

**AMENDED AND RESTATED LEASE FOR CONSTRUCTION  
OF WIND TURBINE GENERATORS**

THIS AMENDED AND RESTATED LEASE AND AGREEMENT (the "**Lease**") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, ("**Effective Date**") by and between \_\_\_\_\_ hereafter referred to as "**LESSOR**" and Flat Rock Windpower LLC, a Delaware limited liability company, hereafter referred to as "**LESSEE**." LESSOR and LESSEE may hereafter be referred to as, together, the "**Parties**" and each, a "**Party**".

WITNESSETH:

WHEREAS, LESSEE is in the business of taking wind energy measurements and making other scientific studies for the purpose of evaluating wind energy resources, and is in the additional business of erecting wind energy conversion systems for the production of electrical energy and capacity for sale to utility companies and other purchasers;

WHEREAS, LESSOR is the owner of land located in Lewis County, New York, designated on the Town of Martinsburg Tax Map Section No.

more particularly described on Exhibit "A" attached hereto and made a part hereof (the "**Property**");

WHEREAS, LESSOR and LESSEE entered into that certain Lease for Construction of Wind Turbine Generators dated \_\_\_\_\_ 2002, a Memorandum of which ("**Memorandum**") was recorded on \_\_\_\_\_ 2003 as Instrument No. \_\_\_\_\_ in the Lewis County Clerk's Office, Lewis County, New York (collectively, the "**Original Lease**");

WHEREAS, LESSEE initially desires to construct, operate, and maintain a renewable energy project consisting of wind-powered turbines and generators capable of producing electricity and associated appurtenances, equipment, facilities and roadways in the Towns of Martinsburg, Lowville, Harrisburg and Watson, New York, more particularly described on Exhibit "D", attached hereto and made a part hereof (the "**Wind Project Property**");

WHEREAS, LESSEE and Flat Rock Windpower II, LLC, a Delaware limited liability company ("**FWP II**"), their respective successors, assigns and any subsequent purchaser of interests in LESSEE or FWP II, may also construct, operate and maintain additional similar renewable energy projects (collectively, "**Subsequent Wind Projects**") in the area (each and collectively, the "**Subsequent Wind Projects Property**"); and

WHEREAS, LESSOR and LESSEE desire to amend and restate the Original Lease as more particularly set forth below, in order to (i) modify certain provisions of the Original Lease and add lender protection provisions, (ii) grant certain easements over Property and (iii) record a memorandum for the purpose of providing constructive notice of the Lease, grant of easements and the Parties' rights hereunder.

NOW, THEREFORE, in consideration of the promises, covenants and agreements of the Parties hereinafter contained or in the future to be performed, and for other valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. **LEASE.** LESSOR does hereby lease, demise and let unto the LESSEE, and LESSEE does hereby lease from LESSOR, the Property, upon all of the terms and conditions hereinafter set forth and subject to (i) LESSEE's obligation to quitclaim the Remaining Property in accordance with and pursuant to Section 5.1.1 and (ii) LESSOR'S reserved rights as stated in Section 5.12. Subject to Section 5.1.1, the only areas within the Property in which LESSEE will have the right to install Improvements are those areas shown on Exhibit "B" (and the coordinates for any Wind Turbine site shall be included on Exhibit B), attached hereto and made a part hereof, which have been approved by LESSOR. The as-built drawing to be provided pursuant to Section 5.1.1 will also be attached to the Lease as Exhibit "C" and made a part hereof. At such time LESSOR agrees to execute an amendment to the Memorandum of the Amended and Restated Lease evidencing the as-built survey and/or a legal description describing the Operating Areas as provided in Section 5, which shall be recorded in the Lewis County Clerk's Office at LESSEE's expense.

## 2. **TERM.**

2.1 The initial term ("**Initial Term**") of this Lease shall commence on April 6, 2002 and expire on the earlier to occur of December 31, 2033 or twenty-five years after the commencement of Commercial Operation. "**Commercial Operation**" means the operation of a Project with an aggregate nameplate output of at least twenty (20) megawatts located on the Wind Project Property from and after the time when a power purchasing utility or other entity first receives and purchases power produced by said Project. If the commencement of Commercial Operation has not occurred by December 31, 2006, this Lease will terminate unless such termination is postponed by LESSEE as provided herein. LESSEE may postpone termination of this Lease for two (2) years by making an additional payment of four thousand dollars (\$4,000) to LESSOR on or before December 15, 2006. In the event this Lease is terminated as provided herein, and LESSEE does not postpone such termination, LESSEE shall properly execute, acknowledge and deliver to LESSOR promptly, a quitclaim deed or any other such instruments or documents as may be necessary in order to remove the Memorandum of Lease from LESSOR's title. LESSEE reserves the right to terminate (i) this Lease and (ii) LESSEE's right to continue to use the Property at any time, by giving written notice of termination to LESSOR. In the event that (i) the Lease has expired or has been earlier terminated, (ii) the Operation Easements and/or the 34.5kV Easement Agreement (defined below) have not been terminated by LESSEE and (iii) LESSOR is no longer receiving Rent in accordance with Section 6 of this Lease (the "**Lease Termination Date**"), LESSEE shall have the right but not the obligation to continue each of the Operation Easements and/or the 34.5 kV Easement Agreement through the end of each of their respective terms by paying to LESSOR (i) if LESSEE wants the Operation Easements to continue, the sum of (a) if the Lease Termination Date occurs during the Initial Term, six thousand six hundred dollars (\$6,600) (four thousand dollars times 1.65MW) times the number of wind turbine towers shown on Exhibit B, which said sum is payable pursuant to and in accordance with Section 6.2.2 during each year of the Operation Easement Term, subject to LESSEE's right to terminate and (b) if the Lease Termination Date occurs during the Extended Term, the amount to be paid under (a) hereof, which said sum is payable pursuant to and in accordance with Section 6.2.3 during each year of the Operation Easement Term, subject to LESSEE's right to terminate (collectively, the "**Operation Easement Payment**") and/or (ii) if LESSEE wants the 34.5 kV Easement Agreement to continue, the sum equal to a one-time payment of four dollars (\$4) per linear foot of easement length or four thousand dollars (\$4,000) minimum for the 34.5 kV Easement Agreement (the "**34.5 kV Easement Payment**"). The 34.5 kV Easement Payment shall be adjusted annually to reflect any price inflation that occurs from the commencement of Commercial Operation to the calendar year as to which such 34.5 kV Easement Payment is payable (based on the CPI (defined below) or the Index (as defined below), as measured by the most recent Index published before the commencement of Commercial Operation and the most recent Index published at least thirty (30) days before the commencement of the calendar year as to which such 34.5kV Easement Payment is payable). In the event the Operation Easements and/or the 34.5 kV Easement are continued in accordance with this Section, LESSEE reserves the right to terminate for any reason and at any time said Operation Easements and/or the 34.5 kV Easement without further liability to

LESSOR and the obligation to pay the Operation Easement Payment and/or the 34.5 kV Easement Payment shall be null and void.

2.2 LESSEE shall have the right but not the obligation ("**Option Extension**") to extend the Initial Term for an additional fifteen (15) years from the date of expiration of the Initial Term (the "**Extended Term**"), provided LESSEE is not in default beyond any applicable cure periods of any material obligations herein at the time of LESSEE's exercise of the Option Extension. The Option Extension shall be exercised by written notice thereof to LESSOR on or before one hundred eighty (180) days before expiration of the Initial Term. All of the terms of this Lease shall apply during the Extended Term. Notwithstanding the foregoing, in no event shall the term of this Lease be longer than the longest period permitted by law. The Initial Term and Extended Term may be referred to herein collectively as the "**Term**".

2.2.1 In the event that LESSEE fails or refuses to exercise the Option Extension, LESSOR shall not be obligated or required to either extend or to renew the Option Extension.

2.2.2 In the event that LESSEE fails to exercise the Option Extension in accordance with the terms of this Lease, then the Option Extension and the rights of LESSEE pursuant to the Option Extension shall automatically and immediately terminate without further notice and upon the termination or expiration of this Lease, LESSEE shall properly execute, acknowledge and deliver to LESSOR promptly, a quitclaim deed or any other such instruments or documents as may be necessary in order to remove the Memorandum of Amended and Restated Lease from LESSOR's title.

3. **USE:** LESSEE shall not use, or permit to be used, all or any portion of the Property for any purpose or purposes other than those described herein without first obtaining the prior written consent of LESSOR for each such additional or further use or purpose. Pursuant to this Lease, LESSEE shall have possession of the Property, including the air space thereof, for the following purposes (collectively, "**Operations**"):

3.1. Converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted;

3.2. Developing, constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and using, maintaining, repairing, operating and monitoring, the following, for the benefit of one or more Projects: (a) wind machines, wind energy conversion systems and wind power generating facilities (including associated towers, foundations, support structures, braces and other structures and equipment), in each case of any type or technology (collectively, "**Wind Turbines**"); (b) power collection facilities, including underground distribution and collection lines, wires and cables, conduit, footings, foundations and above-ground standby transformer at each turbine location; (c) underground control, communications and radio relay systems and telecommunications equipment, including fiber, wires, cables, conduit and poles, provided that any such use not related to or associated with a Project and/or a Subsequent Wind Project shall require the consent of LESSOR, which consent shall not be unreasonably withheld or delayed, with additional compensation to be negotiated at that time; (d) roads and erosion control facilities; (e) utility installations; (f) laydown areas reasonably necessary for the installation and maintenance of the Wind Turbines; (g) signs; (h) fences, gates and other safety and protection facilities; and (i) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing (all of the foregoing, including the Wind Turbines, collectively, "**Improvements**"); and

3.3. Undertaking any other activities that LESSEE or a Sublessee (as defined below) 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, geotechnical and other tests, 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 LESSEE or a Sublessee 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 on the Retained Leasehold Areas or on such other locations as approved by LESSOR, which said consent shall not be unreasonably withheld, conditioned or delayed and (b) the Operations may be accomplished by LESSEE, a Sublessee or one or more third parties authorized by LESSEE or a Sublessee. For purposes of this Lease, the term "**Project or Projects**" means one or more Wind Turbines and associated Improvements (as each such term is defined in Section 3.2 above) that are constructed, installed and/or operated on the Property and/or on the Wind Project Property by or on behalf of LESSEE, a Sublessee and/or one or more affiliates of either or both thereof, as an integrated energy generating and delivery system. LESSEE may determine, in its sole discretion, whether any particular group of Wind Turbines and associated Improvements constitutes a single Project or multiple Projects for the purposes of this Lease.

#### 4. GRANT OF EASEMENTS.

4.1 LESSOR hereby irrevocably grants and conveys to Flat Rock Windpower LLC, a Delaware limited liability company, its successors and assigns, subject to the terms and conditions set forth in the Lease, the following easements ("**Operation Easements**") for the benefit of one or more Projects on, over, under, upon, along and across the Property:

4.1.1 An easement, right and entitlement on, over, across and under Property for any audio, visual, view, light, noise, vibration, air turbulence, wake, shadow flicker, electromagnetic, television reception, ice or other weather created hazards or other effect of any kind whatsoever resulting directly or indirectly from any (a) operations conducted on (i) Property, (ii) the Wind Project Property or (iii) the Subsequent Wind Projects Property or (b) facilities now or hereafter located on (i) Property, (ii) the Wind Project Property or (iii) the Subsequent Wind Projects Property.

