

AGREEMENT REGARDING EASEMENTS

The “Parties” to this Agreement Regarding Easements (this “Agreement”) dated as of _____, 202__ (“Effective Date”) are «RECORD TITLE HOLDER NAME», [INSERT MARITAL STATUS FOR INDIVIDUALS] and their successors in interest (collectively “Owner”) and INVENERGY WIND DEVELOPMENT LLC, a Delaware limited liability company, and its successors and assigns (collectively, “Invenergy” or “Grantee”). Owner and Grantee are sometimes referred to in this Agreement as a “Party” or collectively as the “Parties”.

WITNESSETH:

WHEREAS, Owner owns the real estate described on Exhibit A (the “Property”); and

WHEREAS, Grantee desires to obtain certain easements and rights over the Property in connection with Grantee’s planned construction of a wind energy generation project in [] County (the “Project”), and Owner desires to grant such easement and rights, on the terms and conditions set forth herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Grant of Easement and Profits.** Owner hereby grants, bargains, sells, conveys and warrants to Grantee an exclusive easement for the purposes described below upon, over, across, through and under the Property, together with the right to all rents, royalties, credits and profits derived from wind energy purposes upon, over and across the Property upon the terms and conditions set forth herein.

2. **Easement.**

2.1 **Purpose of Easement.** The easements and grant of rents, royalties, credits and profits created by this Agreement (collectively, the “Easement”) are solely and exclusively for wind energy purposes, and not for any other purpose, and Grantee shall have the exclusive right to use the Property for wind energy purposes and to derive all profits therefrom. For purposes of this Agreement, wind energy purposes means converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto (“Development Activities”), including, without limitation, (a) determining the feasibility of wind energy conversion and other power generation on the Property, including studies of wind speed, wind direction and other meteorological data, and extracting soil samples; (b) constructing, laying down, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, wind turbines, overhead and underground electrical and communications lines (“Collection/Transmission Facilities”), electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with large wind turbine installations, roads,

meteorological towers and wind measurement equipment, and related facilities and equipment (collectively “**Windpower Facilities**”) on the Property; (c) overhanging rotors of wind turbines installed on adjacent land; (d) capturing, using, and converting unobstructed wind resources over and across the Property; (e) wind turbine operations, including electromagnetic, audio, flicker, visual, view, light, noise, vibration, air turbulence, wake, electrical, radio interference, shadow and other effects attributable to wind turbines; and (f) 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, including without limitation, exercising the right of ingress to and egress from Windpower Facilities (whether located on the Property, on adjacent property or elsewhere) 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 (“**Access Rights**”).

2.2 Additional Appurtenances. The Parties acknowledge that this Agreement does not authorize the use of any land on the Property for the installation and operation of: (a) substation facilities, (b) permanent buildings for service, maintenance, operation and other related purposes, or (c) construction headquarters and trailers. To the extent that Owner and Grantee desire to locate any such facilities on the Property, the Parties acknowledge that such agreement will be negotiated in good faith and memorialized in a separate written agreement.

2.3 Nature of Easement. The Easement and related rights granted by Owner in this Agreement to Grantee are an easement in gross for the benefit of Grantee, its successors and assigns, as owner of the rights created by the Easement. The Easement and other rights granted by Owner herein are independent of any lands or estates or interest in lands, there is no other real property benefiting from the Easement granted in this Agreement and, as between the Property and other tracts of property on which Grantee may locate Windpower Facilities, no tract is considered dominant or servient as to the other.

2.4 Easement Runs with the Land. The burdens of the Easement and all other rights granted to Grantee in this Agreement shall run with and against the Property and shall be a charge and burden on the Property and shall be binding upon and against Owner and its successors, assigns, permittees, grantees, licensees, employees and agents. The Easement shall inure to the benefit of Grantee and its successors, assigns, permittees, licensees and grantees. Owner expressly grants to Grantee the right to assign the Easement and this Agreement.

2.5 Project. The Parties acknowledge and agree that the Property, together with the other property included in the Project, will be interrelated and integrated in the operation of one or more larger wind energy conversion projects. The easements and other rights granted herein are an integral part of each Project. So long as any Windpower Facilities in a Project are in commercial operation, the Property shall be deemed to be in commercial operation, notwithstanding whether Windpower Facilities are actually installed upon the Property. Grantee may determine whether any particular group of Windpower Facilities constitutes a single Project or multiple Projects for purposes of this Agreement, and in the case of multiple Projects, which portion of the Property shall be included within each Project.

3. Term. The (“**Term**”) is comprised of the Development Term, Operations Term and Extended Term as follows:

3.1 **Development Term.** The initial term of the Easement (“**Development Term**”) commenced on the Effective Date and, unless sooner terminated in accordance with this Agreement, shall continue without interruption until the Operations Date, or the date ten (10) years from the Effective Date.

