

AMENDED AND RESTATED
WIND ENERGY EASEMENT AGREEMENT
(#CO-SPRI-*)**

This Amended and Restated Wind Energy Easement Agreement (this “Agreement”) is made, dated and effective as of _____, 20__ (the “Effective Date”), by and between *****, [a single man/woman][husband and wife] ([collectively,]”Owner”), and **Orion Power Generation, LLC, a Delaware limited liability company** (“Grantee”).

Owner and Grantee entered into a Wind Energy Easement Agreement in the form of a letter agreement (“Letter Agreement”) dated *****, 20** (the “Letter Agreement Effective Date”). Owner and Grantee now wish to amend and restate the Letter Agreement on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Owner and Grantee hereby agree to amend and restate the Letter Agreement in its entirety as follows:

1. Easement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner, Owner hereby grants an easement (“Easement”) to Grantee in, on, under, over and across that certain real property (the “Property”) of Owner located in Baca County, Colorado. The Property consists of approximately ***.** acres of land and is further described in Exhibit A attached hereto and incorporated herein. In the event of inaccuracies or insufficiencies in the legal description in Exhibit A, Grantee may modify Exhibit A to correct the inaccuracies or insufficiencies. If any center pivot irrigation systems are located on the Property as of the Effective Date, the portions of the Property on which such systems are located are shown on the map attached hereto as Exhibit B (collectively, the “Pivot Property”).

2. Purpose. The Easement is for wind energy purposes, including converting wind energy into electrical energy, collecting and transmitting electrical energy, and related activities (collectively, the “Grantee Activities”). The Grantee Activities include, without limitation: (a) determining the feasibility of wind energy conversion on the Property, including studies of wind speed, wind direction and other meteorological data, and extracting soil samples; (b) constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, wind turbines, underground and overhead electrical transmission and collection lines, underground and overhead communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with large wind turbine installations, roads, fences and gates, meteorological towers and wind measurement equipment, control buildings, maintenance yards, and related facilities and equipment (collectively the “Windpower Facilities”) on the Property; and (c) undertaking any other activities, whether accomplished by Grantee or a third party authorized by Grantee, that Grantee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing. Grantee shall have the exclusive right to convert all of the wind resources of the Property. The Windpower Facilities on the Property are expected to be operated in conjunction with Windpower Facilities installed on other nearby properties that are part of the same wind energy project (collectively, the “Project”). Owner reserves all rights to use the Property except to the extent Owner’s use interferes with Grantee’s use of the Property in accordance with this

Agreement or violates the provisions of this Agreement, including but not limited to Sections 9.2, 10.13 and 10.14.

3. Term. This Agreement shall be for an initial term (“Initial Term”) commencing on the Letter Agreement Effective Date and continuing until the later of (a) thirty (30) years after the first day of the calendar month following the month in which Windpower Facilities in the Project commence operation by delivering commercial quantities of electricity (other than test energy) to the electric utility grid (the “Commercial Operation Date”), or (b) forty (40) years after the Letter Agreement Effective Date. Unless earlier terminated, Grantee may elect to extend the Initial Term for one or two additional ten (10)-year terms commencing on the last day of the Initial Term or the tenth (10th) anniversary of such day, respectively, upon at least ninety (90) days’ notice to Owner. The Initial Term plus either or both of such additional terms are called the “Term.”

4. Owner Termination Right. If Grantee has not poured the foundation for the first wind turbine to be installed in the Project (“Start of Construction”) on or before the tenth (10th) anniversary of the Letter Agreement Effective Date, Owner may terminate this Agreement by written notice to Grantee, and upon such termination, there shall be no further obligations of either party.

5. Payments. In consideration of the rights granted hereunder, Grantee will pay Owner the amounts as set forth in Schedule I attached hereto and incorporated herein (the “Fee Schedule”).

6. Ownership of Windpower Facilities. Owner shall have no ownership or other interest in any Windpower Facilities installed on the Property, and Grantee may remove any or all Windpower Facilities at any time.

7. Taxes. Grantee shall pay personal property taxes attributable to Windpower Facilities and other improvements to the Property installed by Grantee. Grantee shall also pay or reimburse Owner for any increase in real property taxes levied against the Property as a result of Grantee’s installations or that is attributable to a reclassification of the Property as a result of Grantee’s activities on the Property. Owner shall pay all taxes, assessments or other fees attributable to facilities installed by Owner or others on the Property or to the underlying value of the Property itself. It is a condition to Owner’s right to payment or reimbursement hereunder that Owner submit the real property tax bill to Grantee within three (3) months after Owner receives the bill from the taxing authority, but not later than thirty (30) days prior to the due date. Grantee shall have the right to pay its portion of the real property taxes directly to the taxing authority. Owner shall pay its portion of the real property taxes, and if Owner fails to do so, Grantee shall be entitled (but not obligated) to make payments in fulfillment of Owner’s obligations to the taxing authority and may offset the amount of such payments from amounts due Owner under this Agreement. Owner and Grantee agree jointly to use commercially reasonable efforts to cause the Property not to be reclassified from its present agricultural or open space exemption as a result of the Easement, and to cause the County tax assessor to issue separate property tax bills to Owner and Grantee. Grantee’s obligations to Owner under this paragraph shall remain in effect after termination of this Agreement until the Windpower Facilities have been removed from the Property to the extent required by Section 13.3.

8. Grantee's Representations, Warranties and Covenants. Grantee hereby represents, warrants and covenants to Owner as follows:

8.1 Indemnity and Insurance. Grantee will defend and indemnify Owner against liability for physical damage to property and for physical injuries to any person, to the extent caused by Grantee's operations or activities on the Property. The reference to property damage in the preceding sentence does not include losses of rent, business opportunities, profits and the like that may result from Owner's loss of use of the portion of the Property occupied by Windpower Facilities. After the Commercial Operation Date, the foregoing indemnity shall include the following damages caused by Grantee's operations if located more than five feet (5') from the edge of the areas occupied by the Windpower Facilities and Transmission Facilities: damage to Owner's existing growing crops, damage to Owner's drainage tiles and waterways (which damage shall be repaired by Grantee), the Compaction Payment for soil compaction (as determined under Section 7(a) of the Fee Schedule), and the actual costs to repair damage to existing roads, fences, or other structures of Owner located on the Property. In addition, Grantee shall maintain a policy of liability insurance (the "Policy") insuring Grantee and Owner against loss caused by Grantee's use of the Property under this Agreement, or else Grantee shall self-insure and assume the risk of loss for general liability exposures that would have been covered by the Policy, to the extent Grantee has agreed to indemnify Owner pursuant to this Section 8.1. The amount of insurance under the Policy shall be not less than One Million Dollars (\$1,000,000.00) of combined single limit liability coverage before the Start of Construction and Five Million Dollars (\$5,000,000.00) thereafter. Under such Policy, Owner will be named as an additional insured with respect to operations or activities of Grantee but only to the extent Owner is held liable for damage and injuries caused by such operations or activities for which Grantee has agreed to indemnify Owner pursuant to this Section 8.1. No coverage is provided for liability to the extent caused by the operations or activities of Owner or Owner's invitees, employees, tenants, agents or contractors. After the Start of Construction, at Owner's request, Grantee will provide Owner with a certificate of insurance that shows the insurance coverage provided under the Policy, or evidence of self-insurance reasonably acceptable to Owner.

8.2 Requirements of Governmental Agencies. Grantee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Windpower Facilities, including the requirements for excavation activities set forth in COLO. REV. STAT. § 9-1.5. Grantee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, brought in the name of Grantee or in the names of both Grantee and Owner where appropriate or required, the validity or applicability to the Property or Windpower Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Owner shall cooperate in every reasonable way in such contest, at no out-of-pocket expense to Owner. Any contest or proceeding, including any maintained in the name of Owner, shall be controlled and directed by Grantee, but Grantee shall indemnify Owner from Grantee's failure to observe or comply with the contested law, ordinance, statute, order, regulation or property assessment.

8.3 Construction Liens. Grantee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Grantee's use of the Property; *provided, however,*

that if Grantee elects to contest any such lien, Grantee shall, within sixty (60) days after it receives notice of the filing of such lien, either bond around such lien or establish appropriate reserves therefor, or otherwise remove such lien from the Property pursuant to applicable law.

8.4 Hazardous Materials. Grantee shall indemnify Owner against liability and expense arising from any violation by Grantee or Grantee's agents or contractors of, any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material, or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state, or local laws or regulations, on or under the Property.