4.1.2 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.

4.1.3 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 as depicted on Exhibit B ("**Crane Travel Path Easement**"). LESSEE shall have the additional right to temporary earthmoving as necessary to build a suitable access route for the Crane Travel Path Easement. Any change in the access route of the Crane Travel Path Easement shall be approved by LESSOR, which said approval shall not be unreasonably withheld, conditioned or delayed. LESSEE shall pay for damages in accordance with Section 5.8 to LESSOR'S field, timber or for crops taken out of production caused by LESSEE's use of the Crane Travel Path Easement.

4.1.4 A non-exclusive easement and right for vehicular and pedestrian ingress, egress and access to and from the Improvements and from adjacent lands on, over and across the Property by means of those certain existing roads and lanes thereon as designated on Exhibit B, or otherwise by such roads as LESSEE or anyone else may construct from time to time as approved by LESSOR which said consent shall not be unreasonably withheld, conditioned or delayed, as then designated on Exhibit B or Exhibit C as the case may be, in each case for the benefit of one or more Projects (collectively, "**Access Rights**").

4.1.5 A seventy-five (75) foot wide non-exclusive easement and right to install, maintain, repair and operate on the Property underground (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 improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing as designated on Exhibit B in each case for the benefit of one or more Projects (collectively the "**Distribution Easement**").

4.1.6 The term of each Operation Easement (the "**Operation Easement Term**") shall commence on the Effective Date and shall terminate on the Lease Termination Date or if LESSEE has elected to continue the Operation Easements in accordance with Section 2.1, the earlier to occur of (a) the date of the cessation of all Commercial Operation of all of the Projects located on the Wind Project Property or (b) December 31, 2050. Notwithstanding the foregoing, in no event shall the term of each Operation Easement be longer than the longest period permitted by law.

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

4.3. With respect to each Operations Easement and Lessor Subeasement (each, an "**Easement**"): (a) to the extent permitted by law, such Easement shall be appurtenant to the applicable leasehold estate; (b) such Easement shall run with the Property and the Wind Project Property and inure to the benefit of and be binding upon LESSOR 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 LESSEE, a Sublessee 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 LESSOR; (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 of such Easement shall, separately or in the aggregate, constitute an overburdening of the Easement.

4.4 Upon the request of LESSEE at any time and from time to time during the Term, LESSOR shall grant to LESSEE, its respective successors and assigns, a non-exclusive easement for a 34.5 kV Power Line (as defined in the 34.5 kV Easement Agreement) and such additional easements as stated in the 34.5 kV Easement Agreement, on, over, under, across and along the Property, in substantially the form attached hereto as Exhibit "E" and made a part hereof (the "**34.5 kV Easement Agreement**"), upon the terms and conditions and for the consideration stated therein.

## 5. IMPROVEMENTS.

5.1 Subject to Section 5.11, LESSEE may install wind turbine generators, each expected to have a nameplate rating of in the range of approximately 1.50 megawatts to 2.00 megawatts, with the final timing of installation and the nameplate rating to be determined by LESSEE. Provided LESSEE is paying the

Minimum Rent in accordance with Section 6.2.2, LESSEE shall not be obligated to maintain or operate any minimum number of megawatts.

5.1.1 Within sixty (60) days after the completion of each Project having Improvements located on the Property, LESSEE and/or its Sublessees shall deliver to LESSOR legal descriptions of (together with an as-built drawing generally depicting the same) those portions of the Property depicted on Exhibit B (or as modified as permitted pursuant to this Lease) (collectively, the "**Operating Area**"). The Operating Area shall consist of (a) leasehold areas for the Wind Turbines consisting of approximately a 500 foot diameter circle around each Wind Turbine (collectively, the "**Retained Leasehold Areas**"), and (b) easement corridors for (i) the Access Rights including but not limited to the seventy-foot wide road right of way shown on Exhibit B, (ii) the Distribution Easement and (iii) the Crane Travel Path Easement (collectively, the "**Retained Easement Corridors**"). Within sixty (60) days after the completion of such Project, LESSEE shall notify, by written notice to LESSOR (which notice shall include such legal descriptions and drawing(s)), any portion of the Property that is not part of the Retained Leasehold Area (collectively, the "**Remaining Property**"). LESSEE shall promptly thereafter execute and record a quitclaim deed to LESSOR of all of its right, title and interest in and to the Remaining Property; provided, however, that (and the quitclaim deed shall so provide): (i) the Remaining Property shall in any event remain, for the Operation Easement Term subject to and burdened by (A) the Easements on, over, across, along and above the Retained Easement Corridors, (B) the Lessor Subeasements and (C) the Easements created by Sections 4.1.1, 4.1.2 and 4.1.3 hereof over all of the Property; (ii) LESSOR shall be free to use and develop the Remaining Property as it sees fit and for any purpose in accordance with Section 5.12, so long as such development and the use, operations and activities on the Remaining Property do not interfere with LESSEE's or any Sublessee's activities, Operations or Improvements on the Property (including, without limitation, in the Retained Easement Corridors), any Wind Project Property or any Subsequent Wind Projects Property; and (iii) in the event that in connection with a repowering of a Project or any portion thereof LESSEE or a Sublessee reasonably determines that a Retained Easement Corridor needs to be relocated in excess of fifty (50) feet or amended and as approved by LESSOR, which said approval shall not be unreasonably withheld, conditioned or delayed, then (A) LESSOR shall, promptly upon request therefor, execute and deliver to LESSEE or such Sublessee an instrument that implements and grants the applicable rights for such relocation or amendment and (B) LESSEE shall, promptly upon request therefor, execute and deliver to LESSOR a quitclaim of any part of the previous Retained Easement Corridor that LESSEE reasonably determines is no longer needed.

5.1.2 LESSEE and/or its Sublessees have the right to adjust those portions of the Property depicted on Exhibit B that LESSEE and/or its Sublessees reasonably determines are or will be used or needed for or in connection with its Improvements and Operations. With regards to a change in the location of the Improvements previously approved by LESSOR of more than fifty (50) feet for turbine sites and roads and two hundred fifty (250) feet for underground distribution and collection lines, LESSEE will obtain prior written consent of LESSOR which said consent shall not be unreasonably withheld, conditioned or delayed. If within five (5) days of LESSOR's receipt of LESSEE's written request (which such request shall be accompanied with a map of such change in location), LESSOR does not give notice of its reasons for not consenting to LESSEE's request, LESSOR shall conclusively be deemed to have given its consent. If within such time period, LESSOR gives notice of its reasons for not consenting to LESSEE's request, then LESSOR and LESSEE shall promptly meet to discuss LESSOR's comments and concerns and LESSEE shall use its best efforts to address such comments and concerns provided that doing so will not increase the costs to LESSEE or decrease the amount of wind captured for energy conversion purposes. In the event a resolution is not reached, LESSEE and LESSOR shall be entitled to pursue all of their respective rights and remedies contained herein.

5.2 The electrical drawings of all Improvements to be installed on the Property shall be available for LESSOR's inspection upon request and at no charge to LESSOR at the LESSEE's place of business.

5.3 Throughout the Term, LESSEE shall, at LESSEE's sole cost and expense, maintain LESSEE's Improvements and equipment in good condition and repair, ordinary wear and tear excepted, and shall abide by all applicable laws, rules, ordinances, orders, and regulations of all governmental agencies. All costs or penalties resulting from non-compliance with the same shall be borne by LESSEE. LESSEE shall indemnify LESSOR for any costs or penalties resulting therefrom. LESSEE shall not clutter the Property, and shall at LESSEE's sole expense collect and dispose of any and all of LESSEE's refuse, waste and trash, including but not limited to any Hazardous Materials which are or were brought onto the Property by LESSEE.

5.4 Any Improvements constructed or placed on the Property by LESSEE permitted by this Lease shall be owned and remain the sole property of LESSEE. All Improvements constructed or placed on the Property during the Term may be replaced, and/or repaired at any time by LESSEE during the Term. . To the extent permitted by law, LESSOR hereby waives any statutory or common law lien that it might otherwise have in or to all Improvements or any part thereof and if such waiver is not enforceable or permitted by law, then LESSOR hereby subordinates each such statutory or common law lien to any Mortgage from time to time existing against such Improvements or any portion thereof.

5.5 LESSEE agrees to establish a decommissioning fund (the "**Fund**") for each Project having Improvements installed on the Property pursuant to this Lease and the above ground 34.5 kV distribution and collection line installed pursuant to the 34.5 kV Easement Agreement for the Term and/or the Operation Easement Term, as applicable (collectively, the "**LESSOR's Project Improvements**") for the purpose of setting aside monies necessary to meet the cost of removing all such Improvements; that are required to be removed pursuant to Section 19 of this Lease and Section 5.6 of the 34.5 kV Easement Agreement. The Fund will also include an amount to meet the cost of removing (i) all improvements installed on the Wind Project Property for such Project pursuant to the leases affecting the Wind Project Property and (ii) the above ground 34.5 kV distribution and collection lines installed on the Wind Project Property pursuant to the 34.5 kV easement agreements affecting the Wind Project Property that are required to be removed pursuant to such leases and the 34.5 kV easement agreements (collectively and together with the LESSOR'S Project Improvements, the "**Project Improvements**"). The Fund will be established in HSBC Bank or if HSBC Bank refuses to act or its terms and conditions of holding such Fund are not commercially reasonable in LESSEE's reasonable business judgment, then in such event the Fund will be established in a national bank reasonably selected by LESSEE located within one hundred (100) miles of Lowville, for the benefit of the LESSOR and the other lessors of leases and grantors of the 34.5 kV easements affecting the Wind Project Property for such Project, and will be created out of LESSEE's income from such Project beginning in the first year of Commercial Operation. The Fund shall hold, by the end of the first full year after Commercial Operation, a sum of money, if any, sufficient to remove such Project Improvements net of any salvage value (the "**Fund Amount**"), as determined by an independent engineer experienced in the wind industry chosen by LESSEE ("**Independent Engineer**"). The Independent Engineer shall review the Fund Amount every five years after the end of the first full year after Commercial Operation to determine if the Fund Amount should be adjusted to reflect any increase in the cost to remove such Project Improvements net of any salvage value. LESSEE shall promptly fund the Fund with any increase in the Fund Amount in accordance with the determination made by such Independent Engineer. LESSEE will have the right to fund the Fund with cash, a letter of credit, bond, corporate guarantee from an investment grade company or equivalent security. Interest earnings on the Fund shall be the property of LESSEE; and the Fund balance will also be the property of the LESSEE at the expiration of each of the Project Owner's respective leases and the 34.5 kV easement agreements in the event such Project Improvements have already been removed by the LESSEE. Removing the Project Improvements will include the removal of the Wind Turbines (including the associated towers) and removal of each tower foundation pedestal. The area above the foundation will be re-graded with

top soil. Each covered party and LESSOR shall be entitled to make a claim against the Fund only up to the amount for the removal of improvements described in Section 19 of each of their respective leases and Section 5.6 of their respective 34.5kV easement agreement regardless of any claims made or not made against the Fund by any other covered party.