3.2 **Operations Term.** If Grantee constructs any Windpower Facilities on the Property, the “**Operations Term**” shall begin on the Operations Date and end on the twenty-fifth (25th) anniversary of the Operations Date.

3.3 **Operations Date.** The “**Operations Date**” shall mean the earlier of: (1) the first date a wind turbine generator or other Windpower Facilities installed on the Property begin delivering electricity to the transmission grid or (2) the date Grantee notifies Owner in writing that Grantee has elected to declare that the Operations Date has occurred (whether or not wind turbine generators or other Windpower Facilities have been installed on the Property). Grantee shall notify Owner of the Operations Date within forty-five (45) days after the Operations Date occurs. Owner grants Grantee permission to record in the [] County records a notice specifying the Operations Date.

3.4 **Extended Term.** Grantee shall have the preferential right upon written notice to Owner before expiration of the Operations Term to extend the term of the Agreement for an additional period of fifteen (15) years (“**Extended Term**”) expiring on the fortieth (40th) anniversary of the Operations Date. Owner grants Grantee permission to record in the _____ County records a notice of such extension.

4. **Payments.**

4.1 **Financial Terms.** In consideration of the rights granted hereunder, Grantee shall pay Owner the amounts set forth on **Exhibit B**.

4.2 **Crop Compensation.** Grantee shall reimburse Owner for all damage to Owner’s cultivated crops, specialty crops, pasture or hay on the Property directly caused by Grantee’s activities on the Property where no permanent Windpower Facilities are constructed (“**Crop Compensation**”). Crop Compensation shall be equal to the fair market value of the crops but a minimum of the following amounts determined by multiplying the total acreage of damaged cultivated crops, specialty crops, pasture or hay on the Property for which Grantee is responsible pursuant to this Agreement by the following amounts: (i) hay at Two Hundred Sixty and no/100 Dollars (\$260.00) per acre, (ii) corn at Six Hundred and no/100 Dollars (\$600.00) per acre, (iii) oats at One Hundred Seventy Five and no/100 Dollars (\$175.00) per acre, (iv) pasture at Fifty Five and no/100 Dollars (\$55.00) per acre, (v) soybeans at Six Hundred and no/100 Dollars (\$600.00) per acre, and (vi) wheat at Six Hundred and no/100 Dollars (\$600.00) per acre. The above minimum amounts shall be adjusted by the GDPIPD (as hereinafter defined in **Exhibit B**) on an annual basis after the Operations Date. If less than one acre of Owner’s cultivated crops, pasture or hay on the Property is damaged by Grantee’s activities on the Property, the applicable dollar amount per acre shall be reduced proportionally. If the Parties cannot agree, the Parties shall have the area measured and the extent of damage assessed by an impartial party chosen by mutual agreement of the Parties, such as a crop insurance adjuster.

4.3 **Compaction Compensation.** In addition to payments owed pursuant to Section 4.2, Grantee shall pay Owner for areas determined to have significant soil compaction directly caused by Grantee's activities on the Property ("**Compaction Compensation**"). Compaction Compensation shall be equal to an amount that is **equal to the value calculated under Section 4.2 for the area compacted.** In consideration of this payment, no additional damages shall be paid in future years for that incident of soil compaction. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, the Parties shall have the area measured and the extent of damage assessed by an impartial party chosen by mutual agreement of the Parties, such as a crop insurance adjuster.

4.4 **Conservation Reserve Program.** If Owner is a party to a Conservation Reserve Program contract ("**CRP Contract**") with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410, Owner shall provide Grantee with a true and complete copy of such CRP Contract, together with all amendments and modifications, and if applicable, Grantee shall reimburse Owner for (a) any rental payments, or portion thereof, Owner would have received from the U.S. Department of Agriculture but for the construction or occupation of the Windpower Facilities on the Property and (b) the penalties and interest, if any (including for any past payments received by Owner that must be repaid by Owner), assessed by, the U.S. Department of Agriculture as a result of the construction or occupation of the Windpower Facilities on the Property. Owner shall cooperate with Grantee in completing and submitting documents to obtain any exemptions allowed under the Conservation Reserve Program for the use of Windpower Facilities on Property covered by a CRP Contract.

4.5 **Late Payment Penalty.** If Grantee fails to make any payment to Owner required of it hereunder when due, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to the sum of two percent (2%) per annum and the prime lending rate as from time to time may be published by The Wall Street Journal under the "Money Rates" section; provided, that in no event shall such interest exceed the maximum rate permitted by law.

4.6 **IRS Form W-9.** Notwithstanding anything in this Agreement to the contrary, Grantee shall have no obligation to make any payment to Owner otherwise required under this Agreement until Owner has returned to Grantee a completed Internal Revenue Service Form W-9, such W-9 form to either (i) have been provided by Grantee to Owner prior to execution of this Agreement or (ii) be provided by Grantee to Owner promptly upon execution of this Agreement.