9. Owner's Representations, Warranties and Covenants. Owner hereby represents, warrants and covenants as follows:

9.1 Owner's Authority. Owner is the sole owner of the Property and holds fee simple title to the surface estate of the Property. Owner has the unrestricted right and authority and has taken all necessary action to authorize Owner to execute this Agreement and to grant to Grantee the rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so and all persons having any ownership interest in the Property (including spouses) are signing this Agreement. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner and the Property in accordance with its terms. Each spouse signing this Agreement agrees that any rights of community property, homestead, dower, contribution, and the like shall be subject and subordinate to this Agreement and the easement rights granted hereby. Owner hereby releases and waives all rights under and by virtue of any applicable homestead exemption laws as to the easements and rights granted hereunder. Without limiting the foregoing, if a title search shows that the holders of fee simple title to the Property are different from the persons who signed this Agreement as Owner, the persons who signed this Agreement as Owner shall immediately cause all of the holders of fee simple title to the Property to execute an amendment to this Agreement pursuant to which all of such holders of fee simple title to the Property agree to and ratify this Agreement, all at no cost to Grantee.

9.2 Restrictive Covenant -- No Interference. Grantee shall have the quiet use and enjoyment of the Property in accordance with the terms of this Agreement. Owner's activities and any grant of rights Owner makes to any person or entity, whether located on the Property or elsewhere within the Project, shall not, currently or prospectively, interfere with: the development, construction, installation, maintenance or operation of Windpower Facilities, whether located on the Property or elsewhere in the Project; access over the Property to such Windpower Facilities; any Grantee Activities; or the undertaking of any other activities permitted hereunder. If Owner has any right to select, determine, prohibit or control the location of sites for drilling, exploitation, production and/or exploration of minerals, hydrocarbons, water, gravel, or any other similar resource in, to or under the Property, then subject to Section 10.13 below, Owner shall exercise such right so as minimize interference with any of the foregoing. Without limiting the generality of the foregoing, (a) the activities of Owner shall not interfere with the wind speed or wind direction over the Property, whether by placing windmills or wind turbines, planting trees or constructing silos, barns, other buildings or other structures (collectively, "Owner's Structures") closer than five hundred (500) feet or twenty (20) times the height of any such Owner's Structure,

whichever is greater, to any wind turbine or proposed wind turbine of Grantee, whether located on the Property or elsewhere in the Project, and (b) Owner shall not engage in any other activity (other than ordinary agricultural activities), whether located on the Property or elsewhere within the Project, that might cause a decrease in the output or efficiency of the Windpower Facilities. For this purpose, the height of planted trees will be deemed to be their expected height at full maturity. The area of land to remain unobstructed shall consist horizontally of all of the Property, and vertically through all space located above the surface of the Property.

Grantee may send Owner a site development plan from time to time that shows the planned locations of Grantee's wind turbines ("Turbine Siting Plan") so that Owner can comply with clause (a) above. If Owner is planning to install or build an Owner's Structure and has not received the Turbine Siting Plan, Owner will give Grantee at least sixty (60) days' prior written notice of the height and location of the Owner's Structure so that Grantee has such information before completing the Turbine Siting Plan. Any structures or trees existing on the date of Owner's receipt of the Turbine Siting Plan, or replacements thereof at the same location and with no greater height (or expected height at full maturity, in the case of growing trees), will be deemed not to violate this Section 9.2.

9.3 Liens and Tenants. Except as disclosed to Grantee in writing, there are no liens, encumbrances, leases, mortgages, deeds of trust, mineral or oil and gas rights, options, rights of refusal, preferential rights to purchase or lease, or other exceptions to Owner's fee title ownership of the Property (collectively, "Liens") which are not recorded in the public records of the County in which the Property is located. Lienholders (including tenants), whether or not their Liens are recorded, shall be Owner's responsibility, and Owner shall cooperate with Grantee to obtain a non-disturbance agreement from each party that holds a Lien (recorded or unrecorded) that might interfere with Grantee's rights under this Agreement. A non-disturbance agreement is an agreement between Grantee and a lienholder which provides that the lienholder shall not disturb Grantee's possession or rights under the Easement or terminate this Agreement so long as Owner is not entitled to terminate this Agreement under the provisions hereof. If Owner is unable to obtain any such non-disturbance agreement from a lienholder that holds a mortgage, deed of trust, tax lien or other Lien that is senior to this Easement (if any), Grantee shall be entitled (but not obligated) to make payments in fulfillment of Owner's obligations to the lienholder and may offset the amount of such payments from amounts due Owner under this Agreement. Owner represents that it is not aware of any delinquent taxes affecting the Property.

9.4 Requirements of Governmental Agencies. Owner shall assist and fully cooperate with Grantee, at no out-of-pocket expense to Owner, in complying with or obtaining any land use permits and approvals, subdivision approvals, tax-incentive or tax-abatement program approvals, public service commission certification, building permits, environmental impact reviews, or any other permits or approvals required for the financing, construction, installation, relocation, replacement, maintenance, operation or removal of Windpower Facilities in the Project (whether located on the Property, on adjacent property, or elsewhere in the Project), including execution of applications for such approvals if required. In connection with any applications for such approvals, Owner agrees at Grantee's request to support such application (at no out-of-pocket expense to Owner) at any administrative, judicial or legislative level. To the extent permitted by law, Owner hereby waives any property line setbacks or other restrictions on the location of any Windpower Facilities or Transmission Facilities to be installed on the Property or on adjacent

properties, including but not limited to waiver of all property line setbacks, pursuant to state or county rules, regulations or ordinances (that is, Owner approves a reduction of each such setback to zero), and Owner shall cooperate with Grantee in obtaining written waivers of such setbacks and shall execute any documents reasonably requested by Grantee to evidence Owner's waiver of such setbacks. Owner represents that it is not aware of any pending or threatened lawsuits or government actions that might interfere with the Project.

9.5 Access. Owner hereby grants to Grantee the right of ingress to and egress from Windpower Facilities (whether located on the Property, on adjacent property, or elsewhere in the Project) over and across the Property by means of roads and lanes thereon if existing, or otherwise by such route or routes as Grantee may construct from time to time (the "Access Easement"). The Access Easement shall include the right to improve and maintain existing roads and lanes, shall run with the Property, and shall inure to the benefit of and be binding upon Owner and Grantee and their respective transferees, successors and assigns, and all persons claiming under them. The Access Easement shall expire upon termination or expiration of this Agreement.

9.6 Hazardous Materials. Owner shall indemnify Grantee against liability and expenses arising from any violation by Owner or Owner's tenants, agents, or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property. Owner represents that it is not aware of any environmental contamination of the Property.

9.7 Indemnity. Owner will defend and indemnify Grantee against liability for physical damage to property and for physical injuries to any person, to the extent caused by the operations or activities of Owner or Owner's invitees, employees, tenants, agents or contractors.

9.8 Non-exclusive Grant of Rights. Owner hereby grants Grantee a non-exclusive right, privilege, license and easement for the benefit, use and enjoyment of all of the following:

(a) Any and all easements, rights-of-way, rights of entry, hereditaments, privileges and appurtenances benefiting, belonging to or inuring to the benefit of Owner and pertaining to the Property.

(b) Any and all right, title and interest of Owner in and to any land in the bed of any street, road, avenue or alley (open, proposed or closed) in front of or adjoining the Property and any and all right, title and interest of Owner, in and to any rights-of-way, rights of ingress or egress, or other interests in, on, or to any land, highway, street, road, avenue or alley (open, proposed or closed) in, on, or across, in front of, abutting, or adjoining the Property.

(c) Any and all right, title and interest of Owner in and to any strips or gores of land adjacent or contiguous to the Property, whether those lands are owned or claimed by deed, limitations, or otherwise.

9.9 Lateral Support. Grantee shall have the right of subjacent and lateral support for Windpower Facilities on the Property to whatever extent is necessary for the safe construction, operation and maintenance of Windpower Facilities. Owner expressly covenants that Owner shall not excavate so near the sides of or underneath the Windpower Facilities as to undermine or otherwise adversely affect their stability.

9.10 Overhang. Owner grants Grantee an easement for the right and privilege to permit the wind turbines located on adjacent properties to overhang a portion of the Property (the "Overhang Easement Property") by no more than 150 feet at a height of at least 90 feet above the ground. Owner shall not interfere with the operation of wind turbine rotors that overhang the Overhang Easement Property.

9.11 Condemnation. There are no pending or, to Owner's knowledge, threatened condemnation or similar proceedings, lawsuits or other claims that may affect the Property. Owner agrees to notify Grantee promptly if any of the foregoing arise during the Term.