5.6 All access roads built by LESSEE shall be built on grade, to allow for clearance by farm equipment, unless otherwise agreed to in writing by LESSOR. LESSEE shall maintain in good condition any roads it uses on the Property. LESSOR reserves the right to use such roads and shall not be obligated to pay any of the road maintenance costs for damage caused by LESSOR for normal wear and tear caused by LESSOR's usage of such roads. A locked gate will be installed by LESSEE on each access road on the Property that is (a) used by LESSEE and (b) intersects with a public road and each of LESSOR and LESSEE shall have keys to such lock.

5.7 LESSEE agrees that any underground Improvements, or other areas of the Property excavated as part of constructing a Project, will be carefully back-filled with topsoil and re-seeded at LESSOR's preference. Any topsoil not needed for these purposes shall be set aside for LESSOR's use.

5.8 LESSEE shall promptly compensate LESSOR after the completion of the construction, access or maintenance activities on the Property by LESSEE for each acre (or portion thereof) of crop or timber grown or to be grown on any farmland or timber land of the Property taken out of production due to LESSEE's construction, access or maintenance activities on the Property as follows: (i) hay at two hundred sixty dollars (\$260.00) per acre, (ii) corn at four hundred ten dollars (\$410.00) per acre, (iii) oats at one hundred seventy five dollars (\$175.00) per acre, (iv) pasture at fifty five dollars (\$55.00) per acre and (v) compensation for removal of timber or Christmas trees by LESSEE will be individually negotiated based on site-specific conditions, unless LESSOR elects to dispose of such timber or Christmas trees. In such event, no compensation shall be paid by LESSEE (collectively "**Crop Damage Payment**"). If less than an acre of land is taken out of production, the applicable dollar amount per acre shall be reduced proportionately. A Crop Damage Payment shall be adjusted annually to reflect any price inflation that occurs from the commencement of Commercial Operation to the calendar year as to which such Crop Damage is payable (based on the CPI or Index, as measured by the most recent Index published before the commencement of Commercial Operation and the most recent Index published at least thirty (30) days before the commencement of the calendar year as to which such Crop Damage Payment is payable). Any Crop Damage Payment payable before commencement of Commercial Operation is not subject to a CPI adjustment. In no event shall LESSEE pay LESSOR for any damages or loss pursuant to this Section 5.8 that is already provided for under Section 16.1.

5.9 LESSEE will establish a Special Cleanup Escrow Account to the mutual benefit of LESSOR and other landowners participating in a Project, by virtue of their leasing property for Wind Turbines. The purpose of the Special Cleanup Escrow Account shall be to provide funds for (i) the removal of Wind Turbine foundation pedestals, (ii) the removal of all construction material and debris, and (iii) the restoration of the Retained Leasehold Areas to as near as possible to its original condition. Certain other Improvements, including but not limited to access roads, underground power lines and other foundations three feet below grade shall not be removed using this Special Cleanup Escrow Account. This Special Cleanup Escrow Account will be available only in the event of "**Abandonment of Construction**" which shall mean that the LESSEE has commenced actual construction of Project on the Property and that Commercial Operation, has not occurred within two (2) years of said Commencement of Construction (as defined below). This Special Cleanup Escrow Account will be (i) held in a bank in the State of New York, (ii) administered by R. James Heary, Esq. acting as trustee and Escrow Agent, or if R. James Heary, Esq. refuses to act or his terms and conditions of administering such the Special Cleanup Escrow Account are not commercially reasonable in LESSEE's reasonable business judgment, then in such event an attorney, reasonably selected by the LESSEE



and reasonably approved by a majority of lessors participating in a Project, who will be based within one hundred (100) miles of Lowville, (iii) established on or before the Commencement of Construction of the Project on any property that is subject to the benefits of the Special Cleanup Escrow Account, and (iv) in an amount equal to twenty thousand dollars (\$20,000) for each Wind Turbine to be installed in the Project, including those Wind Turbines on the Property. LESSEE will have the right to fund this Special Cleanup Escrow Account with cash, a letter of credit, a corporate guarantee from an investment grade company or equivalent security. Any and all claims relating to Abandonment of Construction by LESSOR shall be made to the Escrow Agent and to LESSEE pursuant to a written claim by LESSOR no later than sixty (60) days after the cure period provided in Section 28 has elapsed without cure. The Escrow Agent shall have full discretion on the sharing and use of funds in the Special Cleanup Escrow Account as between the Parties and based on the projected costs of restoration. The Special Cleanup Escrow Account will be closed as follows: (i) as to LESSOR, if Commercial Operation occurs, the amount of \$20,000 held in the Special Cleanup Escrow Account for each Wind Turbine installed on LESSOR's Property will be released to LESSEE when LESSOR, solely as to its Property, has acknowledged that all construction debris has been removed and the Retained Leasehold Areas have been cleaned up with topsoil regraded and restored as necessary in LESSOR's reasonable satisfaction or (ii) if Commercial Operation does not occur, when (i) the Escrow Agent has determined in its sole opinion that all claims have been satisfied or that all funds in the Special Cleanup Escrow Account have been paid out and (ii) LESSOR, solely as to its Property, has acknowledged that all construction debris has been removed and the Retained Leasehold Areas have been cleaned up with topsoil regraded and restored as necessary to LESSOR's reasonable satisfaction. Any balance in the Special Cleanup Escrow Account when closed shall become the sole property of LESSEE.

5.10 Notwithstanding the grant of the easement contained in Section 4.1.1, LESSOR understands and has been informed by LESSEE that by this Lease, LESSEE and each Sublessee has the right to cause on, over, across and under the Property or as an indirect or direct result of LESSEE's or a Sublessee's activities on the Property in connection with each Project and the Subsequent Wind Projects, such noise, audio, visual, view, light, vibration, air turbulence, wake, electromagnetic, television reception, shadow flicker or weather created hazards other than ice (collectively, the "Consequences") or any other effect of any kind whatsoever as a result of such Consequences transmitted by or from the presence and operations of (a) the Improvements on the Operating Areas and (b) each Project and the Subsequent Wind Projects, now known or hereafter designed and used for the generation of electricity by wind powered turbines and the transmission of such electricity (collectively, the "Effects"). LESSOR, for itself, its heirs, administrators, executors, successors and assigns, does hereby waive, remise and release any right, claim or cause of action which it may now have or which it may have in the future against LESSEE or a Sublessee as a direct or indirect result of said Effects.

5.11 LESSEE 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 Lease or represented to LESSOR shall be construed as requiring LESSEE to (a) undertake construction, installation or operation of any Improvements on the Property or elsewhere on other properties, (b) continue operation of any Improvements from time to time located on the Property or elsewhere on other properties, 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 Improvements, or to generate or sell electrical energy, shall be solely in LESSEE's or a Sublessee's discretion. LESSOR shall cooperate with LESSEE and each Sublessee in connection with its Operations, and, upon request by LESSEE or a Sublessee, shall make available to LESSEE for inspection copies of all reports, agreements, surveys, plans and other records of LESSOR that relate to the wind on or across the Property or to the feasibility of wind energy development on the Property. LESSEE's rights under this Section 5.11 shall not survive the expiration or earlier termination of this Lease, provided, however, that the Operations Easements may be continued pursuant to and in accordance with the Section 2.1 of this Lease.

5.12. Subject to Sections 16 and 37 and the other rights of LESSEE under this Lease, LESSOR hereby reserves the right to use the Property for any purpose (including for agriculture, ranching, hunting, logging and residences now or hereafter constructed on the Property), and 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 LESSOR from such use, leasing or easement granting shall belong entirely to LESSOR); 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 LESSEE in this Lease) except that LESSOR may build and operate (i) one wind turbine up to 25 kW for residential and/or farm electrical purposes only on the Remaining Land without the consent of LESSEE or (ii) one wind turbine of more than 25 kW and up to 75 kW for residential and/or farm electrical purposes only on the Remaining Land, provided that an independent engineer reasonably acceptable to LESSEE and paid for by LESSOR, has, in good faith, determined in writing, that such residential and/or farm wind turbine does not adversely affect a Project, (b) such uses, leases and easements shall be for purposes and activities that are not and will not be inconsistent with any of LESSEE's or any Sublessee's Projects or Operations, or LESSEE's enjoyment of the rights granted to it under this Lease 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 Lease and to the rights of LESSEE 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 LESSEE's use (for the purposes permitted in this Lease) shall have first priority, except for LESSOR's right to build and operate one wind turbine for residential and/or farm electrical purposes in accordance with Section 5.12 (a) above.

## 6. RENT:

6.1 LESSEE agrees to pay to LESSOR \_\_\_\_\_ at Commencement of Construction. "Commencement of Construction" means when LESSEE commences the grading and groundwork for (a) one or more roads on the Property or (b) the first foundation for the Wind Turbines on the Property.

6.2 The annual rent ("**Rent**") shall be paid by LESSEE to LESSOR as follows:

6.2.1 Prior to the commencement of Commercial Operation, two thousand dollars (\$2,000) per year ("**Initial Minimum Rent**") will be payable in arrears during the Initial Term, commencing one year after the Effective Date (and each anniversary thereof), in quarterly installments thirty (30) days after the end of each calendar quarter, only in the event that delays are encountered in reaching Commercial Operation such that no rent is otherwise payable under Section 6.2.2.

6.2.2 After the commencement of Commercial Operation, LESSEE shall pay to LESSOR in advance in quarterly installments on the first day of each calendar quarter, a minimum annual rent ("**Minimum Rent**") equal to the greater of (i) the Initial Minimum Rent or (ii) four thousand dollars (\$4,000) per year per each one (1) MW of equivalent installed generating capacity, as determined by the manufacturer's nameplate rating located on the Property from time to time ("**Generation Minimum Rent**"), provided that in no event during the Initial Term shall the Generation Minimum Rent be less than the greater of four thousand dollars (\$4,000) per year per (a) each one (1) MW of equivalent installed generating capacity, as determined by the manufacturer's nameplate rating located on the Property on the Generation Commencement Date (defined below) or (b) each one (1) MW (as shown on Exhibit B) of the number of turbines shown on Exhibit B. The Minimum Rent shall be adjusted annually to reflect any price inflation that occurs from the commencement of Commercial Operation to the calendar year as to which such Minimum Rent is payable (based on the Consumer Price Index for the Northeast Region of the Bureau of Labor

Statistics published by the United States Department of Labor, Bureau of Labor Statistics ("CPI") or some other similar index selected by LESSEE, if the CPI is no longer available (the applicable index is herein called the "**Index**"), as measured by the most recent Index published before the commencement of Commercial Operation and the most recent Index published at least thirty (30) days before the commencement of the calendar year as to which such Minimum Rent is payable). Notwithstanding the above, the Minimum Rent for the calendar quarter in which the commencement of Commercial Operation occurs shall be payable ten days after the commencement of Commercial Operation, and shall be prorated to the period commencing upon the commencement of Commercial Operation and ending on the last day of the calendar quarter in which the commencement of Commercial Operation occurs. In no event shall the Minimum Rent decline from one year to the next as a result of a decrease in the Index. The term "**Generation Commencement Date**" means the date on which a power purchasing utility or other entity first receives and purchases power produced from all of the Wind Turbines located on the Property.