5. **Ownership of Windpower Facilities.** Owner shall have no ownership, lien, security or other interest in any Windpower Facilities installed on the Property and expressly waives, relinquishes and quitclaims any lien or security interest in and to the Windpower Facilities or any other real or personal property of Grantee in law or equity, or any profits derived therefrom, and Grantee may remove any or all Windpower Facilities at any time. Except for the payments described in Section 4 above, Owner shall not be entitled to any other payments or benefits accrued by or from the Project, including renewable energy credits, environmental credits or tax credits.

6. **Taxes.** Owner shall pay all taxes, assessments, or other governmental charges that shall or may during the Term be imposed on, or arise in connection with, the Property itself; provided that during the Term Grantee shall be responsible for any incremental increase in such taxes, assessments, or other governmental charges directly resulting from the presence of the Windpower Facilities on the Property ("**Windpower Facilities Incremental Property Tax**"). To the extent the applicable taxing authority can provide a separate tax bill for the Windpower Facilities Incremental Property Tax, Grantee shall pay such Windpower Facilities Incremental Property Tax directly to the applicable taxing authorities prior to the date such Windpower Facilities Incremental Property Tax becomes delinquent. If a separate tax bill for the Windpower Facilities Incremental Property Tax is not available, Grantee shall pay the Windpower Facilities Incremental Property Tax within thirty (30) days following receipt of written demand from Owner of the amount of the Windpower Facilities Incremental Property Tax with a copy of the applicable tax bill. At Grantee's election, Grantee shall either pay the applicable taxing authority directly, in which case it will promptly provide Owner evidence of such payment, or Grantee shall make such payment directly to Owner.

7. **Grantee's Representations, Warranties, and Covenants (shall be binding upon Grantee, Heirs, Successors and Assigns).** Grantee hereby represents, warrants, and covenants to Owner that:

7.1 **Minimal Impacts.** Grantee agrees to conduct its Development Activities and to locate and operate its Windpower Facilities in such a way as to reasonably minimize impacts to the Property and to Owner's activities on the Property, to the extent practical, without negatively impacting the Windpower Facilities. Prior to the construction of the Windpower Facilities on the Property, Grantee shall provide Owner with a site plan indicating the approximate proposed location of such wind turbines and access roads. Grantee shall consider in good faith any suggestions or concerns Owner may have with the siting of such wind turbines and access roads. Grantee shall take commercially reasonable steps to minimize dust generated by its construction traffic. Grantee shall operate and maintain the Windpower Facilities in good order and repair throughout the term of this Agreement. Grantee shall not store materials, vehicles or equipment on the Property, except to the extent that such materials, vehicles and equipment are directly connected with the construction, operation or maintenance of the Windpower Facilities. If Owner's Property is fenced, all newly constructed access roads located on the Property shall be gated by Grantee at Grantee's expense, and Owner shall be furnished with keys or other ability to open and close such gates. Grantee shall maintain such gates as part of the Windpower Facilities.

7.2 **Agricultural Activities.** Subject to Section 8.2 below, Grantee's operation of Windpower Facilities shall not unreasonably disturb Owner's current agricultural use of the Property. Upon completion of construction, all Property disturbed by Grantee and not required for continuing operations of the Windpower Facilities, shall be restored to a condition reasonably similar to its original condition, consistent with the continued use of the Property pursuant to this Agreement. Reclamation shall include, as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion. Included in the scope of reclamation activities shall be the repair, and when reasonably determined to be necessary, the replacement of underground drainage tile that was disturbed during the construction process. Grantee shall use commercially reasonable efforts to substantially replace removed topsoil to its general original

location, with the exception of the access roads and wind turbine foundations. Except for de minimus amounts that are removed as a consequence of construction, topsoil shall not be removed from the Property without the consent of Owner.

7.3 Insurance. Grantee shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring Grantee and Owner against loss or liability caused by Grantee's occupation and use of the Property under the Easement, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Such insurance may be procured on a commercial general liability policy with a single occurrence limit or in combination with an umbrella liability policy. Certificates of such insurance shall be provided to Owner upon written request. Such insurance policy shall have a provision prohibiting cancellation without endeavoring to provide at least 30 days' notice to Owner.

7.4 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. Grantee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, 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. Any such contest or proceeding shall be controlled and directed by Grantee.

7.5 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 pursuant to the Easement; provided, however, that if Grantee wishes to contest any such lien, Grantee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond over such lien from the Property pursuant to applicable law or provide Owner with title insurance insuring Owner's interest in the Property against such lien claim.

