposal | 300 |
| 2. Site Plan | 100 |
| 3. Length of Development Phase (shorter development period is preferred) | 100 |
| 4. Proposed lease and Fees | 500 |

The RFP will be considered nonresponsive if items 1-4 are not included in the proposal. Lack of response to any items listed under 5 will affect the overall points score of the submission:

1. Transmittal Letter
2. Proof of authorization to sign on behalf of another or corporation
3. Three hardcopy proposals and one digital copy of the proposal
4. Non-refundable Application Fee
5. Detailed responses to Sections 4.1, 4.2, 5.1, 5.2, & 6.1.

ATTACHMENT 1

QUESTIONS OR MODIFICATIONS PROPOSAL FORM

PLEASE DO NOT IDENTIFY YOUR NAME OR YOUR COMPANY'S NAME OR PRODUCT NAMES OF INTELLECTUAL PROPERTY IN YOUR QUESTIONS.

ADD ROWS BY HITTING THE TAB KEY WHILE WITHIN THE TABLE AND WITHIN THE FINAL ROW.

The following instructions must be followed when submitting questions using the question format on the following page.

1. DO NOT CHANGE THE FORMAT OR FONT. Do not bold your questions or change the color of the font.
2. Enter the RFP section number that the question is for in the "RFP Section" field (column 2). If the question is a general question not related to a specific RFP section, enter "General" in column 2. If the question is in regards to a State Term and Condition or a Special Term and Condition, state the clause number in column 2. If the question is in regard to an attachment, enter the attachment identifier (example "Attachment A") in the "RFP Section" (column 2), and the attachment page number in the "RFP page" field (column 3).
3. Once completed, this form is to be e-mailed per the instructions in the RFP. The e-mail subject line is to state the RFP number followed by "Questions."

ALTERNATIVE ENERGY GROUND LEASE ON STATE ENDOWMENT TRUST LAND

Question Number	RFP Section	RFP Page	Question
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

Questions Due: August 14,2020 at 5PM MST

ATTACHMENT 2

DEDICATED CONFIDENTIAL MATERIALS EXHIBIT FORM

I. PROCEDURE FOR CONFIDENTIAL TREATMENT OF MATERIAL SUBMITTED.

All confidential filings: Please attach this request form to each material requested for confidential treatment. The request form itself is not confidential and is a public record. Any request for confidential handling, including trade secrets will be reviewed for confidentiality by Idaho Department of Lands (“IDL”) Legal Counsel before further consideration of the material to which the request relates. **In general, requests for confidential treatment will be strongly disfavored and granted only for extraordinarily compelling reasons.** IDL will promptly notify the Proposer of the extent to which IDL is willing to agree to treat the designated material in as confidential and the manner in which IDL is willing to handle that material, requesting a response from the Proposer within two business days. If IDL is not willing to agree to the Proposer's request for confidential handling in its entirety, IDL and the Proposer will discuss the matter in an effort to reach a written agreement on the confidential treatment of materials. Only a written agreement, signed by IDL, will be binding on IDL.

II. REQUEST FOR CONFIDENTIAL TREATMENT.

Proposer’s Name: _____

Address: _____

Phone: _____

Email: _____

- 1. What is the Title, date, and description (including number of pages) of the information for which you request confidential designation?**

- 2. Specify the part(s) of the information for which you request confidential designation.**

3. **State the provision(s) of the Public Records Act (Idaho Code §74-106) or other law that allows the Idaho Department of Lands to keep the information confidential, and explain why the provision(s) apply to that material.**

4. **Discuss the public interest in nondisclosure of the material submitted for a confidential designation. If the material contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, please state how it would be lost, the value of the information and the ease or difficulty with which the information could be legitimately acquired or duplicated by others.**

5. **State whether the information can be disclosed if it is aggregated with other information or masked to conceal certain portions (including but not limited to the identity of the Proposer). State the degree of aggregation or masking required. If the information cannot be disclosed even if aggregated or masked, explain why?**

6. **State how the material is kept confidential by the Proposer and whether it has even been disclosed to a person other than an employee of the Proposer. If it has, explain the circumstances under which disclosure occurred.**

7. State other restrictions on disclosure, use, and handling of the material requested.

By signing this Dedicated Confidential Materials Exhibit, the undersigned certifies that he or she has authority to do so on behalf the Proposer. The undersigned agrees to the procedure described in section I of this statement and that there is no claim to confidential treatment for any material submitted by Proposer not clearly identified and marked "CONFIDENTIAL."

Dated: _____

Signed: _____

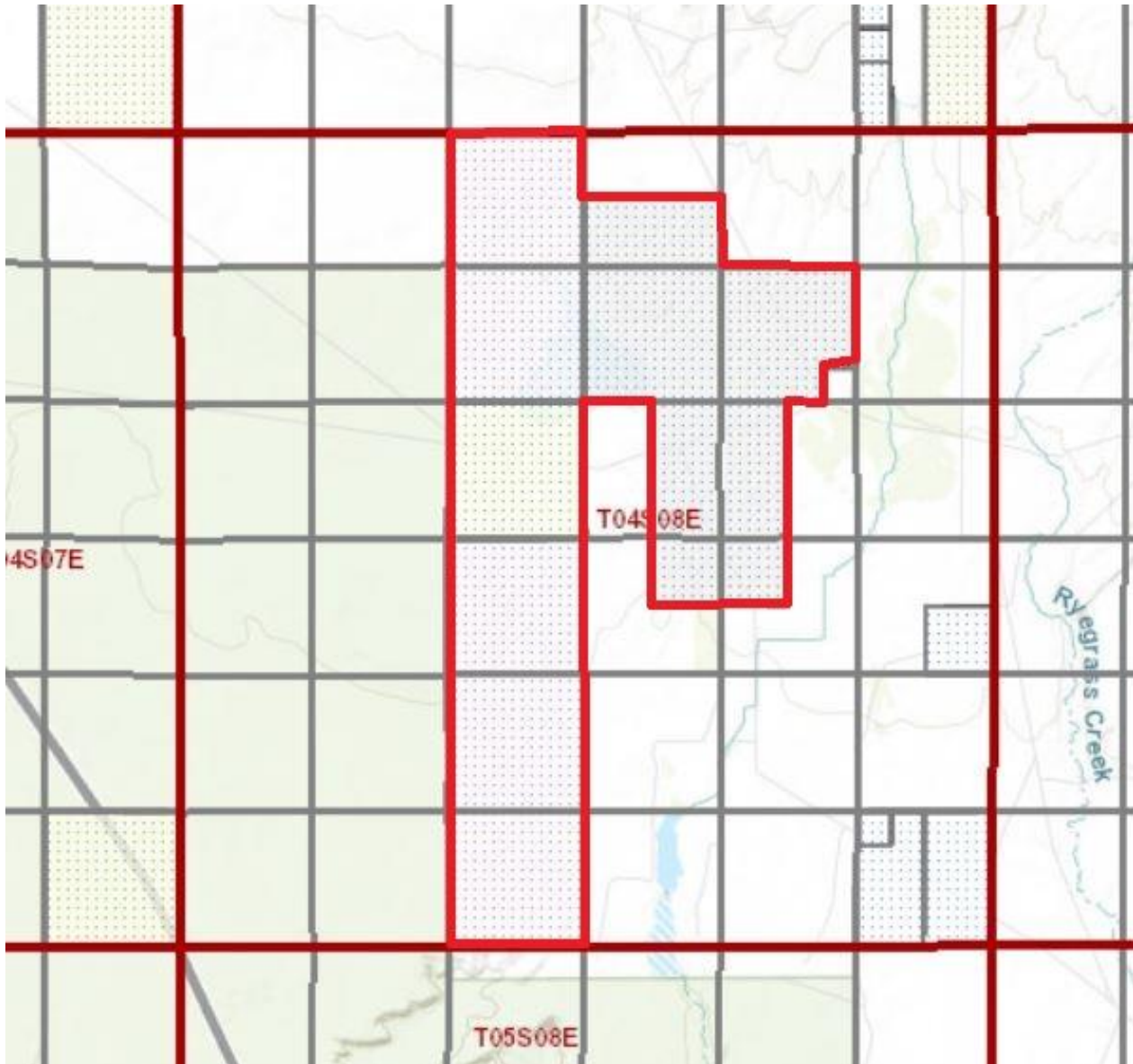
Name (print or type): _____

Title: (print or type): _____

Representing: _____

**ATTACHMENT 3
Map of Proposed Site**

T04S, R08E
Elmore County



**ATTACHMENT 4
Draft Lease Agreement**



**DRAFT COMMERCIAL LEASE
ENERGY RESOURCES**

No. XXXXXX

LESSEE(S), FULL LEGAL NAME(S)

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COMMERCIAL LEASE ENERGY RESOURCES-WIND

No. XXXXXX

This Lease for Wind Energy Development and Production (“Lease”) is made and entered by and between the State of Idaho, by and through the Idaho State Board of Land Commissioners, acting by and through the Department of Lands (“Lessor”), and _____, a _____ company (“Lessee”) authorized to do business in Idaho, collectively referred to herein as the “Parties” or individually as “Party”. In consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

ARTICLE I - DEFINITIONS

The following terms, together with forms of the following terms in capital letters or otherwise, except where the context indicates otherwise, shall have the respective meanings set forth below.

“Affiliated Party” means a subsidiary, parent, or any other entity that Lessee or an owner of Lessee has a financial interest in, by stock ownership of ten percent (10%) or more.

“Commencement Date” shall mean the date of execution of the Lease by all Parties (it being understood that Lessor shall not execute the Lease until after the Lease has been approved by the Idaho State Board of Land Commissioners).

“Convert” shall mean the conversion of kinetic energy in the wind by the wind energy turbine into electricity.

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

“Deliver” shall mean the delivery of electricity from the Wind Energy Facilities to the transmission grid.

“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 Lessee’s activities pursuant to this Lease, including, but not limited to, the construction, use, operation, placement, replacement, removal or discontinuance of the Wind Energy Facilities and Improvements or Lessee’s execution, delivery, or performance of this Lease.

“Gross Annual Revenue” shall mean the aggregate total revenue in money and the value of any other consideration actually received by Lessee or a sub-lessee during a calendar year from the following: the sale, to any purchaser or Affiliated Party, of electrical energy generated by Wind Energy Facilities on the Leased 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; payments 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 Leased Premises; proceeds from Lessee’s business interruption insurance required under the terms of this Lease, where such proceeds represent lost income from the production or conversion of electrical energy on the Leased Premises. Gross Annual Revenue 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 Leased Premises to Lessee for internal uses (recognizing that electrical energy used to operate the wind power devices is not an internal use) or to a subsidiary or affiliate of Lessee, the revenue for the purposes of calculating Gross Annual Revenue shall be calculated to include 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 all buildings, structures, roads, supporting structures and towers, platforms and footings, electrical transformers and substations, electrical distribution and transmission lines, interconnection facilities, meteorological towers, water wells, any signage or advertising structures, and any associated equipment needed for electricity production, and

related equipment, and staging areas for the construction, installation, operation, and maintenance of any such improvements constructed, installed, erected, or affixed by Lessee, or caused to be installed, erected, or affixed by Lessee or its agents, contractors or subcontractors on the Leased Premises. All materials used for the construction, reconstruction, alteration or repair of any such Improvements now or hereafter constructed, installed, erected, or affixed, upon the Leased Premises shall be deemed to be included as Improvements immediately upon their use, attachment or connection with any of the Improvements upon the Leased Premises.

