

Wind Agreement Compensation Fact Sheet

Estimates of Lease Compensation During Operating Period

The below information is provided for informational purposes only in order to be responsive to landowners' questions and attempt to generate additional transparency around the terms of the Talen Northwest Renewables LLC Wind Energy Agreement (the "Agreement").

Operating Years	Royalty Percentage (%)	Estimated Annual Compensation per Operational Turbine
1-10	4%	\$12,500 - \$15,000
11-20	5%	\$15,500 - \$19,000
21-30	6%	\$19,000 - \$22,500
31-40	7%	\$22,000 - \$26,500
41-50	8%	\$25,000 - \$30,000

Note that all figures are not to be relied upon and are high level estimates based on practical, general assumptions and are subject to change, including the potential for compensation to be higher or lower than the estimated range, based on some or all of the following variables:

- Actual wind turbine nameplate capacity, which can roughly range from 2.5 megawatts to 5 megawatts. The estimate above is based on a wind turbine with a nameplate capacity of 3.5 megawatts.
- Actual wind speeds and general weather conditions which are a critical determinant of wind turbine output.
- The final revenue proposition, and the structure of the proposition, for the project, meaning how much the project gets paid for the energy, renewable energy credits and other potential attributes generated over the life of the project.
- Other variables including, but not limited to, those contained in the Agreement.

Also note that this outline does not represent an agreement, a portion of the Agreement, or legal confirmation of the terms of the Agreement. The Agreement supersedes this outline in the event of any discrepancy.

The Megawatt Payment is also included in the Agreement so that, even in years where the factors driving the royalty payment are below expectations the minimum, compensation is still \$8,750 for that year based on a single 3.5 megawatt turbine being installed. A single wind turbine will take less than 2 acres of land out of service, so this payment represents a significant increase over using that same acre for a traditional agricultural purpose.

Frequently Asked Questions | Talen Northwest Renewables

<p>Who is Talen Northwest Renewables LLC?</p>	<p>Talen Northwest Renewables LLC is a project-level company that owns the assets related to our wind energy efforts located in Rosebud and Treasure Counties. Talen Northwest Renewables LLC is jointly owned by Pattern Energy and Talen Energy..</p> <p>Talen Energy is a privately-owned independent power producer that generates and sells electricity, capacity and related products from a fleet of power plants that use diverse fuel sources including zero-carbon nuclear, clean and flexibly dispatched natural gas, and efficient, resilient coal. The Talen Northwest Renewables project will help further diversify Talen’s generation portfolio, adding renewable energy to its fleet and furthering its commitment to the Montana energy market. Talen is a part owner in the Colstrip Steam Electric Station located in Rosebud County, MT.</p> <p>Pattern Energy is an industry leader in developing renewable energy and transmission assets. With a long history in wind energy, Pattern Energy’s highly-experienced team has developed, financed and placed into operation more than 4,500 MW of wind and solar power projects in the U.S., Canada, Mexico, and Japan, including an 80 MW wind project in Stillwater County, MT. A strong commitment to promoting environmental stewardship drives the Pattern’s dedication in working closely with communities to create renewable energy projects. Pattern Energy has offices in San Francisco, San Diego, Houston, and New York in the US; Toronto, Canada; Mexico City, Mexico; Santiago, Chile; and Tokyo, Japan.</p> <p>Pattern Energy has a portfolio of 20 operating wind power facilities, including two projects it has agreed to acquire, with a total owned interest of 2,736 MW in the United States, Canada and Chile that use proven, best-in-class technology. These facilities generate stable, long-term cash flows in attractive markets that have strong growth potential. Each of the facilities has contracted to sell all, or a majority, of its energy output under long-term, fixed-price power sale agreements.</p>
<p>I recently met a land agent working on behalf of Talen Northwest Renewables LLC. How are they connected to Talen Northwest Renewables and the potential wind farm?</p>	<p>Agents in the field are employed as direct contractors representing Talen Northwest Renewables LLC to assist us with our mission to meet face-to-face with as many landowners as possible. Connecting with landowners and beginning the process of discussing land lease details is an important stage for us as it allows us to communicate directly with the community about this project – these agents are allowing us to broaden our reach and expand this process given their significant experience in Montana and the Northwest in general.</p>
<p>Previous developers had mentioned that projects such as this would be difficult due to the area’s lack of transmission. Is that no longer true?</p>	<p>The Talen Northwest Renewables team is working with federal, regional and state entities to finalize the specific path to market utilizing the existing 500kV transmission capability near Colstrip, MT.</p>
<p>What economic benefits to my local community can I expect from the proposed project?</p>	<p>The proposed Talen Northwest Renewables project represents a significant investment within Rosebud and Treasure Counties. Throughout development and construction, local residents can expect to see widespread direct and indirect job creation, economic investment, and tax revenue.</p>

<p>How much money can I expect to make per year if I host a wind turbine on my land?</p>	<p>Please see the separate document titled <i>Estimates of Easement Compensation During Operating Period</i>.</p>
<p>How is wind a viable source for energy when the wind itself is intermittent?</p>	<p>Wind turbines in Montana are expected to generate energy between 80-90% of the time in any average year. Wind forecasting technology makes wind energy easier to predict and more reliable than ever before.</p> <p>Electricity grids are already designed to handle variability in both demand and supply. Because of the natural variations in demand, the electric grid always has more power available than it needs in the form of spinning reserve. During a power plant outage – whether a conventional plant or a wind plant – backup is provided by the entire interconnected utility system.</p> <p>No power plant operates 100% of the time. There are periods when power plants shut down for maintenance and repairs and times when resources run low or unexpected outages occur. At some conventional power plants, the entire plant may have to be shut down for repairs, whereas wind farm maintenance takes place one turbine at a time, without having to shut down the entire plant.</p>
<p>Does Talen Northwest Renewables LLC have a plan for decommissioning?</p>	<p>Yes, Talen Northwest Renewables LLC will have plans and funding set aside for decommissioning the wind farm at the end of its useful life or, in the very unlikely scenario that the company goes out of business or is unable to continue operating the project, the project lease has requirements for decommissioning. Provisions for removal of turbines and infrastructure, provisions for land restoration and provisions for Talen Northwest Renewables LLC to provide financial assurance, accessible by the County, to carry out the decommissioning are all captured as provisions in the lease.</p>
<p>When can I expect the construction process to begin and how long will it last?</p>	<p>Talen Northwest Renewables LLC is targeting the commencement of construction as early as 2024 but has included a five-year period in the land lease to give time to work through any issues that arise during the development process. Depending on factors such as seasonal conditions and final project size and design, construction is expected to last between 1-2 years.</p>
<p>What is the Development Phase and how long will it last?</p>	<p>The Development Phase (prior to construction of the wind farm) includes many important, necessary steps including obtaining land easements, collecting meteorological data, performing environmental studies and working through the permitting processes, to name a few. This can typically take anywhere from two to five years depending upon the complexity of the project.</p>
<p>If public roads are damaged during construction, how and when are they repaired?</p>	<p>All public roads that are expected to be utilized during construction are documented and analyzed to capture the existing condition of the roadways prior to commencing construction activities. All public roads impacted by the construction of the wind farm will be returned to the same or better condition at the conclusion of construction activities. This arrangement is documented and memorialized through a Public Road Use Agreement with the local road engineers at the County level.</p>
<p>Are there safety issues related to the project?</p>	<p>The health and safety of the public, landowners, and personnel at the project is of utmost importance to Talen Northwest Renewables LLC. The project will be monitored on-site and by a remote operations center which is staffed 24 hours a day and 7 days a week.</p> <p>Talen Northwest Renewables LLC will work closely with local permitting and zoning officials as well as the first responder community to ensure the project is compliant with all applicable state and local regulations.</p>