7.6 Hazardous Materials. Grantee shall not violate any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, 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 any Environmental Law (collectively, "**Hazardous Materials**"), on or under the Property. Any current and future federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of any Hazardous Materials are referred to herein as an "**Environmental Law**". Grantee shall indemnify Owner against any such violation that is caused by Grantee or Grantee's agents or contractors and occurs after the commencement of construction of the Windpower Facilities. Grantee shall promptly notify Owner of any such violation.

7.7 GPS Coordinates. Grantee shall provide Owner with approximate GPS coordinates and, if available, as-built drawings of all underground improvements constructed on the Property within one (1) year of such construction.

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

8.1 **Owner's Authority.** Owner is the sole owner of the Property and has the unrestricted right and authority 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. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms. Each person/entity comprising Owner, as listed in the preamble to this Agreement, owns the fractional interest in the Property set forth below:

Owner:	<i>Name 1</i>	<i>Name 2</i>	<i>Name 3</i>	<i>Name 4</i>
Fractional Ownership:	[]%	[]%	[]%	[]%

8.2 **No Interference.** Owner's activities and any grant of rights Owner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with: the construction, installation, maintenance, or operation of the Windpower Facilities, whether located on the Property or elsewhere; access over the Property to such Windpower Facilities; any Development Activities; or the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Owner's activities or any rights granted by Owner to a third party shall not disturb or interfere with the wind speed or wind direction over the Property, whether by placing wind turbines, telecommunication towers or antennas, planting trees or constructing buildings or other structures, or by engaging in any other activity on the Property or elsewhere that might (i) cause a decrease in the output or efficiency of the Windpower Facilities or (ii) disturb the subsurface such that it could be reasonably expected to damage or interfere with the structural integrity of the Windpower Facilities. Owner may not use, or otherwise grant the right to use, the Property for the development of Windpower Facilities.

8.3 **Liens and Tenants.** Owner represents that there are no recorded or unrecorded liens, encumbrances, leases (including leases for tenant farmers), mortgages, deeds of trust (except as disclosed to Grantee in writing), or other exceptions (collectively, "**Liens**") to Owner's full ownership of the Property or to Owner's right, title or interest in the Property. Except as disclosed by Owner in writing to Grantee, Owner represents that there are no mortgages, deeds of trust, or similar liens or security interests encumbering all or any portion of the Property. Owner shall fully cooperate and assist Grantee, at no out-of-pocket expense to Owner, in obtaining a consent to the granting of the Easement, if necessary, and a non-disturbance agreement from each party that holds rights (recorded or unrecorded) that might interfere with Grantee's rights under this Agreement, including tenant farmers. A non-disturbance agreement is an agreement between Grantee and a third party which provides that the third party shall not disturb Grantee's possession or rights under the Easement or terminate the Easement so long as Owner is not entitled to terminate this Agreement under the provisions hereof. Grantee shall promptly reimburse Owner for any actual reasonable expenses incurred by Owner in connection with such cooperation and assistance. Owner shall provide written notice of this Agreement to any such third parties that

EXHIBIT B

Financial Terms

1. **Annual Rent.** Grantee shall pay Owner an annual rental payment ("Annual Rent") of Ten and no/100 Dollars (\$10.00) per acre of Property subject to the Easement per year beginning on the Effective Date of this Agreement and continuing until the earlier of the Operations Date, the end of the Development Term or the termination date of this Agreement. The first payment of Annual Rent shall be made within forty-five (45) calendar days of the Effective Date of this Agreement and Annual Rent payments thereafter shall be paid within forty-five (45) calendar days of each annual anniversary of the Effective Date of this Agreement.

2. **Installation Fee.** Grantee agrees to pay the following amount (the "Installation Fee"):

(a) For Properties Where Grantee Intends to Construct Wind Turbines – within forty-five (45) days after the commencement of construction of a wind turbine foundation on the Property, Grantee shall make a one-time payment to Owner of Two Thousand and no/100 Dollars (\$2,000.00) per wind turbine that will be installed on the Property, or

(b) For Properties Where Grantee Does Not Intend to Construct Wind Turbines But Intends to Construct Other Windpower Facilities – within forty-five (45) days after the commencement of construction of Windpower Facilities on the Property (where Grantee does not intend to construct a wind turbine), Grantee shall make a one-time payment to Owner of One Thousand and no/100 Dollars (\$1,000.00).

In addition, Grantee shall make another payment of the applicable Installation Fee to Owner in the event that the Operations Date has not occurred within one (1) year after the date of the initial payment by Grantee to Owner of the Installation Fee.