6.2.2.1 Notwithstanding Section 6.2.2, LESSEE shall pay to LESSOR, three percent (3%) of Gross Revenues ("**Percentage Rent**") derived from each Wind Turbine located on the Property from time to time on an annual basis for each year of the Initial Term, subject to a credit of the Minimum Rent paid pursuant to Section 6.2.2. Within forty-five (45) days after the end of each year, LESSEE shall calculate the total Minimum Rent paid to LESSOR pursuant to Section 6.2.2 during the past year and if said sum is less than the Percentage Rent payable pursuant to Section 6.2.2.1, LESSEE shall pay to LESSOR the difference between the Minimum Rent paid pursuant to Section 6.2.2 and the Percentage Rent payable pursuant to Section 6.2.2.1.

6.2.3 During the Extended Term, LESSEE shall pay to LESSOR in advance in quarterly installments on the first day of each calendar quarter of each Extended Term year, a minimum annual rent ("**Extended Term Minimum Rent**") in the amount of the Generation Minimum Rent as adjusted by the CPI in accordance with Section 6.2.2 immediately prior to the expiration of the Initial Term per year per each one (1) MW of equivalent installed generating capacity, as determined by the manufacturer's nameplate rating located on the Property from time to time ("**Extended Term Generation Minimum Rent**"), provided that in no event during the Extended Term shall the Extended Generation Minimum Rent be less than the greater of the Generation Minimum Rent as adjusted by the CPI in accordance with Section 6.2.2 immediately prior to the expiration of the Initial Term per year per (a) each one (1) MW of equivalent installed generating capacity, as determined by the manufacturer's nameplate rating located on the Property as of the date of the commencement of the Extended Term or (b) each one (1) MW (as shown on Exhibit B) of the number of turbines shown on Exhibit B. The Extended Term Minimum Rent shall be adjusted annually to reflect any price inflation that occurs from the commencement of the Extended Term to the calendar year as to which such Extended Term Minimum Rent is payable (based on the Index, as measured by the most recent Index published before the commencement of the Extended Term and the most recent Index published at least thirty (30) days before the commencement of the calendar year as to which such Extended Term Minimum Rent is payable). In no event shall the Extended Term Minimum Rent decline from one year to the next as a result of a decrease in the Index.

6.2.3.1 Notwithstanding Section 6.2.3, LESSEE shall pay to LESSOR, Percentage Rent derived from each Wind Turbine located on the Property from time to time on an annual basis for each year of the Extended Term, subject to a credit of the Extended Term Minimum Rent paid pursuant to Section 6.2.3. Within forty-five (45) days after the end of each year, LESSEE shall calculate the total Extended Term Minimum Rent paid to LESSOR pursuant to Section 6.2.3 during the past year and if said sum is less than Percentage Rent payable pursuant to Section 6.2.3.1, LESSEE shall pay to LESSOR the difference between the Extended Term Minimum Rent paid pursuant to Section 6.2.3 and the Percentage Rent payable pursuant to Section 6.2.3.1.

### 6.3 Intentionally Omitted

6.4 **"Gross Revenues"** means the aggregate total revenue actually received by LESSEE or a Sublessee, during the applicable period of time, from the sale, to the purchaser of the electricity, of electrical energy and capacity generated and sold from Wind Turbines then located on the Property. The amount of electricity generated by each Wind Turbine on the Property will be metered at such Wind Turbine. LESSOR understands and acknowledges that the amount of electricity generated by and metered at the Wind Turbines then located on the Property will not equal the amount of electricity actually metered and sold at the utility interconnection point since it will not include electrical losses related to (a) the parasitic loads of each of the Wind Turbines then located within a Project and (b) the line losses inherent in the power collection system, the transmission lines and the related transformers, switches and circuit breakers. The total electrical losses of a Project will be determined by subtracting the total amount of electricity of the Project actually metered and sold at the utility interconnection point from the total amount of electricity generated by and metered at the Wind Turbines then located within such Project, and such total Project electrical losses will be apportioned by LESSEE among all of the Wind Turbines then located within the Project. For purposes hereof, the term "Gross Revenues" shall include the sale of renewable energy certificates or other environmental attributes associated with the sale of each unit of wind powered electricity from the Wind Turbines then located on the Property, but, without limitation, shall not include revenues received: (a) from the sale, lease, sublease, assignment, transfer or other disposition of Improvements or any other of LESSEE's or any Sublessee's Improvements, trade fixtures or chattel (or any interest therein); (b) from the sale, lease, sublease, assignment, transfer or other disposition of an interest in LESSEE or a Sublessee, (c) from sales of electrical energy produced by Wind Turbines not located on the Property; (d) from any rental or other payment received by LESSEE in exchange for LESSEE's assigning, subleasing, mortgaging or otherwise transferring all or any interest of LESSEE in this Lease; (e) from any sale, modification or termination under a power purchase contract; (f) from parasitic or other losses (i.e., electrical energy used to power Improvements or Operations, or lost in the course of transforming, shaping, transporting or delivering the electricity); (g) from sales of electrical energy for which payment is not received (including because of a default by the purchaser thereof); (h) as reimbursement or compensation for wheeling costs or other electricity transmission or delivery costs; (i) from production tax credits, other tax benefits and credits, or any reimbursement thereof received by LESSEE or a Sublessee in connection with any Project; or (j) any price support payments made to the LESSEE by the New York State Energy Research and Development Authority. Except as provided above in this Section, Gross Revenues shall be calculated without offset for any costs of producing, gathering, storing, transporting, marketing or otherwise making electricity ready for sale.

6.5 Within three (3) months after the first full calendar year of Commercial Operations and every five (5) years thereafter ("**LESSEE's Audit Commencement Date**"), LESSEE shall perform an audit of the computations of the Rent based on Gross Revenues (the "**Computations**") for the sixty month period prior to LESSEE'S Audit Commencement Date ("**LESSEE's Audit Year**") on all the leases then affecting the Wind Project Property for a Project, which audit shall be performed by an independent certified public accountant (an "**Accountant**") selected by LESSEE and paid for by LESSEE. Within sixty (60) days after the end of each lease year during the Term, LESSEE shall deliver to LESSOR a statement of the kilowatt-hours of electric energy sold from the Wind Turbines installed on the Property net of electrical losses described in Section 6.4. LESSOR shall have the right to schedule an appointment once a year to inspect the MWh output produced by each of the Wind Turbine located on the Property, as tracked by the SCADA ("supervisory control and data acquisition system"), which system can be accessed either in the operations center or at the control panel at the base of each Wind Turbine tower. LESSOR shall have the right to demand (but not more often than once every eighteen (18) months), by written notice to LESSEE, an audit of the Computations for any twelve month period prior to the date of LESSOR's request but in no event for a

LESSEE's Audit Year, which audit shall be performed by an Accountant selected by LESSEE and paid for by LESSEE or by LESSOR in accordance with Section 6.5.2.

6.5.1. Any determination made by an Accountant under this Section 6.5 shall be conclusive as between and binding upon the Parties. If any audit performed under this Section 6.5 shows that Percentage Rent has been underpaid for this Lease, then the amount of the deficiency shall be promptly paid in accordance with the determination made by such Accountant. If such audit of this Lease shows that Percentage Rent has been overpaid for this Lease, then the amount of the overpayment for this Lease in accordance with the determination made by such Accountant shall be credited against the Rent then due under this Lease.

6.5.2. In the event that an audit which was demanded by LESSOR reveals no underpayment of the Rent based on Gross Revenues due LESSOR, then all of the costs associated with such audit shall be paid by LESSOR.

6.5.3. Upon any audit performed under this Section 6.5 or if LESSOR did not demand within eighteen (18) months following a particular Computation for a non LESSEE's Audit Year, LESSOR shall conclusively be deemed to have waived its right to an audit with respect to such Computation, and shall forever thereafter be precluded from bringing any legal action or proceeding to compel an audit of such Computation or to recover any underpayment of Percentage Rent associated with or forming the basis of such Computation.

6.5.4 Any Computations, materials, data or information obtained or reviewed by the Accountant, as well as such Accountant's determination, shall be deemed to be Confidential Information and shall be governed by Section 34.

**7. EXISTING RIGHTS OF WAY AND EASEMENTS AND CONDITION OF TITLE.** LESSEE shall have the right to use all existing rights of way and easements serving the lands of the LESSOR. LESSEE shall not do or suffer to be done any damage or interference to the rights and interests of the holders of said rights of way and easements. LESSEE agrees to be responsible for all such damages and repairs caused by LESSEE's activities.

7.1 LESSOR represents to LESSEE that, to LESSOR's knowledge, there are no covenants, restrictions, rights of way, easements or other encumbrances on the Property which will prevent LESSEE's use thereof.

7.2 LESSEE shall, at its expense, obtain a current title report showing the condition of LESSOR's title and all of the recorded rights of way and easements now of record encumbering or benefiting the Property and shall provide a copy to LESSOR. It shall be the duty and responsibility of LESSEE to ascertain from the public records all of the recorded rights of way and easements now on record affecting the Property and the nature and location, if locatable, thereof, in order that LESSEE's activities hereunder will not cause any damage or interference thereto. To the best of LESSOR's knowledge the condition of LESSOR's title is accurately reported in the title report which was prepared at LESSEE's request. LESSOR shall not be responsible for damages resulting from a mistake or omission in said title report unless such mistake or omission shall have occurred as a result of LESSOR's fraud or misrepresentation with respect to ownership of the Property, liens and encumbrances and/or authority to execute this Lease. In the event that it is determined that there are title issues to be resolved in the future which were not addressed in LESSEE's title report, LESSOR hereby agrees to cooperate with LESSEE in attempting to cure and title defects provided that LESSEE shall not incur any extraordinary expenses by so cooperating.

**8. PLANNING AND ZONING.** LESSOR agrees to execute all necessary applications and other related documents to aid LESSEE in obtaining all planning, zoning, and building permits before the appropriate agencies which have jurisdiction over the Property at no expense to LESSOR. The location of the Property places the jurisdiction in Lewis County, New York.

**9. RECORDING.** Upon execution of this Lease, the Parties shall execute a Memorandum of Amended and Restated Lease, at no expense to LESSOR and take all reasonable steps and execute all documents necessary to record the Memorandum of Amended and Restated Lease with any appropriate governmental entity, including but not limited to the Lewis County Clerk. LESSOR consents to such recordings.

**10. SANITARY FACILITIES.** LESSEE shall provide sanitary facilities for all workers and employees. All permits required by the New York Department of Environmental Conservation, or other agencies which regulate these facilities, will be provided by LESSEE. LESSEE shall be responsible for removing from the Property all waste generated by LESSEE's conduct and development on the Property at regular intervals through the Term.

**11. TREES.** Subject to Section 5.8, LESSEE shall have the right to clear and cut all brush, trees, timber or other hazards located in those areas shown on Exhibit "B". Subject to Section 5.8, no other trees on the Property shall be cut without LESSOR's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

**12. UTILITIES.** LESSEE agrees to pay all utility costs incurred on the Property by reason of the LESSEE's Operations.

**13. THIRD-PARTY ACCESS.** Both Parties shall have the power and authority to control and prevent access of parties to the Property if such third parties have not been authorized by either LESSOR or LESSEE. Either Party may invite third parties upon the Property without permission from the other so long as no material inconvenience is caused to the other Party. LESSEE shall invite third parties only for purposes relevant to this Lease.

**14. CONDEMNATION.**

**14.1. Taking; Notice.** As used herein, the term "**Taking**" means the taking or damaging of the Property, the Improvements, the Lease, the Easements or any part thereof (including severance damage) by eminent domain or by inverse condemnation or for any public or quasi-public use. A Party who receives any notice of a Taking shall promptly give the other Party notice of the receipt, contents and date of such Taking notice.