9.12 Noise and Flicker. Grantee shall have the right in connection with the construction, use and operation of the Project to emit or cause the emission of noise, vibration, air turbulence, wake, and electromagnetic and frequency interference, to permit wind turbulence, to allow and permit wind turbines to overhang, cast shadows, or cause flicker or shadow onto the Property and adjacent properties, and to impact Owner's views of and from the Property, and similar field effects. OWNER, FOR ITSELF AND ON BEHALF OF ITS SUCCESSORS AND ASSIGNS, HEREBY ACCEPTS SUCH EFFECTS AND WAIVES ANY RIGHT TO OBJECT TO SUCH EFFECTS AND HEREBY RELEASES GRANTEE FROM ANY CLAIMS, DAMAGES, LIABILITIES OR LOSSES OWNER MAY INCUR THEREFROM.

10. Grantee's Non-Interference with Owner's Activities.

10.1 Agricultural Activities. In the construction and operation of its Windpower Facilities, Grantee will make commercially reasonable efforts not to interfere with Owner's agricultural activities on the Property. To facilitate communication, Grantee and Owner will each designate a single point of contact with the other party.

10.2 Noxious Weeds. Grantee shall be responsible for the control of all noxious weeds resulting from surface disturbances associated with the Grantee Activities during construction of the Windpower Facilities. In particular, Grantee shall take such measures to remove or prevent noxious weeds on the Property resulting from the Grantee Activities during construction of the Windpower Facilities. After the Commercial Operation Date, Grantee shall cooperate with Owner's efforts to control noxious weeds. For purposes of this Agreement, "noxious weeds" shall be those undesirable plant species designated to be "noxious weeds" pursuant to the Colorado Noxious Weed Act, COLO. REV. STAT. § 35-5.5-101, *et seq.*, or any other applicable law, rule, or regulation.

10.3 Construction and Siting. Grantee will consult with Owner (or, at Owner's request, with Owner's then-current tenant) prior to the Start of Construction to describe Grantee's plan and schedule for construction on the Property. As part of the consultation, Grantee will present a preliminary site map showing the proposed location of wind turbines, new roads, overhead

transmission lines, an electric substation (if any), and other above-ground Windpower Facilities on the Property, and solicit Owner's advice and input, before finalizing the site design. The final location of wind turbines, overhead lines, substations, and other above-ground Windpower Facilities to be installed on the Property shall be subject to Owner's consent, such consent not to be unreasonably withheld. If a site map in the form of "Exhibit D" is attached to this Agreement on the Effective Date or is later mutually agreed by Owner and Grantee, Owner hereby consents to the location of any wind turbines, new roads, overhead lines, substations, and other above-ground Windpower Facilities shown on such Exhibit D. Grantee will also discuss with Owner the measures Grantee will take during construction to minimize conflicts between Grantee's construction activities and Owner's ongoing agricultural operations. Any substation, switchyard or operations & maintenance building installed on the Property will be located near a public road to the extent practicable unless Owner otherwise consents, and Grantee will have the right to lease or purchase not more than ten (10) acres of the Property to be used for each such facility, in exchange for the payments set forth in the Fee Schedule. Once the Project begins operating, Grantee will provide Owner with a site map showing the location of underground lines using GPS coordinates. The "as built" map will identify the depth of underground tiles and underground power lines at any location where they cross.

10.4 Center Pivot Irrigation System. If Owner does not elect (by initialing Section 2(a) of the Fee Schedule in the space provided) to withhold permission for Grantee to install any wind turbines or other above-ground Windpower Facilities in the path of center pivot irrigation systems located on the Pivot Property, then, within ninety (90) days of its receipt of notice from Grantee, Owner shall install pivot reversal mechanisms and/or remove one or more links to the sprinkler arm of each system identified by Grantee as necessary to avoid interference with the construction or operation of Windpower Facilities, and prior to the Commercial Operation Date, Owner shall limit the operation of the irrigation system, as modified, per Grantee's request by up to 90 degrees. After the Commercial Operation Date, Owner shall limit the operation of the irrigation system as requested by Grantee to avoid interference with the Windpower Facilities, by up to 8.6 degrees. Within thirty (30) days of receipt of an invoice and documentation therefor, Grantee shall reimburse Owner for the reasonable out-of-pocket costs incurred by Owner in installing pivot reversal mechanisms and/or removing links to sprinkler arms as directed by Grantee.

10.5 Soil Restoration and Compaction. Upon completion of construction on the Property, Grantee will restore the soil surface on any portion of the Property disturbed by Grantee that is not within five feet (5') of the Windpower Facilities. In addition, Grantee will re-plant native grass seed on any portion of the Property disturbed by Grantee which was in native grassland prior to construction and which is not occupied by Windpower Facilities. If Grantee causes compaction of any previously cultivated part of the Property located more than five feet from the edge of the areas occupied by the Windpower Facilities and Transmission Facilities, Grantee will "rip" such portion of the Property in at least three passes to a depth of at least 18 inches. If despite such "ripping" such compaction is reasonably expected to seriously impair crop yield in future years, Grantee will make a Compaction Payment in accordance with Section 7(a) of the Fee Schedule.

10.6 Underground Lines and Drainage Tiles.

(a) At Grantee's option, either (i) Grantee will hire a local tiling firm to do any trenching work on the Property in connection with the installation of underground power lines, or (ii) Grantee will allow all of the landowners in the Project collectively to select a local tiling consultant to be present during trenching work for the Project, and Grantee will pay such consultant at standard local long-term rates. Grantee will install its underground power lines at least four feet (4') below the soil surface so long as soil conditions do not make it commercially impracticable to do so, unless Owner consents to a lesser depth. During construction, if Grantee encounters underground drainage tiles while trenching for underground lines, Grantee shall install its underground lines below the drainage tiles unless the drainage tiles are six feet (6') or more below the surface, in which case Grantee shall install its underground lines above the drainage tiles. After the Commercial Operation Date, Grantee shall provide Owner with a site map showing the "as built" location of the underground lines on the Property (using GPS coordinates), and such "as built" site map shall include notations identifying the depth of all underground tiles and underground lines at any location where such items cross (using GPS coordinates with a deviation no greater than one inch).

(b) During construction on the Property, Grantee will promptly repair any damage to underground drainage tiles or waterways caused by the construction activities of Grantee, and such repairs will be done by a qualified professional. Grantee shall have a continuing obligation to effect repairs to drainage tiles for any damage provided that such damage is related to the construction activities of Grantee. Once Owner has provided Grantee with written acceptance of the drainage repairs, Grantee shall be relieved of any obligation to effect further repairs unless Grantee causes new damage to drainage tiles or waterways.

10.7 Gates and Fences. When installing a gate within Owner's existing fence, Grantee will make such fence cuts, braces, and repairs that will be permanent and remain functional for the remaining life of the fence of which they are part; alternatively, Owner may require Grantee to install a cattle guard in lieu of a gate. When accessing the Property, Grantee will close gates used by its personnel except when open to permit the passage of vehicular traffic, so that Owner's or Owner's tenant's livestock do not stray or escape through such gates. If Owner maintains locks on exterior gates, Owner will provide Grantee with keys or with the combinations to such locks.

10.8 Roads. To minimize erosion caused by Grantee's construction of roads on the Property and facilitate natural drainage, Grantee will seek Owner's advice on the design and location of such roads. Grantee will incorporate Owner's advice into the final road design to the extent such advice does not substantially increase construction costs over a design based on good engineering practice in the area, as determined by Grantee in its reasonable judgment. During construction, Grantee will keep Owner's existing site roads used by Grantee in good repair. After the Commercial Operation Date, Grantee will maintain roads used by Grantee on the Property to the extent necessary for Grantee's continued use, as reasonably determined by Grantee, and will use commercially reasonable efforts to minimize erosion caused by Grantee's road use. The crown of new roads located in any previously cultivated portion of the Property will be kept to a minimum. New roads used during construction but not required for operations will be reclaimed.

10.9 Resources. Grantee may use caliche, gravel and water from the Property, so long as Grantee pays Owner the then current market price, excluding cost of transportation.

10.10 Animals. Grantee's employees shall not bring animals onto the Property at any time.

10.11 Keeping Property Clean. After the Commercial Operation Date, Grantee will remove all refuse, litter and debris created by Grantee and its contractors from the Property.

10.12 Livestock. Grantee will use commercially reasonable efforts to minimize any interference with Owner's livestock operation.