“Installed Capacity” means the aggregate megawatt capacity for the Wind Energy Facilities located on the Leased Premises (expressed in MW).

“Lease Year” shall mean the period between midnight on the Commencement Date or the anniversary of the Commencement Date, as applicable, and the moment immediately preceding midnight on the day before the next anniversary of the Commencement Date.

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

“Production Area” shall mean the portion of the Leased Premises associated with wind energy turbines specified in the “Development Plan” described in Article VI as directly engaged in the production of wind energy and the conversion of wind energy to 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 all of the amounts to be paid by Lessee to Lessor in accordance with Article V.

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

“Supporting Area” shall mean the portion of the Leased Premises specified in the Development Plan described in Article VI as generally supporting Lessee’s activities on the Leased Premises and being used by Lessee, such as roads, operation and management facilities, and the transmission or storage of electrical energy; constructing, installing, using, replacing, relocating, maintaining, and removing Wind Energy Facilities from the Leased Premises; collecting and transmitting; but not in use for the production of wind energy or the conversion of wind energy to electrical energy.

“Use Agreement” sometimes referred to as a “Power Purchase Agreement” shall mean an agreement to sell electrical energy converted from wind energy on the Leased Premises to a third party; an agreement or all required governmental permissions or agreements to distribute electrical energy converted from wind energy on the Leased 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 Leased Premises for internal purposes of Lessee.

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

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

ARTICLE II - Leased Premises

2.1 Lessor’s Demise.

2.1.1 Demise.

Lessor does hereby lease and demise unto Lessee, at the rate and for the use specified herein, the lands particularly described in Attachment A, which is incorporated herein by this reference, (the “Leased Premises”) subject to the terms, covenants, restrictions and conditions of this Lease.

2.1.2 Conditions of Demise.

The demise is made subject to the following:

A. The Leased Premises are leased subject to 1) the rights of any party in possession thereof; 2) the state of the title thereof as of the Commencement Date; 3) any state of facts which an accurate survey or physical inspection thereof might show; 4) all conditions, restrictions, and limitations now appearing of record; 5) all applicable laws, rules and regulations; 6) all existing encumbrances, if any; and 7) Lessor’s reservations set forth in Section 2.3, and

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

2.1.3 No Representation or Warranty.

Lessee acknowledges that neither Lessor, nor any agent or designee of Lessor, has made any representation or warranty with respect to the Leased Premises or concerning the suitability of the Leased Premises for the uses intended by Lessee. Lessee acknowledges that it has accepted the Leased Premises in an "AS IS CONDITION," accepting any and all known or unknown faults therein subject only to the terms of Section 2.4 below regarding Lessee’s due diligence. Lessor disclaims any and all warranties of merchantability, suitability, or fitness for a particular purpose and any other warranty not expressly set forth in this Lease.

Lessor does not represent or warrant that the Leased Premises is free of encumbrances, liens or prior rights. Lessee has examined the title to the Leased Premises and has found the same satisfactory.

The provisions of this section shall survive the expiration or earlier termination of this Lease.

2.1.4 Lessee's Costs

Lessee acknowledges that all costs to develop the Leased Premises for its intended use are the responsibility of Lessee. Lessor shall not contribute financially to Lessee's costs of development or construction.

2.2 Lessee's Use of the Leased Premises.

2.2.1 Permitted Uses.

Lessee's use of the Leased Premises shall be for Wind Energy Purposes, subject to the reservations in Section 2.3.

2.2.2 No Waste or Nuisance.

Lessee shall not use the Leased Premises in any manner that would constitute waste or a nuisance, nor shall Lessee allow the same to be committed thereon. Lessee shall not excavate or remove material from the Leased Premises, nor deposit material upon the Leased Premises other than as is necessary for the construction of Wind Energy Facilities and Improvements on the Leased Premises according to the approved Development Plan. The natural characteristics of the Leased Premises, including, but not limited to, the topographical, hydrological and natural drainage shall be considered and preserved to the greatest extent possible when reasonably determined by Lessor to be in the best interest of the Leased Premises. Excavation or deposit of material for construction of Wind Energy Facilities or Improvements on the Leased 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 shall be allowed. Only clean, non-contaminated, natural fill material may be brought onto the Leased Premises. Lessee shall address disposition of material excavated from the Leased Premises in the Development Plan described in Section 6.3.

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, and licenses which now or at any time hereafter may be materially applicable to the Leased Premises or any part thereof, or to any adjoining waterways, roads, sidewalks, streets, or walkways to the extent applicable to Lessee or Lessee's activities or to any material use or condition of the Leased Premises or any part thereof; provided however, that with respect to local planning and zoning ordinances, in accordance with Idaho Code § 58-307(4), Lessee and Lessor shall have consulted with the county commissioners of the county in which the Leased Premises are located before the Commencement Date; 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; and, the Idaho Department of Lands shall have held a hearing in the county in which the Leased Premises are located.

2.2.4 Overhang.

Lessor shall grant to Lessee the right to permit the rotors of wind turbines owned by Lessee located on adjacent properties not owned by Lessor to overhang the Leased Premises. However, Lessee shall not permit the rotors of any wind turbines owned by Lessee located on the Leased

Premises to overhang adjacent property whether owned by Lessor or any other third party owner without the express written permission of such affected property owner in each instance, whether Lessor or such other third party property owner. Lessee shall provide Lessor with a copy of written permission from any such third party owner.

2.3 Lessor's Reservations.

Lessor shall not permit any activities upon the Leased Premises that will materially interfere with Lessee's authorized use of the Leased Premises stated herein. Lessee's Development Plan shall adequately describe fall zones and wind patterns. Subject to the terms of this Lease, Lessor expressly reserves and excepts the following rights from the Lease:

2.3.1 Right of Entry.

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

2.3.2 Resources and Fee Title.

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

2.3.3 Grant of Easements, Licenses, Permits, Leases, and Other Property Interests.

To grant and issue easements, licenses, permits, leases, and any other property interest over, under, through or upon the Leased Premises, providing said easements, licenses, permits, and leases do not materially conflict or interfere with the use of Lessee or with the permitted Wind Energy Facilities or Improvements installed and maintained or operated by Lessee upon the Leased Premises. This Lease may provide a specifically described portion of the Production Area for the exclusive use of Lessee, and if such area for Lessee's exclusive use is provided for, any such exclusive use area shall be described on Attachment C, if any. It shall be Lessee's duty to "fence out" or otherwise preclude entrance into any such exclusive use area, and any such fence or other method of preclusion must first be approved by Lessor, which approval shall not be unreasonably withheld. Lessor shall notify Lessee before granting or issuing any easement, license, permit, or lease on the Leased Premises. This Lease is subject to any, permit, license, lease, right-of-way, easement, or other encumbrance in existence prior to the execution of this Lease.

2.3.4 Ownership of Improvements and Wind Energy Facilities.

Throughout the term of this Lease and apart from any rights provided herein by reason of a default by Lessee, Lessor shall have no ownership or other interest in any Improvements, Wind Energy Facilities other than roads and appurtenances thereto, and Lessee may remove any or all such property, other than roads and appurtenances thereto, at any time in accordance with the terms of this Lease, including, but not limited to, Section 7.2.

2.3.5 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 Leased Premises and to hold all water rights for any beneficial use that may develop as a result of this Lease; however Lessee shall have use of such water, if approved in the Development Plan, during the term of this Lease without cost.

2.3.6 Right of Access Across the Leased Premises.

To the extent such access does not unreasonably interfere with Lessee's activities with regard to the Leased Premises, rights of access across the Leased Premises for Lessor and its assigns on existing roads or on alternative roads provided by Lessee subject to Lessor's prior written approval, unless otherwise provided on Attachment C, if any.

2.3.7 Timber and Forest Management.

This Lease is made subject to all present and future timber sale contracts and reforestation or other forest management contracts. Lessee shall be provided with such present contracts or memoranda of such present contracts prior to the execution of this Lease. Except as specifically approved by Lessor in writing, this Lease does not authorize Lessee to cut any timber growing on the Leased Premises. Lessee shall notify Lessor at least six (6) months prior to cutting or removing timber on the Leased Premises. Lessee shall not remove such timber without the prior written approval of Lessor, which approval shall not be unreasonably withheld. Lessee shall pay to Lessor the fair market value of any merchantable timber and pre-merchantable timber cut or cleared from the Leased Premises. Timber value shall be established by Lessor using fair market value approach appraisal techniques. Upon payment by Lessee of the timber value established by Lessor, title to the timber shall pass to Lessee.

2.3.8 Sale and Exchange.

Lessor reserves the right to sell or exchange all or any portion of the Leased Premises subject to the terms of this Lease, and subject to the terms of Idaho Code § 58-313. In the event Lessor sells or exchanges all or any part of the Leased Premises, Lessor shall provide Lessee one hundred eighty (180) days' prior written notice.

2.3.9 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 Lessee's use under the terms of this Lease, and further excepting exclusive use areas approved by Lessor pursuant to Section 6.3.3. However, nothing in this Lease authorizes or purports to authorize trespass on private lands to reach State-owned lands. Lessee shall not restrict public use of State lands authorized by the State Board of Land Commissioners without prior written approval of Lessor; provided however, nothing in this Lease shall be deemed a limitation on Lessor's authority to control public use of the Leased 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).

2.3.10 Harvest of Seed.

Lessor reserves the right to harvest seed from plants on the Leased Premises. Lessor shall coordinate the harvesting activities with Lessee at the earliest reasonable time to minimize impacts on Lessee's operations.

2.3.11 Closure of Roads.

Lessor reserves the right to close roads for a period reasonably necessary for road protection, water quality protection, wildlife and fish protection, administrative purposes or any other reason

deemed necessary by Lessor, subject to emergency access by Lessee if reasonably feasible. Planned road closures will be reviewed with Lessee, and Lessee shall be given notice of any planned road closure at least sixty (60) days in advance of any such closure; and, to the extent reasonably feasible, Lessee shall be provided with alternate access prior to action by Lessor. Lessor shall make reasonable efforts to limit the term of any emergency road closures to the period necessary to resolve the emergency.

2.3.12 Temporary 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 temporarily cease operations on the Leased Premises for so long as reasonably necessary in Lessor's sole discretion to protect the public safety or for fire suppression on the Leased Premises or adjacent lands without compensation to Lessee.