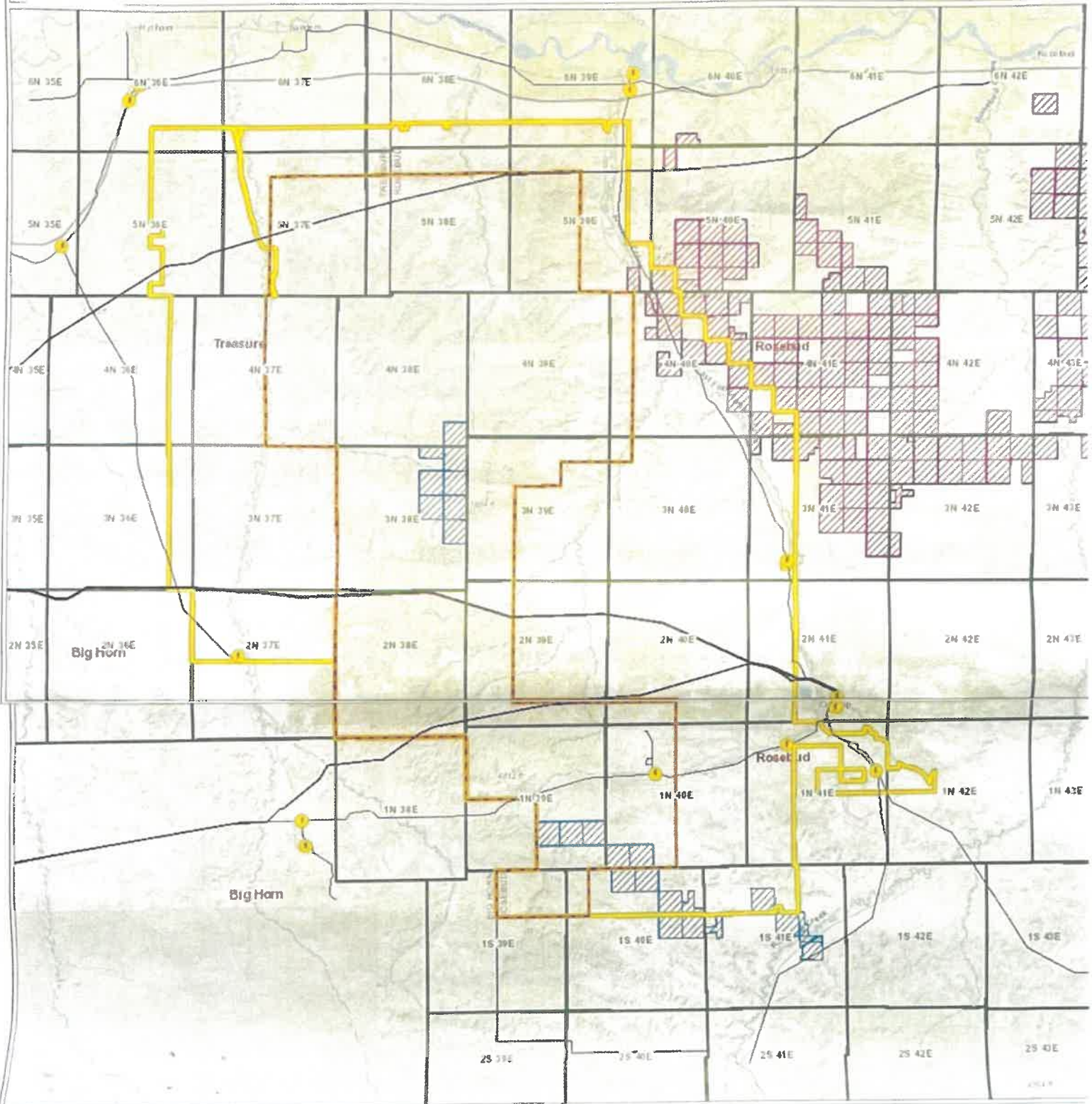
What will happen to the soil that is excavated from the turbine sites?	The soil that is excavated to install the turbine foundation structure will be used to backfill the foundation and redistributed around the turbine after construction. If there is excess material that is not needed for fill on roads or other places in the project area, the soil can typically be left for the landowner to do what he/she wants with it, if the landowner desires.
Should Pattern Energy or Talen sell their interest in the wind farm, will the “new owner” be held to the same terms for removal of infrastructure and decommission of towers?	Yes. Any owner or owners would be required to continuously comply with the terms of the Lease and further, as a condition of any sale, would need to be fully qualified to own and operate a large-scale wind project.
Does Talen Northwest Renewables LLC have a power purchase agreement (PPA) for its proposed wind or solar projects?	Not yet. Talen Northwest Renewables LLC is working diligently to identify an offtake partner or partners for the energy that would be generated. Securing offtake is typically part of the development process.
Does sound or low frequency noise from wind turbines impact human health?	<p>For more than 40 years people have been living near more than 350,000 wind turbines operating globally and more than 50,000 wind turbines operating in North America. There is no scientific evidence indicating that wind turbines have caused any adverse health effects. Overall, health and medical agencies agree that the sound from wind turbines is not loud enough to cause hearing impairment and is not causally related to adverse effects. Scientific evidence to date does indicate that at common residential setback distances there is no direct health risk from wind turbine noise, including low frequency noise and infrasound.</p> <p>Wind turbine sounds are not unique. Based on the levels and frequencies of the sounds, a multidisciplinary scientific advisory panel comprised of medical doctors, audiologists, and acoustical professionals concluded that there is no evidence the audible or sub-audible sounds emitted by wind turbines have any direct adverse physiological effects.</p>
Why is this project located in Rosebud and Treasure Counties, and at this particular site?	This particular site was chosen for development due to strong natural resources (wind) along with proximity to existing transmission lines. Wind projects are typically complementary land use for existing agricultural or ranching operations and can be viewed by landowners as providing an additional source of income and “drought-resistant” stream of revenue through direct payments to landowners, and tax revenue to the local schools and Counties.
Are you getting government handouts or using local tax dollars to fund the project?	This project receives no government grants, and no other checks from taxpayers. Like nearly all energy infrastructure in the US, the project’s owner will receive federal tax credit for a portion of the project value. For wind, this is called the Production Tax Credit.
Do you have an erosion control plan?	A stormwater pollution prevention plan (SWPPP) will be developed by the general contractor and verified by Talen Northwest Renewables LLC. The SWPPP will be reviewed by multiple agencies and must be approved before construction begins.

For more information please contact us at:

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WIND ENERGY AGREEMENT

This WIND ENERGY AGREEMENT (this “**Agreement**”) dated February _____, 2021 (the “**Effective Date**”) is entered into by and between _____ (“**Owner**”) and Talen Northwest Renewables, LLC, whose address is 600 Hamilton Street, Suite 600, Allentown, PA 18101 (together with its successors and assigns, “**Developer**”). Owner and Developer are sometimes herein referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Owner owns certain real property located in Rosebud County, Montana, as more particularly described in the legal description set forth in Exhibit A attached hereto (the “**Property**”); and

B. Owner desires to grant Developer certain leasehold, easement and other rights to develop, install, own and operate wind energy generation and transmission systems on the Property.

AGREEMENT

In consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the following:

SECTION 1: Grant of Rights

1.1. Lease. Owner hereby leases to Developer, and Developer leases from Owner, the Property, including airspace thereof, upon the terms and conditions hereinafter set forth.

1.1.2. Purposes of Lease. Pursuant to this Agreement, Owner shall have possession of the Property for the following purposes (collectively, “**Operations**”):

- (a) Determining the feasibility of wind energy conversion and other power generation on the Property or on adjacent lands, including studies of wind speed, wind direction and other meteorological data, and extracting soil samples;
- (b) Converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted;
- (c) Constructing, laying down, installing, using, replacing, relocating, reconstructing and removing from time to time, and monitoring, maintaining, repairing and operating the following only for the benefit of the Project or Projects (as defined below): (i) wind power generating machines, of any kind including supporting towers, foundations and any other associated equipment or structures (collectively “**Wind Turbines**”); (ii) overhead and underground electrical distribution, collection, transmission and communications lines, electric transformers, electric

substations, energy storage facilities, telecommunications equipment, and power generation facilities; (iii) roads and crane pads; (iv) meteorological towers, LiDAR and other types of wind measurement equipment; (v) control buildings, maintenance yards, temporary construction laydown and staging yards and related facilities and equipment; and (vi) PTC qualifying holes and related roadways (all of the above, including the Wind Turbines, collectively “**Wind Power Facilities**”). The term “**Project**”, for the purposes of this Agreement, means an integrated wind energy generation system, consisting of Wind Power Facilities, that is constructed and operated on the Property, and/or adjacent lands, by Developer, or a third party authorized by Developer. Developer may determine whether any particular group of Wind Power Facilities constitutes a single Project or multiple Projects for purposes of this Agreement, and in the case of multiple Projects, which portion of the Property shall be included within each Project. As used herein, the term “**Wind Project Property**” means that portion of the Property and other lands in the vicinity upon which are located the Wind Power Facilities that constitute a Project.

- (d) Vehicular and pedestrian ingress, egress and access to and from Wind Power Facilities on, over and across the Property by means of roads and lanes thereon if existing, or otherwise by such roads, including but not limited to turning radius from public roads, if necessary, as Developer or anyone else may construct from time to time, in each case for the benefit of one or more Projects (collectively, “**Access Rights**”); and
- (e) Undertaking any other activities that Developer or a third party authorized by Developer, determines are necessary, helpful, appropriate or convenient in connection with, incidental to, or to accomplish any of the foregoing purposes or for the benefit of one or more Projects, including conducting surveys and environmental, biological, cultural and other tests and studies, including but not limited to geotechnical drilling and studies. Without limiting the generality of the foregoing, the Parties recognize that (a) power generation technologies are improving at a rapid rate and that Developer may (but shall not be required to) from time to time replace existing Wind Turbines on the Property with newer model (and potentially larger) Wind Turbines and (b) the Operations may be accomplished by Developer or one or more third parties authorized by Developer.

1.2. Operations Easements. In addition, Owner hereby grants to Developer the following easements over the Property (collectively, the “**Operations Easements**”):

- (a) An exclusive easement to use, convert, maintain and capture the free and unobstructed flow of wind currents and wind resources over and across the Property;
- (b) A non-exclusive easement for audio, visual, view, light, flicker, noise, shadow, vibration, air turbulence, wake, electromagnetic, electrical and radio frequency interference, and any other effects attributable to any Project or Operations located on the Property or on adjacent properties over and across the Property and any other property owned by Owner adjacent to or in the vicinity of the Property;

- (c) An exclusive easement to permit the rotors of Wind Turbines located on adjacent properties to overhang the Property and to encroach into any county, state or other governmental setback;
- (d) An exclusive easement to use the Property reasonably necessary to permit the use of cranes required to install, repair or replace the Wind Turbines from time to time along with an access route for the cranes (“**Crane Travel Path Easement**”). Developer shall have the additional right to temporary earthmoving as necessary to build a suitable access route for the Crane Travel Path Easement;
- (e) A seventy-five (75) foot wide non-exclusive easement and right to install, maintain, repair and operate on the Property underground at least thirty-six (36) inches below the surface (or above ground if reasonably necessary or required), (i) distribution and collection lines which carry electrical energy to and/or from the Wind Project Property, (ii) communication lines which carry communications to and from the Wind Project Property and (iii) other above ground improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing (“**Distribution Facilities**”), in each case for the benefit of one or more Projects (collectively the “**Distribution Easement**”);
- (f) A non-exclusive easement and right for the Access Rights in each case for the benefit of one or more Projects. Owner may specify a reasonable access route, but Owner shall not unreasonably withhold its approval for other routes in such locations as Developer may request. All roads on the Property used for the benefit of Developer (each, a “**Developer Road**”) shall be constructed or repaired at Developer’s expense.; and
- (g) A non-exclusive “**Construction Easement**” for purposes of constructing, maintaining, repairing, replacing, and removing all or any part or element of the Wind Power Facilities whether located on or off the Property. The exact size and configuration of the Construction Easement will vary with location and function as reasonably determined by engineering and construction personnel, but is generally expected to comprise an area of approximately three (3) acres at each turbine site, one and one-half (1 1/2) acres at each meteorological tower site, an area of approximately two hundred (200) feet of additional width on each side of all of the access roads measured from the center line of such access roads, an area approximately fifty (50) feet in width (i) on either side of all buried cable and (ii) on either side of all of the aboveground lines, and an area of approximately two hundred fifty (250) feet of additional width on each side of the Crane Path Travel Easement. Developer shall have the right to use the Property during the life of the Wind Power Facilities for major repairs requiring a crane and laydown areas. This Construction Easement also shall permit vehicular and pedestrian access in connection with installation or removal of the nacelle or rotor on any Wind Turbine to go onto the Property up to 750 feet in any direction from the base of the Wind Turbine to hold tag lines securing the nacelle and rotor while they are being lifted into place. When using the Construction Easement, Developer will implement suitable wind erosion control on disturbed ground caused by construction or

Developer's other activities. After each use of the Construction Easement, Developer to the extent reasonably possible shall restore the Construction Easement Property to the condition it was in before Developer's use.

1.3 Notwithstanding anything contained herein to the contrary, each Operations Easement shall continue for so long as a Project, the electrical substation serving a Project, or any Wind Power Facility exists on any of the Wind Project Property, including replacements thereof, exists, unless terminated in writing by Developer and shall not terminate on, and shall survive after, the termination or expiration of the Agreement. Notwithstanding the foregoing, in no event shall any of the Operations Easements continue longer than the longest period permitted by Law.