10.13 Mineral Development. Owner reserves the right to develop the minerals, if any, owned by Owner on the Property so long as such development (including, without limitation, any drilling or mining) does not interfere with Grantee's use of the Property (as provided in Section 9.2 above). Owner shall include as a term and condition to any conveyance on or after the Effective Date of any interest of Owner in the mineral estate in the Property, including any lease thereof (but the following shall be true and binding upon such parties and their successors and assigns whether or not such term and condition are expressly so included), that any owner of any mineral interest in the Property (a) shall use the surface of the Property in a manner that reasonably accommodates Grantee's surface use as described herein and with due regard for the rights of Grantee with respect to the surface use, (b) shall make such use of the surface of the Property as shall avoid material impairment of Grantee's actual or anticipated surface use as described herein, and (c) shall limit any drilling, mining or other activity for extraction of minerals from the Property to occur only on those areas of the surface of the Property that are not closer to any wind turbine or proposed wind turbine of Grantee than the greater of (i) twenty (20) times the height of any well, rig, building or other structure, or (ii) five hundred (500) feet; *provided, however*, that Owner may install temporary, latticed drilling equipment on the Property so long as such drilling equipment is no closer than 500 feet or 300 feet plus the radius of the wind turbine rotor (whichever is greater) to the location or proposed location of any wind turbine, and the height of any such drilling equipment does not exceed 200 feet. If requested by Owner from time to time, Grantee will in good faith negotiate and execute a commercially reasonable surface use agreement and/or crossing agreement with any mineral lessee or pipeline company with whom Owner has entered or contemplates entering an agreement.

10.14 Hunting. Under no circumstances shall Grantee or any of Grantee's invitees hunt on the Property. Grantee hereby acknowledges Owner's existing hunting rights on the Property throughout the term of this Agreement, *provided* that (a) hunting by Owner, its employees, licensees, invitees or agents shall be done in a safe manner and shall not interfere with Grantee's use of the Property, damage any Windpower Facilities, or injure any personnel or property, and (b) for safety reasons, after the Start of Construction and before the Commercial Operation Date, hunting by Owner, its employees, licensees, invitees or agents is prohibited. Owner specifically agrees to defend, indemnify, and hold Grantee harmless against any and all losses cost, liabilities, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, damage or harm to Grantee, its employees, licensees, invitees or agents resulting from or arising out of or in connection with hunting activities by Owner, its employees, licensees, invitees or agents.

11. Assignment; Cure.

11.1 Assignees. Grantee and any Assignee (as hereinafter defined) shall have the right, without need for Owner's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: finance Windpower Facilities; grant easements, co-easements, subeasements, leases, subleases, licenses or similar rights (however denominated) to one or more Assignees; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees the Easement, or any or all right or interest in the Easement or in this Agreement, or any or all right or interest of Grantee in the Property or in any or all of the Windpower Facilities that Grantee or any other party may now or hereafter install on the Property. An "Assignee" is any of the following: (a) any one or more parties involved in the development, financing or refinancing of any Windpower Facilities, including, without limitation, any lender to or investor in, or purchaser or lessee of, Windpower Facilities; (b) any one or more parties involved in financing or refinancing the development of the Project or any Windpower Facilities, or any purchaser or owner of Windpower Facilities; (c) a corporation, partnership or limited liability company now existing or hereafter organized (including Grantee) in which Grantee or any of its owners, or any affiliate or partner of either, owns (directly or indirectly) a controlling interest at the time of assignment; (d) a partnership now existing or hereafter organized, a general partner of which is such a corporation, partnership or limited liability company; or (e) a corporation, partnership, limited liability company, or other entity that acquires all or substantially all of Grantee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. Grantee or an Assignee that has assigned an interest under this Section 11.1 will give notice of such assignment (including the address of the assignee thereof for notice purposes) to Owner, *provided* that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Owner with respect to such assignment until such notice shall have been given.

11.2 Assignee Obligations. No Assignee shall have any obligation or liability under this Agreement prior to the time that such Assignee takes actual physical possession of the Property. An Assignee shall be liable to perform obligations under this Agreement only for and during the period such Assignee is in possession of the Property. Any assignment permitted hereunder shall release the assignor from liability under this Agreement when the Assignee agrees in writing to perform the assigned obligations, if such Assignee either (a) is at least as creditworthy as the assignor at the time of the assignment or (b) owns or holds, or after the assignment will own or hold, a majority or controlling interest, directly or indirectly, in any Windpower Facilities located on the Property.

11.3 Lender Protection. Grantee may, at any time and without the consent of Owner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "Lender") one or more liens, security interests or collateral assignments in all or any part of Grantee's rights, title or interests under this Agreement (a "Mortgage"). In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 11.3 and the other provisions of this Section 11 applicable to Assignees, upon delivery to Owner of notice of its name and address.

(a) Lender's Additional Cure Period. A Lender shall have the same period after receipt of the notice of default to remedy such default, or cause the same to be remedied, as is given to Grantee, plus, in each instance, the following additional time periods: thirty (30) days (for a total of 90 days) after receipt of the notice of default, provided that such 90-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Lender to perfect its right to cure such default by obtaining possession of the Property (including possession by a receiver) as set forth in Section 11.7 or by instituting foreclosure proceedings, provided the Lender acts with reasonable and continuous diligence.

(b) Consent to Modification, Termination or Surrender. So long as any Mortgage remains in effect, this Agreement shall not be modified, and Owner shall not accept a surrender of any of the Property or a termination of this Agreement by Grantee prior to expiration of the Term, including any applicable renewal terms, without the prior consent of all Lenders.

(c) No Waiver. No payment made to Owner by any Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or a waiver of the Lender's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

11.4 Right to Cure Defaults. To prevent termination of the Easement or any partial interest therein, Grantee (or any Assignee) shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee or Grantee hereunder or necessary to prevent the termination of the Easement or any partial interest therein. If Grantee or an Assignee holds an interest in less than all of the Easement, the Property or the Windpower Facilities (other than an undivided interest in wind turbines installed on the Property), any default under this Agreement shall be deemed remedied, as to Grantee's or such Assignee's partial interest, and Owner shall not disturb such partial interest, if Grantee or the Assignee, as the case may be, shall have cured its *pro rata* portion of the default by paying the fees attributable to the Windpower Facilities in which Grantee or the Assignee, as the case may be, holds an interest.

11.5 Acquisition of Interest. The acquisition of all or any portion of Grantee's or an Assignee's interest in the Property or the Windpower Facilities or the Easement by another Assignee or any other person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof, or any conveyance in lieu thereof, shall not require the consent of Owner or constitute a breach of any provision or a default under this Agreement. Upon such acquisition or conveyance, Owner shall recognize the Assignee, or such other party, as Grantee's or such other Assignee's proper successor.

11.6 New Easement. If the Easement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or the Easement is terminated as a result of any uncured default, and within one hundred twenty (120) days after such rejection or termination Grantee or any Assignee (including any lenders in connection with the financing of the Windpower Facilities) shall have arranged to the reasonable satisfaction of Owner for the cure of all defaults that are susceptible of cure (including the payment of all fees or other charges due and payable by Grantee or other Assignees as of the date of such rejection or termination), then Owner shall execute and deliver to Grantee or such Assignee, as the case may be, a new easement

agreement for the Property which (a) shall be for a term equal to the remainder of the Term of the Easement before giving effect to such rejection or termination, (b) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Grantee or any Assignee prior to rejection or termination of the Easement), (c) shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner, and (d) shall include that portion of the Windpower Facilities in which Grantee or such other Assignee had an interest on the date of rejection or termination. The provisions of this Section 11.6 shall survive the termination or rejection of this Agreement.

11.7 Extended Cure Period. If any default by Grantee or an Assignee under this Agreement cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of Grantee's or another Assignee's interest in the Easement, then any such default shall be deemed remedied if: (a) within one hundred twenty (120) days after receiving notice from Owner as set forth in Section 13.2 hereof, either Grantee or an Assignee shall have acquired possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in the Easement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and (b) Grantee or the Assignee, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion, and (c) after gaining possession of all or part of the Property and/or all or part of the Windpower Facilities and/or all or part of such interest in the Easement, Grantee or the Assignee performs all obligations as and when the same are due (to the extent then practicable) in accordance with the terms of this Agreement. If Grantee or an Assignee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Grantee or any defaulting Assignee, as the case may be, from commencing or prosecuting the proceedings described above, the one hundred twenty (120) day period specified above for commencing such proceeding shall be extended for the period of such prohibition.