**14.2. Effect on Lease.** In the event of a Taking, the rights, interest and obligations of LESSEE as to the property or assets taken shall terminate upon the earlier to occur of (a) the date on which possession thereof is taken by the condemning agency, (b) the date that LESSEE, in its sole judgment, determines that it is no longer able or permitted to operate the Project(s) in a commercially viable manner on or as to the property or assets so taken, or (c) the date of the condemnation judgment. In the event of any other damage to the Property or any part thereof, the rights, interest and obligations of LESSEE as to the damaged portion(s) of the Property shall terminate on the date that LESSEE, in its sole judgment, determines that it is no longer able or permitted to operate the Project(s) on such portion(s) of the Property in a commercially viable manner. Following such Taking or damage to the Property, this Lease shall continue in full force and effect (with an equitable reduction in the Rent) as to any part of the Property, the Improvements, the Lease and the Easements that has not been the subject of such Taking or has not been damaged (as the case may

be); provided, however, that if LESSEE, in its sole judgment, determines that the remaining Property, Improvements, Lease and Easements are insufficient or unsuitable for LESSEE's purposes hereunder, then, subject to Sections 38.2 and 20.3.5, LESSEE shall be entitled (but not required) to terminate this Lease in its entirety by written notice to LESSOR, whereupon the Parties shall be relieved of any further obligations and duties to each other hereunder.

14.3. Disbursement. If a Taking occurs, then the compensation payable therefor, whether pursuant to a judgment, by agreement or otherwise, including any damages and interest (collectively, the "**Award**"), whether for the fee, the Lease, the Easements, the Improvements or any thereof, shall be deposited promptly with an independent third-party escrow company mutually agreed upon by the Parties (or, if the Parties cannot so agree, by an escrow company selected by the AAA), and shall be distributed in the following order or priority: (a) any portion of the Award attributable to the Taking of or injury to the Lease, the Easements or the Improvements shall be paid to LESSEE; (b) any portion of the Award attributable to any cost or loss that LESSEE and/or any Sublessee may sustain in the removal and/or relocation of the Improvements, or LESSEE's or any Sublessee's chattels and trade fixtures, shall be paid to LESSEE; (c) any portion of the Award attributable to LESSEE's or a Sublessee's anticipated or lost profits, to damages because of deterrent to LESSEE's or a Sublessee's business or to any special damages of LESSEE or a Sublessee, shall be paid to LESSEE; and (d) any portion of the Award attributable to the Taking of the fee, and all remaining amounts of the Award, shall be paid to LESSOR.

15. **GOVERNING LAW**. The laws of the State of New York shall govern the interpretation and enforcement of this Lease.

#### 16. INDEMNIFICATION AND INSURANCE.

16.1 Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and such other Party's Related Persons (each, an "**Indemnified Party**") from and against any and all claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, costs and expenses, including attorneys', investigators' and consulting fees, court costs and litigation expenses (collectively, "**Claims**") suffered or incurred by such Indemnified Party, arising from (a) physical damage to the Indemnified Party's property (which (i) in LESSEE's or any Sublessee's case, shall include damage to any Improvements and (ii) in LESSOR's case, shall include damage to crops and livestock), to the extent caused by the Indemnifying Party or any Related Person thereof, (b) physical injuries or death (including by reason of any hunting on the Property) to or of the Indemnified Party or the public, to the extent caused by the Indemnifying Party or any Related Person thereof or (c) any breach of any covenant, and any failure to be true of any representation or warranty, made by the Indemnifying Party under this Lease, provided, however, that in no event shall the Indemnifying Party be responsible for defending, indemnifying or holding harmless any Indemnified Party to the extent that any Claim is caused by, arises from or is contributed to by the negligence or willful misconduct of such Indemnified Party.

16.2 Throughout the Term, LESSEE shall maintain and pay for (i) general liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate and (ii) excess liability insurance with a limit of not less than \$9,000,000 in the aggregate, in each case for injury to any person and for damage to property. Such insurance shall, at the option of LESSOR, name LESSOR as an additional insured on a primary, non-contributing basis, except for claims arising out of LESSOR's gross negligence, and shall cover all risks arising directly or indirectly out of LESSEE's activities on the Property whether or not caused or contributed to by LESSEE's negligence. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days written notice to LESSOR prior to any change or cancellation shall be furnished to LESSOR prior to LESSEE taking possession of or using any of the Property.

16.3 During construction of the Project on the Property by the general contractor, LESSOR shall be added as an additional insured on a primary, non-contributing basis (except for claims arising out of LESSOR's gross negligence) to the general contractor's general liability policy. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days written notice to LESSOR prior to any change or cancellation shall be furnished to LESSOR prior to the commencement of construction by the general contractor.

17. **HAZARDOUS MATERIALS.** Any Hazardous Materials that are necessary for the conduct of LESSEE's Operations will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material. As used herein, the term "**Hazardous Materials**" means any hazardous or toxic substance, material or waste, including but not limited to those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172-101) or by the Environmental Protection Agency as Hazardous Substances (40 CFR Part 301) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law for the protection of the environment (collectively, "**Environmental Law**").

17.1 LESSEE hereby agrees to defend, indemnify LESSOR and hold LESSOR harmless from and against any and all Claims, whatsoever including but not limited to Claims brought by any third-party, whether a governmental entity or private party, in any way relating to the (a) the presence or release of Hazardous Materials in, under, on or about the Property, which are or were brought onto the Property by LESSEE or any Related Person thereof or (b) the violation of any Environmental Law by LESSEE or any Related Person thereof.

18. **TAXES.** LESSOR shall pay, when due, all real property taxes and assessments levied against the Property, including the Operating Areas and excluding therefrom the Improvements located thereon, by a governmental body (collectively, "**Taxes**"). LESSOR shall send a copy of each tax bill to LESSEE promptly upon receipt of such tax bill by LESSOR unless the Operating Areas are separately assessed. LESSEE agrees to promptly pay or cause to be paid its portion of the increase in the Taxes attributable to LESSEE's or a Sublessee's use of the Operating Areas during the Term. If the Taxes are levied or assessed in the name of LESSOR, LESSEE agrees to pay the same directly to the taxing authority, at LESSOR's preference, upon written notice by LESSOR to LESSEE setting forth LESSEE's proportionate share thereof. LESSEE and/or LESSOR may contest the legal validity or amount of any Taxes for which each is responsible under this Lease, and may institute such proceedings as they consider necessary. LESSOR, upon request of LESSEE and at no cost or expense to LESSOR, agrees to contest on behalf of LESSEE, the legal validity or amount of any Taxes which LESSEE is responsible for under this Lease. LESSEE shall reimburse LESSOR for any additional taxes imposed upon the Property becoming disqualified from receiving a special assessment as (i) farm use land or (ii) any other assessment classification that results in the increase of Taxes, if such land is so assessed as of the execution date of this Lease, and if the Property is in fact disqualified from receiving such special consideration or treatment by reason of the use of the Property by LESSEE hereunder. LESSEE's duty to reimburse shall exist only with respect to Taxes for tax years during the period this Lease remains in effect. LESSOR shall promptly send to LESSEE evidence that the Taxes have been paid by LESSOR. To the extent available from the taxing authority, LESSEE shall also be entitled to receive a copy of each tax bill from the taxing authority during the term of this Lease. In the event LESSOR fails to pay the Taxes against the Property including the Operating Areas, LESSEE may take any and all lawful steps to protect its interests in the Operating Areas and the Easements, including but not limited to, direct payments of its proportionate share of the Taxes to the taxing authority. If LESSOR fails to pay its Taxes when due, LESSEE may, at its option, pay the same (together with, at LESSEE's option, taxes on any land and improvements other than the Property that are part of the same tax lot as all or any part of the Property as to which Taxes have not been paid) and deduct the amount paid from the amount paid from the Rent due LESSOR hereunder. LESSEE will use best reasonable commercial efforts, working together with LESSOR, to support the proposal to have



the Improvements assessed separately as a suffix to the LESSOR's tax parcel, which proposal would make LESSEE exclusively liable for any and all taxes and assessments levied against the Improvements.

19. **SURRENDER OF POSSESSION.** No later than six (6) months after the expiration or earlier termination of this Lease and the rights granted LESSEE hereunder, LESSEE shall remove all towers, tower pedestals, footings, concrete pads, anchors, guy wires, fences, fixtures, materials, and other Improvements (except for roads and the below ground distribution and collection lines) and personal property made or placed thereon by LESSEE pursuant to this Lease (except that LESSEE shall be entitled to leave in place all portions of the tower foundations other than the tower pedestals); cover up all pit holes, trenches or other borings or excavations made by LESSEE thereon; replace all topsoil removed in connection with siting the anemometers or wind turbines, fertilize and reseed with native grass, and otherwise restore the Property to as near as possible to its original condition prior to the Lease, and leave the Property in a good, clean condition. The balance, if any, of the Fund will be used to pay for the removal of the Improvements as described in this Section 19.

## 20. **ASSIGNMENT AND MORTGAGEE PROTECTION.**

20.1 **Right to Mortgage and Assign.** LESSEE or a Sublessee may, upon notice to LESSOR, but without LESSOR's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the leasehold estate created by the Lease ("**Leasehold Estate**"), the Lease, any Sublease, the Easements and the Improvements (collectively, the "**Wind Farm Assets**") which said security interests in all or a part of the Wind Farm Assets are collectively referred to herein as "**Mortgages**" and the holders of the Mortgages, their designees and assigns are referred to herein as "**Mortgagees.**" LESSEE and each Sublessee shall also have the right without LESSOR's consent to sell, convey, lease, or assign all or any portion of the Wind Farm Assets on either an exclusive or non-exclusive basis, or to apportion, grant sub-easements, co-easements, separate easements, leases, subleases, co-leases, licenses or similar rights, however denominated, (collectively, "**Assignments**"), to one or more persons or entities (collectively, "**Assignees**"). As used herein, the term "**Sublessee**" means any person or entity that receives an interest from LESSEE of less than all of the right, title or interest under this Lease or in one or more Easements and (ii) the term "**Sublease**" means the grant or assignment of such rights from LESSEE to a Sublessee. Under no circumstances shall any Mortgagee or Assignee have any greater rights of ownership or use of the Retained Leasehold Areas or the Easements than the rights granted to LESSEE in this Lease. Any member of a LESSEE or a Sublessee shall have the right from time to time without LESSOR's consent to transfer any membership interest in LESSEE or a Sublessee to one or more persons or entities.