1.4 Owner Subeasements. To the extent that Owner holds any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Property (the "**Owner Easements**"), and such Owner Easements are or could be used for the benefit of the Property, then the same are hereby included in this Agreement, and Developer shall be entitled to make full use thereof. Upon the request of Developer at any time and from time to time during the Term, Owner shall grant thereto (in recordable form and containing such terms and provisions as may reasonably be requested by Developer), for no additional consideration, one or more subeasements of the Owner Easements (each, an "**Owner Subeasement**"). The term of each Owner Subeasement shall run concurrently with the Term (or for such shorter period of time as is provided in the applicable Owner Easement) and shall terminate upon the expiration or termination hereof.

1.5 Separate Continuing Easements. Upon the request of Developer at any time and from time to time during the Term, Owner shall grant thereto (in recordable form and containing such terms and provisions as may reasonably be requested by Developer), the following stand-alone easements (each, a "**Separate Continuing Easement**"): (a) one or more nonexclusive easements for Access Rights on, over and across the Property, including for vehicular and pedestrian ingress, egress and access to and from one or more Projects; and (b) one or more easements for Distribution Facilities on, under, over and across the Property, for the benefit of one or more Projects; in each such case where and to whom designated by Developer. Each Separate Easement shall continue for so long as a Project, the electrical substation serving a Project, or any Wind Power Facility exists on any of the Wind Project Property, including replacements thereof, unless terminated in writing by Developer and shall not terminate upon, and shall survive, the expiration or earlier termination of this Agreement.

1.6 With respect to each Operations Easement, Owner Subeasement, and Separate Continuing Easement (each, an "**Easement**"): (a) to the extent permitted by law, such Easement shall be appurtenant to the applicable leasehold estate and the Wind Project Property; (b) such Easement shall run with the Property and the Wind Project Property (and such other lands, as applicable) and inure to the benefit of and be binding upon Owner and the holder of the Easement and their respective successors and assigns, and all persons claiming under them; (c) no act or failure to act on the part of Developer or the holder of the Easement shall be deemed to constitute an abandonment, surrender or termination thereof, except upon recordation by such holder of a quitclaim deed specifically conveying the Easement back to Owner; (d) nonuse of the Easement shall not prevent the future use of the entire scope thereof in the event the same is needed; and (e) no use of or improvement to the Property (or such other lands) or any lands benefited by the

Easement, and no Transfer (as defined below), shall, separately or in the aggregate, constitute an overburdening of the Easement.

1.7 Exclusivity. Developer shall have the exclusive right to develop and use the Property for wind energy purposes and to convert all of the wind resources of the Property; provided, however, that nothing expressly or impliedly contained in this Agreement or represented to Owner shall be construed as requiring Developer to (a) undertake construction, installation or operation of any Wind Power Facilities on the Property or elsewhere, (b) continue operation of any Wind Power Facilities from time to time located on the Property or elsewhere or (c) generate or sell any minimum or maximized amount of electrical energy from the Property; and the decision if, when and to what extent to construct, install or operate Wind Power Facilities, or to generate or sell electrical energy, shall be solely in Developer's discretion. Owner shall cooperate with Developer and each sublessee in connection with its Operations, and, upon request by Developer, shall make available to Developer for inspection copies of all reports, agreements, surveys, plans and other records of Owner that relate to the wind on or across the Property or to the feasibility of wind energy development on the Property.

1.8 Owner's Reserved Rights. Subject to the rights of Developer under this Agreement, Owner hereby reserves the right (i) to use the Property for any purpose (including for agriculture, ranching and hunting), (ii) to rebuild, replace or enlarge the existing structures in their present location, and to build additional structures up to fifty (50) in height (collectively, "**Owner's Improvements**") outside of (a) the setback area of the Wind Turbines consisting of approximately a 750 foot diameter circle around each Wind Turbine, (b) the Crane Travel Path Easement, (c) the Access Easement and (d) the Distribution Easement; and (iii) to lease the Property and grant easements on, over, under and across the Property to other persons and entities for such purposes (and any income derived by Owner from such use, leasing or easement granting shall belong entirely to Owner); provided, however, that (a) such uses, leases and easements shall not include wind energy development or the installation or use of any facilities related to wind energy development or generation (which rights and uses are exclusively granted to Developer in this Agreement), (b) such uses, leases and easements shall be for purposes and activities that are not and will not be inconsistent with any of Developer's Projects or Operations, or Developer's enjoyment of the rights granted to it under this Agreement and (c) any such leases and easements entered into after the Effective Date shall expressly provide that they are subject and subordinate in all respects to this Agreement and to the rights of Developer and any sublessees hereunder. Notwithstanding the foregoing, if there is any conflict or disagreement between the Parties regarding their respective rights to develop and utilize the Property, then Developer's use (for the purposes permitted in this Agreement) shall have first priority. Owner shall have the right to fence the Property for control of livestock provided Developer has the right to install a gate or gates in such fencing. Owner shall have the right to transfer Owner's interest in all of the Property to any person or entity ("**Transferee**") provided there is a concurrent transfer and/or assignment and assumption of Owner's rights and obligations under this Agreement to the same Transferee as part of the same transaction. Owner shall have the right to mortgage the Property without the consent of Developer, provided any such mortgage shall be subordinate to and subject to this Agreement.

SECTION 2: Term

2. Term. The term of this Agreement (the “**Term**”), shall commence on the Effective Date and shall continue until the expiration of the Extended Operating Phase (as defined below), unless sooner terminated as provided herein.

2.1. Development Phase. As used herein, the term “**Development Phase**” shall mean the period commencing on the Effective Date and ending on the earlier of: (a) the Commercial Operation Date (as defined below), or (b) the fifth anniversary of the Effective Date. This Agreement shall terminate upon the expiration of the Development Phase only if there has been no Commercial Operation Date and no extension of the Development Phase into the Extended Development Phase as defined below.

2.2. Extended Development Phase. If the Commercial Operation Date has not occurred prior to the fifth anniversary of the Effective Date, the Developer may, upon written notice to Owner not less than thirty (30) days prior to the fifth anniversary of the Effective Date, extend the term of the Development Phase for an additional three (3) years. If Developer exercises this option to extend the Development Phase, the term “**Extended Development Phase**” shall mean the period commencing on the fifth anniversary of the Effective Date and ending on the earlier of: (a) the Commercial Operation Date (as defined below), or (b) the eighth anniversary of the Effective Date. This Agreement shall terminate upon the expiration of the Extended Development Phase only if there has been no Commercial Operation Date.

2.3. Operating Phase. As used herein, the term “**Operating Phase**” shall mean the period commencing upon the first production of wind energy in commercial quantities by Developer or its successors or assigns in connection with the Project after the initial equipment testing period (the “**Commercial Operation Date**”), and ending thirty (30) years thereafter. This Agreement shall terminate upon the expiration of the Operating Phase unless Developer has exercised Developer’s option to extend the Operating Phase into the Extended Operating Phase as defined below.

2.4. Extended Operating Phase. Upon written notice to Owner not less than 30 days prior to the expiration of the Operating Phase, Developer may extend the Operating Phase an additional ten (10) years (the “**First Extended Operating Phase**”) commencing on the thirtieth anniversary of the Commercial Operation Date. In addition, upon written notice to Owner not less than 30 days prior to the expiration of the First Extended Operating Phase, Developer may extend the Operating Phase a second time for another ten (10) years (the “**Second Extended Operating Phase**”) commencing on the fortieth anniversary of the Commercial Operation Date. The First Extended Operating Phase and Second Extended Operating Phase are sometimes collectively referred to herein as the “**Extended Operating Phase**.”

2.5. Outside Termination Date. This Agreement shall terminate in all cases on December 31, 2099 (the “**Outside Termination Date**”), unless otherwise sooner terminated pursuant to the terms and conditions of this Agreement. This provision is intended by the Parties to satisfy the wind energy agreement content requirement set forth in §70-17-406(1)(d), M.C.A.

SECTION 3: Payments to Owner

3. In consideration of the rights granted hereunder, Developer will pay Owner the amounts set forth in **Exhibit B** attached hereto. **Exhibit B** shall not be recorded without the specific prior written consent of Developer.

SECTION 4: Developer's Covenants

4. Developer covenants, represents and warrants to Owner as follows as of the Effective Date:

4.1. Compliance with Laws. Developer shall at all times comply in all material respects with all valid laws, ordinances, rules, regulations and statutes of any governmental agency applicable to Developer's operations on and use of the Property. This provision is intended by the Parties to satisfy the wind energy agreement content requirement set forth in §70-17-406(1)(h), M.C.A.

4.2. Payment of Taxes and Other Charges. Developer shall be responsible for any increase in real, personal or mixed property taxes levied against the Property attributable to Developer's installation of improvements on the Property owned by or under the control of, Developer, which improvements may include the Wind Turbines, power transmission and interconnection facilities, and other fixtures and equipment owned by Developer and located on the Property. Developer will also pay prior to delinquency all charges for natural gas, water, electricity, and other utilities used by Developer on the Property. Developer is responsible for paying any other taxes levied against Developer's personal property. Notwithstanding anything to the contrary in the Agreement, Owner shall not be liable for any property tax associated with the Project or other equipment related to the development of the Project during the Term of this Agreement. This provision is intended by the Parties to satisfy the wind energy agreement content requirement set forth in §70-17-406(1)(f), M.C.A. For clarification purposes, Owner shall be liable for all property tax associated with all real and personal property owned by Owner, but shall not be liable for any increases in such property tax by virtue of the Project. For the avoidance of doubt, Developer shall not be responsible for any personal income taxes of Owner.

4.3. Liens. Developer shall keep the Property free and clear of all liens and claims of liens (other than inchoate liens arising automatically by operation of law) for labor and services performed on, and materials, supplies, or equipment furnished to, the Property in connection with Developer's use of the Property pursuant to this Agreement; provided, however, that if Developer wishes to contest any such lien, Developer shall, within sixty (60) days after it receives written notice of the filing of such lien, provide a bond or other reasonably acceptable security to Owner for the amount of such lien, or provide Owner with title insurance insuring Owner's interest in the Property against such lien claim.

4.4. Hazardous Substances. Developer shall not violate, and shall indemnify Owner against any violation by Developer of any law, statute, order, ordinance, rule or regulation relating to the generation, manufacture, storage, use, release or threatened release, disposal, transportation or presence on or under the Property of any substance which is defined as a hazardous substance, deleterious substance, hazardous material, toxic substance, solid waste, or hazardous waste in any

applicable federal, state or local law, statute or ordinance. This Section 4.4 is not intended to apply to the legal and appropriate use of substances to mitigate or control noxious weeds.