11.8 Separability. Grantee may use the Property in connection with the Project or Grantee may divide the Property between two or more separate collections of associated Windpower Facilities constructed, installed and/or operated on the Property and/or on other lands in the general vicinity of the Property by or on behalf of Grantee or an affiliate or Assignee(s) thereof as an integrated energy generating and delivery system. If Grantee elects to so divide the Property into two or more projects, then Owner shall, within twenty (20) days after request from Grantee, and without demanding any additional consideration, bifurcate this Agreement and the Easement by entering into and delivering to Grantee two or more independent new easement agreements (which shall supersede and replace this Agreement) that provide Grantee with separate easement estates in different portions of the Property, as designated by Grantee. Each such new easement agreement shall: (a) specify the portion(s) of the Property to be covered thereby, (b) contain the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Grantee or any other person or entity prior to the execution of such new agreements, and except for any modifications that may be required to ensure that each party's combined obligations under such new agreements do not exceed such party's obligations under this Agreement) and be in a form reasonably acceptable to Grantee; (c) be for a term equal to the remaining Term of this Agreement; (d) contain the same grant of access and transmission easements and rights and associated communications rights as are contained in this Agreement for the benefit of each of the bifurcated estates, covering such portion or portions of the Property

outside of the benefited estate in each case as Grantee may designate; (e) require payment to Owner of only an acreage-proportionate part of each payment due under Section 2(a) of the Fee Schedule (which under all such new agreements shall in the aggregate equal the amounts that are due under Section 2(a) of the Fee Schedule); (f) provide for payments thereafter due under Sections 3 and 4 of the Fee Schedule and elsewhere to be paid with respect to the wind turbines and other Windpower Facilities actually installed under such new easement for the portion of the Property subject to such easement; and (g) enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Property. Further, notwithstanding any other provision of this Agreement, (i) in the event of any uncured default under any such new easement agreement, such event of default shall not affect, or cause a termination of, any other such new easement agreement or any rights or interests granted under any other such new easement agreement, and (ii) in the event of a termination of any such new easement agreement, the remaining new easement agreements and all rights granted therein, including all easements affecting any portions of the Property (regardless of whether such portions of the Property are part of or outside the benefited estate), shall remain in full force and effect without any further compensation due Owner.

11.9 *Estoppel Certificates, etc.* Owner shall execute such (a) estoppel certificates (certifying as to such factual matters as Grantee may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case), (b) consents to assignment, (c) non-disturbance agreements (respecting other property as to which Owner or its affiliates may have lease, use or other rights), and (d) documents reasonably required by a title insurance company, in each case as Grantee or any Assignee may reasonably request from time to time. Owner shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee or any Assignee for the purpose of implementing the terms and conditions contained in this Agreement or of preserving an Assignee's security interest, at no out-of-pocket cost to Owner. Notwithstanding any provision of this Agreement, the parties agree that this Agreement shall not be modified or amended prior to expiration of the Term without each Assignee's prior written consent. The previous sentence is for the express benefit of, and shall be enforceable by, each Assignee.

12. Transmission Facilities.

12.1 *Grant of Transmission Easement.* For the obligations set forth in the Fee Schedule attached hereto and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Owner, Owner hereby grants to Grantee an exclusive easement ("Transmission Easement") in, on, along and under the Property for the right to erect, construct, reconstruct, replace, relocate, remove, maintain and use the following from time to time in connection with Grantee Activities, whether carried out on the Property or elsewhere: (a) a line or lines of towers or structures, together with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables in, on, over, under, along and across the Property; and (b) one or more substations or interconnection or switching facilities from which Grantee or others that generate energy may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights-of-way, on, along and in the Property. Said towers, structures, wires, cables, foundations, footings, crossarms, appliances, fixtures,

substations, facilities and rights-of-way are herein collectively called the “Transmission Facilities.” The location of Transmission Facilities shall be subject to Section 10.3, to the extent applicable. The Transmission Easement shall be exclusive with respect to Grantee Activities in, on, over or under the Property and, without limiting the generality of the foregoing, Owner covenants not to convey or authorize the exploitation of rights or otherwise to grant or suffer any conflicting rights or to grant a transmission easement on or across the Property to any other person or entity in connection with wind energy activities.

12.2 Access. The Transmission Easement is also for the right of ingress to and egress from the Transmission Facilities (whether located on the Property or elsewhere), over and along the Property by means of roads and lanes thereon if existing or otherwise by such route or routes as Grantee may construct from time to time, consistent with the requirements of this Agreement.

12.3 Assignment in Connection with Transmission Lines. In connection with the exercise of the rights of Grantee hereunder to utilize the Property for Grantee Activities, Grantee, in its sole discretion and without further act or consent of Owner, shall have the right to grant to any utility or other duly authorized entity the right to construct, operate and maintain electric transmission, distribution, interconnection or switching facilities on the Property pursuant to any standard form of easement or other agreement used or proposed by the utility or other entity, including, without limitation, a perpetual easement. Alternatively, at Grantee’s election, Owner agrees either to (a) grant such rights directly to such utility or other entity, or (b) convey title to such portion of the Property to the utility or other entity by deed or other conveyance. In the event Grantee exercises the foregoing rights or election, and in lieu of payment to Owner by the utility or other entity, Grantee will make a one-time payment to Owner equal to 150% of the fair market value for its current land use of the actual acreage occupied or to be occupied by such facilities. If the Parties are unable to agree on such fair market value, then fair market value shall be determined by written appraisal performed by an independent appraiser reasonably acceptable to Owner and Grantee. Half of such one-time payment will be payable within 30 days of the commencement of construction of such facilities, the other half will be payable within 30 days of completion of construction.

12.4 Term; Assignment. The term of the Transmission Easement shall expire upon expiration or termination of this Agreement. Grantee (and any Assignee) shall have the right, without need for Owner’s consent, to assign or convey all or any portion of the Transmission Easement to an Assignee on an exclusive or nonexclusive basis. The Transmission Easement shall run with the Property and inure to the benefit of and be binding upon Owner and Grantee and their respective transferees, successors and assigns, and all persons claiming under them.

13. Default and Termination.

13.1 Grantee’s Right to Terminate. Grantee shall have the right to terminate this Agreement and the Easement as to all or any part of the Property at any time, effective upon written notice to Owner from Grantee and Assignees having an interest in the Property.

13.2 Owner’s Right to Terminate. Except as qualified by Section 11, Owner shall have the right to terminate this Agreement and the Easement in the following circumstances:

(a) Default. If (i) a material default in the performance of Grantee's obligations under this Agreement shall have occurred and remains uncured, (ii) Owner simultaneously notifies in writing Grantee and all Assignees of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Grantee and such Assignees receive the written notice thereof, or, if cure will take longer than sixty (60) days, Grantee or any such Assignee has not begun diligently to undertake the cure within sixty (60) days and thereafter diligently prosecutes the cure to completion unless unable to do so due to Force Majeure (as defined in Section 14.1).

(b) Abandonment. If after the Commercial Operation Date, Grantee ceases to operate the Windpower Facilities on the Property for a period of twenty-four (24) consecutive months, unless due to Force Majeure (as defined in Section 14.1), Owner may terminate this Agreement and the Easement upon written notice to Grantee and, in such event, Grantee shall comply with Section 13.3.

13.3 Effect of Termination; Removal. Upon expiration or earlier termination of this Agreement, whether as to the entire Property or only as to part, Grantee shall (a) upon written request by Owner, prepare and place of record in the County records, a quitclaim deed to Owner of all of Grantee's right, title and interest in and to the Property, or to that part thereof as to which the Easement has been terminated, and (b) as soon as practicable thereafter, remove all above-ground Windpower Facilities and all underground Windpower Facilities down to a depth of forty-two inches from the Property or portion as to which the Easement was terminated and restore the soil surface to a condition reasonably similar to its original condition. If Grantee fails to remove such Windpower Facilities within twenty-four (24) months of termination of the Easement, or such longer period as Owner may provide by extension, Owner may do so, in which case Grantee shall reimburse Owner for reasonable costs of removal and restoration incurred by Owner.

13.4 Security for Removal. On such date as may be required by county or state regulations, but not later than 10 years after the Commercial Operation Date, Grantee shall provide security ("Removal Bond") to cover the estimated removal costs associated with the Windpower Facilities then on the Property pursuant to Section 13. The Removal Bond shall be, at Grantee's option, either a removal bond from an individual or entity engaged in the construction business and reasonably acceptable to the parties, a surety bond from an insurance company with a Best's Rating of not less than "A", a corporate guarantee (from a financially responsible entity that is reasonably acceptable to the parties and whose credit rating is investment grade), a letter of credit issued by a financial institution reasonably acceptable to the parties, a cash deposit, or other security reasonably acceptable to both parties. The amount of the Removal Bond shall be based on a written estimate from a reputable construction company selected by Grantee and reasonably acceptable to Owner, which sets forth such company's estimate of the cost to satisfy the removal and restoration obligations under Section 13.3 minus estimated salvage value. In the event the county or other governmental authority requires Grantee to provide security for removal or decommissioning of the Project, Grantee shall provide a single Removal Bond that benefits both Owner and the governmental authority in a manner consistent with the requirements of the governmental authority, and the governmental authority shall have access to the Property pursuant to reasonable notice to effect or complete the required removal or decommissioning. In addition, to the extent the removal and restoration requirements set forth in Section 13.3 and this Section 13.4 conflict with the requirements of any State or local permitting entity for construction and

operation of the Project (the “Permitting Requirements”), such Permitting Requirements shall prevail and control over the removal and restoration requirements in this Agreement and Grantee shall be obligated to perform such Permitting Requirements instead of any conflicting requirements hereunder.