20.2 **LESSOR Obligations.** LESSOR agrees to consent in writing to financing documents as may reasonably be required by Mortgagees. As a precondition to exercising any remedies related to any alleged default by LESSEE or a Sublessee under this Lease or a Sublease as the case may be, LESSOR shall give written Notice of Default to each Mortgagee and Assignee at the same time it delivers Notice of Default to LESSEE or a Sublessee, specifying in detail the alleged Event of Default and the required remedy. However, in order to be entitled to such Notice of Default, each Mortgagee must have, at least thirty (30) days prior to an Event of Default, delivered to LESSOR a notice of its name and address in accordance with Section 22. Each Mortgagee and Assignee shall have the same amount of time to cure the default as to LESSEE's or a Sublessee's entire interest or its partial interest in the Wind Farm Assets as is given to LESSEE or a Sublessee and the same right to cure any default as LESSEE or Sublessee or to remove any property of LESSEE, Sublessee, Mortgagee or Assignee located on the Operating Areas. The cure period for each Mortgagee and Assignee shall begin to run at the end of the cure period given to LESSEE or a Sublessee in this Lease or a Sublease as the case may be, but in no case shall the cure period for any Mortgagee or Assignee be less than thirty (30) days after receipt of the Notice of Default. The Mortgagee shall have the absolute right to substitute itself for LESSEE or a Sublessee and perform the duties of

LESSEE or Sublessee hereunder or under the Sublease as the case may be for purposes of curing such Event of Default. LESSOR expressly consents to such substitution, agrees to accept such performance, and authorizes the Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Operating Areas to complete such performance with all of the rights and privileges of LESSEE hereunder or a Sublessee under a Sublease as the case may be.

20.2.1 Liability. Any Mortgagee that does not directly hold an interest in the Wind Farm Assets, or whose interest is held solely for security purposes, shall have no obligation or liability under this Lease or a Sublease as the case may be prior to the time the Mortgagee directly holds an interest in the Wind Farm Assets, or succeeds to absolute title to LESSEE's or a Sublessee's interest therein. A Mortgagee shall be liable to perform LESSEE's or a Sublessee's obligations under this Lease or a Sublease as the case may be only for and during the period it directly holds such interest or title, provided, however, that a Mortgagee shall not escape the obligations imposed under Sections 5.5 and 19 by foreclosing solely on the Project Improvements and not the Leasehold Estate. Further in the event that a Mortgagee elects to (a) perform LESSEE's or a Sublessee's obligations under this Lease or the Sublease as the case may be, (b) continue operations on the Operating Areas, (c) acquire any portion of LESSEE's or a Sublessee's right, title or interest in all or any of the Wind Farm Assets or (d) enter into a new Lease or a Sublease as the case may be as provided in Section 20.3.4, then such Mortgagee shall not have any personal liability to LESSOR in connection therewith, and LESSOR's sole recourse in the Event of Default by such Mortgagee shall be to execute against such Mortgagee's interest in the Wind Farm Assets. Moreover, any Mortgagee or other party who acquires the Wind Farm Assets pursuant to foreclosure or an assignment in lieu of foreclosure shall not be liable to perform any obligations under the Lease or a Sublease as the case may be to the extent the same are incurred or accrue after such Mortgagee or other party no longer has ownership of the Wind Farm Assets.

20.3 Mortgagee Protection. Any Mortgagee, upon delivery to LESSOR of notice of its name and address, for so long as its Mortgage is in existence shall be entitled to the following protections which shall be in addition to those granted elsewhere in this Lease or a Sublease as the case may be:

20.3.1 Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (a) to assign its Mortgage; (b) to enforce its lien and acquire title to all or any portion of the Wind Farm Assets by any lawful means; (c) to take possession of and operate all or any portion of the Wind Farm Assets and to perform all obligations to be performed by LESSEE or a Sublessee under this Lease or a Sublease as the case may be, or to cause a receiver to be appointed to do so; and (d) to acquire all or any portion of the Wind Farm Assets by foreclosure or by an assignment in lieu of foreclosure and thereafter without LESSOR's consent to assign or transfer all or any portion of the Wind Farm Assets to a third party. LESSOR's consent shall not be required for any of the foregoing, and upon acquisition of the interests of all or any portion of the Wind Farm Assets by a Mortgagee or any other third party who acquires the same from or on behalf of the Mortgagee, LESSOR shall recognize the Mortgagee or such other party (as the case may be) as LESSEE's or a Sublessee's proper successor, and this Lease, any such Sublease and the Easements shall remain in full force and effect.

20.3.2 Opportunity to Cure. During any period of possession of the Property by a Mortgagee (or a receiver requested by such Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Mortgagee, the Mortgagee shall pay or cause to be paid the Rent and/or Taxes which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of all or a portion of the Wind Farm Assets by the Mortgagee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Lease or a Sublease as the case may be shall continue in full force and effect and the Mortgagee or party acquiring title to the Wind Farm Assets shall, as promptly as reasonably possible, (i) pay any Rent and/or Taxes then due and (ii) commence the cure of all defaults under this Lease or a Sublease as

the case may and thereafter diligently process such cure to completion; provided, however, that the Mortgagee or party acquiring title to the Wind Farm Assets shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("**Non-Curable Defaults**"). Non-Curable Defaults shall be deemed waived by LESSOR upon completion of foreclosure proceedings or acquisition of LESSEE's or a Sublessee's interest in the Wind Farm Assets by such party. If a Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any bankruptcy or insolvency proceeding involving LESSEE or a Sublessee from commencing or prosecuting the appropriate judicial or nonjudicial proceedings, then any cure period for commencing such proceedings shall be extended for the period of such prohibition.

20.3.3 Termination. Neither the bankruptcy nor the insolvency of LESSEE or a Sublessee shall be grounds for terminating this Lease, a Sublease or the Easements so long as all payments and all other monetary charges payable by LESSEE or Sublessee under this Lease or a Sublease as the case may be are paid by the Mortgagee in accordance with the terms of this Lease or a Sublease as the case may be.

20.3.4 New Lease. In the event that this Lease or a Sublease, as the case may be (a) terminates because of LESSEE's or a Sublessee's uncured Event of Default or (b) is rejected or disaffirmed pursuant to bankruptcy law or any other law affecting creditors' rights, then, so long as a Mortgagee has cured any such monetary Event of Default and is making commercially reasonable efforts to cure any such non-monetary Event of Default as provided herein, LESSOR shall, immediately upon written request from such Mortgagee received within ninety (90) days after any such event, without demanding additional consideration therefore, enter into a new Lease or a new Sublease as the case may be in favor of such Mortgagee, which new Lease or new Sublease shall (i) contain the same covenants, agreements, terms, provisions and limitations as this Lease or such Sublease as the case may be (except for any requirements that have been fulfilled by LESSEE or a Sublessee prior to such termination, foreclosure, rejection or disaffirmance), (ii) be for a term commencing on the date of such termination, foreclosure, rejection or disaffirmance and continuing for the remaining term of this Lease or such Sublease as the case may be before giving effect to such termination, foreclosure, rejection or disaffirmance, (iii) contain a lease or sublease as the case may be on, over, under, upon along and across the Operating Areas or such portion thereof as to which such Mortgagee held a lien on the date of such termination, foreclosure, rejection or disaffirmance, (iv) contain a grant to the Mortgagee of access, transmission, communications, utility and other easements covering such portion or portions of the Property as such Lender may reasonably designate and (v) enjoy the same priority as this Lease or a Sublease as the case may be has over any lien, encumbrance or other interest created by LESSOR, and, until such time as such new Lease or Sublease as the case may be is executed and delivered, the Mortgagee may enter, use and enjoy the Easements and the Operating Areas and conduct operations thereon as if this Lease or such Sublease as the case maybe were still in effect. At the option of the Mortgagee, the new Lease or Sublease as the case may be, may be executed by a designee of such Mortgagee, with the Mortgagee assuming the burdens and obligations of LESSEE or a Sublessee thereunder. If more than one Mortgagee makes a written request for a new Lease or Sublease as the case may be pursuant hereto, then the same shall be delivered to the Mortgagee whose lien is senior in priority.

20.3.5 Mortgagee Consent. Notwithstanding any provision of this Lease or a Sublease to the contrary, (a) LESSOR shall not agree to a modification or amendment of this Lease or a Sublease as the case may be if the same could reasonably be expected to materially reduce the rights or remedies of a Mortgagee or impair or reduce the security for its lien and (b) LESSOR shall not accept a surrender of the Retained Leasehold Areas, the Easements or any part thereof or a termination of this Lease or a Sublease as the case may be; in each such case without the prior written consent of each Mortgagee.

20.4 Estoppel Certificates. LESSOR shall execute estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Lease or a Sublease, if such be the

case), consents to assignment and non-disturbance agreements as LESSEE, a Sublessee or any Mortgagee may reasonably request at any time and from time to time. LESSOR and LESSEE and a Sublessee shall cooperate in (i) amending this Lease or a Sublease as the case may be from time to time to include any provision that may be reasonably requested by LESSEE or a Sublessee or any Mortgagee to implement the provisions contained in this Lease or a Sublease as the case may be or to preserve a Mortgagee's security interest and (ii) execute any documents which may reasonably be required by LESSEE, a Sublessee or a Mortgagee. LESSOR shall request any of LESSOR's lenders to execute an agreement of non-disturbance from any Mortgagee with respect to LESSEE's or a Sublessee's interest in the Retained Leasehold Areas.

**20.5 LESSOR's Right of Transfer.** LESSOR shall have the right to transfer LESSOR's interest in all of the Property to any person or entity ("**Full Transferee**") provided there is a concurrent transfer and/or assignment and assumption of LESSOR's rights and obligations under this Lease to the same Transferee as part of the same transaction. LESSOR shall have the right to subdivide the Property, including but not limited to the Retained Leasehold Areas, and to transfer LESSOR'S interest in each of such subdivided parcels to any person or entity (a "**Partial Transferee**") provided that (i) LESSEE shall have the right to receive, review, comment on and/or approve any applications for any such subdivision and shall be entitled to receive notice from LESSOR of any public proceeding relating thereto, (ii) any such subdivision (a) shall comply with all zoning and/or subdivided land ordinances and regulations applicable thereto and (b) shall not violate any zoning and/or subdivided land ordinances and regulations, including but not limited to any setback requirement, imposed upon any Project located thereon or on the Wind Project Property by any applicable governmental entity, (iii) each such Partial Transferee shall assume in a writing reasonably acceptable to LESSEE, all of the LESSOR's then-existing obligations under the Lease and shall be included as a part of "LESSOR" under this Lease and all of the rights and obligations of the LESSOR shall bind all such Partial Transferee. In the event of such assumption, all references in this Lease to "LESSOR" shall be deemed to include a Partial Transferee; or (iv) at the option of LESSEE's in LESSEE's sole discretion, the Lease shall be bifurcated upon the first transfer of each subdivided parcel to a Partial Transferee and (v) each such Partial Transferee shall assume all of the LESSOR's then-existing obligations under the Lease for its respective parcel of the Property by entering into a new lease with LESSEE. Each such new lease shall (a) contain the same terms and conditions as this Lease (except for any requirements that have been fulfilled by LESSEE prior to the execution of such new agreements), (b) be for a term equal to the remaining term of this Lease, (c) contain a grant to LESSEE of easements similar to the Operations Easements granted in Section 4 hereof, covering such portion or portions of the overall Property as LESSEE may designate, (d) require payment to LESSOR and such Partial Transferee of only a proportionate amount of the Rent to the payment of the same is required under this Lease, which proportion shall be determined by multiplying the Rent by a fraction, (i) the numerator of which is the number of acres that are subject to such new agreement and (ii) the denominator of which is the aggregate number of acres of the overall Property or such other proportion as agreed upon by LESSOR and each such Partial Transferee. LESSOR shall also have the right to transfer LESSOR'S interest in any separate tax parcels comprising the Property (which does not require subdivision approval) to a Partial Transferee provided that all of the conditions stated in (ii)(a), (ii)(b), (iii), (iv) and (v) above are complied with.