4.5. Indemnification. Developer shall indemnify, defend and hold harmless Owner and Owner's shareholders, lessees, mortgagees, officers, employees and agents (each, an "**Owner Indemnified Party**") against any and all losses, damages, claims, expenses and other liabilities resulting from or arising out of (i) any operations of Developer on the Property, including during the construction and operation of the Project and the Wind Power Facilities, (ii) any negligent failure to act on the part of Developer or anyone else engaged in doing work for Developer, or (iii) any breach of this Agreement by Developer. This indemnification shall survive the termination of this Agreement and the termination of any lease or easement that is the subject of this Agreement. This indemnification shall not apply to losses, damage, claims, expenses, and other liabilities caused by any negligent or deliberate act or omission on the part of any Owner Indemnified Party. This provision is intended by the Parties to satisfy the wind energy agreement content requirement set forth in §70-17-406(1)(g), *M.C.A.*

4.6. Insurance. Developer agrees to maintain liability insurance covering its activities on the Property and to provide Owner with additional insured status to the extent of Developer's Indemnification obligations hereunder. Such coverage shall have a minimum combined occurrence and annual limitation of Two Million Dollars (\$2,000,000), provided that such insurance coverage may be provided as a part of a blanket policy covering other properties. Developer agrees to supply Owner with such certificates and other evidence of insurance as Owner may reasonably request. Developer will also ensure that all Developer's employees, contractors, subcontractors and third parties working on Owner's Property for the benefit of Developer carry appropriate licensure, worker's compensation and general liability insurance as required by Montana law.

4.7. Developer Roads. Developer shall maintain in good condition any Developer Road. For any Developer Road to be constructed by Developer or that Developer desires to use which is not on an existing road, such Developer Road shall be used to incur the least damage and inconvenience to the Owner. Additionally, if requested by the Owner, the Owner shall have the opportunity to review location and plans for the construction of any new Developer Road in advance; however, Developer maintains final decision on new Developer Road location. Developer Roads shall include water diversion dikes or culverts as necessary. Owner reserves the right to use any Developer Roads.

4.8. Non-Interference with Existing Lines and Rights of Way. Developer shall be responsible to ensure that its development does not interfere with existing lines and rights of way, including but not limited to, overhead/underground power lines, pipelines and fiber optic lines, absent agreement from the owner of such lines and rights of way.

4.9. Wind Turbine Setback. Developer shall determine the size, type, manufacturer and exact location of the Wind Turbines and other installations in its sole discretion, but Developer shall not locate, position or place any Wind Turbines within one thousand five hundred (1,500) feet of any occupied residence as such residence existed on the Effective Date without Owner's prior written consent

4.10. Noxious Weeds. Upon commencement of construction and until the termination of this Agreement, Developer shall undertake commercially reasonable efforts to control the germination and growth of noxious weeds in and immediately adjacent to the areas in which Developer is performing construction or maintains any of its access or improvements. Any such weed control efforts shall be consistent with the Montana Weed Management Plan.

4.11. Fences and Gates. Developer, its contractors, its agents, employees, and invitees shall be responsible to open and close any gates accessing Owner's property, and to repair both the fences and gates from any damage caused by their opening and closing of the gate in the course of gaining access to the Property. Developer shall leave any gates, open or shut, as the gates were found in order to maintain Owner's livestock and Property management. During all times when fences or gates are open or cut to allow Developer access, Developer shall, at Developer's expense, post personnel to act as spotters to prevent escape of livestock from pastures or enclosures affected thereby. Developer will be responsible for reimbursing Owner for any loss of livestock caused by an incorrectly shut or open gate by Developer or its employees and for any time spent by Owner gathering livestock that strayed from the Owner's property as a result of Developer or its agents or employees leaving a gate open. Developer will, at its expense, install any different gates or cattle guards reasonably required to facilitate Developer's operations on the Property, together with any additional measures reasonably required for the control of Owner's livestock.

4.12. No Developer Party Recreation. Developer will instruct its employees, agents, invitees, contractors and the like not to hunt on the Property or otherwise use the Property for recreational purposes, unless approval by Owner is granted in writing.

4.13. Notice of Activity on Property. Developer's on-site manager and project manager shall use reasonable, good faith efforts to communicate to and keep Owner apprised of when Developer, its contractors, agents, and employees will be on the Property. If Owner installs a lock on any gate(s), Owner will work with Developer to install double locks so that both parties may access the Property.

4.14. Layout Plans. Developer at the request of Owner will provide to Owner for Owner's review the plans of the layout and location of the Wind Turbines and other Wind Power Facilities upon the Property. Owner may provide advice on the layout and location; however, Developer retains the unilateral power and control to select, in Developer's sole discretion, the final location of the Wind Turbines and other Wind Power Facilities upon the Property

SECTION 5: Owner's Covenants

5. Owner covenants, represents and warrants to Developer as follows, as of the Effective Date:

5.1. Owner's Authority. *[Except as to mineral rights,]* Owner is the sole owner and holder of fee simple title to the Property, free and clear of all liens, encumbrances and security interests, other than any and all easements, rights-of-way, covenants, conditions, restrictions, if any, relating to the Property, to the extent, the same may be in force and effect and either shown of record in the Office of the County Clerk and Recorder of **Rosebud** County, State of Montana, or apparent on the Property. Except as to mineral rights, all persons having any ownership interest

in the Property (including spouses) have signed this Agreement. Each spouse signing this Agreement agrees that any rights of community property, homestead, dower, contribution, and the like shall be subject and subordinate to this Agreement and the rights granted hereby. Owner hereby releases and waives all rights under and by virtue of any applicable homestead exemption laws as to the Lease, the Easements and other rights granted hereunder.

5.2. Liens and Tenants. Owner represents and warrants that, to the best of Owner's knowledge, there are no liens, options, encumbrances, leases, mortgages, deeds of trust, fractured interests, mineral or oil and gas rights, or other exceptions to Owner's fee title ownership of the Property (each, a "**Lien**") except as may appear in the official real estate records of **Rosebud** County, Montana. *[Owner represents and warrants that, to the best of Owner's knowledge, Owner may not own all the gas, oil and mineral interests, some of which may have been severed from the fee title to the Property, and Owner makes no representation or warranties with regard to those non-owned gas, oil, or mineral rights or their future development.]* Except as disclosed above, Owner represents and warrants that there are no tenants or any other parties (other than Owner) with rights to possession or occupancy of any portion of the Property. Owner covenants and agrees that during the Term, it shall not permit or grant a Lien, tenancy or other possessory rights in any portion of the Property (other than portions that may have been released from the operation of this Agreement) to any entity or person unless and until both Owner and such entity or person has executed agreements (the "**Subordination Agreements**"), satisfactory in substance and form to Developer, subordinating such Lien, tenancy or other possessory rights to this Agreement and to the Lease and the Easements and protecting Developer in its use of the Lease and the Easements from interference by the holder of such Lien, tenancy or other possessory rights. *[However, Developer understands and acknowledges that Owner has an existing mortgage and line of credit. Owner shall cooperate with Developer to request subordination of such mortgage and line of credit, but Owner does not guarantee that existing lenders will subordinate.]* Owner has not performed a title search, but Developer may do so at its own expense. Furthermore, in the event that any entity or person holds or comes to hold any form of Lien, tenancy or other possessory rights on the Property during the Term without having previously executed a Subordination Agreement, Owner shall notify Developer within ten (10) days of gaining knowledge of such Lien, tenancy or other possessory rights, and Owner shall cause such entity or person to execute a Subordination Agreement, satisfactory in substance and form to Developer, within fifteen (15) days of such notice. The provisions of this Section 5.2 are not intended to prevent Owner from participating in Governmental programs for farming and ranching activities, provided that Owner's participation in such programs does not conflict with Owner's obligations under Section 5.3.1 hereof.

5.3. No Interference.

5.3.1. In General. As long as no Event of Default (as that term is defined in Section 7 hereof) caused by Developer has occurred and is continuing, Developer shall have the quiet use and enjoyment of the Property for the purposes of this Agreement and of all wind that passes over the Property in accordance with the terms of this Agreement, without any suit, trouble or interference of any kind by Owner or any party claiming through Owner. Owner hereby ensures the undisturbed flow of wind on and over the Property which restriction shall extend to vegetation, structures, and other objects that would impair or obstruct the wind flow on and over the Property, but which structures do not include equipment necessary to access minerals as they relate to the

rights belonging to the mineral estate. This provision is intended by the Parties to satisfy the wind energy agreement content requirement set forth in §70-17-406(1)(c), M.C.A. Owner reserves all rights to use the Property for agricultural, recreational or other beneficial purposes including oil and gas exploration and extraction or any other mineral exploration or extraction (subject to the limitations described in Section 5.3.2 hereof), provided that the use does not interfere with the wind flow across the Property or otherwise with Developer's use of the Property in accordance with the terms of this Agreement. Owner may build, construct, reconstruct or locate improvements on the Property provided that any such improvements shall not (1) interfere with the wind flow across the Property, (2) interfere with or obstruct Developer's operations on the Property, nor (3) impede or obstruct Developer's access to the Property. In no event during the term shall Owner construct or locate any structure within three thousand (3,000) feet of Developer's improvements, including the Wind Turbines and associated facilities described in Section 2 hereof, without the prior written approval of Developer. Exceptions shall be allowed for structures no taller than 50 feet in height as long as such structures do not interfere with or obstruct Developer's operations and access. Owner shall not construct or locate, or allow others to construct or locate, wind turbines or other similar projects on the Property or, to the extent within Owner's control, on any other property which is within three thousand (3,000) feet of any of Developer's improvements, including, without limitation, the Wind Turbines and associated facilities described in Section 2 hereof without the prior written approval of Developer. Developer acknowledges that it would be unusual for Owner to have control over the use of adjacent properties.

5.3.2. Oil Gas and Mineral Exploration and Extraction. Owner reserves the right to lease the Property for oil and gas exploration and extraction, provided that any such lease shall expressly provide that any such exploration or extraction must be compatible with Developer's use of the Property, and not harm, interfere with, put at risk, or otherwise jeopardize any of Developer's improvements, including any infrastructure or improvements located in the subsurface, or otherwise interfere with Developer's rights granted pursuant to this Agreement. Any damage to Developer's infrastructure and improvements as a result of Owner's lease of mineral rights for exploration or extraction of oil, gas, or minerals, in breach of the terms of this Section 5.3.2, shall be the sole responsibility of Owner. Developer reserves the right to be reimbursed for repairs to such infrastructure and improvements if damage is caused by others leasing or otherwise using the Property for oil, gas, and mineral exploration and extraction and Owner entered into such lease with third parties. To the extent there are oil and gas leases or mineral leases or mineral exploration and extraction agreements burdening the Property as of the Effective Date, Owner shall cooperate with Developer to request subordination of such leases and agreements or surface use waivers, but Owner does not guarantee that existing mineral lessees will subordinate or grant surface use waivers.