2.4 Lessee's Due Diligence.

2.4.1 Due Diligence Period.

Lessee shall have a period of ninety (90) days after the Commencement Date (the "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. An ALTA survey (the "Survey") of the Leased 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 and/or any title policy thereafter acquired (the "Title Report") insuring Lessee's leasehold interest on the Leased 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 Leased 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 Leased 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 Matters). 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 thirty (30) days after expiration of the Cure Period or waive any such Disapproved Matters, and proceed. If Lessee does not elect to cancel on or before thirty (30) days after expiration of the Cure Period, Lessee shall be deemed to have elected to waive any uncured Disapproved 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 Disapproved Matters or by Lessee by reason of Lessor's failure to cure such Disapproved Matters 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 Leased Premises shall be limited to those necessary for Lessee's Due Diligence.

ARTICLE III – Lease Term, Termination and Expiration

3.1 Lease Term.

This Lease shall commence on _____ (the "Commencement Date") and continue until the ___ anniversary of the Commencement Date (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 Leased Premises as more particularly described in the Development Plan produced pursuant to Section 6.3. If different phases occur simultaneously, Rent shall be apportioned as set forth in Section 5.5.

3.3 Maximum Phase Terms.

Phases shall not exceed the periods set forth in Article IV.

3.4 Termination.

3.4.1 Termination by Lessee.

A. During Phase 1 of this Lease, and provided Lessee is not then in default, Lessee may terminate this Lease by giving Lessor ninety (90) days' prior 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 Section 5.1 of this Lease. If this Lease is terminated during Phase 1, Lessee shall restore the Leased Premises to its contour and vegetative state immediately preceding Lessee's activity on the Leased Premises, and excluding any alterations caused by any third party not under the control of nor at the express direction of Lessee.

B. During Phase 2 of this Lease, and provided Lessee is not then in default, Lessee may terminate this Lease by giving Lessor one hundred eighty (180) days' prior written notice of termination and completing all Lessee's obligations under the Decommissioning and Reclamation Plan accepted by Lessor under Article IV. Upon such termination during Phase 2, Lessee shall not be entitled to refund or credit of the Rent paid by Lessee under Section 5.2 of this Lease.

C. During Phase 3 of this Lease, and provided Lessee is not then in default, Lessee may terminate this Lease by giving Lessor one hundred eighty (180) days' prior 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 wind energy turbine taken out of production at the premises.

D. Upon termination during Phase 2, Phase 3, or Phase 4, Lessee's actions on the Leased Premises shall be limited to those necessary for completion of its obligations under the Decommissioning and Reclamation Plan.

E. If different Phases are occurring simultaneously, then the Termination provisions applicable to the most advanced Phase shall apply.

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, and the lease may be terminated if any default is not cured: 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 terms, covenants, agreements, conditions or undertakings herein contained to be kept, observed and performed by Lessee under this Lease when the same become due;

3. Lessee becomes insolvent or proceedings in bankruptcy or for liquidation, reorganization or rearrangement of Lessee's affairs are instituted by or against Lessee;

4. A receiver or trustee is appointed for all or substantially all of 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;

7. Lessee makes a transfer, novation, assignment, or sublease not approved by Lessor in violation of Article X;

8. Lessee's failure to complete a phase as more particularly described in Section 3.3 and Article IV; or,

9. Lessee's failure to complete a phase prior to the conclusion of its maximum period as more particularly described in Article IV without the prior written approval of Lessor.

10. Lessee allows a lien to be filed or continued in existence in violation of Article XII.

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 thirty (30) 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 or default of any of the terms and conditions of this Lease, Lessee shall be allowed the period specified in this Lease for cure, or if no cure period is specified, Lessee shall be allowed thirty (30) days from the date of notice thereof to effect a cure, provided however, in the case of any curable failure referred to in Subsection 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 reasonably necessary to complete the curing of the same with diligence.

3. As to an occurrence of any event described in Subsections 3.4.2.A.3, 3.4.2.A.4 or 3.4.2.A.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, which is not cured within the applicable cure period, if any, and subject to the terms of Article X, 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 Leased 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 Leased 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 Leased 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 incurred by or resulting to Lessor for the failure of Lessee to observe and perform any term, condition, covenant, duty or obligation of this Lease.

4. Lessor may allow the Lease to remain in full force and effect and enforce all of Lessor's rights and remedies hereunder.

5. Remove Lessee's property and store the same at Lessee's expense, or require Lessee to remove the same.

D. The failure of Lessor to re-let the Leased 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 attorney fees, brokerage, advertising and for keeping the Leased 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 Leased Premises in good order or preparing the same for re-letting may, at Lessor's option, make such alterations, repairs, or replacements to the Leased Premises as Lessor, in Lessor's sole judgment, considers advisable and necessary for the purpose of re-letting the Leased 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 Leased Premises, or in the event that the Leased 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 Leased 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 Leased Premises to Lessor.

3.6 Reclamation of Leased Premises.

Prior to or upon expiration or termination of this Lease, Lessee shall complete reclamation of the Leased Premises in accordance with the Decommissioning and Reclamation Plan accepted by Lessor as provided in Article IV and Article VI.

3.7 Holding Over.

If Lessee or any successor in interest of Lessee should remain in possession of the Leased 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, except that the reasonable rent for the holdover period shall be two times the Rent payable immediately preceding the first day of the holdover period. Nothing contained herein shall be construed as Lessor's permission for Lessee to hold over or as limiting Lessor's remedies at law or in equity against Lessee, and if the Leased 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 the delay by Lessee in so surrendering the Leased Premises, including without limitation, any claims made by any succeeding lessee based on such delay.

3.8 Lease Expiration.

If Lessee desires to continue leasing the Leased Premises, and provided Lessee is not in default of any term or condition of this Lease, then at least one hundred eighty (180) days, but not more than one year, prior to the Expiration Date, Lessee shall provide Lessor with a written request for a new wind lease or an extension of this Lease. If Lessor elects to enter into another wind lease or to extend this Lease, then Lessor will notify Lessee in writing within one hundred twenty (120) days prior to the Expiration Date and shall propose terms and conditions for a new lease and negotiate exclusively with Lessee. If the Parties reach agreement within thirty (30) days prior to the Expiration Date, a new lease will be executed with no lapse in time between the expired lease and the new lease. If the Parties do not reach agreement, then Lessor may, at its option, offer the new lease to a third party in accordance with Lessor's policies and procedures.

ARTICLE IV - Lease Phases

4.1 Phase 1 - Research and Analysis.

Phase 1 shall commence upon the Commencement Date and shall run simultaneously with the Due Diligence Period.

4.1.1 Phase 1 Activity.

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 shall be described in the Research and Analysis Plan more particularly described in Section 6.2 to be developed by Lessee and submitted to Lessor for acceptance and approval in writing before Lessee commences any Phase 1 activities. All such activities and requirements shall be conducted at Lessee's sole cost and expense. Lessee shall provide to Lessor all wind data collected and all reports and studies including, but not limited to, seismic, environmental and aviary studies conducted on the Leased Premises during Phase 1; all such data, reports and studies may be utilized by Lessor or any subsequent lessee upon the termination of this Lease by default or otherwise. During the term of this Lease, Lessee may mark any such wind data collected and any reports and studies including,

but not limited to, the above listed studies conducted during Phase 1, as trade secrets, proprietary information or by such other designation as Lessee believes applicable to exempt such documents from public disclosure pursuant to the Idaho Public Records Law (Idaho Code §§ 9-337 through 9-350) and Lessor shall treat the information as confidential as set forth in Section 15.19.

A. Lessee shall conduct all studies necessary for the development of Wind Energy Facilities on the Leased Premises. These studies may occur off the Leased Premises in the same general geographic location if the studies can be reasonably extrapolated to the Leased Premises as determined by Lessor, in Lessor's sole discretion. Studies may include the installation of wind measurement equipment.

B. Lessee shall conduct environmental studies required to obtain Government Approvals for subsequent phases of this Lease, including, if required, avian interaction and migration pattern studies.

C. Lessee shall obtain all required Government Approvals for subsequent phases of this Lease, and shall submit to Lessor an Opinion Letter addressed to Lessor signed by a law firm that includes attorneys admitted to practice and in good standing in the State of Idaho providing an opinion that all Government Approvals necessary for Seller's commencement of construction and, to the extent required to have been obtained as of such date, operation of the Wind Energy Facilities are legally and validly issued, are held in the name of Lessee and, that Lessee is in substantial compliance with said Government Approvals as of the date of the Opinion Letter. Lessee shall provide copies of such Government Approvals to Lessor.

D. Lessee shall provide to Lessor evidence of any and all, but at least one existing, valid and enforceable Use Agreement acceptable to Lessor.

E. Lessee shall submit to Lessor the Development Plan more particularly described in Section 6.3.

F. Lessee shall submit to Lessor a Decommissioning and Reclamation Plan and security more particularly described in Section 6.4 and Article VIII, respectively.

G. Lessee shall submit to Lessor a Hazardous Materials/Waste Management Plan more particularly described in Section 13.1 and Article XIII.

4.1.2 Conclusion of Phase 1.

Phase 1 of this Lease shall conclude upon the receipt by Lessor of copies of all required studies, surveys, reports, and Government Approvals for commencement of development under Phase 2 of this Lease; Lessor's acceptance of any and all Use Agreements then existing, with any thereafter existing to be submitted for acceptance by Lessor; Lessor's acceptance of the Decommissioning and Reclamation Plan; Lessor's acceptance of the Development Plan; and, Lessee's provision of the security required by Article VIII. Lessor's acceptance of a Use Agreement and required plans shall be in writing. Progression to Phase 2 shall not occur until

Lessee's obligations to Lessor identified in Phase 1 are satisfied and acknowledged by Lessor 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 thirty-six (36) months from the Commencement Date. As the Decommissioning and Reclamation Plan requirements are completed and to the extent not required by Lessee to complete remaining Decommissioning and Reclamation Plan requirements, any acreage not delineated in the Development Plan for either Phase 1 or Phase 2 as either Supporting Area or Production Area may be removed from the terms of this Lease at the discretion of Lessor, subject to written confirmation by Lessee within thirty (30) days after notice to Lessee that any such acreage proposed to be removed by Lessor is or is not required for the remaining Decommissioning and Reclamation Plan requirements.

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 Leased 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 Lessor, in good faith, determines that Lessee has violated or failed to obtain any Governmental Approvals necessary for activities during Phase 2 of this Lease, then following notice to Lessee specifically identifying each of the Governmental Approvals which Lessor has in good faith determined to be lacking but necessary for the activities the subject of this Lease as well as any legal authority which Lessor relied upon in making its determination, Lessee shall have ninety (90) days to demonstrate that such Governmental Approvals have been obtained, are not necessary, or to seek such Governmental Approvals; and, if such Governmental Approvals are necessary for Lessee's activities and are not obtained, then Lessor shall have the right, without limitation, to require Lessee to cease activities related to such violation on the Leased Premises until the violation has been remedied to the satisfaction of Lessor in its reasonable discretion.