13.5 Payment Under Protest; Tolling. The defaulting party hereunder may cure any monetary event of default by depositing the amount in controversy (not including claimed consequential, special or punitive damages) in an interest-bearing escrow account with any reputable third party escrow, or by interpleading the same, which amount shall remain undistributed until final decision by a court of competent jurisdiction or upon agreement by the parties. The time period for cure of any event of default shall be tolled during such period of time the matter is subject to a judicial contest.

14. Miscellaneous.

14.1 Force Majeure. If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of “Force Majeure” (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder whenever such causes are removed. “Force Majeure” means flood, drought, earthquake, storm, fire, tornado, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God, casualty or accident; war, sabotage, vandalism, civil strife or other violence; strikes or labor disputes; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; or any other act or condition beyond the reasonable control of a party hereto.

14.2 Confidentiality. Owner shall maintain in confidence, and shall not publish or otherwise disclose, information pertaining to the financial terms of or payments under this Agreement, Grantee’s site design, methods of construction or operation, power production or availability of the Windpower Facilities, and the like, whether disclosed by Grantee or discovered by Owner, in each case unless such information either (a) is in the public domain by reason of prior publication through no act or omission of Owner or its employees or agents, or (b) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any person or entity, or (c) is required to be disclosed to by a court or governmental agency; *provided however*, that Owner may disclose the financial terms of this Agreement to Owner’s family members; consultants, accountants, lawyers, or other professionals who receive such information under an obligation of confidentiality; prospective buyers of the Property or lenders that may have a mortgage on the Property; or other owners of land included in the Project. Grantee shall maintain in confidence, and shall not publish or otherwise disclose, information pertaining to the financial terms of this Agreement except as necessary in connection with Grantee’s development and financing activities.

14.3 Successors and Assigns. Any sale or other transfer of the Property by Owner shall be subject to this Agreement and the Easement and all other easements, rights and privileges granted or provided herein. This Agreement and all easements and rights granted herein, shall burden the Property as the servient tenement and shall run with the Property, and none of Owner’s

right, title or interest in, to or under this Agreement, including Owner's interest in the production or potential production of energy from wind power on the Property, may be severed from the surface estate. The Easement and this Agreement shall inure to the benefit of and be binding upon Owner and Grantee and, to the extent provided in any assignment or other transfer under Section 11.1 hereof, any Assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to Grantee in this Agreement shall be deemed to include Assignees and Lenders in possession of the Property. The parties agree and intend that the provisions of this Agreement shall be covenants running with the land and that they touch and concern the land because they determine how the parties will use the Property and its resources, including payment for those resources and use of the Property. The further parties agree and intend that any conveyance, assignment, sale or other transfer of all or a portion of either party's rights or interests covered by and permitted under this Agreement shall include and be subject thereto because the provisions of this Agreement are covenants that run with the land. As covenants running with the land, the parties intend that should either no longer share privity of estate with the other, its rights and obligations in this Agreement pass to the person or entity that shares privity of estate and assumes the role of Owner or Grantee. As a result, except as otherwise provided in Section 11.2 above, any party who ceases to have privity of estate under this Agreement shall bear no liability or any obligation for the terms hereunder after the date on which privity ends. The privity of contract between the current parties shall not change this result because the parties do not intend the use of identifiers like Owner or Grantee to bind those specific parties upon any transfer, conveyance, assignment, sale, or other transfer covered by and permitted under this Agreement.

14.4 Notices. All notices, requests and other communications required or permitted by this Agreement shall be given in writing by personal delivery (confirmed by courier delivery service), or facsimile, receipt confirmed, or first class U.S. mail, postage prepaid, return receipt requested, certified, and addressed as follows:

If to Owner:

Attn: ***

Telephone: ***
E-mail: ***

If to Grantee:

Orion Power Generation, LLC
c/o Orion Renewable Energy Group LLC
155 Grand Avenue, Suite 706
Oakland, CA 94612
Attn: General Counsel
Telephone: (510) 267-8921

If to any Assignee or Lender:

At the address indicated in the notice to Owner provided under Section 11.1.

Payments to Owner shall be mailed to Owner's address above and made out to Owner, unless Owner directs Grantee otherwise in writing. For the purpose of notices to be given by Owner, Owner designates the person to whom notices are given hereunder as its primary contact, and Grantee shall be entitled to rely on any notices given by such individual in writing as if given in writing by all of the persons or entities constituting Owner. Any party may change its address for

purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph. Any notice provided for herein shall become effective only upon actual receipt by the party to whom it is given, unless such notice is only mailed by certified mail, in which case it shall be deemed to be received five business days after the date it is mailed.

14.5 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between Owner and Grantee respecting its subject matter. Any agreement, understanding or representation respecting the Property, the Easement, or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both parties is null and void. This Agreement shall not be modified or amended, except in writing signed by both parties. No purported modifications or amendments, including, without limitation, any oral agreement, course of conduct or absence of a response to a unilateral communication, shall be binding on either party. This Agreement amends and restates the Letter Agreement in its entirety, with effect from the Letter Agreement Effective Date.

14.6 Governing Law; Interpretation. This Agreement shall be governed by and construed, enforced and interpreted in accordance with the laws of the State of Colorado. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the state or federal courts located in Denver, Colorado. The parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either party shall not be employed in the interpretation of this Agreement, and is hereby waived. **Each party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this agreement shall be to the Court. In no event shall either party be liable under this Agreement for consequential, punitive, special, incidental or indirect damages.**

14.7 Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. If the term of the Easement, the Access Easement, the Transmission Easement, or other right hereunder is found to be in excess of the longest duration permitted by applicable law, then the provisions hereof which specify such term of duration shall be severed from this Agreement, and the term instead shall expire on the latest date permitted by applicable law.

14.8 No Partnership. Neither the provisions of this Agreement, nor the provisions of any other agreements referenced herein, nor any acts of the parties, nor any other circumstances shall be deemed to create a partnership or joint venture between the parties with respect to the Property, the Windpower Facilities or the Transmission Facilities for any purposes whatsoever. Each party shall, in connection with this Agreement, the Property, the Windpower Facilities and the Transmission Facilities, take reasonable steps in dealing with third parties to negate any inference that such partnership or joint venture exists.

14.9 Memorandum. Neither Owner nor Grantee shall record this Agreement in its entirety. The parties agree that a Memorandum of this Agreement shall be recorded in the county's real property records at Grantee's expense, in a form reasonably acceptable to both parties, which form shall not contain any of the financial provisions hereof.

14.10 *Counterparts*. This Agreement may be executed in multiple counterparts, no one of which need be executed by all parties hereto, each of which shall constitute an original. Counterparts thus executed shall together constitute one and the same instrument.

14.11 *Third Party Beneficiaries*. Except with respect to the rights conferred upon Lenders and Assignees hereunder (which Lenders and Assignees and their respective successors and assigns are hereby expressly made third party beneficiaries hereof to the extent of their respective rights hereunder), the covenants contained herein are made solely for the benefit of the parties and shall not be construed as benefiting any person or entity who is not a party to this Agreement other than successors and assigns to the extent described in Sections 11 and 14.3.

14.12 *Tax Credits*. If under applicable law Grantee becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Grantee's option, Owner and Grantee shall amend this Agreement or replace it with a different instrument so as to convert Grantee's interest in the Property to a substantially similar interest that makes Grantee eligible for such tax credit, benefit or incentive.

[Signature page follows]

IN WITNESS WHEREOF, Owner and Grantee have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

“OWNER”

Name: ***

Name: ***

“GRANTEE”

**Orion Power Generation, LLC,
a Delaware limited liability company**

By: _____
Name: _____
Title: _____

EXHIBIT A

Description of Property

That certain real property of Owner located in Baca County, Colorado, to wit:



(In the event of inaccuracies or insufficiencies in the foregoing legal description, Grantee may modify this Exhibit A to correct such inaccuracies or insufficiencies)

EXHIBIT B

Map of Pivot Property

(In the event of inaccuracies or insufficiencies in the foregoing map, Grantee may modify this Exhibit B to correct such inaccuracies or insufficiencies)

EXHIBIT C

Purchase and Sale of Control Property

1. Control Property. Pursuant to Section 6 of the body of the Fee Schedule, Grantee may elect to purchase the Control Property. As provided in Section 6, the purchase price for the Control Property shall be the amount equal to 150% of the fair market value of the acreage of the Control Property for agricultural use and it shall be payable within 30 days after the Commercial Operation Date for the Project with which the Control Property is associated.