5.3.3. Owner's Right to Grant Easements. During the term, but subject to Developer's prior written approval (which approval shall not be unreasonably withheld) and, in any case subject to the provisions of Section 5.3.1 hereof, Owner shall have the right to grant easements to the third parties for the purpose of making reasonable use of the Property, including but not limited to, rock, sand, and gravel extraction, petroleum production, and electrical transmission separate from Developer's facilities (but not, in any event, including wind energy generating facilities).

5.4. Ownership of Installed Property; Attributes; Tax Credits and Incentives. All Wind Power Facilities and other property installed on the Property by Developer, its successors or assigns, whether real, personal or mixed, shall remain the property of Developer and shall be removable by Developer at any time, subject to Section 7.3 hereof. Further, Developer shall be the sole and exclusive owner of any environmental attributes produced from the Wind Power Facilities, including, without limitation, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, renewable energy credits), rebates, incentives, benefits, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the Wind Project Property, the Wind Power Facilities or the electric energy, generation capacity or other generator-based products produced therefrom, whether in effect as of the Effective Date or as may come into effect in at any time during the Term.

5.5 Permitting. Developer may, if it so elects and at its own cost, process and obtain any permit, licence, approval or entitlement (including any zoning change, conditional use permit or variance) in connection with Operations, Wind Power Facilities or any Project (collectively, “**Permits**”). Further, Developer shall have the right to (a) meet with governmental agencies and with any other persons or entities with whom Owner has contractual arrangements relating to, or which have jurisdiction over or an interest in, the Property or any portion thereof, at any place including the Property and (b) discuss with any such agencies, persons and entities the terms of this Agreement, the terms of any contractual arrangements between Owner and any such agency, person or entity, and any other matters relating to the Property or to Developer’s Operations, Wind Power Facilities or Projects. In addition, Owner agrees to reasonably cooperate with Developer in Developer’s efforts to obtain Permits that may be necessary, prudent, appropriate or otherwise useful in connection with the Operations upon and within the Wind Project Property and the Easements. Such cooperation by Owner shall include (but shall not be limited to) (i) joining with Developer in the execution of the applications for Permits from any governmental agencies, as may be necessary, required, prudent, desirable, useful or appropriate (as determined by Developer) to develop, construct, erect, install, reinstall, improve, enlarge reconstruct, remove, replace, decommission, recommission, repower, modify, relocate, use, maintain, repair and operate the Wind Power Facilities and to use and enjoy the Wind Project Property and the Easements and (ii) not publicly opposing any aspect of Developer’s efforts to obtain Permits for use of the Wind Project Property, the Easements and/or the Wind Power Facilities located upon and within same.

5.6. Division into Separate Projects. Developer may use the Property for one Project or Developer may divide the Property into multiple separate Projects. In the event that Developer elects to divide the Property into multiple projects, Owner shall, within twenty (20) days after written request from Developer, and without demanding any additional consideration, bifurcate this Agreement by entering into and delivering to Developer two or more new agreements (which shall supersede and replace this Agreement) that provide Developer with separate leasehold estates in different portions of the Property, as designated by Developer. Each of such new agreements shall: (a) specify the portion(s) of the Property to be covered thereby, (b) contain the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Developer prior to the execution of such new agreements, and except for any modifications that may be required to ensure that each Party’s combined obligations under such new agreements do not exceed such Party’s obligations under this Agreement) and be in a form reasonably acceptable to Developer; (c) be for a term equal to the remaining Term; (d) contain a grant of access,

transmission, communications, utility and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Property as Developer may designate; (e) require payment to Owner of only a proportionate amount of the Rent; and (f) enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner. Further, notwithstanding any other provision of this Agreement, in the event of any uncured default under any such new agreement, such event of default shall not affect, or cause a termination of, any other such new agreement or any rights or interests granted under any other such new agreement.

5.7. Hazardous Substances. Owner shall not violate, and shall indemnify Developer against any violation by Owner of, any law, statute, order, ordinance, rule or regulation relating to the generation, manufacture, storage, use, release, or threatened release, disposal, transportation, or presence on or under the Property of any substance which is defined as a hazardous substance, deleterious substance, hazardous material, toxic substance, solid waste, hazardous waste in any applicable federal, state or local law, statute or ordinance. This Section 5.4 is not intended to apply to the legal and appropriate application of substances to mitigate or control noxious weeds.

5.8. Indemnification. Owner shall indemnify, defend and hold harmless Developer and Developer's members, partners, mortgagees, officers, employees, and agents (each, a "**Developer Indemnified Party**") against any and all losses, damages, claims, expenses, and other liabilities resulting from or arising out of (i) any negligent, reckless, or intentionally wrongful misconduct or omissions contributed to by Owner or anyone else engaged in doing work for Owner or (ii) any breach of this Agreement by Owner. This Indemnification shall survive the termination of this Agreement. This indemnification shall not apply to losses, damages, claims, expenses, and any other liabilities caused by any negligent act or negligent omission (or any willful act constituting a breach of this Agreement) on the part of any Developer Indemnified Party.

5.9 Waiver of Consequential and Certain Other Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT IT IS THE INTENT THAT, NEITHER PARTY NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, MEMBERS, TRUSTEES, BENEFICIARIES, SHAREHOLDERS, AGENTS, EMPLOYEES, CONTRACTORS, CONSULTANTS, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR TO ITS OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS, TRUSTEES, BENEFICIARIES, AGENTS, EMPLOYEES, CONTRACTORS, CONSULTANTS, SUCCESSORS OR ASSIGNS FOR CLAIMS FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY NATURE CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED UPON NEGLIGENCE, STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

5.10 Waiver of Nuisance Claim. OWNER HAS BEEN INFORMED BY DEVELOPMENT AND UNDERSTANDS THAT THE PRESENCE AND OPERATIONS OF THE WIND POWER FACILITIES ON THE WIND PROJECT PROPERTY MAY POTENTIALLY RESULT IN SOME NOISE OR OTHER SOUNDS EMANATING THEREFROM. OWNER HEREBY (A) ACCEPTS THE EXISTENCE OF ANY SUCH NOISE AND OTHER SOUNDS, (B) WAIVES ANY RIGHT THAT IT MAY HAVE TO OBJECT TO ANY SUCH NOISE AND OTHER SOUNDS (WHETHER BASED ON A NUISANCE CAUSE OF ACTION OR OTHERWISE), AND (C) RELEASES DEVELOPER FROM ANY AND ALL CLAIMS (WHETHER BASED ON A NUISANCE CAUSE OF ACTION OR OTHERWISE) THAT OWNER MAY HAVE IN CONNECTION WITH ANY SUCH NOISE AND OTHER SOUNDS.

SECTION 6: Encumbrance: Required Notice to Mortgagees

6.1. Right to Encumber. Developer shall have the right, without the consent of Owner, at any time to mortgage, encumber and otherwise assign as collateral to one or more entities (each, a “**Mortgagee**” and, collectively, the “**Mortgagees**”) all or any part of Developer’s interest under this Agreement and the Easements, the Lease and other rights created by this Agreement.

6.2. Covenants for Mortgagee’s Benefit. Should Developer mortgage any of its interest hereunder as provided in Section 6.1 hereof, Developer and Owner expressly agree between themselves and for the benefit of any Mortgagees as follows:

6.2.1. The Parties will not cancel or modify this Agreement or the Easements without the prior written consent of each of the Mortgagees.

6.2.2. Each Mortgagee shall have the right to do any act or thing required to be performed by Developer under this Agreement, and Owner shall accept any such act or thing performed by a Mortgagee under this Agreement as if such act or thing was done by Developer itself.

6.2.3. No default, which requires the giving of notice to Developer shall be effective unless a similar notice is given to all of the Mortgagees, provided Owner has been given written notice of the existence of such Mortgagees. If Owner shall become entitled to terminate this Agreement, the Lease or any of the Easements due to an Event of Default (defined below) by Developer, Owner will not terminate this Agreement, the Lease or any Easement unless it first gives written notice of such Event of Default and of its intent to terminate this Agreement, the Lease or any such Easement to each Mortgagee and has given each Mortgagee at least thirty (30) additional days to cure the Event of Default to prevent any termination of this Agreement, the Lease or the Easements. Furthermore, if within such thirty (30) day period a Mortgagee notifies Owner that it must foreclose on Developer’s interest or otherwise take possession of Developer’s interest under this Agreement, the Lease or the Easements in order to cure the Event of Default, then provided all payment obligations are paid current, Owner shall not terminate this Agreement, the Lease or any of the Easements and shall permit such Mortgagee a sufficient period of time as may be necessary for such Mortgagee, with the exercise of due diligence, to foreclose or acquire Developer’s interest under this Agreement, the Lease and the Easements and then to perform or cause to be performed all of the covenants and agreements to be performed and observed by Developer. Following any such foreclosure or other acquisition by a Mortgagee, upon sale or other transfer by the acquiring Mortgagee of its interest in the Easements and other rights granted hereunder, such Mortgagee shall have no further duties or obligations hereunder.

6.2.4. In case of the termination of this Agreement or any of the Easements as a result of any Event of Default or bankruptcy, insolvency or appointment of receiver in bankruptcy for Developer, Owner shall give prompt notice to the Mortgagees, provided Owner has been given written notice of the existence of such Mortgagees. Owner shall, upon written request of the first priority Mortgagee, made within forty (40) days after such notice to such Mortgagee, enter into a new wind energy agreement with such Mortgagee, or its designee, within twenty (20) days after the receipt of such request. Such new wind energy agreement shall be effective as of the date of the termination of this Agreement or the affected Lease or Easement by reason of Event of Default

by Developer, and shall be for a term equal to the remainder of the Term of this Agreement and otherwise upon the same terms, covenants, and conditions as contained in this Agreement. Upon the execution of any such new wind energy agreement, the Mortgagee shall (i) pay Owner any amount which are due Owner from Developer, (ii) pay Owner any and all amounts which would have been due under this Agreement (had this Agreement, the Lease or the affected Easement not been terminated) from the date of the termination of this Agreement, the Lease or the affected Easement to the date of the new wind energy agreement, and (iii) agree in writing to perform or cause to be performed all the other covenants and agreements set forth in this Agreement to be performed by Developer to the extent that Developer failed to perform the same prior to the execution and delivery of the new wind energy agreement. Developer shall provide Owner with the names and addresses of all Mortgagees to which this Section 6 applies, provided that Developer's failure to do so shall not deprive any Mortgagee of the benefits of this Section 6.