**21. MORTGAGE PAYMENTS.** LESSOR agrees to promptly provide LESSEE and each Sublessee with a copy of any default notices that LESSOR receives from its lender. If LESSOR fails to pay any of its obligations secured by a mortgage on the Property when due, LESSEE may, at its option, pay the same and deduct the amount paid from the amount paid for the Rent due LESSOR hereunder. In addition, LESSOR, at the request of LESSEE or a Sublessee shall use reasonable efforts to obtain from any existing lender a subordination and/or non-disturbance agreement in form and substance reasonably acceptable to LESSEE or a Sublessee. In addition, LESSOR expressly acknowledges and agrees that any statutory or common law lien rights in favor of LESSOR or any mortgage granted by LESSOR subsequent to the date of this Lease or a Sublease as the case may be are expressly subordinate and inferior to LESSEE's or a

Sublessee's right, title and interest in this Lease, a Sublease and/or the Easements granted by this Lease and to any liens and security interests granted by LESSEE or a Sublessee in favor of any Mortgagee who has provided financing for the Improvements on the Property. LESSOR agrees to execute or cause its mortgagee to execute any further documentation which may be requested by LESSEE, a Sublessee or a Mortgagee of either to evidence such subordination.

22. **NOTICES.** Any notice to be given hereunder or which either party wishes to give to the other shall be in writing and may be delivered personally to the other or given by mailing by depositing the same in the U.S. Mail, with all postage and certification charges thereon prepaid, in a sealed envelope and sent by registered or certified mail with return receipt requested, addressed as follows:

If to LESSOR:

With copy to:

If to LESSEE:

Flat Rock Windpower LLC  
c/o Atlantic Renewable Energy Corporation  
3311 Church Road, Suite 210  
Richmond, VA 23233

With copy of notices sent to LESSEE to:

Flat Rock Windpower LLC  
c/o Zilkha Renewable Energy, LLC  
1001 McKinney Street, Suite 1740  
Houston, Texas 77002

Flat Rock Windpower LLC  
7612 N. State Street  
Lowville, NY 13367

Or to such other address as either Party shall hereafter specify by written notice to the other. Any notice shall be deemed delivered three days after deposit in the mail in accordance with the foregoing provision.

23. **ATTORNEY'S FEES.** In the event of any litigation for the interpretation or enforcement hereof, or for damages for a default hereunder, or which in any other manner relates to the Lease, the Easements, this Agreement or the Property, each Party shall pay its own attorneys' fees and court and other costs.

24. **WAIVER.** The waiver of any covenant, condition, or agreement contained herein shall not vitiate this Lease or any other covenant, condition or agreement herein. The waiver of the time for performing any act shall not constitute a waiver of the time for performing any other act or any identical act required to be performed at a later time.

25. **TIME OF ESSENCE.** Time is of the essence of this Lease and of each of all the terms, conditions, covenants and agreements thereof.

26. **ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between LESSOR and LESSEE and no promises or representations, express or implied, either written or oral, not herein set forth shall be binding upon or inure to the benefit of LESSOR and LESSEE. This Lease shall not be modified by any oral agreement, either express or implied, and all modifications hereof shall be in writing and signed by both LESSOR and LESSEE.

27. **DEFAULT.** Each of the following events shall be a default and a breach of the Lease (an "**Event of Default**"):

27.1 Failure to perform any covenants, conditions or terms of this Lease, including but not limited to the obligation to pay the Taxes under Section 18 of this Lease and LESSEE's obligation to fund the Fund in accordance with Section 5.5, to the extent that the failure to perform will have a material adverse impact on LESSOR or LESSEE and has not been cured within the cure periods stated in Section 28;

27.2 Failure of LESSEE to make any payment of Rent when due and the continuation of such failure for a period of thirty (30) days after receipt of written notice from LESSOR that such payment is past due;

27.3 Failure of LESSOR to make a payment when due of a mortgage or a deed of trust, or allow the Operating Areas to become subject to a lien; and

27.4 Failure of LESSEE to keep in full force and effect any policy of insurance to be maintained under the terms of this Lease.

28. **NOTICE AND RIGHT TO CURE DEFAULT.** A Party shall not be deemed in default under this Lease if:

28.1 The non-defaulting Party has given written notice to the defaulting Party specifying the nature of the default (a "**Notice of Default**"); and

28.2 The Event of Default has been cured within the following cure periods: (i) for monetary defaults: thirty (30) days after the receipt of the Notice of Default and (ii) for non-monetary defaults: sixty (60) days and if such default cannot be cured within said 60 day period, despite the exercise of reasonable diligence, then such sixty (60) day period shall be extended for the time reasonably required to complete such cure.

29. **REMEDIES.**

29.1 Upon an uncured Event of Default, LESSOR may, at its sole option by summary or other appropriate legal action or proceedings, terminate this Lease and expel LESSEE from the Operating Areas. At any time, or from time to time after any termination of this Lease pursuant to this section, LESSOR may re-let the Operating Areas or any part thereof for such term or terms as LESSOR, in its reasonable discretion, may determine. No termination of this Lease pursuant to this section shall relieve LESSEE of its liabilities and obligations under this Lease.

29.2 Upon the occurrence of an Event of Default, the non-defaulting Party, without waiving any other remedy for such default, may (but shall not be obligated to) perform such obligation for the account

and at the expense of the defaulting Party. The defaulting Party agrees to reimburse the non-defaulting Party upon demand for any reasonable expense so incurred.

29.3 All remedies under this Lease are cumulative and no one remedy shall be exclusive of any other, or of any remedy conferred by law or at equity.

30. **LIMITATIONS.** Neither Party shall be liable to the other Party or any person or entity claiming by or through the other Party, for any special, indirect, incidental, punitive or consequential damages including, but not limited to lost profits or loss of business arising out of or in any manner connected with the performance or non-performance of this Lease even if the Parties have knowledge of the possibility of such damages.

31. **QUIET ENJOYMENT.** LESSOR hereby grants to LESSEE that it shall and may peacefully and quietly have and enjoy the Operating Areas for and during the Term, for the purposes set forth herein.

32. **SEVERABILITY.** The unenforceability, invalidity, or illegality of any provisions of this Lease shall not render the other provisions hereof unenforceable, invalid or illegal.

33. **COVENANTS RUNNING WITH THE LAND.** The Parties hereby agree that all of the covenants and agreements contained in this Lease touch and concern the real estate described in this Lease and are expressly intended to, and shall, be covenants running with the land and shall be binding and a burden upon the Property and each Parties' present or future estate or interest therein and upon each of the Parties, their respective heirs, administrators, executors, legal representatives, successors and assigns as holders of an estate or interest in the Property (including without limitation, any lender or other person acquiring title from any such person upon foreclosure or by deed in lieu of foreclosure), and shall benefit LESSEE, Sublessee and their respective heirs, administrators, executors, legal representatives, successors and assigns and the Wind Project Property. To the extent any of the provisions of the Lease are not enforceable as covenants running with the land, the Parties intend that they shall be enforceable equitable servitudes.

34. **CONFIDENTIALITY.** (a) Any books, records, computer printouts, product designs or other information regarding Lessee or any Sublessee, or their respective Projects or businesses, (b) any information regarding Operations on the Property or on any other lands, (c) Lessee's or any Sublessee's site or product design, methods of operation or methods of construction, (d) the level of power production, the wind capacity of the Property and the availability of the Wind Power Facilities and (e) any other information that is proprietary or that Lessee or a Sublessee requests be held confidential (collectively, "**Confidential Information**"), shall remain confidential between the Parties, provided (i) LESSEE has the right to disclose this Lease in its entirety to its lenders, attorneys, accountants and other financial advisors, to prospective investors in, and purchasers and insurers of each Project, any Project participant landowner, to any governmental authority in connection with the issuance or enforcement of any permit, entitlement, approval or authorization pertaining to a Project, or where required by law or pursuant to lawful process, subpoena or court order and (ii) LESSOR has the right to disclose this Lease in its entirety to LESSOR's lenders, attorneys accountants and other personal financial advisors, any prospective purchaser of the Property, any Project participant landowner, or where required by law or pursuant to lawful process, subpoena or court order; provided that in making such disclosure LESSOR advises the party receiving such information of the confidentiality thereof and obtains the agreement of said party not to disclose such information.

35. **COOPERATION.** LESSOR shall fully support and cooperate with LESSEE and each Sublessee in its operations and the exercise of its rights hereunder and in carrying out and otherwise giving full force and effect to the purposes and intent of this Lease and each Sublease as the case may be, including

LESSEE's or a Sublessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, permit entitlement, approval, authorization or other rights necessary or convenient in connection with LESSEE's or a Sublessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with its respective operations, including but not limited to the widening and improving of public roads to a width of up to three rods, the width of which will vary depending on the topography, the width of the shoulder, buildings or other improvements, boulders, wetlands, roads, transmission facilities or lines, recreational areas, inhabited areas, leased lands (or other rights of third parties) or other obstacles or impediments and/or need (the "**Road Widening**"), and (2) any governmental authority's efforts in the Road Widening; and LESSOR shall, without demanding additional consideration therefor, (a) execute, and, if appropriate, cause to be acknowledged, any map, application, document, or instrument (including any document or instrument intended (i) to correct an error in this Lease or a Sublease as the case may be, (ii) to amend the legal description attached hereto or (iii) the Road Widening) that is reasonably requested by LESSEE or a Sublessee or as requested by a governmental authority in connection herewith or therewith and (b) return the same (as executed) to LESSEE, a Sublessee or a governmental authority within ten (10) days after LESSOR's receipt thereof. LESSOR hereby consents to any such Road Widening. LESSEE agrees to pay LESSOR's reasonable attorney's fees incurred by LESSOR for LESSOR's review of documents that could be reasonably expected to materially reduce the rights and remedies of LESSOR hereunder but in no event shall LESSEE pay any attorney's fees incurred by LESSOR for LESSOR's review of documents reasonably required by LESSEE that are factual or ministerial in nature.

36. **FORCE MAJEURE.** Notwithstanding any other provision of this Lease, if LESSEE's performance of this Lease or of any obligation hereunder is interfered with, delayed, restricted or prevented, in whole or in part, by reason of an event of Force Majeure (as defined below), then LESSEE, upon giving notice to LESSOR, shall be excused from such performance (but not from its obligation to pay Rent and Taxes) to the extent and for the duration of such interference, delay, restriction or prevention, and the term of this Lease and any other time periods set forth herein shall continue and be extended for a like period of time. "**Force Majeure**" means any act or condition beyond the reasonable control of LESSEE, whether or not similar to the matters or conditions herein specifically enumerated, and includes: acts of God or the elements (including fire, earthquake, explosion, flood, epidemic or any other casualty or accident); strikes, lock outs or other labor disputes; delays in transportation; inability to secure labor or materials in the open market; inability to sell electricity at commercially reasonable prices in the open market; transmission system power failure or power surge; war, terrorism, sabotage, civil strife or other violence; acts or failures to act of LESSOR; the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after an application for the same has been submitted; the effect of any law, proclamation, action, demand or requirement of any government agency or utility; or litigation contesting all or any portion of the right, title and interest of LESSOR in the Property and/or of LESSEE under this Lease.