4.2.2 Conclusion of Phase 2.

Phase 2 of this Lease shall conclude upon:

A. Lessor's acknowledgement of receipt and completeness of copies of all easements for connecting lines and pipelines, transmission lines, substations, and other improvements outside the Leased Premises necessary to carry out any and all Use Agreements submitted under Phase 1 of this Lease or subsequently submitted for use and accepted by Lessor;

B. Lessor's acknowledgement of receipt and completeness of "as built" drawings showing the exact location of all completed Wind Energy Facilities and Improvements on the Leased Premises; and

C. Lessor's acknowledgement of receipt and completeness of electrical energy converted from wind energy on the Leased Premises under any and all Use Agreements submitted under Phase 1 of this Lease or subsequently submitted for use and accepted by 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 any and all Use Agreements submitted under Phase 1 of this Lease or subsequently submitted for use and accepted by 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 from the Commencement of Phase 2. Progression to Phase 3 shall not occur until Lessee's obligations to Lessor identified in Phase 2 are satisfied and acknowledged in writing by Lessor.

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 Leased Premises under the Use Agreements submitted under Phase 1 of this Lease or subsequently submitted for use and accepted by Lessor. If Lessor, in good faith, determines that Lessee has violated or failed to obtain any Governmental Approvals necessary for activities during Phase 3 of this Lease, then following notice to Lessee specifically identifying each of the Governmental Approvals which Lessor has in good faith determined to be lacking, but necessary for the activities the subject of this Lease, as well as any legal authority which Lessor relied upon in making its determination, Lessee shall have ninety (90) days to demonstrate that such Governmental Approvals have been obtained, are not necessary, or to seek Governmental Approvals; and, if any such Governmental Approvals are necessary for Lessee's activities and are not obtained, then Lessor shall have the right, without limitation, to require Lessee to cease activities related to such violation on the Leased Premises until the violation has been remedied to the satisfaction of Lessor in its reasonable discretion.

4.3.2 Modifications to Wind Energy Facilities and Improvements in Phase 3.

No material modifications to the Leased Premises or to the accepted Development Plan may be made without Lessor's prior written consent. Lessor reserves the right to approve any and all material modifications, designs, location, and construction which approval shall not be unreasonably withheld. 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 Leased Premises as such modifications are completed.

4.3.3 Conclusion of Phase 3.

Phase 3 of this Lease shall conclude upon the occurrence of any of the following:

A. Written notice by either Party of termination of this Lease as more particularly set forth in Section 3.4, subject to and in accordance with the terms thereof, including the terms of Article X;

B. Failure of Lessee to convert fifty percent (50%) of the Nameplate Capacity of the Wind Energy Facilities installed on the Leased Premises for a period of one hundred twenty (120) consecutive days, unless such failure arises from: replacement of Wind Energy Facilities or Improvements under a Development Plan accepted by Lessor; replacement of Wind Energy Facilities or Improvements as a result of casualty or loss; or force majeure under Section 15.3; unless such failure is waived by Lessor and Lessee continues to pay Rent throughout such period and in such amounts as if the Wind Energy Facilities and Improvements were functioning properly.

C. Failure of Lessee to deliver fifty percent (50%) or more of the Nameplate Capacity of the Wind Energy Facilities installed on the Leased Premises under the Use Agreements submitted under Phase 1 of this Lease or subsequently submitted for use and accepted by Lessor for a period of one hundred twenty (120) consecutive days, unless such failure arises from: a serial defect in Wind Energy facilities (a serial defect is defined as a manufacturer's defect affecting all or a substantial portion of the Wind Energy Facilities causing simultaneous failures which Lessee is not able to correct through reasonably diligent efforts due to the failure to obtain all necessary parts within said timeframe from the manufacturer due to manufacturer's failure); replacement of Wind Energy Facilities or Improvements under a Development Plan accepted by Lessor; replacement of Wind Energy Facilities or Improvements as a result of casualty or loss; or force majeure under Section 15.5; unless such failure is waived by Lessor and Lessee continues to pay Rent throughout such period and in such amounts as if the Wind Energy Facilities and Improvements were functioning properly.

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 Lessor's written confirmation that all Phase 3 Lease requirements have been fulfilled to Lessor's satisfaction or upon earlier termination as more particularly described in Section 3.4. Lessee's obligations relative to the Decommissioning and Reclamation Plan shall survive the termination of this Lease. Phase 4 of this Lease shall conclude upon Lessor's written confirmation that all Phase 4 Lease requirements have been fulfilled to Lessor's satisfaction. If Lessor, in good faith, believes that Lessee has violated or failed to obtain any Governmental Approvals necessary for activities during Phase 4 of this Lease, then following notice to Lessee specifically identifying each of the Governmental Approvals which Lessor has in good faith determined to be lacking, but necessary for the activities the subject of this Lease, as well as any legal authority which Lessor relied upon in making its determination, Lessee shall have ninety (90) days to demonstrate that such

Governmental Approvals have been obtained, are not necessary, or to seek such Governmental Approvals; and, if any such Governmental Approvals are necessary for Lessee's activities and are not obtained, then Lessor shall have the right, without limitation, to require Lessee to cease activities related to such violation on the Leased Premises until the violation has been remedied to the satisfaction of Lessor in its reasonable discretion.

4.5 Transition of Supporting Areas.

Supporting Areas shall be transitioned into Phases 2 and 3 concurrently with the first Production Area transitioning to such phase. Supporting 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 and Royalty

5.1 Phase 1 Rent.

Lessee shall pay on or before the Commencement Date and on or before each anniversary of the Commencement Date, in advance, at a rate of _____ dollars (\$_____) of land value per acre multiplied by _____, (the total acreage of the Leased Premises set forth in Attachment A) and increased three percent (3%) annually during Phase 1 ("Phase 1 Acreage Fee"). In no event shall Phase 1 Acreage Fee be less than five hundred dollars (\$500.00) per year. Lessee shall not receive any refund of Phase 1 Acreage Fee at termination of the Lease.

5.2 Phase 2 Rent.

Lessee shall pay the following during Phase 2 (collectively "Phase 2 Rent"):

- A. Annually, in advance, on or before each anniversary of the Commencement Date, ___% of appraised value per acre of the Leased Premises and increased 3% annually during Phase 2 ("Phase 2 Acreage Fee"); and
- B. An installation fee, of _____ dollars (\$_____) times the number of megawatts of total proposed installed capacity for each Wind Energy Turbine installed on the Leased Premises during Phase 2 (the "Phase 2 Installation Fee").

At the sole discretion of the Lessor, during Phase 2, Lessor may conduct a new appraisal of the Leased Premises, or endowment lands comparable to the Leased Premises for the purposes of increasing Phase 2 Rent. Notwithstanding the foregoing, at no time during the life of the Lease will Rent be less than the Phase 1 Acreage Fee.

Lessee shall not receive any refund of Phase 2 Rent or Installation Fee 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.

- A. During Phase 3, Lessee shall pay rent in the total amount calculated in (1), (2) and (3) below (collectively the "Phase 3 Rent"):
 1. The greater of the amounts set forth in (a) or (b) below:

a. _____ dollars (\$_____) times the total installed megawatt capacity for each Wind Energy Turbine installed on the Leased Premises defined in the Development Plan as Production Area, regardless of whether such Wind Energy Facilities are operating (“Capacity Fee”), and increased annually at the rate of _____ percent (____%), which upward adjustments shall be cumulative in and for all of Phase 3 and Phase 4 of this Lease; or

b. _____ percent (____%) of the Gross Annual Revenue during the prior Lease Year (“Production Fee”); and

2. of the appraised value of the Leased Premises as established by the certified appraisal to be completed prior to the beginning of Phase 2 but never less than Phase 1 Rent with land value being increased annually at the rate of _____ percent (____%), which upwards adjustments to land value shall be cumulative in and for all of Phase 3 and Phase 4 of this Lease, moving from one Phase to the other (“Phase 3 Acreage Fee”); provided however, that if the greater of the Capacity Fee or the Production Fee as calculated in (1)(a) or (1)(b) above, for any given year during Phase 3 exceeds an amount equal to _____ percent (____%) of the indexed appraised value (based upon the appraisal performed prior to Phase 2) of the total acreage of the Leased Premises leased herein, then Phase 3 Rent for any such year shall not include the Phase 3 Acreage Fee set forth herein; and

3. An installation fee, of _____ dollars (\$_____) times the number of megawatts of total installed capacity for each Wind Energy Turbine newly installed on the Leased Premises during Phase 3 (the “Phase 3 Installation Fee”). For purposes of clarification, only one Installation Fee will be charged for each new installation of a Wind Energy Turbine to be installed in either Phase 2 or Phase 3 at the time of any such installation.

B. The Capacity Fee or Phase 3 Acreage Fee, whichever is greater, shall be paid each year in advance on the anniversary of the Commencement Date. The Production Fee for each such year shall be paid in arrears, if, to the extent, and in the amount that the Production Fee is greater than the greater of either the Capacity Fee or Phase 3 Acreage Fee. For example, if at the beginning of any given year the Capacity Fee were calculated to be _____ dollars (\$_____), and the Acreage Fee were calculated to be _____ dollars (\$_____), and the Production Fee were calculated at the end of the year to be _____ dollars (\$_____), then Lessee would pay Lessor _____ dollars (\$_____) in advance for such year, and at the end of the year would pay Lessor an additional amount of Rent for the year of _____ dollars (\$_____), for a total Rent paid for such year of _____ dollars (\$_____). If, on the other hand, using the same example, but with a Production Fee of only \$_____ dollars (\$_____), the Lessee would only have to pay the Capacity Fee (where the Capacity Fee was greater than the Acreage Fee) of \$_____ in advance, but would not be obligated to pay any additional amount of Rent at the end of the year by reason of the lower Production Fee.

C. In connection with each Phase 3 Rent payment, at the end of the Lease Year, Lessee shall provide to Lessor a signed statement setting forth the amount of Gross Annual Revenue received by Lessee during such Lease Year, and the Rent due to Lessor arising from

such Gross Annual Revenue. 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. Phase 3 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 any Rent paid for such year.

5.4 Phase 4 Rent.

Lessee shall pay the following during Phase 4 in advance, annually on each anniversary of the Commencement Date (the "Phase 4 Rent"):

- A. ____% of the appraised value of the Leased Premises as established by the certified appraisal to be completed prior to the beginning of Phase 2 but never less than Phase 1 Rent; subject to upwards adjustment of the cumulative land value at the rate of ____% per year ("Phase 4 Acreage Fee"); and
- B. \$_____ times the total installed megawatt capacity for each wind energy turbine remaining on the Leased Premises (which Wind Energy Turbine shall not then be operating);

Together with _____ percent (__%) of the Gross Annual Revenue during Phase 4.

Phase 4 Rent shall be prorated if Lessee completes Phase 4 prior to the expiration of a full year, and Lessee shall be entitled to a refund of prorated rent 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.

If different Phases are occurring simultaneously, then the Rent applicable to the most advanced Phase shall apply.