3. **Operating Fees.** Grantee shall pay to Owner the amounts set forth in this Section 3 of Exhibit B (collectively, the "Operating Fees") which such Operating Fees shall be payable prospectively on an annual basis as follows: the initial annual payment of the Operating Fees shall be made by Grantee to Owner within forty-five (45) days after the Operations Date and subsequent annual payments of the Operating Fees shall be paid by Grantee to Owner within 45 days after each anniversary of the Operations Date for and during the Operations Term and the Extended Term (if applicable), unless the Agreement is terminated earlier by either Party in accordance with the terms of this Agreement. After the end of the term of this Agreement, Grantee shall pay to Owner the Operating Fee for the applicable Windpower Facility (i.e., wind turbine generator, turbine access road, Collection/Transmission Facilities, or permanent meteorological tower) until the applicable Windpower Facility is physically removed from the Property in accordance with the terms of this Agreement.

3.1 **Wind Turbine Payment.** Five Thousand and no/100 Dollars (\$5,000.00) per megawatt of installed nameplate capacity for each wind turbine generator installed on the Property.

3.2 Turbine Access Road Payment. One and no/100 Dollars (\$1.00) per lineal foot of turbine access road installed on the Property.

3.3 Collection/Transmission Facilities Payment. Twenty Five Cents (\$0.25) per lineal trench foot of underground Collection/Transmission Facilities installed on the Property and Two Dollars (\$2.00) per lineal foot of the Property corridor traversed by overhead Collection/Transmission Facilities installed on the Property.

3.4 Acreage Payment. Thirty and no/100 Dollars (\$30.00) per acre of Property subject to the Easement.

3.5 Permanent Meteorological Tower Payment. Two Thousand and no/100 Dollars (\$2,000.00) for each permanent meteorological tower installed on the Property.

Grantee shall receive a credit for any Annual Rent prepaid for the year in which the Operations Term begins for Annual Rent paid and applicable to the Operations Date and any time periods thereafter. Commencing on the first anniversary of the Operations Date, such Operating Fees shall be adjusted upwards by the greater of two percent (2%) per year on a compounded basis or by the percentage change, if any, in the GDPIPD for the preceding available four quarters. "GDPIPD" means the gross domestic product implicit price deflator, as computed and published quarterly by the U.S. Department of Commerce (Index 2000=100), as presented and revised from time to time in the "Gross Domestic Product: [applicable quarter] Quarter 'Final' Press Release" released periodically by the Bureau of Economic Analysis.

4. Payment Instructions. All payments issued hereunder will be paid to Owner, as set forth in this Agreement, or its permitted successors and assigns. If Owner is comprised of more than one person or entity, then all payments will be issued by a single check payable to all such persons or entities, unless otherwise indicated below. Each person or entity holding record title to the Property hereby acknowledges and agrees that all payments are legally permitted to be made as set forth below and that no other party shall have any right to such payments or to contest the payments and allocations as set forth below. Each person receiving payment hereunder agrees to fully indemnify and hold harmless Grantee against claims by any third party in connection with its payments hereunder to the person/entities set forth herein. *Check one below:*

- A single check should be issued payable to all persons/entities comprising Owner.
- Separate checks should be issued to each person/entity comprising Owner as set forth below:

Owner:	Name 1	Name 2	Name 3	Name 4
Payment Allocation:	[]%	[]%	[]%	[]%

Owner contracts with after the Effective Date, whether a new agreement, amendment or extension of a previous agreement, or otherwise.

8.4 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, building permits, environmental impact reviews or any other approvals (collectively the "**Approvals**") required for the financing, construction, installation, monitoring, replacement, relocation, maintenance, operation or removal of Windpower Facilities, including execution, if necessary, of applications for such Approvals, and including participating in any appeals or regulatory proceedings respecting the Windpower Facilities. Owner hereby appoints Grantee as its agent for the purpose of preparing, executing, applying for, submitting and prosecuting, in Owner's name, any and all such Approvals on behalf of Owner, provided, however, that all costs incurred in connection with such Approvals shall be borne solely by Grantee. To the extent permitted by law, Owner hereby waives enforcement of any applicable setback requirements respecting the Windpower Facilities to be placed on the Property or any such facilities to be placed upon property adjacent to the Property.

8.5 Access. Upon the request of Grantee during the term of the Easement, Owner shall grant, for the term of the Easement, for no additional consideration, an easement for Access Rights over and across designated portions of Owner's property that are not part of the Property ("**Access Easement**"). Any Access Easement shall include the right to improve existing roads and lanes, shall be appurtenant to the Property, and shall inure to the benefit of Grantee and be binding upon Owner and their respective transferees, successors, and assigns, and all persons claiming under them. In the event Grantee wishes to designate any such Access Easement after the construction of the Windpower Facilities, Grantee shall do so only if reasonably required for the operation of the Windpower Facilities, there is no other reasonable access on the Property and only in locations and to the extent it does not materially interfere with Owner's use of such property.