2. Closing. By written notice to Owner delivered before the closing of the sale (the "Closing"), Grantee will designate the proposed date, time and location of the closing for the purchase of the Control Property. At the Closing, Grantee will pay or cause to be paid any and all recording or conveyancing taxes and transfer fees incurred in connection with the sale to Grantee. Ad valorem taxes for the Control Property for the calendar year of the Closing for the purchase will not be prorated between the Parties and shall be the responsibility of Grantee or its designee. At the Closing, Owner shall deliver to Grantee (i) a special warranty deed (the "Deed") conveying good and indefeasible fee simple title to the Control Property and all improvements thereon free and clear of all liens, encumbrances and other title exceptions, except the Permitted Encumbrances (as defined below); (ii) a non-foreign certificate required by Section 1445 of the Internal Revenue Code of 1986, as amended; and (iii) such other documents or instruments as are reasonably requested by Grantee or Grantee's title company to close the transaction, including, without limitation, a seller's affidavit in the form typically required by a title company to enable the title company to issue an extended coverage title insurance policy. The Deed shall contain a waiver of surface rights for the exploration, development and production of oil, gas and other minerals. As used herein, the term "Permitted Encumbrances" shall mean and refer to only (x) those easements, covenants, restrictions, rights of way and other encumbrances affecting the Control Property that are evidenced of record as of the Effective Date in the Real Property Records, except that the Permitted Encumbrances shall not include, and Owner shall obtain a satisfaction and release on or before the Closing of, any monetary liens, including, without limitation, any and all mortgages, mechanics liens, financing statements and judgment liens encumbering the Control Property; and (y) any other matters affecting the Control Property executed after the Effective Date with Grantee's prior written consent.

3. Subdivision and Other Approvals. Grantee shall take all actions and pay all costs of obtaining any governmental approvals (the "Approvals") required to partition the Control Property from the balance of the Property, so that the Control Property constitutes a legal lot that can be conveyed to Grantee or Grantee's designee as contemplated by this Agreement. The Approvals shall be on terms and conditions satisfactory to Grantee, in Grantee's sole discretion. Owner agrees to join in executing any applications and requests reasonably required by Grantee in connection with Grantee's pursuit of the Approvals, to support approval of such applications and requests, and to otherwise cooperate with Grantee in the processing and pursuit of such applications and requests.

4. Actual Acreage. The actual acreage of the Control Property shall be subject to confirmation in an ALTA survey to be obtained by Grantee at Grantee's expense.

5. Breach. In the event that a Party breaches its obligations at the Closing, the other Party shall have the right to seek the remedy of specific performance of the defaulting Party's obligations.

SCHEDULE I

Fee Schedule

Section 1. *Payments.* Grantee shall pay Owner in accordance with this Schedule I in the amounts set forth below. All capitalized terms used but not otherwise defined in this Schedule I shall have the meanings given in the body of this Agreement.

Section 2. *Payments Before Start of Construction*

(a) Initial Payments. Within thirty (30) days after the Letter Agreement Effective Date, Grantee paid Owner the greater of (i) the sum of \$3.00 per acre of the Property and (ii) \$1,000. Within thirty (30) days after each anniversary of the Letter Agreement Effective Date during the Term, unless such anniversary occurs after the Start of Construction or this Agreement has terminated, Grantee has paid or will pay Owner an additional sum for each acre of the Property (or such portion of the initial Property as Grantee may designate from time to time as the Property subject to this Agreement), as set forth below:

<u>Anniversary</u>	<u>Amount</u>
1, 2 and 3	\$3.00/acre, but not less than \$1,000
4, 5, 6 and 7	\$5.00/acre, but not less than \$1,500
8 and 9	\$8.00/acre, but not less than \$2,000

Notwithstanding the foregoing, if Owner has elected (by initialing this Section 2(a) in the space provided below) to withhold permission for Grantee to install wind turbines or other above-ground Windpower Facilities in the path of center pivot irrigation systems on the Pivot Property, payments to Grantee with respect to the Pivot Property shall be \$1.00 per acre of the Pivot Property for each of the years provided and payments with respect to all Property other than the Pivot Property shall be at the applicable per acre rates in the table above.

INITIAL HERE (_____) to withhold permission for Grantee to install wind turbines or other above-ground Windpower Facilities in the path of center pivot irrigation systems on the Pivot Property.

(b) Meteorological Towers. If Grantee installs one or more temporary meteorological towers on the Property prior to the Start of Construction, Grantee will pay Owner \$1,000 per year for each such tower from the date of installation until the Start of Construction or removal, such amount to be payable within thirty (30) days after installation and each anniversary of installation.

(c) SODAR Units. If Grantee places one or more SODAR units on the Property prior to the Start of Construction, Grantee will pay Owner \$500 per year for each such unit from the date of installation until the Start of Construction or removal, such amount to be payable within thirty (30) days after placement and each anniversary of placement.

Section 3. *Installation Payment.* If and when wind turbines are installed on the Property, Grantee will pay Owner a one-time installation payment (“Installation Payment”) equal to the sum of \$2,000 multiplied by the number of megawatts of installed capacity of wind turbines installed on such the Property, based on such turbines’ “nameplate rating” (as determined by the manufacturer), *plus* any crop damage and damages associated with soil compaction caused by Grantee’s construction activities (in each case as determined under Section 7 below). The Installation Payment shall be made as follows: Grantee will pay Owner the amount equal to \$1,000 per megawatt to be installed on the Property within thirty (30) days of the Start of Construction, and the balance of the Installation Payment within sixty (60) days of the Commercial Operation Date or such later date on which such crop damage or damages for soil compaction are determined.

Section 4. *Payments During Operations.*

(a) Royalty Payments.

(i) Payments. If and when wind turbines are installed on the Property and begin generating electricity, Grantee will pay Owner a percentage (“Applicable Percentage”) of Gross Revenues (defined below) which Grantee receives from the sale of electricity generated by wind turbines on the Property. The “Applicable Percentage” shall be equal to the following:

- five percent (5%) for the first ten (10) full calendar years after the Commercial Operation Date,
- six percent (6%) during the eleventh (11th) through twenty-fifth (25th) full calendar years after the Commercial Operation Date, and
- seven percent (7%) during the twenty-sixth (26th) full calendar year after the Commercial Operation Date and each year thereafter during the Term.

Payment of the Applicable Percentage of Gross Revenues shall be made annually within forty-five (45) days of the start of each calendar year following the Commercial Operation Date, and each payment shall be accompanied by a statement, including adequate supporting documentation, that shows how the payment was calculated.

Subject to clause (ii) of this Section 4(a), “Gross Revenues” shall mean cash payments actually received by Grantee during the applicable year of the Term for electricity sold to a utility or other wholesale purchaser of electrical energy which is generated from Windpower Facilities located on the Property and delivered to the point of interconnection to the utility grid, net of wheeling, integration, transmission and/or congestion charges (if any) paid by Grantee to an entity that is not affiliated with Grantee. Gross Revenues shall include the sale of credits for greenhouse gas reduction or the generation of renewable or alternative energy on the Property. Gross Revenues shall not include any gross revenues from any facilities not located on the Property; any production tax credits, investment tax credits, or other federal, state, county or local tax credits or benefits; or any proceeds from the sale, lease, conveyance, financing or other disposition of any Windpower Facilities or any interest in this Agreement or the Project.