5.6 Lessee's Records.

Lessee shall keep full, complete and proper books, records and accounts of Gross Annual Revenue according to Generally Accepted Accounting Principles as would be normally examined and required to be kept by an independent accountant when performing an audit of Lessee's business to verify the accuracy of Lessee's statements of Gross Annual Revenue. 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 Leased Premises, including relevant income tax returns, for the purpose of investigating and verifying the accuracy of any prior statement of Gross Annual Revenue. During the term of this Lease, Lessee may mark any records provided under this section as trade secrets, proprietary information or by such other designation as Lessee believes applicable to exempt such documents from public disclosure pursuant to the Idaho Public Records Law (Idaho Code §§ 9-337 through 9-350), and Lessor shall treat the information as confidential as set forth in Section 15.19. If the results of the audit show that Lessee's

statement or statements of Gross Annual Revenue for any period has been understated, then, within ten (10) days of the receipt of notice 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 Revenue for the audit period have been understated by five percent (5%) or more, Lessee shall also pay Lessor the cost of the audit. Lessee shall submit monthly net metering reports on the first business day of each month to Lessor during Phase 3 for verification of Production Capacity. Lessor must approve the format and requirements for content of the monthly net metering report in writing.

5.7 Payment.

All Rent shall be paid in lawful money of the United States of America forwarded to Lessor at the address for notices under this Lease or as otherwise directed by 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 twenty-five dollars (\$25.00) or one percent (1%) of the amount due. In the event payment is not made within thirty (30) days 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 Lessor and State of Idaho against all of Lessee's property on the Leased Premises, including, but not limited to Wind Energy Facilities and Improvements.

5.8 Readjustment of Rent.

Lessor shall have the right to request and receive copies of all lease documents, agreements, memorandums of understanding and compensation agreements that Lessee has with adjoining landowners or landowners within a fifty (50) mile radius of the Leased Premises for Wind Energy Purposes entered into by Lessee within two (2) years before and after the date of this Lease to determine if Lessor is obtaining comparable rates for the Leased Premises for Wind Energy Purposes under this Lease. Lessor reserves the right to adjust the Rent rates under this Lease to reflect comparable rates paid by Lessee for Wind Energy Purposes to other landowners as determined from the terms of other landowner leases entered into by Lessee, based on all the terms and conditions of such leases and this Lease within two (2) years after the date of this Lease. Lessee shall provide copies of such leases within forty-five (45) days of request from Lessor. Such adjustments may occur upon ninety (90) days' written notice to Lessee. Lessor shall have an additional right of adjustment to request copies of all lease documents, agreements, memorandums of understanding and compensation agreements that Lessee has with adjoining landowners or landowners within a fifty (50) mile radius of the Leased Premises for Wind Energy Purposes entered into by Lessee within two (2) years prior to, and following the date of any renewal of this Lease and amendments hereto.

ARTICLE VI - Plans

6.1 Plans Generally.

Lessee shall provide a Research and Analysis Plan, the Development Plan, a Decommissioning and Reclamation Plan and a Hazardous Materials/Waste Management Plan (“HMWMP”), as more particularly set forth below in accordance with the schedule set forth in Article IV and Article XIII. The Development Plan, HMWMP, and the Decommissioning and Reclamation Plan may be submitted as a single plan with the information required by this Lease or as separate plans. Each plan shall include a detailed schedule in a format approved by Lessor. The schedule shall include critical path and major milestones with sufficient detail to assess project progress. Updates to the schedule shall be provided to Lessor on a quarterly basis or more frequently if critical path is lengthened by more than thirty (30) days. Lessor’s approval or acceptance of such plans, as the case may be, shall be in writing. Notwithstanding the acceptance of any plan, the terms and conditions of any plan required under this Lease shall not be inconsistent with, alter or amend any of the terms and conditions of this Lease without the Parties entering into a formal amendment to this Lease; and, in the event of any inconsistency in the terms and conditions between any plan and this Lease, the terms and conditions of this Lease shall govern.

6.2 Research and Analysis Plan.

The Research and Analysis Plan shall describe all due diligence and exploratory activities, as described below, to be conducted on the Leased Premises during Phase 1 necessary to complete and/or obtain all studies, surveys, reports, and Government Approvals required for commencement of development under Phase 2 of this Lease.

6.2.1 Exploratory Activities.

The type, location, and schedule of all exploratory activities which have or will occur on the Leased Premises, including, but not limited to, soil testing, surveys, wind inventory activities, and all reports and studies including, but not limited to, seismic, environmental and aviary studies.

6.3 Development Plan.

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

6.3.1 Facilities and Improvements.

The location and specifications of all Wind Energy Facilities and Improvements on the Leased Premises. Information concerning Wind Energy Facilities shall include numbers, type, size, manufacturer, model and foundation design of any surface area that may be disturbed with the placement of proposed Wind Energy Facilities and Improvements. Information concerning the construction of roads on the Leased Premises shall identify all gates and culverts and identify road construction materials, including those materials, if any, proposed to be acquired from the Leased Premises. Information concerning the construction of pipes, pipelines, transmission lines, and any other items to be placed above or below the surface on the Leased Premises, if applicable, shall identify where any such items are to be installed on the surface or buried and how they cross existing or planned roads.

6.3.2 Commingled Production Plan and Agreements.
Not used.

6.3.3 Areas of Exclusive Lessee Use.

The portion(s) of the Leased 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 Leased Premises.

6.3.4 Development Schedule.

The schedule of construction and development on the Leased Premises (Development Schedule). If Lessor includes partial transitions of the Leased Premises to phases of this Lease, the Development Plan shall set forth the portions of the Leased 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 Leased Premises into Production Areas (including those to be transitioned separately), and Supporting Areas.

6.3.5 Government Approvals.

A complete and accurate list of all Government Approvals that are known or reasonably believed to be necessary for the commencement of construction under Phase 2 and for operation under Phase 3, including the Opinion Letter required pursuant to Subsection 4.1.1.C above. 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.

6.3.6 Vegetation and Soil Management.

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

6.3.7 Surveys.

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

6.3.8 Security Requirements.

An estimate of the dollar amounts required for Construction Security, Operating Security and Decommissioning Security under Article VIII.

6.4 Decommissioning and Reclamation Plan.

The Decommissioning and Reclamation Plan shall set forth the means whereby Lessee shall restore the Leased Premises to its contour and vegetative state immediately preceding Lessee's

activity on the Leased Premises (excluding any alterations caused by any third party not under the control of, or at the express direction, of Lessee) following construction or modification of Wind Energy Facilities and Improvements upon the expiration or termination of this Lease, other than for default. The Decommissioning and Reclamation Plan shall address the decommissioning and reclamation of all planned construction of Wind Energy Facilities and Improvements by Lessee and any other planned alteration of the Leased Premises. The Decommissioning and Reclamation Plan shall include a complete and accurate list of all Government Approvals that are known or reasonably believed to be necessary for the activities under such plan, along with an Opinion Letter satisfying the same requirements as set forth in Subsection 4.1.1.C above. In the event that additional Government Approvals necessary for the activities under the 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. The Decommissioning and Reclamation Plan shall address the disposal of any known or unknown Hazardous Substances that are located on the Leased Premises at the termination of this Lease. No construction of any Wind Energy Facilities or Improvements, and no alteration of the Leased Premises; nor any change in such construction or alteration, shall occur until Lessor has accepted, in writing, the Decommissioning and Reclamation Plan.

6.5 Plan Reviews.

The Research and Analysis Plan, the Development Plan, and the Decommissioning and Reclamation Plan shall call for an annual operating review during which time Lessee shall disclose to Lessor any construction or alteration of the Leased Premises planned by Lessee during the ensuing year. Lessor may require modification to any approved plan 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 any plan required under the terms of this Lease on an annual basis and require reasonable modifications therein based on the nature and extent of Lessee's use or alteration of the Leased Premises and the work reasonably necessary to restore the Leased Premises to its natural state or pre-lease 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, unless Lessor exercises its option to acquire title pursuant to Section 7.1.2, and the Leased 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 the termination or cancellation of this Lease for Lessee's default, following notice of default and opportunity to cure as provided herein, and at Lessor's option, title to the Wind

Energy Facilities and Improvements shall vest in Lessor. Lessee shall prepare and record any documents that Lessor may require to evidence such ownership in Lessor. In the event Lessor leases the Leased Premises 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 sell the Wind Energy Facilities and Improvements to the new lessee. Lessor shall apply the proceeds of such sale first to any Rent or other obligations due and owing from Lessee at the time of the sale and pay the remainder, if any to Lessee. Upon payment to Lessor, 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. The value of the Wind Energy Facilities and Improvements shall be as agreed between Lessee and Lessor; provided however, that if they are unable to agree, the value shall be determined through an appraisal that determines the current market value of the Wind Energy Facilities and Improvements. Lessee and Lessor shall each be responsible for one-half (1/2) of the cost of such appraisal.

7.2 Removal.

Without Lessor's prior written consent, which consent shall not be unreasonably withheld provided Lessee is not then in default, Lessee shall not remove Wind Energy Facilities or Improvements from the Leased 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 and Improvements on the Leased Premises sufficient to maintain the operations contemplated under the approved or modified Development Plan. Any Permitted Mortgage (as defined in Article X) of the leasehold interest of this Lease and any security interest in the personal property constituting the Wind Energy Facilities or Improvements shall be subject to the terms of this Article VII.

7.3 Use and Operation of Wind Energy Facilities and Improvements.

Use and operation of the Wind Energy Facilities and Improvements on the Leased Premises shall be in conformance with the terms of this Lease and shall comply with all applicable federal, state and local laws and rules and safety standards whether currently existing, amended, or enacted during the term of this Lease.

7.4 Maintenance of Wind Energy Facilities and 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 nonstructural, 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. Except as otherwise provided in Subsection 7.1.1 above, Lessor shall obtain possession of and title to the Wind Energy Facilities and Improvements upon a termination of the Lease by Lessee's default (following notice of default and opportunity to cure as provided herein), and the Wind Energy Facilities and 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 or 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; provided further however, that such Wind Energy Facilities and Improvements at or near the end of their useful

life are removed by Lessee in accordance with its Decommissioning and Reclamation Plan. Lessee, at Lessee's expense, shall be responsible for all Improvements, additions, alterations, maintenance, and repairs necessary or appropriate such that the Leased 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: Damaged Wind Energy Facilities and 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 Leased Premises, or of any Wind Energy Facilities or Improvements now or hereafter located in, upon or on the Leased Premises, or any fixtures, equipment or machinery used or intended to be used in connection with the Leased 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 Additional Rent or otherwise, as and when such Rents 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 the event of any damage by fire or any other cause resulting in either the partial or total destruction of any Wind Energy Facilities or Improvements now or hereafter located in, upon or on the Leased Premises, or any fixtures, equipment or machinery used or intended to be used in connection with the Leased Premises or the Wind Energy Facilities or Improvements, Lessee shall, at its sole 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 and Improvements, fixtures, equipment or machinery, as nearly as possible to its value, condition and character immediately prior to such damage or destruction. Nothing in Subsections 7.5.1 or 7.5.2 shall limit Lessee's right to terminate under Subsection 3.4.1.C.

7.5.3 Application of Insurance Proceeds.

Insurance proceeds on account of any damage to or destruction of the Leased 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; provided however, that Lessee shall not be required to so apply such insurance proceeds if Lessee elects to terminate the Lease rather than restore the Wind Energy Facilities and Improvements provided Lessee is not then otherwise in default of this Lease, in which event, Lessee shall proceed immediately to Phase 4.