8.6 Hazardous Materials. Owner shall not violate any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of any Hazardous Materials on or under the Property. Owner shall indemnify Grantee against any such violation that is caused by: (i) any person and exists as of the Effective Date or occurs on or before the commencement of construction of the Windpower Facilities; or (ii) Owner or Owner's agents and occurs after the commencement of construction of the Windpower Facilities. Owner shall promptly notify Grantee of any such violation.

8.7 Title Insurance. Owner agrees that within ten (10) business days of receipt, Owner shall execute and deliver to Grantee any documents reasonably required by the title insurance company selected by Grantee necessary to allow Grantee and an Easement Mortgagee to obtain policies of title insurance insuring their respective interests in the Property.

8.8 Litigation. No litigation is pending, and, to the best of Owner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or which could affect, the Property. If Owner learns that any such

litigation, action, claim or proceeding is threatened or has been instituted, Owner shall promptly deliver notice thereof to Grantee.

9. **Assignment.**

9.1 **Assignments.** Grantee shall have the right, without obtaining the consent of Owner, to do any of the following with respect to all or any portion of the Property: (i) finance Windpower Facilities; (ii) grant co-easements, separate easements, subeasements, licenses or similar rights (however denominated) to one or more persons (an "Assignee"); or (iii) 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 Assignee party may now or hereafter install on the Property. Grantee shall notify Owner in writing of any such assignment, and any such Assignee shall assume in writing the obligations of Grantee under this Agreement which Grantee will no longer be fulfilling pursuant to the terms and conditions of such assignment with respect to the Property assigned. To the extent provided for in each conveyance document, an Assignee shall have all of the rights and benefits of Grantee under and pursuant to this Agreement. Grantee shall be relieved of all of its obligations under this Agreement upon the sale, conveyance, lease, assignment or transfer ("Transfer") of its entire interest hereunder or, if only a partial interest is Transferred and such Transfer is to an affiliate of Grantee, Grantee shall be relieved of only those obligations under this Agreement relating to the partial interest Transferred to its affiliate.

9.2 **Acquisition of Interest.** The acquisition of all or any portion of Grantee's interest in the Property or the Windpower Facilities or the Easement by another person shall not require the advance consent of Owner or constitute a breach of any provision or a default under this Agreement, and Owner shall recognize the person as Grantee's proper successor.

9.3 **Assignment by Owner.** This Agreement shall not be construed to limit Owner's right to sell, transfer or convey, lease, mortgage, grant easements, licenses or similar rights or otherwise encumber the Property (each, a "Owner Transfer"); provided, however, in each case, any such Owner Transfer shall be subject and subordinate to the rights of Grantee hereunder and under the Easement.

10. **Collection/Transmission Facilities.**

10.1 **Grant of Collection/Transmission Facilities Easement.** Upon the request of Grantee during the term of the Easement, Owner shall grant to Grantee one or more easements for the construction, laying down, installation, use, replacement, relocation, removal, operation and maintenance of underground and aboveground electric collection and transmission facilities including electric transmission and distribution lines, communication lines, interconnections and switching stations on, under, over and across designated portions of the Property ("**Collection/Transmission Facilities Easement**"). Any such Collection/Transmission Facilities Easement shall contain all of the rights and privileges for Windpower Facilities as are set forth in this Agreement.

10.2 **Access.** Any Collection/Transmission Facilities Easement shall also include the right of ingress to and egress from the Collection/Transmission Facilities (whether

located on the Property, on adjacent 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.

10.3 Assignment in Connection with Collection/Transmission Facilities Lines. In connection with the exercise of the rights of Grantee hereunder and to facilitate Development Activities, Grantee shall have the right to grant to any utility or other duly authorized entity the right to construct, operate and maintain electric transmission and distribution, interconnection and switching facilities on the Property.

10.4 Term; Assignment. The term of any Collection/Transmission Facilities Easement shall be the same as the term of the Easement unless termination by Grantee of the Collection/Transmission Facilities Easement by written notice to Owner as set forth herein, and shall not expire or be terminable by Owner under any circumstances, notwithstanding Section 12.2. During the term of the Easement, Grantee shall have the right to assign or convey all or any portion of any Collection/Transmission Facilities Easement to any person on an exclusive or nonexclusive basis. Any Collection/Transmission Facilities 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. At Grantee's option, any Collection/Transmission Facilities Easement shall survive the termination of the Easement pursuant to Section 12.2 of this Agreement.

11. Mortgagee Protection. In the event that any mortgage, deed of trust or other security interest in the Easement or in any Windpower Facilities is entered into by Grantee or any Assignee (an "Easement Mortgage"), then any person who is the mortgagee of an Easement Mortgage (an "Easement Mortgagee") shall, for so long as its Easement Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 11. Grantee shall send written notice to Owner of the name and address of any such Easement Mortgagee; provided that failure of Grantee to give notice of any such Easement Mortgagee shall not constitute a default under this Agreement and shall not invalidate such Mortgage.