(ii) Gross Revenues – Alternative Computation. On and after the Commercial Operation Date, in the event that (A) the value of the U.S. Production Tax Credit available for the wind turbines installed on the Property under Section 45 of the Internal Revenue Code is less than eighty percent (80%) of the maximum value of the U.S. Production Tax Credit available on the Letter Agreement Effective Date (as adjusted for inflation under said Section 45), or (B) the Project is owned by a regulated utility company, or (C) Grantee does not sell electricity generated by wind turbines installed on the Property under a power purchase agreement or similar contract to a purchaser that is not affiliated with Grantee, then for purposes of calculating the royalty payments described in clause (i) of this Section 4(a), Gross Revenues shall mean (1) the quantity of electrical energy which is generated from Windpower Facilities located on the Property during the applicable year of the Term and delivered to the point of interconnection to the utility grid, *multiplied by* (2) an imputed power purchase price equal to the prevailing price paid by utilities in Colorado during the applicable period for electricity generated from wind energy under long-term purchase contracts (the “Imputed Power Purchase Price”), as reasonably determined by Grantee, *such product to be reduced by* (3) wheeling, integration, transmission and/or congestion charges (if any) paid by Grantee to an entity that is not affiliated with Grantee. If Owner disputes Grantee’s determination of the Imputed Power Purchase Price, the Imputed Power Purchase Price shall be determined by an independent third party knowledgeable in the electric power industry chosen by Grantee and reasonably acceptable to Owner. Gross Revenues shall not include any gross revenues from any facilities not located on the Property; any production tax credits, investment tax credits, or other federal, state, county or local tax credits or benefits; or any proceeds from the sale, lease, conveyance, financing or other disposition of any Windpower Facilities or any interest in this Agreement or the Project.

(b) Minimum Payment. By March 1 of each year following the first full calendar year after the Commercial Operation Date, Grantee will pay Owner the following amount, as applicable:

(1) If Grantee has installed at least one wind turbine on the Property, Grantee will pay Owner, the amount (if any) by which \$3,000, as adjusted for inflation pursuant to clause (c) below (the “Minimum Megawatt Amount”), multiplied by the number of megawatts of capacity of wind turbines installed on the Property, based on such turbines’ “nameplate rating” (as determined by the manufacturer), *exceeds* Grantee’s aggregate payments to Owner under clause (a) above for the preceding full calendar year. The Minimum Megawatt Payment shall increase to \$3,500 (as adjusted for inflation pursuant to clause (c) below) for the eleventh (11th) through twenty-fifth (25th) full calendar years following the Commercial Operation Date, and to \$4,000 (as adjusted for inflation pursuant to clause (c) below) for the twenty-sixth (26th) full calendar year and each full calendar year thereafter during remainder of the Term.

(2) If Grantee has not installed any wind turbines on the Property, then Grantee will pay Owner (A) \$3.00 per acre of the Property, but not less than \$1,500, *plus* (B) \$1.00 per lineal foot of new roads constructed by Grantee on the Property, *plus* (C) \$0.25 per lineal foot of underground electric lines constructed by Grantee on the Property, *plus* (D) \$0.50 per lineal foot of overhead electric lines constructed by Grantee on the Property.

The applicable amount under clause (b)(1) or (2) above (the “Minimum Payment”) shall be paid annually and adjusted annually for inflation as set forth in clause (c) below.

(c) Inflationary Adjustments. The amount of the Minimum Payment shall be adjusted annually by the increase or decrease in the Gross Domestic Product - Implicit Price Deflator for all goods and services (2009 = 100) published in the Survey of Current Business by the U.S. Department of Commerce, Bureau of Economic Analysis (“Index”), but not more than 5% per year. Any annual increase in the Index above 5% shall be included in the computation of annual adjustments in subsequent years. The base for computing the increase or decrease in the Index for this purpose shall be the Index for the later of the quarter in which the Letter Agreement Effective Date occurs or the first calendar quarter in 2019 (the “Beginning Index”). The adjustment shall be effective for every full calendar year following the Commercial Operation Date and shall be determined by multiplying such amount by a fraction, the numerator of which is the Index published for the third calendar quarter of the calendar year prior to each adjustment and the denominator of which is the Beginning Index. If the Index is discontinued or revised during the Term, such other government index or computation by which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

Section 5. *Shared Substations*. Any wind turbines located on the Property will be connected to a utility’s transmission line at a substation or switching facility. If electricity from other sources is transmitted through the same substation or facility, the electricity generated on the Property and delivered to the substation or facility will be determined separately by Grantee using electric meters and Grantee’s computerized data acquisition system to calculate the payments due Owner.

Section 6. *Substation, Switchyard, etc.* If Grantee intends to install the electric substation, switchyard or Operations & Maintenance building for the Project on the Property, then Grantee may lease or purchase the actual acreage occupied by the substation, switchyard or building (the “Control Property”). In the event of any such installation, whether Grantee leases or purchases such acreage, Grantee will make a one-time payment to Owner within thirty (30) days of the Commercial Operation Date equal to 150% of the fair market value of such acreage for agricultural use. If the parties are unable to agree on such fair market value, then fair market value shall be determined by written appraisal performed by an independent appraiser reasonably acceptable to Owner and Grantee. If Grantee elects to purchase the Control Property, Owner will sell and convey the same to Grantee upon and subject to the terms and conditions set forth in Exhibit C attached to and made a part of this Agreement.

Section 7. *Crops and Compaction*.

(a) Compaction. If Grantee causes severe compaction of any part of the Property located more than five feet from areas occupied by Windpower Facilities or Transmission Facilities, and such compaction is reasonably expected to seriously impair crop yield in future years, Grantee shall compensate Owner as calculated below (the “Compaction Payment”). In consideration of the Compaction Payment, no additional damages shall be paid in future years for that episode of compaction, no compensation for crops that Owner is prevented from planting anywhere on the Property shall be paid, and no compensation for damage to or destruction of growing crops anywhere on the Property shall be paid except as provided in clause (b) below. The Compaction Payment will be calculated using the following formula: Unit Price x 400% x Unit Yield Per Acre x Acres Damaged = Damages. Unit Price will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop. Yield will be

the average of the previous three (3) years' yields according to Owner's records for the smallest parcel of land that includes the damaged area. If Owner does not have yield records available, the parties will use Farm Service Agency records or other commonly used yield information available for the area. The parties shall try in good faith to agree to the extent of damage and acreage affected. If they cannot agree, they shall promptly have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent. The Compensation Payment shall be made as part of the Installation Payment within sixty (60) days of the Commercial Operation Date or such later date on which such damages are determined.

(b) Crop Damage. If Grantee causes the destruction of existing growing crops on any part of the Property located more than five feet from areas occupied by the Windpower Facilities or Transmission Facilities, Grantee shall compensate Owner as calculated below (the "Crop Damage Payment"). In no case shall Grantee be required to pay more than a single, total crop loss in any one crop year on any given property. The Crop Damage Payment will be calculated using the following formula: Unit Price x 100% x Unit Yield Per Acre x Acres Damaged = Damages, where Unit Price, Unit Yield Per Acre and Acres Damaged will be calculated in accordance with clause (a) above. For damage caused between Start of Construction and the Commercial Operation Date, the Crop Damage Payment shall be made as part of the Installation Payment within sixty (60) days of the Commercial Operation Date or such later date on which such damages are determined. For damage caused after the Commercial Operation Date, the Crop Damage Payment shall be made within 30 days after determining extent of damage.

Section 8. *Conservation Reserve Program*. If any portion of the Property is removed from the Conservation Reserve Program ("CRP") because of Grantee's installation of Windpower Facilities, Grantee will reimburse Owner for the resulting penalties or reimbursement obligations to the federal government. Reimbursement will not extend to CRP payments that would otherwise have been made to Owner, or to removal of any other lands from CRP.

Section 9. *Right to Inspect Records*. Not more than once per year, Owner shall have the right by appointment at Grantee's offices during normal business hours, personally or by representative, to inspect the utility statements received by Grantee and any other necessary books and records of Grantee for the purpose of verifying the payments due under this Agreement. All such inspections shall be paid for by Owner unless Owner discovers an inaccuracy in the payments made to Owner in excess of 3% of the total payments due Owner in Grantee's favor. Owner shall keep confidential all information inspected or obtained by Owner hereunder in accordance with Section 14.2 of the Agreement; further, any representative of Owner that performs any such inspection or obtains any such information shall provide Grantee, in advance, a signed confidentiality agreement containing the terms set forth in Section 14.2 of the Agreement.

Section 10. *Late Payment*. If Grantee should fail to pay Owner any sum to be paid by Grantee to Owner hereunder within 30 days after such payment is due, Grantee shall pay Owner, to the maximum extent allowed by law, a late payment penalty of one percent of the unpaid amount each month from the date payment was due until the date paid.

Section 11. *No Representation*. Owner acknowledges that any estimates of production or revenue provided by Grantee are for informational purposes only and shall not be relied on by Owner in executing this Agreement. Other than those representations and warranties set forth in

Section 7 of the Agreement, Grantee has neither made, nor makes, any representations or warranties concerning the likelihood that Grantee will install Windpower Facilities on the Property, the amount of production or revenue generated by any Windpower Facilities installed on the Property, the payments Grantee will make hereunder during any period of time, or any other matter whatsoever. Owner acknowledges that Grantee has no obligation to install wind turbines or to generate or sell any amount of electrical energy from the Property.