SECTION 7: Default and Termination

7.1. Default. Each of the following events shall, following all applicable notice and cure periods, constitute an “**Event of Default**” by the defaulting Party and, subject to Section 6.2 hereof, shall permit the non-defaulting Party to pursue all appropriate remedies available at law or equity; provided, however that Owner shall only have the right to terminate or seek to terminate this Agreement as a remedy upon an Event of Default by Developer under Section 7.1.1:

7.1.1. Failure or omission by either Party to pay amounts required to be paid hereunder when due, and such failure or omission has continued for thirty (30) days after written notice from the other Party;

7.1.2. The failure or omission by either Party to observe, keep or perform any of the other terms, agreements or conditions set forth in this Agreement, and such failure or omission has continued for thirty (30) days (or such longer reasonable period of time required to cure such failure or omission, if such failure or omission cannot reasonably be cured with a thirty (30) day period) after written notice from the other Party; or

7.1.3. The filing by either Party for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or the filing of an involuntary petition in bankruptcy with respect to either Party that is not caused to be dismissed by that Party within sixty (60) days after filing.

7.2. Termination by Developer. Developer may terminate this Agreement at any time by giving Owner at least three (3) months' written notice. Termination by Developer, however, shall not terminate Developer's continuing rights under Section 1.5.

7.3. Surrender of Property. Upon the expiration or earlier termination of this Agreement, promptly following written request by Owner, Developer shall execute and cause to be acknowledged and recorded in the Office of the County Clerk and Recorder of **Rosebud** County, a quitclaim deed of all of Developer's right, title and interest in the Property (but subject to Developer's continuing rights under Section 1.5). Upon the expiration or earlier termination of this Agreement, Developer shall peaceably and quietly leave, surrender and return the Property to Owner (but subject to Developer's continuing rights under Section 1.5). Within one year from the

date of termination, Developer agrees and hereby covenants to (a) dismantle and remove all equipment, improvements, fixtures and other property owned or installed by Developer or its affiliates on the Property, other than such equipment, improvements, fixtures and other property installed on portions of the Property subject to Developer's continuing rights under Section 1.5 (collectively, such equipment, improvements, fixtures and other property, but excluding such items as are affected by such continuing rights, are referred to as the "**Facilities**"), (b) cover up all pit holes, trenches or other borings or excavations made, (c) plug and abandon any water wells drilled by Developer on the Property only if Owner consents, and (d) leave the surface of the Property (or such part thereof, as applicable) free from debris; provided, however that with regard to any Facilities located beneath the surface of the land (including footings and foundations), Developer shall only be required to remove the same to the greater of (i) three (3) feet below the surface of the land or (ii) the depth (if any) required by applicable law. If Developer unreasonably fails to remove such Facilities or to restore the surface of the Property within the one-year period, and subject to Section 9.1 herein, *infra.* ("**Force Majeure Delays**"), Owner may do so, in which case Developer shall reimburse Owner for reasonable costs incurred by Owner, such decommissioning costs to be secured by the Decommissioning Bond as set forth in Section 7.4, and Owner may dispose of the Facilities as Owner sees fit without any further obligation to Developer or the utility installing the same. Before Developer shall be allowed to remove the Facilities, Developer must cure any outstanding obligation owed to Owner. This section shall survive the expiration or termination of this Agreement.

7.4. Decommissioning Bond. Developer shall provide security, pursuant to statutory requirements, in the form of a decommissioning bond payable to the State of Montana in compliance with §75-26-301, *et seq.*, M.C.A., unless Developer posts a bond with a federal agency, with the Montana Department of Natural Resources and Conservation for the lease of state land, or with a tribal, county, or local government in compliance with §75-26-301, *et seq.*, M.C.A. This section shall survive the expiration or termination of this Agreement.

SECTION 8: Condemnation

8. Should title or possession of all the Property be taken in condemnation proceedings by a governmental agency, governmental body or any private party under the exercise of the right of eminent domain, or should a partial taking render the remaining portion of the Property wholly unsuitable for Developer's use, then this Agreement shall terminate upon the vesting of title or taking of possession. All payments made on account of any taking by eminent domain shall be made to Owner, except that Developer shall be entitled to any award made for the reasonable removal and relocation costs of any removable property that Developer elects or is required to remove, and for the loss and damage to any such property that Developer elects or is required not to remove, and for loss of use of the Property by Developer. It is agreed that Developer shall have the right to participate in any settlement proceedings and that Owner shall not enter into any binding settlement agreement without the prior written consent of Developer, which shall not be unreasonably withheld.

SECTION 9: Miscellaneous

9.1. Force Majeure Delays. If performance of any act required by this Agreement to be performed by either Party is prevented or delayed by reason of any act of God; labor unrest

(including strike, lock-out, slowdowns, boycotts, picketing or other similar labor trouble); inability to secure labor or materials; floods; earthquakes; tornadoes; hurricanes; other inclement weather; storms; fires; lightning; explosions; power failures or power surges; vandalism; theft; terrorism; the unauthorized cutting of power, transmission or other lines, wires or cables to any of the improvements of the Project; epidemics; wars; revolutions; riots, civil disturbances; sabotage; changes in law subsequent to the Effective Date; actions or inactions by any federal, state or local legislative, executive, administrative judicial agency or body; or any other cause not the fault of the Party required to perform the act, the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction, or delay. Each Party shall use reasonable efforts to mitigate the adverse effect and duration of any force majeure event which affects the performance of such Party.

9.2. Assignment. Developer shall at all times have the right to sell, assign, encumber, transfer or grant sub-easements in whole or in part under, any or all of the Easements, and its other rights and interests under this Agreement without Owner's consent; provided, however, that any and all such transfers shall be expressly made subject to all of the terms, covenants and conditions of this Agreement. No such sale, assignment, transfer, or easement shall relieve Developer of its obligations under this Agreement unless Developer assigns its entire interest hereunder, in which event Developer shall have no continuing liability from the date of such assignment. This Agreement is not revocable by Owner, but is subject to Owner's rights of termination, if applicable, under Section 7.1 hereof. The burdens of the Lease and Easements and other rights contained in this Agreement shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Owner and its successors, assigns, permittees, licensees, lessees, employees, and agents. The Easements shall inure to the benefit of Developer and its successors, assigns, permittees, licensees, lessees, employees and agents.

9.3. Notices. All notices or other communications required or permitted hereunder, including notices to Mortgagees, shall, unless otherwise provided herein, be in writing, shall be personally delivered, delivered by reputable overnight courier, sent by registered or certified mail, return receipt requested, and postage prepaid, or electronic mail with a simultaneous copy delivered pursuant to another method permitted hereunder, addressed to Mortgagees at such addresses as may be furnished by them from time to time and to the Parties at the following addresses:

To Owner:



With copy to:

Attn:
Telephone:
Email:

To Developer: Talen Northwest Renewables, LLC
600 Hamilton Street, Suite 600
Allentown, Pennsylvania 18101
Attention: Real Estate
Telephone: (610) 601-0279
Email: marc.jackson@talenergy.com

With copy to: Pattern Energy Group
1088 Sansome Street
San Francisco, California 94111
Attention: General Counsel
Telephone: (415) 283-4014
Email: generalcounsel@patternenergy.com

and: Talen Energy Supply, LLC
600 Hamilton Street, Suite 600
Allentown, Pennsylvania 18101
Attention: Real Estate
Telephone: (610) 601-0279
Email: marc.jackson@talenergy.com

Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the date placed with courier for delivery. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notices sent by electronic mail shall be deemed given upon the entrance of such electronic mail into the information processing system designated by the recipient's electronic mail address. Notice of changes shall be given by written notices in the manner detailed in this Section 9.3.

9.4 Further Assurances. Each of the Parties in this Agreement agrees to perform all such acts (including but not limited to, executing and delivering such instruments and documents) as reasonably may be necessary to fully effectuate each and all of the purposes and intent of this Agreement, including reasonable amendments hereto as may be required by any Mortgagee or required in connection with the transfer by Developer of the rights granted under this Agreement, so long as such amendments are consistent with the terms and conditions of this Agreement, or have been willingly negotiated between Owner and Developer or Mortgagee. Owner specifically acknowledges that commercial operation of the Project may require, from time to time, additional easements (i.e., in addition to the Easements) in favor of certain third parties on the Property. Accordingly, if the independent system operator with jurisdiction over the system in which the Project operates, the transmission system owner or operator to whose transmission lines the Project interconnects, the phone or other communications provider, any other provider of utilities or services to the Property, or the off-taker to whom output from the Project is to be sold determines that one or more separate, stand-alone easements on, over, across, along and/or above the Property are reasonably required for the efficient and/or safe operation of the Project, then upon request Owner shall grant to such third party such an easement in such location or locations as such party may reasonably request, provided such party shall agree to pay to Owner a reasonable and

customary fee, if any, for such easement in addition to all other amounts payable by Developer to Owner hereunder.

In addition to its obligations under Section 5.2 above, Owner expressly agrees that it will request any mortgagee of Owner's interest in the Property to enter into a reasonable non-disturbance agreement with Developer, requiring such mortgagee to recognize the rights of Developer and not disturb its possession of the Property so long as no Event of Default shall exist permitting Owner to terminate this Agreement, the Lease and the Easements (after taking into account the rights of any Mortgagees under Section 6 hereof). Owner agrees that within ten (10) days after receipt of a written request by Developer, it shall (at Developer's expense): (a) join in all grants for rights of way and easements for electric and other public utilities and facilities and any other electric power purpose, including any power transmission lines Developer shall deem necessary or desirable for its development and use of the Property, subject to the limitations set forth in this Agreement and taking into account any portion of the Property that may have been released from the operation of this Agreement, and (b) join with Developer in requesting any and all zoning changes or other land use permits or approvals necessary for Developer's development and use of the Property as contemplated by this Agreement, provided that Owner shall not be required to take any action that will impose any liability on Owner not otherwise imposed by the terms of this Agreement.