11.1 Easement Mortgagee's Right to Possession, Right to Acquire and Right to Assign. An Easement Mortgagee shall have the absolute right: (a) to assign its security interest and mortgage lien; (b) to enforce its lien and acquire title to the easement estate by any lawful means; (c) to take possession of and operate the Windpower Facilities or any portion thereof and to perform all obligations to be performed by Grantee hereunder, or to cause a receiver to be appointed to do so; and (d) to acquire the easement estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the easement estate to a third party. Owner's consent shall not be required for the acquisition of the encumbered easement or subeasement estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure.

11.2 Notice of Default: Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Grantee, Owner shall give written notice of the default to each Easement Mortgagee concurrently with delivery of such notice to Grantee, specifying in detail the alleged event of default and the required remedy. In the event Owner gives such a written notice of default, the following provisions shall apply:

(a) A “**monetary default**” means failure to pay when due any fee, payment, real property taxes, insurance premiums or other monetary obligation of Grantee under the Easement. Any other event of default is a “**non-monetary default**.”

(b) The Easement Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Grantee after Grantee’s receipt of notice of default, plus, in each instance, the following additional time periods: (1) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any monetary default; and (ii) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any non-monetary default, provided that such 120-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Easement Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Easement Mortgagee acts with reasonable and continuous diligence. The Easement Mortgagee shall have the absolute right to substitute itself for Grantee and perform the duties of Grantee hereunder for purposes of curing such defaults. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Easement Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Grantee hereunder. Owner shall not take any action to terminate the Easement in law or equity prior to expiration of the cure periods available to an Easement Mortgagee as set forth above.

(c) During any period of possession of the Property by an Easement Mortgagee (or a receiver requested by such Easement Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by an Easement Mortgagee, the Easement Mortgagee shall pay or cause to be paid the Operating Fees and all other monetary charges payable by Grantee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Grantee’s easement estate by the Easement Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, the Easement shall continue in full force and effect and the Easement Mortgagee or party acquiring title to Grantee’s easement estate shall, as promptly as reasonably possible, commence the cure of all defaults of Grantee’s defaults which are reasonably susceptible of being cured by the Easement Mortgagee or party acquiring title, hereunder and thereafter diligently process such cure to completion, whereupon such defaults shall be deemed cured without incurring any default hereunder.

(d) Any Easement Mortgagee or other party who acquires Grantee’s easement interest pursuant to foreclosure or assignment in lieu of foreclosure shall be liable to perform the obligations imposed on Grantee by the Easement so long as such Easement Mortgagee or other party has ownership of the easement estate or possession of the Property.

(e) Neither the bankruptcy nor the insolvency of Grantee shall be grounds for terminating the Easement as long as all material obligations of Grantee under the terms of the Easement and this Agreement are performed by the Easement Mortgagee in accordance with the terms of the Easement and this Agreement.

(f) Nothing herein shall be construed to extend the Easement beyond the Term or to require an Easement Mortgagee to continue foreclosure proceedings after the default has been cured. If the default is cured and the Easement Mortgagee discontinues foreclosure proceedings, the Easement shall continue in full force and effect.

11.3 New Easement to Mortgagee. If the Easement or this Agreement terminates because of Grantee's default or if the Easement is foreclosed, or if the Easement or this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Owner shall, upon written request from any Easement Mortgagee within ninety (90) days after such event, enter into a new easement for the Property, on the following terms and conditions:

(a) The terms of the new easement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the terms of the Easement, at the same rent and subject to the same terms and conditions set forth in this Agreement.

(b) The new easement shall be executed within thirty (30) days after receipt by Owner of written notice of the Easement Mortgagee's election to enter a new easement, provided said Easement Mortgagee: (i) pays to Owner all rent and other monetary charges payable by Grantee under the terms of the Easement and this Agreement up to the date of execution of the new easement, as if the Easement had not been terminated, foreclosed, rejected or disaffirmed; (ii) performs all other obligations of Grantee under the terms of the Easement and this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Easement Mortgagee; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Grantee and would have accrued under the Easement and this Agreement up to the date of commencement of the new easement, except those obligations which constitute non-curable defaults as defined above. Any new easement granted to the mortgagee shall enjoy the same priority as the Easement over any lien, encumbrances or other interest created by Owner.

(c) At the option of the Easement Mortgagee, the new easement may be executed by a designee of such Easement Mortgagee without the Easement Mortgagee assuming the burdens and obligations of Grantee thereunder.

(d) If more than one Easement Mortgagee makes a written request for a new easement pursuant hereto, the new easement shall be delivered to the Easement Mortgagee requesting such new easement whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(e) The provisions of this Section 11 shall survive the termination, rejection or disaffirmance of the Easement or this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Owner, Grantee and such Easement Mortgagee, and, from the effective date of such termination, rejection or disaffirmance of the Easement to the date of execution and delivery of such new easement, such Easement Mortgagee may use and enjoy said Property without hindrance by Owner or any person claiming by, through or under Owner, provided that all of the conditions for a new easement as set forth herein are complied with.