ARTICLE VIII - Performance Security

8.1 Security Generally.

8.1.1 Format and Renewal.

All bonds, letters of credit, and either cash or certificates of deposits (which may be referred to throughout this Lease generically as "bonds") shall be in a form acceptable to Lessor, conditioned upon 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 of Idaho. All bonds shall be issued by an Idaho qualified U.S. Bonding Corporation and all letters of credit, and cash or certificates of deposits shall be subject to Lessor's approval and shall provide for notice to Lessor prior to any cancellation or lapse thereof. Upon the failure of Lessee to maintain any required bond, letter of credit, or cash or certificate of deposit in full force and effect at all times during the life of this Lease, Lessor shall have the right to cancel this Lease or to declare a default and terminate this Lease. A substitute bond, a new letter of credit, or a new cash or certificate of deposit, or an extension of the expiration date of any existing bond, letter of credit, or cash or certificate of deposit, must be received by Lessor no later than thirty (30) days before the expiration, cancellation or other termination of the bond, letter of credit, or cash or certificate of deposit. Failure to provide such replacement thirty (30) days prior to the expiration, cancellation or other termination shall constitute a material breach of this Lease and shall be grounds for Lessor to terminate this Lease, pursue any other remedy at law or in equity, including, but not limited to, presenting any such letter of credit, or cash or certificate of deposit for payment, or to make demand under any such bond. Presentation of any such bond, letter of credit, or cash or certificate of deposit for payment, or the demand and payment under any such bond, letter of credit, or cash or certificate of deposit, shall in no way limit the liability or obligations of Lessee, or the rights and remedies of Lessor, under this Lease. The form of any bonds, letters of credit, and cash or certificates of deposit shall be presented to Lessor for acceptance prior to the issuance of such bonds or letters of credit, or cash or certificates of deposit, or they may be rejected as insufficient in Lessor's discretion, or shall be modified or amended as may be reasonably required by Lessor.

8.1.2 Lessor Determined Bond

The amount of bond or other security to be obtained by Lessee for the aspect of Lessee's operation described in Sections 8.2, 8.3, 8.4, and 8.5 of this Lease shall be determined by Lessor. In the event that any costs actually and reasonably incurred by Lessor exceed the amount of any bond or security required by Lessor, Lessee shall pay such additional amount to Lessor within thirty (30) days of notice and demand to Lessee.

8.1.3 Adjustment of Security Amount.

At intervals of not less than one (1) year after approval of the Development Plan and the Decommissioning and Reclamation Plan, as applicable, Lessor may, in Lessor's reasonable discretion, following consultation with Lessee, revise the estimate of the cost of development or reclamation in accordance with the approved plan to reflect then current estimated 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 Research and Analysis Security.

Prior to the commencement of Research and Analysis related activities described in Section 4.1, Lessee shall furnish a payment bond and a performance bond, letter of credit, cash or certificate of deposit in an amount reasonably determined by Lessor upon Lessor's written approval of the Research and Analysis Plan, which security will be in favor of Lessor to protect Lessor against loss due to Lessee's failure to reclaim areas disturbed by the Research and Analysis activities 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 the Phase 1 activities and satisfactory reclamation of all affected areas. Lessor reserves the right at any time to increase or decrease the amount of the bond, letter of credit, cash or certificate of deposit to an amount Lessor reasonably believes necessary to reclaim disturbed areas or areas to be disturbed by Lessee's proposed or actual Research and Analysis related activities, including, but not limited to, motorized ground disturbance. At the conclusion of Lessee's Research and Analysis activities, the performance security shall be released to Lessee.

8.3 Construction Security.

Prior to the commencement of construction related activities described in Section 4.2, Lessee shall furnish good and sufficient payment and performance bonds, letters of credit, cash or certificate of deposit, all subject to approval by Lessor in Lessor's discretion. Any such bonds, letters of credit, cash or certificates of deposit shall be in an amount prorated for that portion of the contracted construction activity to take place in or upon the Leased Premises and shall be in the full contract amount required for all such construction activities of Wind Energy Facilities and Improvements on the Leased Premises; said security shall be in favor of Lessor to protect Lessor against any and all loss due to Lessee's failure to complete such construction in accordance with the Development Plan or Lessee's failure to pay contractors, subcontractors or others who may provide goods and services to Lessee. Any bond, letter of credit, cash or certificate of deposit accepted by Lessor pursuant to this Lease shall be made payable to Lessor upon demand or presentment for payment. The period of liability to maintain the security shall not be terminated until the completion of construction of all Wind Energy Facilities and Improvements to be constructed on the Leased Premises under the applicable contract for construction as determined by Lessor; the expiration of the timeframe under applicable law for filing of lien claims with respect to such construction has expired; and upon the prior written notice by Lessee to Lessor certifying the satisfaction of such events, and the written consent of Lessor to release such security, which consent shall not be unreasonably withheld.

8.4 Operating Security.

Prior to the commencement of Phase 3 of this Lease, Lessee shall furnish a good and sufficient security bond, letter of credit, cash, or certificate of deposit satisfactory to Lessor in the amount of one year's Acreage Fee or Capacity Fee, whichever is greater. The amount of security during Phase 3 may be adjusted annually, in Lessor's reasonable discretion, to reflect the annual amount of Rent payable based upon the historical operation of Lessee's Wind Energy Facilities and Improvements upon the Leased Premises.

8.5 Decommissioning and Reclamation Security.

Upon approval of the Decommissioning and Reclamation Plan, Lessee shall furnish a good and sufficient letter of credit, bond, cash or certificate of deposit in the amount equal to 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, cash or certificate of 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 activity in accordance with this Lease is completed, Lessee shall have and maintain or cause to be maintained, at Lessee's expense, the types of insurance set forth below and shall comply with all limits, terms and conditions of such insurance, and shall require all of its contractors and subcontractors to maintain the same types of insurance and limits. 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 to Lessor or under any indemnities granted to Lessor in this Lease.

A. Commercial General and Umbrella Liability Insurance. Lessee shall maintain commercial general liability ("CGL") with a combined limit of not less than five million dollars (\$5,000,000) each occurrence. If such CGL insurance, or any umbrella policy, contains a general aggregate limit, it shall apply separately to the Leased Premises, shall not be less than five million dollars (\$5,000,000), and shall provide that defense costs shall be and remain outside policy limits. 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 Leased 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 from, including earthquake and flood (if reasonably available), for an amount proportionate to the amount of the construction contracts performed on the Leased Premises. Any deductible amount shall not exceed two hundred fifty thousand dollars (\$250,000) for each loss, except earthquake and flood deductibles shall not exceed two percent (2%) of the value at risk at the time of each loss or two hundred fifty thousand dollars (\$250,000) for each loss, whichever is more. Alternatively, Lessee may provide evidence of Builders Risk/Installation Floater Insurance coverage obtained by Lessee's contractor for the entire project of which the Wind

Energy Facilities and Improvements to be constructed pursuant to this Lease are a part which provides for substantially equivalent coverage or as otherwise reasonably 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 Leased 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 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 sole 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 maintain during the term of this Lease, at Lessee's expense, Pollution Legal Liability (PLL) insurance with a limit of not less than five million dollars (\$5,000,000) per pollution condition, and with a limit of not less than five million dollars (\$5,000,000) annual aggregate, with coverage for: (1) bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; (2) property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; (3) defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages. Such limits shall apply separately to the Leased Premises, and shall provide that defense costs shall be and remain outside policy limits.

Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, steam, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere, ground water, or any watercourse or body of water, which results in bodily injury or property damage. Lessor, its officials and employees shall be covered as additional insureds as with respect to liability arising out of activities performed by or on behalf of Lessee. The coverage shall contain no special limitations on the scope of protection afforded to Lessor, its subsidiaries, officials and employees.

PLL policies shall be written on a claims made basis. The policy must be maintained for the length of the Lease with the retroactive date being the date the Lease is signed. Multi-year policy terms are acceptable. Lessee warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three years beginning from the time the Lease is terminated. For any claim related to this Lease, Lessee's insurance coverage shall be primary insurance with respect to Lessor, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by Lessor, its subsidiaries, officials and employees shall be excess of Lessee's insurance and shall be noncontributing. Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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 five million dollars / five million dollars / five million dollars (\$500,000/\$500,000/\$500,000). 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 current A.M. 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 representative of each insurer duly authorized to bind coverage, and a copy of any applicable policy or policy endorsement showing compliance with all insurance requirements set forth herein. 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	• Certificate of Insurance evidencing required coverage
Workers Compensation/ Employers Liability Insurance	• Certificate of Insurance evidencing required coverage

Should any of the policies described herein be cancelled or terminated prior to the expiration date thereof, the insurer affording coverage, and Lessee shall also provide Lessor thirty (30) days' written notice prior to any such cancellation or termination or, if such prior advanced written notice cannot reasonably be provided, then either the insurer or Lessee shall immediately notify Lessor of any such cancellation or termination as soon as either becomes aware of any such cancellation or termination. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits of insurance exhausted by Lessor, shall not affect 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 policies required above within thirty (30) days of Lessor's written request for said copies. If Lessee's 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.

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 Lessor evidence of such payment before the payment of any premiums become in default. 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, while such failure is a default under the terms of this Lease, Lessor shall have the right but not the obligation to purchase said insurance at Lessee's expense, in addition to any other remedy available at law or in equity. In that event, Lessee shall, upon Lessor's demand repay to it the amounts so paid, including reasonable attorney fees and all other court costs and expenses reasonably incurred because of or in connection with such payments, together with interest thereon at the Default Rate. Lessor may collect or enforce any such 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 Lessee, on the day when Lessor demands repayment of or reimbursement therefor. However, Lessor's election to pay any such insurance obligations shall not waive Lessee's default.

9.2 Indemnification by Lessee.

During the entire term of the Lease, Lessee shall indemnify and hold harmless Lessor, including without limitation, Lessor's 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 Lessor, Lessor's officers, agents and employees or against its title in the Premises, arising out of, or in connection with, any alleged act or omission of Lessee or any person claiming under, by, or through Lessee. If it becomes necessary for Lessor to defend any action seeking to impose any such liability, Lessee shall pay Lessor all costs of court, litigation expenses, and attorney fees incurred by Lessor in effecting such defense in addition to all other sums that Lessor may be called upon to pay by reason of the default or the entry of a judgment against it in the litigation in which such claim is asserted. Without limiting the survival of any other provision of this Lease, this Section 9.2 shall survive the termination of this Lease and any cause of action to enforce it shall not accrue until Lessor's discovery of such losses, claims, actions, debts, demands, obligations, or judgments.