37. **NO INTERFERENCE.** Neither LESSOR's activities nor the exercise of any rights or interests heretofore or hereafter given or granted by LESSOR to any Related Person (as defined below) of LESSOR, whether exercised on the Property or elsewhere, shall, currently or prospectively, interfere with, impair or materially increase the cost of (a) the construction, installation, maintenance or operation of any Project, (b) vehicular or pedestrian access to, or the transmission of energy from, the Operating Areas, any Improvements or any Project, (c) any Operations of LESSEE or any Sublessee on the Property or with respect to any Project, or (d) the undertaking of any other activities or the free enjoyment and exercise of any other rights or benefits given to or permitted LESSEE hereunder. Without limiting the generality of the foregoing, neither LESSOR nor any Related Person of LESSOR shall (i) interfere with or impair (A) the free, unobstructed and natural availability, accessibility, flow, frequency, speed or direction of air or wind over



and across the Property (whether by planting trees, constructing buildings or other structures, or otherwise) or (B) the lateral or subjacent support for the Improvements or (ii) engage in any other activity on the Property or elsewhere; in each case that might cause a decrease in the output or efficiency of LESSEE's or any Sublessee's Wind Turbines. As used herein, the term "**Related Person**" means any member, partner, principal, officer, director, shareholder, predecessor-in-interest, successor-in-interest, employee, agent, heir, representative, contractor, sublessee, grantee, licensee, invitee or permittee of a specified Party.

**38. RIGHTS OF SUBLESSEES.** Subject to any limitations provided in its Sublease, each Sublessee shall be entitled to exercise all of the rights and privileges of LESSEE hereunder. Without limiting the generality of the foregoing, each Sublessee shall have the right, but not the obligation, to pay any or all amounts due hereunder, and to perform any other act or thing required of LESSEE hereunder, or which may be necessary or appropriate to cure any Event of Default.

**38.1. Notice of Default; Cure.** As a precondition to exercising any rights or remedies upon an alleged Event of Default by LESSEE, LESSOR shall deliver a copy of the applicable Notice of Default (as defined below) to each Sublessee concurrently with delivery of such Notice of Default to LESSEE. However, in order to be entitled to such Notice of Default, each Sublessee must have, at least thirty (30) days prior to an Event of Default, delivered to LESSOR a notice of its name and address in accordance with Section 22. The Sublessee(s) shall collectively have the same period of time to cure said Event of Default as is given to LESSEE pursuant to this Lease, which period shall commence to run at the end of the cure period given to LESSEE in Section 28. If a Sublessee holds an interest in less than all of the Property, then any Event of Default by LESSEE shall be remedied or deemed remedied, as to such Sublessee's interest (and LESSOR shall not disturb such interest), if such Sublessee shall have cured such Event of Default as to the portion of the Property and the Improvements in which it holds an interest.

**38.2. Consent of Sublessees.** Notwithstanding any provision of this Lease to the contrary, (a) LESSOR shall not agree to any modification or amendment of this Lease if the same could reasonably be expected to materially reduce the rights or increase the obligations of a Sublessee and (b) LESSOR shall not accept a surrender of the Property or any part thereof or a termination of this Lease; in each such case without the prior written consent of each Sublessee who could reasonably be expected to be adversely affected by such modification, amendment, surrender or termination.

**38.3. New Lease.** In the event of termination of this Lease upon a default, by agreement, by operation of law or otherwise, or if this Lease is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, each Sublessee shall have the right (but not the obligation) to demand, and LESSOR shall, without demanding additional consideration therefor, except for reasonable attorney's fees incurred by LESSOR for LESSOR's review of such new lease, immediately grant and enter into, a new lease pursuant to which such Sublessee shall be entitled to, and LESSOR shall not disturb, the continued use and enjoyment by such Sublessee of the Property (or the applicable portion thereof), which new lease shall (a) contain the same covenants, agreements, terms, provisions and limitations as this Lease (except for any requirements that have been fulfilled by LESSEE or any Sublessee prior to the execution of such new lease, and except for any modifications that may be required to ensure that such Sublessee's obligations under such new lease do not exceed its obligations under its Sublease), (b) include the Property and the Improvements (or such portion thereof) in which said Sublessee had an interest on the date of such default, termination or rejection, (c) be for the full remaining term of this Lease, as set forth in Section 2, or such shorter term to which said Sublessee may otherwise be entitled pursuant to its Sublease, (d) contain a grant to said Sublessee of access, transmission, communications, utility and other easements covering such portion or portions of the Property as such Sublessee may reasonably designate (which shall not be less than the grant, if any, contained in its Sublease) and (e) enjoy the same priority as this Lease over any lien, encumbrance or other interest created by LESSOR. Until such time as such new lease is executed and delivered, the Sublessee may

continue to enter, use and enjoy the Property (or such portion thereof) and conduct Operations thereon as if the Lease were still in effect.

38.4. Non-Disturbance. In the event that an Event of Default by LESSEE is not cured under Section 20.3.2 or a new lease is not demanded or is not entered into pursuant to Section 38.3 and (a) this Lease is terminated upon a default, by agreement, by operation of law or otherwise or (b) this Lease is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, then so long as (i) a Sublessee is not in default under its Sublease (beyond any period given such Sublessee thereunder to cure such default) and (ii) such Sublessee attorns to LESSOR, LESSOR shall, for the full term of this Lease or such shorter term to which said Sublessee may be entitled under such Sublease, (A) recognize such Sublease as if it were an agreement between LESSOR and said Sublessee and (B) not disturb, diminish or interfere with said Sublessee's possession of the portion of the Property covered by such Sublease.

38.5. Amendments. LESSOR and LESSEE shall cooperate in amending this Lease from time to time to include any provision that may reasonably be requested by any Sublessee for the purpose of implementing the provisions contained in this Lease or of preserving such Sublessee's interest in the Property; provided, however, that such amendment shall not materially impair the rights or materially increase the burdens or obligations of LESSOR under this Lease, or extend the term of this Lease beyond the period of time stated in Section 2 above. Further, LESSOR shall, within ten (10) days after written notice from LESSEE or any existing or proposed Sublessee, execute and deliver thereto a certificate to the effect that LESSOR (a) recognizes a particular entity as a Sublessee under this Lease and (b) will accord to such entity all the rights and privileges of a Sublessee hereunder.

**39. LESSOR'S REPRESENTATIONS.** LESSOR hereby represents and warrants to LESSEE the following:

39.1 LESSOR is the sole fee title owner of the Property, (b) each person or entity signing this Lease on behalf of LESSOR is authorized to do so, (c) LESSOR has the unrestricted right, power and authority to enter into and perform its obligations under this Lease and to grant the rights granted to LESSEE hereunder, (d) no other person (including any spouse) is required to execute this Lease in order for it to be fully enforceable as against all interests in the Property, (e) this Lease constitutes a valid and binding agreement, enforceable against LESSOR in accordance with its terms and (f) LESSOR is not the subject of any bankruptcy, insolvency or probate proceeding.

39.2 No litigation is pending, and, to the best of LESSOR's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or which could affect, the Property. If LESSOR learns that any such litigation, action, claim or proceeding is threatened or has been instituted, LESSOR shall promptly deliver notice thereof to LESSEE.

39.3 To the best of LESSOR's knowledge, (a) no underground tanks are now located or at any time in the past have been located within the Operating Areas or any portion thereof, (b) no asbestos-containing materials, petroleum, explosives or other substances, materials or waste which are now or hereafter classified or regulated as hazardous or toxic under any law has been generated, manufactured, transported, produced, used, treated, stored, released, disposed of or otherwise deposited in or on or allowed to emanate from the Operating Areas or any portion thereof other than as permitted by all Environmental Laws that govern the same or are applicable thereto and (c) there are no other substances, materials or conditions in, on or emanating or migrating from the Operating Areas or any portion thereof or emanating or migrating from the Property onto the Operating Areas or any portion thereof which may support a claim or cause of action under any Environmental Law. LESSOR has not received any notice or other communication from any governmental authority alleging that the Operating Areas are in violation of any Environmental Law.

**40. SETBACK WAIVER.** To the extent that (a) LESSOR now or in the future owns or leases any land adjacent to the Property or (b) LESSEE, any Sublessee or any affiliate of any thereof owns, leases or holds an easement over land adjacent to the Property and has installed or constructed or desires to install or construct Improvements on said land at and/or near the common boundary between the Property and said land, LESSOR hereby waives any and all setbacks and setback requirements, whether imposed by applicable law or by any person or entity, including any setback requirements described in the zoning ordinance of the County, City, Town or in any governmental entitlement or permit heretofore or hereafter issued to LESSEE such Sublessee or such affiliate. Further, if so requested by LESSEE or any such Sublessee or affiliate, LESSOR shall, without demanding additional consideration therefore, (i) execute (and if appropriate cause to be acknowledged) any setback waiver, setback elimination or other document or instrument reasonably requested by LESSEE, a Sublessee, the County, City or Town in connection therewith and (ii) return the same thereto within ten (10) days after such request.

**41. FURTHER ACTS AND ASSURANCES.** Each Party hereby agrees that each shall execute such additional documents or instruments, and shall undertake such actions as are necessary and appropriate to effectuate the intent of this Lease.

**42. AMENDMENT AND RESTATEMENT.** This Lease sets forth the rights and obligations of the Parties effective as of the Effective Date, and amends, restates and supersedes the Original Lease in its entirety and in all respects.

**43. PRIORITY.** The Parties acknowledge that the Original Lease created a leasehold estate with established priority as against other encumbrances against the Property, and the Parties intend that this Lease shall retain the priority of the Original Lease.

**44. COUNTERPARTS.** This Lease may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

**SIGNATURES TO FOLLOW ON NEXT PAGE**

IN WITNESS WHEREOF, the Parties hereto have executed this Lease on this \_\_\_\_ day of \_\_\_\_\_, 2004.

LESSOR:

\_\_\_\_\_

\_\_\_\_\_

LESSEE

Flat Rock Windpower LLC  
a Delaware limited liability company

By:

\_\_\_\_\_

William M. Moore  
Project Manager

**ACKNOWLEDGEMENTS  
FOR THE LESSEE**

STATE OF NEW YORK

}

COUNTY OF LEWIS

} ss.  
}

On the \_\_\_\_ day of \_\_\_\_\_, 2004, before me, the undersigned, a Notary Public, in and for said State, personally appeared **William M. Moore**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public, State of New York

**ACKNOWLEDGEMENTS  
FOR THE LESSOR**

STATE OF NEW YORK }  
 } ss. }  
 COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_ day of \_\_\_\_\_, 2004, before me, the undersigned, a Notary Public, in and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/capacity, and that by his/her/their signature on the instrument the individual, or the person, upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
 Notary Public, State of New York

STATE OF NEW YORK }  
 } ss. }  
 COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_ day of \_\_\_\_\_, 2004, before me, the undersigned, a Notary Public, in and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/capacity, and that by his/her/their signature on the instrument the individual, or the person, upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
 Notary Public, State of New York

**EXHIBIT B**

**Site Plan of the Operating Areas on the Property**

The attached site plan shows the preliminary location of the Operating Areas on the Property.

Agreed: (LESSOR)

Agreed: (LESSEE)

**EXHIBIT C**

**As-Built Drawing of the Operating Areas**

TO BE ATTACHED AFTER SIXTY (60) DAYS AFTER COMPLETION OF CONSTRUCTION OF A PROJECT







**EXHIBIT E**

**34.5 kV Easement Agreement**

[ATTACH A COPY OF THE 34.5 kV MASTER EASEMENT FORM]