9.5 Municipal Officer. Owner represents and warrants that Owner is not a Municipal Officer (as defined below) of the county or any municipality in which Owner's Property is located. "**Municipal Officer**" means any officer or employee of any such county or municipality, whether paid or unpaid, and includes, without limitation, members of any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau or committee of any such county or municipality whose official duties involve discretionary decision-making with respect to the Developer's "Energy Development." "**Energy Development**" means any stage of present or future development or siting of energy developments, wind turbines or wind turbine equipment, power and related facilities or energy projects, whether considered, planned, attempted or completed, including but not limited to permitting, licensing, construction and energy production. Municipal Officer also includes any entity that is directly or indirectly controlled by, or is under common control with, such officer or employee. However, Municipal Officer shall not include: (a) a judge, justice, officer or employee of the local court system; (b) a volunteer firefighter or civil defense volunteer, except a fire chief or assistant fire chief; or (c) a member of an advisory board of the county or municipality if, but only if, the advisory board has no authority to implement its recommendations or to act on behalf of the county or municipality or to restrict authority of the municipality to act. Owner further represents and warrants that Owner is not a "Relative" of a Municipal Officer. "**Relative**" shall be defined as a spouse or domestic partner of the Municipal Officer, or a person claimed as a dependent on the Municipal Officer's latest individual state income tax return. If Owner is a Municipal Officer, Owner agrees to recuse himself/herself/itself from participating in any vote or other discretionary decision-making action with respect to Developer's Energy Development. Owner agrees to promptly notify Developer in writing if at any time it becomes or any Relative becomes a Municipal Officer. Owner agrees to indemnify Developer against any loss, liability or damages, including attorneys' fees, directly or indirectly resulting from any misrepresentation by Owner or failure by Owner to notify Developer as set forth above under this subsection

9.6 Filming, Marketing and Promotion. Developer shall have the right to film and record (including a webcam showing site activities on the internet) any aspect of the Wind Project Property, the Easements, the Wind Power Facilities and/or the Operations (whether on the Wind Project Property and/or any other portion of the Property being filmed or recorded from the Wind Project Property) for measuring the energy output, publicity, marketing, research or educational purposes associated with development of renewable energy, the Operations and/or the Project.

9.7 Estoppel Certificates. Each Party agrees that it shall, at any time during the Term within ten (10) days after a written request by the other Party, execute, acknowledge, and deliver to the requesting Party a written statement certifying that this Agreement is unmodified and in full force and effect (or modified and stating the modifications), the dates on which the payments and any other charges have been paid, that there are no defaults existing or that defaults exist and stating the nature of such defaults, and such other matters as the requesting Party may reasonably request.

9.8 No Waiver. No waiver of any right under this Agreement shall be effective for any purpose unless in writing, signed by the Party possessing the right, nor shall any such waiver apply to any subsequent right accruing under any term or provision of this Agreement. Further, (a) no act or failure to act on the part of Developer shall be deemed to constitute an abandonment, surrender or termination of any lease, easement or right, except upon recordation by Developer of a quitclaim deed or release specifically conveying such lease, easement or right back to Owner, (b) nonuse of the lease, easements or right shall not prevent the future use of the other leases, easements or rights granted hereunder; and (c) no use of or improvement to the Property, and no permitted assignment hereunder or other transfer, shall, separately or in the aggregate, constitute an overburdening of the Easements or any thereof.

9.9 Entire Agreement; Effect of Amended and Restated Agreement. This Agreement, together with its attached exhibits, contains the entire Agreement between the Parties with respect to the subject matter hereof and any prior agreements, discussions or understandings, written or oral, are superseded by this Agreement and shall be of no force and effect. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by each of the Parties.

9.10 Governing Law. The terms and provisions of this Agreement are intended to comply with the "Wind Energy Rights Act," set forth in §70-17-401, *et seq.*, *Montana Code Annotated*, and shall be interpreted in accordance with the laws of the State of Montana applicable to contracts made and to be performed within such State and without reference to the choice of law principles of such State or any other state.

9.11 Interpretation. The Parties agree that the terms and provisions of this Agreement embody their mutual intent and that such terms and conditions are not to be construed more liberally in favor, nor strictly against, either Party.

9.12 Partial Invalidity. Should any term or provision of this Agreement, or the application thereof to any person or circumstance, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected

thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

9.14 Attorneys' Fees. Developer shall reimburse Owner for Owner's attorney's fees and costs, not to exceed \$2,000.00, incurred by Owner during the initial legal review by Owner's attorney of this Agreement. The prevailing Party in an action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Agreement or for the interpretation of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing Party.

9.15 Memorandum. The Parties shall execute and record a memorandum of this Agreement in the form attached as Exhibit C. If a title search, survey work or additional examination reveals the need to correct or amend the legal description of the Property or Lease or Easement areas attached to the recorded memorandum or other instrument recorded pursuant to this Agreement, or if Developer releases its interest in any portion of the Property pursuant to this Agreement following the recordation of the Memorandum or other instrument, the Parties shall execute in recordable form documents to reflect the corrected and/or amended legal description(s), and Developer shall have the right to record the same in the real property records of the county in which the Property is located.

9.16 Binding Effect; Non-Merger. This Agreement shall be binding on all the Parties, their agents, contractors, subcontractors, heirs, successors, assigns and mortgagees. However, the leasehold and easement estates created hereby with respect to the Property shall not merge with the fee estate thereof in the event that the same person or entity acquires, owns or holds, directly or indirectly, the fee estate and the leasehold and easement estates; provided that this Section shall not restrict termination of such leasehold and easement estates upon a termination of this Agreement in accordance with the terms thereof.

9.17 No Partnership. Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, co-tenants or any other association between Owner and Developer, other than the relationship of landlord and tenant and, with respect to the Easements, grantor and grantee. Developer may engage one or more independent contractors (each, a "**Developer Independent Contractor**") to perform certain work related to the Projects. Developer is not acting as an agent, partner or joint venturer of any Developer Independent Contractor, and no Developer Independent Contractor shall not have any liability under this Agreement.

9.18 No Broker. Each of Owner and Developer represents to the other that neither such Party, nor any of its affiliates, officers, directors, or employees, if any, has employed any broker or incurred any liability for any broker's fees, commissions or finder's fees as a result of the execution of this Agreement, and agrees that such Party shall indemnify the other for any broker's fees, commissions or finder's fees being claimed by, through or under such Party.

9.19 Confidentiality. Owner shall maintain in the strictest confidence, for the sole benefit of Developer, all information pertaining to the terms and conditions of this Agreement, including, without limitation, the financial terms, Developer's site design and product design, methods of operation and methods of construction and power production of the Project. Without first obtaining written permission from Developer, Owner shall not issue any statements or press releases or respond to any inquiries from the news media regarding such matters. This Section shall survive the termination or expiration of this Agreement. Nothing in this Section shall prohibit sharing or disclosing information with any Party's counsel, accountants or current or prospective investors, purchasers, lenders or as required by law, provided that the Party sharing or disclosing such information requires the recipient to maintain the confidentiality of such disclosed information.

[9.20. Arbitration of Disputes: Waiver of Jury Trial.¹

*9.20.1. Any controversy, claim or dispute between the Parties arising out of or related to this Agreement or the breach hereof, which cannot be settled amicably, shall be submitted for arbitration in accordance with the provisions contained herein and in accordance with the commercial arbitration rules of the American Arbitration Association ("**Rules**"); provided, however, that notwithstanding any provision of such Rules, the Parties shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration, as provided in the law of the State of Montana. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The arbitrators shall determine all questions of fact and law relating to any controversy, claim or dispute is subject to the arbitration provisions contained herein.*

9.20.2. Any Party desiring arbitration shall serve on the other Party and the on the American Arbitration Association, in accordance with the Rules, its notice of intent to arbitrate, accompanied by the name of the arbitrator selected by the Party serving such notice. A second arbitrator shall be chosen by the other Party, and the third arbitrator shall be chosen by the two arbitrators so selected. If the Party upon whom the notice of intent to arbitrate is served fails to select an arbitrator and advise the other Party of its selection within fifteen (15) days after receipt of such notice, the second arbitrator shall be selected by the first arbitrator. If the two arbitrators so chosen cannot agree on a third arbitrator within ten (10) days after the appointment of a second arbitrator, the third arbitrator shall be selected in accordance with the Rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition to compel arbitration. Unless otherwise agreed to by the Parties, all arbitration proceedings shall be held in Billings, Montana.

9.20.3. By signing this Agreement below you are agreeing to have any dispute arising out of this Agreement decided by neutral arbitration as provided by Montana law and you are giving up the right you might possess to have the dispute litigated in court by a jury trial. By signing this Agreement below you are giving up your judicial rights to discovery and appeal, unless those rights are specifically included in this Section 9.18. If you refuse to submit to

¹ NTD: Subject to review by Talen legal team.

EXHIBIT B

PAYMENTS TO OWNER

3.1. Development Phase Rent. Within thirty (30) days of the Effective Date and thereafter within forty-five (45) days after each January 1 of the Development Phase and Extended Development Phase, if any, until the Commercial Operations Date, Developer shall pay to Owner the Development Phase Rent. As used herein, “**Development Phase Rent**” means the annual per acre fee paid by Developer to Owner during the Development Phase and Extended Development Phase for the use of the Property under this Agreement, The Development Phase Rent for the first year shall be Two Dollars (\$2.00) per acre and shall escalate by Fifty Cents (\$.50) per acre each subsequent year of the Development Phase and Extended Development Phase, if any.

3.2. Construction Impact Payment. Developer will make a one-time construction impact payment of Five Thousand Dollars (\$5,000.00) per Wind Turbine installed on the Property, with each such payment due thirty (30) days after completion of the foundation for the Wind Turbine for which the payment is required.

3.3. Operating Rent Payments. After the Commercial Operations Date, within forty-five (45) days after each January 1st that occurs during the Operating Phase and Extended Operating Phase, if any, Developer shall pay to Owner an amount equal to the greater of (i) the Megawatt Payment (as defined below); or (ii) the Production Royalty (as defined below) for such term year (“**Operating Rent Payments**”), provided that no later than one (1) month following the Commercial Operations Date, Developer shall pay Owner a partial Operating Rent Payment prorated for the partial year between the Commercial Operations Date and the next following January 1st.

3.3.1. As used herein, “**Megawatt Payment**” means Two Thousand Five Hundred Dollars (\$2,500) per megawatt of installed nameplate capacity of the Wind Turbines installed on the Property.

3.3.2. As used herein, the “**Production Royalty**” means an amount equal to the product of the Royalty Rate (as defined below) of the Gross Operating Proceeds (as defined below) actually received over the course of a calendar year times a fraction, the numerator of which is the number of Operational Wind Turbines (as defined below) from time to time located on the Property and the denominator is the total number of Operational Wind Turbines from time to time located on the Property and the Wind Project Property. An “**Operational Wind Turbine**” is a wind turbine: (a) that has been installed and completed for production pursuant to this Agreement and (b) which has not been removed by the Developer. Owner acknowledges that the number of Operational Wind Turbines which comprise the fraction referred to above may not be a constant number throughout the Term and will differ depending on the number of Operational Wind Turbines located from time to time on the Property and the Wind Project Property at the time of each calculation. For the avoidance of doubt, an Operational Wind Turbine will be considered to be located on the Property if the center point of the Operational Wind Turbine is located on the Property, regardless of any blade overhang or other matter.