ARTICLE X - Permitted Mortgages

10.1 Mortgages.

Upon prior written notice to Lessor, Lessee shall have the right to subject Lessee's leasehold interest in the Lease to one or more mortgages or deeds of trust, and Lessee may grant a security interest in any personal property constituting the Wind Energy Facilities or Improvements in accordance with the Uniform Commercial Code, Idaho Code § 28-9-101 et seq. (which mortgages, deeds of trust and security interests in personal property may generically be referred to herein simply as mortgage or mortgages) related to the construction or purchase money financing of any of the Wind Energy Facilities or Improvements, or related to an approved assignment of Lessee's interest in the Lease together with an assignment of Lessee's interest in any personal property constituting the Wind Energy Facilities and Improvements ("Permitted Mortgage" or "Permitted Mortgages"); provided that:

A. Such Permitted Mortgages and all rights acquired under them 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 as provided in this Lease;

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

C. Such Permitted Mortgages contain a statement which disclaims any interest or lien against Lessor's fee interest in the Leased Premises and provide that Lessor shall have no liability whatsoever in connection with any such mortgage or the instruments or obligations secured thereby; and,

D. Such Permitted Mortgages provide that, in the event of any assignment of such mortgage, or in the event of a change of address of the interested party named in any Permitted Mortgage ("mortgagee"), notice of the new name and address shall be provided to Lessor.

Only the Permitted Mortgages allowed by this Article are authorized, and in no event shall Lessee's interest in the Lease or Lessee's interest in any personal property constituting the Wind Energy Facilities or Improvements, or any part thereof, be otherwise encumbered by Lessee. To

the extent that a mortgagee of any particular Permitted Mortgage may consist of one or more natural persons or entities, notice to any one such natural person or entity constituting mortgagee shall be deemed notice to all constituting said mortgagee; provided however, that if there are multiple persons or entities constituting mortgagee, then mortgagee may identify which party shall be served any and all notices for all constituting mortgagee.

10.2 Default Notice.

10.2.1 Default Notice to Mortgagee.

Lessor shall serve a copy of any notice of default under this Lease on a mortgagee identified to Lessor pursuant to Section 10.1. The notice shall provide that the mortgagee shall have ninety (90) 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 the default on Lessee's behalf by the payment or expenditure of money, or if Lessee's 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 promptly perform and comply with all covenants and conditions of this Lease it can reasonably perform, including the payment or expenditure of money until the leasehold interest in the Lease shall be released from the effect of the Permitted Mortgage.

10.2.2 Mortgagee's Acquisition of Lessee's Leasehold Interest.

A Permitted Mortgage shall be subject to all provisions of this Lease and shall provide that if Lessee defaults under the terms of any Permitted Mortgage, and if the mortgagee of any Permitted Mortgage acquires Lessee's leasehold interest under this Lease, whether by exercising its power of sale, judicial or non-judicial foreclosure, or an assignment in lieu of foreclosure, then mortgagee shall be liable for the performance of all of Lessee's obligations under the Lease; provided however, that mortgagee's obligations may be limited to the obligations provided in Subparagraphs A, B and C below for a maximum term of one hundred eighty (180) days in order to provide mortgagee an opportunity to sell or assign the leasehold interest to a new assignee that meets all of the qualifications of a permitted assignee and assumes the Lease; provided further, however, that if mortgagee has not found an acceptable assignee to assume the Lease, then mortgagee shall be responsible to satisfy all of the terms and conditions of the Lease the same as Lessee, and mortgagee shall assume the Lease. Nothing contained herein shall be deemed to be or to effect a release of Lessee, and Lessee shall at all times remain liable and responsible to comply with each and every term and condition of this Lease. The obligations that a mortgagee shall be responsible for during the above described period of one hundred eighty (180) days are as follows:

- A. Payments of all Rent, taxes, assessments, and insurance premiums required by this Lease to be paid by Lessee are current, or are promptly 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 promptly brought current by mortgagee, and are kept current; and

C. The mortgagee performs all Lessee's obligations for maintaining the Leased Premises in good order and repair.

10.3 Refinancing.

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

A. 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 Leased Premises are located;

B. The new mortgage given for refinancing shall comply with the provisions this Lease, including the terms of Section 10.1.

If the new Permitted Mortgage complies with the above conditions, Lessee may execute, acknowledge, and deliver the new mortgage as a Permitted Mortgage for the purpose of subjecting Lessee's respective interests in the Wind Energy Facilities and/or Improvements to the lien thereof, and the new mortgage shall cover and be a lien on the Wind Energy Facilities and/or Improvements, subject to the terms and conditions of this Lease.

10.4 Estoppel Certificates.

A. Lessee shall, from time to time, on not less than thirty (30) days' prior written notice from Lessor, execute, acknowledge, and deliver to Lessor, or any other party specified by Lessor, a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), the dates to which the rent and other charges payable under this Lease have been paid, and stating whether or not, to the best knowledge of the signer of the certificate, Lessor is in default in the performance of any covenant, agreement, or condition contained in this Lease and, if so, specifying each such default of which the signer may have knowledge, and further certifying as to such other matters relating to this Lease as may be reasonably requested by Lessor, it being intended that any such statement delivered pursuant to this section may be relied on by Lessor or any prospective purchaser or assignee of Lessor's interest in the Leased Premises.

B. Lessor shall, from time to time, on not less than thirty (30) days' prior written notice from Lessee, execute, acknowledge, and deliver to Lessee, or to the holder of any Permitted Mortgage affecting the Leased Premises or the Improvements, or any other party specified by Lessee, a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the rent and other charges payable under this Lease have been paid, and stating whether or not, to

the best knowledge of the signer of the certificate, Lessee is in default in the performance of any covenant, agreement, or condition contained in this Lease and, if so, specifying each such default of which the signer may have knowledge, and further certifying as to such matters relating to this Lease as may be reasonably requested by Lessor, it being intended that any such statement delivered pursuant to this section may be relied on by any prospective assignee of Lessee, or by a prospective purchaser or assignee of 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, including, but not limited to, 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, 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 Leased 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 Lessee from subtenants, any use or occupation of the Leased Premises, and such franchises as may be appurtenant to the use of the Leased Premises, or any document to which Lessee is a party creating or transferring any interest or estate in the Leased Premises.

11.2 Mode of Payment.

Lessee shall pay the taxes and other charges enumerated in this Article and deliver to 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, 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 Lessor written notice of its intention to contest the tax, claim or obligation, and also furnishes 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 Leased Premises are 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 its 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 an absolute triple net "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 any federal, state or local taxes. Nothing herein shall require Lessee to pay any municipal, state, or federal income tax or other tax of any nature or kind that may be assessed against Lessor or Lessor's assigns.

11.4 Lessee's Default.

If Lessee defaults, fails, refuses, or neglects to make any payment required in this Article, Lessor may do so. In that event, Lessee shall, upon Lessor's demand repay to it the amounts so paid, including reasonable attorney fees and all other court costs and expenses reasonably incurred because of or in connection with such payments, together with interest thereon until paid at the Default Rate. Lessor may collect or enforce any such 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 Lessee, on the day when Lessor demands repayment of or reimbursement therefor. However, Lessor's election to pay the taxes or obligations shall not waive Lessee's default.

ARTICLE XII - Liens

12.1 No Lien.

Lessee shall not subject Lessee's leasehold interest in the Lease or in the Leased 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.

Lessee shall not allow a lien or claim of any kind, except for Permitted Mortgages to be filed or claimed against Lessee's leasehold interest in the Lease during the continuance of this Lease. If any lien other than a Permitted Mortgage is claimed or filed against the Lease or any portion of the Leased Premises, Lessee shall cause the Lease and Leased Premises to be released from the claim within thirty (30) days after Lessee is given written notice that a claim has been filed, or within thirty (30) days after Lessor is given written notice of the claim and transmits written notice of its receipt to Lessee, whichever thirty (30) day period expires earlier. Lessee will cause such release either by paying to the court the amount necessary to relieve and release the Lease and Leased Premises from the claim, or in any other manner which, as a matter of law, will result, within the thirty (30) day period, in the release of the Lease and Leased Premises, Lessor, or Lessor's title from the claim.

12.3 No Liens and No Interest in Fixtures.

Lessor and Lessee agree that none of the Wind Energy Facilities or Improvements installed by Lessee under this Lease shall constitute fixtures regardless of the manner in which such improvements are attached to or installed on the Leased Premises. Lessor will not allow any liens to be placed on any of these facilities arising out of any work done or services performed on behalf of Lessor unless such work or services performed is directly for or on the Wind Energy Facilities or Improvements in the event of any default by Lessee or otherwise allowed or provided for in this Lease. If a lien is filed against any of these facilities arising out of any work done or services performed on behalf of Lessor unrelated to this Lease, Lessor will, at its own expense, take whatever action is needed to remove such lien from the facilities within thirty (30) calendar days of when the Lessor receives notice of the existence of such lien(s).

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 Leased 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 Leased Premises or the construction or preparation of the Leased Premises for the construction of the Wind Energy Facilities or the maintenance of the Wind Energy Facilities, 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 Substance. Other than for maintenance of inventories necessary for the prudent generation, conversion or transmission of electrical energy generated on the Leased Premises, Lessee will not cause or permit long-term storage of any Hazardous Substance on the Leased Premises. In the event that Lessee must utilize Hazardous Materials for the prudent generation, conversion or transmission of electrical energy generated on the Leased Premises, or the construction or preparation of the Leased Premises for the construction of the Wind Energy Facilities or the maintenance of the Wind Energy Facilities, Lessee will provide to Lessor, prior to Phase 2, an HMWMP. The HMWMP will include, at a minimum, a detailed map indicating planned location of Hazardous Materials/Waste storage areas on the Leased Premises, location of spill containment/cleanup materials, location of drains in the storage areas and destination of those drains, and location of fire suppression equipment. The HMWMP shall include a detailed Spill Prevention Plan that includes information regarding the handling of hazardous materials/wastes and the procedures to be followed in the case of an inadvertent spill. All hazardous materials will be marked in accordance with National Institute for Occupational Safety and Health (NIOSH) standards, and storage facilities will be marked in accordance with National Fire Protection Association (NFPA) 704 Hazardous Material Information System approved markings.

13.2 Environmental Laws.

With respect to the Leased 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 operations on the Leased Premises; 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 - Transfer, Assignment, Novation, Subleasing, Subcontractors and Key Employees

14.1 Prior Approval Required.

Lessee shall not have the right to transfer, assign, novate, or sublease all or any part of this Lease without Lessor's prior written consent. Such consent shall not be unreasonably withheld, conditioned or delayed. Lessor, in determining whether to consent to a requested transfer,

assignment, novation, or sublease, shall require submission of information including, but not limited to, the assignment or sublease agreements, the proposed assignee or sublessee's experience and abilities to plan, develop, operate and decommission the Wind Energy Facilities and other Improvements, and such other documents that Lessor may reasonably require. Assignments and subleases, if consented to, shall require Lessee to remain liable for full performance of Lessee's obligations under this Lease. Any transfer, assignment, novation, or sublease without Lessor's prior written consent is a default and shall make the assignee, along with Lessee responsible for performing each and every Lessee obligation under this Lease. Lessor's acceptance of Rent or any other payment from any person shall not constitute consent to any transfer, assignment, novation, or sublease.

No request for Lessor's approval of any assignment or release will be considered unless all Rent due, late payment fees, and interest have been paid in full, and Lessee is in good standing under all other terms and conditions of the Lease.