3.3.2.1. The “**Royalty Rate**” for each year of the Operating Phase and Extended Operating Phase, if any, shall be as follows:

- Years 1-10: 4%
- Years 11-20: 5%
- Years 21-30: 6%
- Years 31-40: 7%
- Years 41-50: 8%

3.3.2.2. “**Gross Operating Proceeds**” means the aggregate total revenue actually received by Developer (less any amounts paid by Developer in respect of hedging or similar arrangements to mitigate the risk of market price fluctuations), during the applicable period of time, from the sale, to the purchaser of the electricity, of electrical energy generated and sold from Wind Turbines then located on the Property and Wind Project Property. Gross Operating Proceeds shall also include any payments received for the period in question: (a) from renewable energy credits or pollution credits that directly result from construction and operations of Wind Turbines on the Property and Wind Project Property (except for production tax credits, other tax benefits and credits, or any reimbursement thereof); or (b) pursuant to a business interruption insurance policy or by the manufacturer of any Wind Turbine under the provisions of its warranty therefrom, in each case if made specifically in lieu of revenues from the normal operation of such Wind Turbines; or (c) from “net ancillary services revenue” including but not limited to revenues from the sale of capacity, energy imbalance credits, reactive power and voltage control, regulation and frequency control/response, less any actually-incurred ancillary services charges including but not limited to energy imbalance charges and scheduling and dispatch. Gross Operating Proceeds shall, without limitation, not include revenues received: (a) from (i) the sale, lease, sublease, assignment, transfer or other disposition of Wind Power Facilities or any other of Developer’s improvements, trade fixtures or chattel (or any interest therein) or (ii) the transfer or sale of all or a part of the membership interests in the Developer; (b) from sales of electrical energy produced by Wind Turbines not located on the Property and the Wind Project Property; (c) from any rental or other payment received by Developer in exchange for Developer’s assigning, subleasing, mortgaging or otherwise transferring all or any interests of Developer in this Agreement; (d) from the sale, modification or termination of any obligation under a power purchase contract; (e) from parasitic or other loss (i.e., electrical energy used to power Wind Power Facilities or Operations, or lost in the course of transforming, shaping, transporting or delivering the electricity); (f) from sales of electrical energy for which payment is not received (including because of a default by the purchaser thereof); (g) as reimbursement or compensation for wheeling costs or other electricity transmission or delivery costs; or (h) from production tax credits, other tax benefits and credits, or any reimbursement thereof received by Developer in connection with any Project. Except as provided above in this Section, Gross Operating Proceeds shall be calculated without offset for any costs of producing, gathering, storing, transporting, marketing or otherwise making electricity ready for sale.

3.3.3. Commingling. In the event that electrical energy produced from Wind Turbines located on the Property is commingled with electrical energy produced from Wind Turbines located on other lands, then Developer shall, using such methods,

calculations, procedures and/or formulae as Developer may in good faith adopt, allocate to the Property a portion of the Gross Revenues received from such commingled electrical energy.

3.3.4. Audit. Upon Owner's request, Developer shall provide Owner with all revenue statements from utility companies as is reasonably necessary to confirm the actual amount of Gross Operating Proceeds received by Developer during any year. At Owner's cost, one (1) time per three (3) calendar years during the Term and by appointment during normal business hours scheduled no less than two (2) weeks in advance, Owner and/or its accountant(s)/lawyer(s) may at Developer's offices inspect the utility statements Developer has received and any other books and records of Developer for the purpose of verifying the Production Royalty (if any) due under this Agreement. This audit right is only available if for any part of the calendar years in question at least one (1) Operational Wind Turbine was located on the Property. Information reviewed by Owner will remain confidential and Owner will make no disclosures thereof. If Owner's audit reveals an underpayment of more than three percent (3%), then Developer will pay Owner's cost of the audit. If any underpayment is discovered, Developer will pay such amount to Owner within thirty (30) days of receipt of notice from Owner.

3.4. Other Infrastructure Payments. Developer shall pay to Owner the following amounts, as applicable:

- (a) If Developer does not construct a Wind Turbine on the Property, Developer shall pay to Owner annually within forty-five (45) days of January 1 of each year of the Term: (i) One Dollar (\$1.00) per linear foot of Developer Road on the Property; and (ii) Ten Cents (\$0.10) per linear foot of Distribution Facilities on the Property to the extent said Distribution Facilities are located outside of a road corridor; provided, however, that if Developer exercises the option to secure a Separate Continuing Easement as described in Section 1.5 above, Developer shall pay instead of the annual payments set forth here, a one-time payment of _____ Dollars (\$ _____) per linear foot of the actual length of the Separate Continuing Easement;
- (b) If Developer constructs a permanent meteorological measurement tower on the Property, Developer shall pay to Owner annually in arrears within forty-five (45) days of January 1 of each year of the Term, Two Thousand Dollars (\$2,000) per meteorological measurement tower installed on the Property;
- (c) If Developer constructs a substation on the Property, Developer shall pay to Owner a one-time payment of Two Thousand Dollars (\$2,000.00) per acre of property occupied by the substation and any related equipment (up to ten (10) acres) due and payable within forty-five (45) days after the Commercial Operations Date;
- (d) If Developer constructs an operations and maintenance facility on the Property, Developer shall pay to Owner a one-time payment of Two Thousand Dollars (\$2,000.00) per acre of property occupied by the operations and maintenance facility (up to ten (10) acres) due and payable within forty-five (45) days after the Commercial Operations Date.

(e) If Developer installs overhead transmission lines on the Property, Developer shall pay to Owner:

(i) for each mile of overhead transmission lines installed over the property, a one-time payment of One Thousand Dollars (\$1,000.00) per mile; and

(ii) for each transmission line pole installed on the Property, at Owner's election, *either* (x) a one-time payment of One Thousand Five Hundred Dollars (\$1,500.00) per pole *or* (y) the Annual Pole Payment per pole. The "**Annual Pole Payment**" shall initially be One Hundred Dollars (\$100.00) per pole and shall escalate by One Dollar (\$1.00) per pole each subsequent year of the Term following the Commercial Operations Date.

Payments under (i) and (ii)(x) above shall be due and payable within forty-five (45) days after the Commercial Operations Date, and payments under (ii)(y) above shall be due and payable within forty-five (45) days after January 1 of each year of the Term following the Commercial Operations Date.

3.5. Payment for Damage to Grass or Growing Crops and Land Compaction.

3.5.1. Damages to Grass or Growing Crops. In the event that Owner suffers any destruction of, or damage to, its grass or growing crops on the Property due to Developer's or its contractors' or subcontractors' construction, access, maintenance or decommissioning activities on the Property, including but not limited to road construction, installation of Wind Power Facilities, transportation of heavy equipment and machinery or the use of any areas of the Property for construction staging activities, ongoing maintenance of the Wind Power Facilities, or decommissioning, (each such event in which grass or growing crops are damaged a "**Crop Damaging Event**") Developer shall pay Owner for all damage to, or loss of, such grass or growing crops in an amount equal to the reasonable value of such grass as pasture, or equal to the revenue that the Owner would have received on the open market for said crops during the growing season during which crops were damaged or destroyed (the "**Crop Damage Payment**").

(a) The Crop Damage Payment shall be made by Developer within sixty (60) days after the amount of such payment is determined in accordance with Section 3.5.1(c) below.

(b) The amount of such loss for grass shall be based upon (a) the amount of acreage affected and (b) the average rental rate for comparable grass pasture for the period of time that grazing is impaired. The amount of such loss for growing crops shall be determined based upon (a) the amount of acreage affected, (b) the average yield per acre of the crop actually planted or growing on the acreage affected, the average yield per acre of the crop actually planted or growing on the acreage affected (or for which there are documented plans for such crops to be planted on the acreage affected but which planting could not occur due to construction, access, maintenance or decommissioning activity) at the time the damage occurred, and (c) the market price received for that particular type of crop during the then current growing season.

(c) Owner shall deliver its calculation and supporting evidence of the Crop Damage Payment to Developer as soon as reasonably possible. Developer shall also have the right,

at its sole cost, to use a third-party surveyor to confirm the amount of acreage affected. Should Owner fail to timely present such evidence to Developer, or if Developer disagrees with the calculation of the amount requested, Developer and Owner shall determine the amount of any payment in consultation with the local Farm Service Agency to obtain the average yield per acre and market value of any particular crop during such growing season.

3.5.2. Compaction of Land. During the construction, maintenance or decommissioning phases of the Project, in the event that any land located on the Property is from time to time compacted as a result of as a result of Developer's activities on the Property to the extent that the growing of grass for grazing and/or the growing of crops will be negatively affected and diminished beyond the then current season (each, a "**Compaction Determination Date**"), Developer shall pay owner for such damage caused by compaction. Within ninety (90) days of the overall activities causing the compaction being deemed completed, Developer shall rip all compacted areas at least 18 inches deep and then disk the areas at Developer's cost and make payment to Owner in accordance with the formula and at the times set forth below:

(a) Within thirty (30) business days of the first (1st) anniversary of the Compaction Determination Date, Developer shall pay Owner a compaction damages payment equal to seventy-five percent (75%) of the Crop Damage Payment for the relevant compacted land areas; and

(b) Within thirty (30) business days of the second (2nd) anniversary date of the Compaction Determination Date, Developer shall pay Owner a compaction damages payment equal to fifty percent (50%) of the Crop Damage Payment for the relevant compacted land areas.

(c) Within thirty (30) business days of the third (3rd) anniversary date of the Compaction Determination Date, Developer shall pay Owner a compaction damages payment equal to twenty-five percent (25%) of the Crop Damage Payment for the relevant compacted land areas.

3.6. Prorations. Any Development Phase Rent payable for less than a full calendar year shall be prorated by Developer on the basis of a 365-day year, while any Operating Rent Payment payable for part of a calendar year shall be calculated based solely on the Gross Operating Proceeds actually received during such partial calendar year. Further, if at any time during the Term, Owner owns less than one hundred percent (100%) of the fee interest in the Property, then the payments payable to Owner hereunder shall be reduced proportionately.

3.7 Payment Documentation. Notwithstanding anything in this Agreement to the contrary, Developer shall have no obligation to make any payment to Owner otherwise required under this Agreement until Owner has returned to Developer a completed Internal Revenue Service Form W-9, including any applicable back-up documentation, as well as any additional documentation as may be reasonably required by Developer's or its affiliates' internal procedures to process payments, such W-9 form and additional documentation to either (a) have been provided by Developer to Owner prior to execution of this Agreement or (b) be provided by Developer to Owner promptly upon execution of this Agreement. From time to time throughout the Term within

ten (10) days following reasonable request by Developer, Owner shall provide an update or new Form W-9.