If Lessee transfers or assigns its interest in this Lease, Lessee shall provide to Lessor one copy of the purchase agreement, contract of sale, or assignment and assumption agreement, signed and acknowledged by Lessee and the assignee. Lessor may require additional documentation as reasonably necessary.

14.2 Terms.

Any assignment or sublease shall be subject to all of the terms, covenants, conditions and obligations of this Lease, including termination of Lessee's interest under this Lease; shall require any assignee or sublessee to assume each and every term, covenant, condition and obligation of Lessee under the Lease; and shall require Lessor's prior written approval of the terms and conditions of any 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 each and every term, covenant, condition and obligation contained in this Lease unless a written release is subsequently granted and executed 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 Lessor's prior written consent to any other or subsequent assignment, mortgage or encumbrance or as a modification or limitation of the right of Lessor.

14.4 Overriding Royalty.

Leases may be assigned with an overriding royalty interest, but overriding royalties cannot exceed a total of five percent (5%) of Gross Annual Revenue. Lessee must state whether it intends to grant overriding royalties in Lessee's application for lease assignment. Lessor may suspend or terminate overriding royalty if it affects the economic viability of electricity production.

14.5 Subcontractors.

At least fifteen (15) days prior to any contractor or subcontractor entering upon the Leased Premises, Lessee shall provide to Lessor a list of all contractors and subcontractors that it will use upon the Leased Premises, including any subcontractor that may be assigned to manage or oversee the day-to-day operations at the Leased Premises. Lessee must obtain Lessor's prior written approval of contractors and subcontractors assigned to manage or oversee the day-to-day operations, which approval shall not be unreasonably withheld.

14.6 Key Employees.

As soon as practicable after initiating a Phase, Lessee shall provide a list of key employees assigned to oversee as many of the following responsibilities as apply for all operations on the Leased Premises: resource assessment and energy projections; financing; design, engineering, procurement and construction specifications; interconnection and substation design; environmental assessments; community liaison; permits and related approvals; regulatory compliance; construction; commissioning potential decommissioning/reclamation; risk management; insurance; performance bonding; operations; and maintenance. Lessee shall update this list of key employees at the start of each new Phase of the Lease, and Lessee shall promptly notify Lessor of any changes to any such key employees. Lessee must provide at least one point of contact in the event of an emergency who shall be available twenty four (24) hours a day, three hundred sixty five (365) days a year.

ARTICLE XV - Miscellaneous

15.1 Governing Law; Venue, Sovereign Immunity.

All of the rights and remedies of the Parties shall be governed by the provisions of this Lease and by the laws of the State of Idaho, exclusive of the conflicts of law provisions. Any action brought to enforce this Lease shall only be brought in an appropriate Idaho State Court with jurisdiction in the county where the Leased Premises are located, or in Ada County, Idaho. Lessee irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, that it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction with respect to this Lease or any document related hereto. Nothing contained in this Lease shall be construed as a waiver of sovereign immunity of Lessor, which immunity is hereby expressly reserved.

15.2 Cumulative Remedies.

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

15.3 Promotion.

Except as allowed by prior written approval of Lessor, neither Lessee nor its successors or assigns shall use the name of the State of Idaho or the fact that its or their operations are to be conducted in whole or in part on state owned lands, under lease or otherwise, in any advertisement or prospectus promoting the sale of stock; provided however, that the reflection on

the accounting and financial records and statements of Lessee of this Lease as an asset of Lessee shall not constitute a breach of this paragraph.

15.4 Enforcement.

The prevailing Party in any litigation or other enforcement action or proceeding between the Parties arising under this Lease shall be entitled to recover against the non-prevailing Party all reasonable costs and expenses incurred by the prevailing Party by reason of any default by the non-prevailing Party, which costs and expenses shall include reasonable attorney fees, and any such costs and expenses incurred on appeal. In the event any litigation or other enforcement action or proceeding is required or effected by either Party to enforce any term, covenant, condition, duty or obligation of this Lease, and Lessor is the prevailing Party, Lessor shall be entitled to recover its reasonable attorney fees for any legal counsel representing Lessor therein, and the calculation of fees incurred for any services performed by any attorney with the Office of the Attorney General using reasonable hourly rates commensurate with similarly qualified counsel for similar legal services.

15.5 Force Majeure.

If Lessor or Lessee is delayed, hindered, or prevented from performing any act required hereunder by reason of any act of God; strike; lockout; labor trouble; inability to procure materials; failure of power; restrictive government laws or regulations enacted after the Commencement Date which precludes the activities the subject of this Lease; riot; insurrection; war; escalation of hostilities; or other reason beyond the party's control making performance impossible, then performance of that act, and that act only, shall be excused for the reasonable period of the delay. In that event, the period for the performance of the act shall be extended for a reasonable period equivalent to the period of the delay, provided that Lessee works diligently to eliminate the delay. Notwithstanding the foregoing, this provision shall not extend the time for commencement of Phase 3 unless the Force Majeure Condition impacts the entire Production Area. The reduction or cessation of wind on the Leased Premises is not a Force Majeure Condition. Neither Lessee's financial condition, nor the financial condition of any of Lessee's contractors or subcontractors, or any other party with whom Lessee contracts, shall be a Force Majeure Condition.

15.6 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 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 Lessor shall rest in and be vested with the State of Idaho.

15.7 Relationship of Parties.

Nothing contained in this Lease shall be construed as creating any relationship between the Parties other than that of landlord and tenant; and nothing contained in this Lease shall be

construed to create any other relationship between the Parties, including, but not limited to, any relationship of principal-agent, master-servant, employer-employee, partnership or joint venture.

15.8 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 Lessor and Lessee and their respective heirs, personal representatives, successors, and assigns, except as otherwise provided herein.

15.9 Non-Waiver.

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

15.10 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 Lessor, or its duly authorized agent or attorney. Unit or cooperative agreements, as described in IDAPA 20.03.15.085, entered into after Phase 1 will be evaluated as lease modifications.

15.11 Entire Agreement.

This Lease contains the entire agreement between the Parties. The execution hereof has not been induced by either Party by any representation, promise, or understanding not expressed herein. There is no other or collateral agreement, stipulation, promise, or undertaking whatsoever between the respective Parties in any way touching the subject matter of this Lease which is not expressly contained herein. This Lease was drafted with full participation of Lessor and Lessee. If there is any ambiguity in the Lease, it should not be resolved against either Party, but by a fair reading of what the Parties intended the Lease to provide.

15.12 Notices.

All notices between the Parties in connection with this Lease shall be in accordance with terms of this Lease. All notices allowed or required herein shall be given by registered or certified mail, deposited in the United States mail with postage prepaid. The notices shall be addressed as follows:

To Lessor:

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

To Lessee:

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

15.13 Joint Liability.

If Lessee consists of more than one person, such persons shall be jointly and severally liable for each term, condition, covenant, duty and obligation of this Lease.

15.14 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.

15.15 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. In such event, the remaining provisions of this Lease shall be interpreted as closely as possible to provisions held invalid or unenforceable.

15.16 Headings.

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

15.17 Survival.

Any provision of this Lease that expressly or by implication comes into or remains in force following the termination of this Lease shall survive the termination or expiration of this Lease for the period set forth in such provision, or if no period is set forth in such provision, for the period that is coextensive with the applicable statute of limitations. Notwithstanding anything to the contrary in this Lease, any indemnification obligations provided for under this Lease shall survive the termination of this Lease.

15.18 Time of Essence.

Time is expressly declared to be of the essence of each and every term, covenant, condition, duty and obligation of this Lease.

15.19 Confidential Information.

Insofar as Lessee seeks to maintain the confidentiality of its confidential or proprietary information, Lessee must clearly identify in writing the information it claims to be confidential or proprietary. Lessee acknowledges that Lessor is subject to the Idaho Public Records Law (Idaho Code §§ 9-337 through 9-350). Lessor shall maintain the confidentiality of the identified information insofar as it is consistent with applicable laws or regulations. In the event Lessor receives a request for the information identified by Lessee as confidential, Lessor shall notify Lessee and specify the date Lessor will be releasing the requested information. Any effort to prohibit or enjoin the release of the information shall be Lessee's sole responsibility and at Lessee's expense. If Lessee fails to obtain a court order enjoining the disclosure, Lessor shall

release the information on the date specified in Lessor's notice to Lessee without any liability to Lessee.

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DRAFT

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be duly executed the day and year of the last signature hereto.

IDAHO STATE BOARD OF LAND COMMISSIONERS

President of the State Board of Land Commissioners
Governor of the State of Idaho
Date: _____

Secretary of State
Date: _____

Director, Department of Lands
Date: _____

STATE OF IDAHO)
) SS
COUNTY OF ADA)

On the date set forth by each of the above signatures, before me, a Notary Public in and of said State, personally appeared Brad Little, known to me to be the President of the Idaho State Board of Land Commissioners and the Governor of the State of Idaho; and Ben Ysursa, known to me to be the Secretary of the State of Idaho; and Dustin Miller, known to me to be the Director of the Department of Lands, that executed the within instrument, and acknowledged to me that the State Board of Land Commissioners of the State of Idaho and the State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this _____ day of _____, _____.

Notary Public

Residence

Commission Expires

LESSEE

By _____

Date: _____

Its _____

Address: _____

STATE OF _____)

) SS

COUNTY OF _____)

On this ____ day of _____ in the year _____, before me, a Notary Public in and of said State, personally appeared _____, known or identified to me to be the _____ of _____, a _____ company, and the person that executed the within instrument on behalf of said _____ company, and acknowledged to me that said person executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this ____ day of _____, _____.

Notary Public

Residence

Commission Expires

ATTACHMENT A
DESCRIPTION OF THE LEASED PREMISES

ATTACHMENT 5 Proposed Fee Schedule

An electronic version of this table is available at <https://www.idl.idaho.gov/energy-resource-leasing/>

Rent Per Acre During Research and Development Phase									
Appraised Value/Acre		\$800							
Desired Acres (NTE 7,000)		0							
Lease Rate Per Acre		0.00%							
Annual Rent Escalator		0.00%							
Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8		
\$0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Construction Rent Phase					The values in the yellow boxes can be changed to manipulate the yearly totals. The Construction Phase rent cannot be less than the Development Phase rent. During the Operational Phase, the annual rental fee per MW must include a rent escalator to account for changing land values and inflationary factors. The Operational Phase rent is the greater of the Royalty Rental fee or the annual rental fee per MW of installed nameplate capacity.				
Annual Baseplate per MW Fee			\$0						
Operational Rent									
Proposed Installed MW			0						
Annual Baseplate per MW Fee			\$0						
Annual Increase as a %			0.00%						
Year 1-5	Year 6-10	Year 11-15	Year 16-20	Year 21-25					
\$0	\$0	\$0.00	\$0.00	\$0.00					
Royalty Rental fee									
Gross Annual Revenue			\$0						
Year 1-5	Year 6-10	Year 11-15	Year 16-20	Year 21-25					
Royalty Fee Rate									
0.0%	0.0%	0.0%	0.0%	0.0%					
\$0	\$0	\$0	\$0	\$0.00					