11.4 Easement Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the parties agree that so long as there exists an unpaid Easement Mortgage, the Easement and this Agreement shall not be modified or amended and Owner shall not accept a surrender of the Property or any part thereof or a cancellation, termination or release of the Easement or this Agreement from Grantee prior to expiration of the term without the prior written consent of the Easement Mortgagee. This provision is for the express benefit of and shall be enforceable by such Easement Mortgagee.

11.5 No Waiver. No payment made to Owner by an Easement Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of the Easement; and an Easement Mortgagee, having made any payment to Owner pursuant to Owner's wrongful, improper or mistaken notice or demand, shall be entitled to the return of any such payment.

11.6 No Merger. The parties intend that there shall be no merger of the Easement, or of the easement estate created by the Easement, with the fee estate in the Property if the Easement or the easement estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property and all persons (including Easement Mortgagee) having an interest in the Easement or in the estate of Owner and Grantee shall join in a written instrument effecting such merger and shall duly record the same.

11.7 Estoppel Certificates, Etc. Owner shall execute such estoppel certificates (certifying as to such matters as Grantee may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Grantee, any Assignee or Easement Mortgagee may reasonably request from time to time.

12. Termination, Default, and Remedies.

12.1 Grantee's Right to Terminate. Grantee shall have the right to terminate the Easement and this Agreement as to all or any part of the Property at any time and without cause, effective upon 30 days' written notice to Owner from Grantee. In the event any such notice is delivered to Owner by Grantee after wind turbines have been installed on the Property, such notice shall be accompanied by a statement by Grantee setting forth how Grantee shall comply with the provisions of Section 12.3.

12.2 Owner's Right to Terminate. Except as qualified by Section 11, Section 12.4, and Section 12.5 below, Owner shall have the right to terminate the Easement (including all or any portion of its rights in this Agreement and the easements granted hereunder) if (a) Grantee has not commenced construction of Windpower Facilities for the Project on the Property by the date which is ten (10) years from the Effective Date or (b) a material default in the performance of Grantee's obligations under this Agreement shall have occurred and remains uncured following the applicable notice and cure periods provided herein.

12.3 Effect of Termination. Upon termination of the Easement, Grantee shall, as soon as practicable thereafter, remove above-ground and below-ground (to a depth of four (4) feet below grade) Windpower Facilities from the Property. All Property disturbed by Grantee shall be restored to a condition reasonably similar to its original condition. Reclamation shall include, as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion. If Grantee fails to remove such Windpower Facilities within twelve (12) 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 and documented costs of removal and restoration incurred by Owner.

12.4 Default. If a Party (the "**Defaulting Party**") fails to perform an obligation under this Agreement the other Party (the "**Non-Defaulting Party**") shall not have the right to exercise any remedies hereunder if the default is cured within sixty (60) days of the Defaulting Party receiving written notice of such default specifying in detail the default and the required remedy from the Non-Defaulting Party; provided, that if the nature of the default requires, in the exercise of commercially reasonable diligence, more than sixty (60) days to cure, then the Defaulting Party shall not be in default as long as it commences performance of the cure within sixty (60) days and thereafter completes such cure with commercially reasonable diligence. Further, if the Parties have a good faith dispute as to whether a payment is due hereunder, the alleged Defaulting Party may deposit the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) in escrow with any reputable third party escrow, or by interpleading the same, which amount shall remain undistributed and shall not accrue interest penalties, and no default shall be deemed to have occurred, until final decision by a court of competent jurisdiction or upon agreement by the Parties. No such deposit shall constitute a waiver of the Non-Defaulting Party's right to institute legal action for recovery of such amounts.

12.5 Remedies. Except as qualified by Section 11 regarding Mortgagee Protections, should a default remain uncured by the Defaulting Party beyond the applicable cure periods, the Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, all of which remedies shall be cumulative, including the right to enforce this Agreement by injunction, specific performance or other equitable relief. Notwithstanding anything in this Agreement to the contrary or any rights or remedies Owner might have at law or in equity, if any of Grantee's Windpower Facilities are then located on the Property and Grantee fails to perform any of its non-monetary obligations hereunder, then Owner shall be limited to pursuing damages and Owner shall not commence any action to terminate or cancel this Agreement.

13. Miscellaneous.

13.1 Force Majeure. If performance of the Easement 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 fire, earthquake, flood, or other casualty, condemnation or accident; strikes or labor disputes; war, civil strife or other violence; 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.

13.2 Confidentiality. To the fullest extent allowed by law, Owner shall maintain, and shall cause its Related Persons to maintain, in the strictest confidence, for the sole benefit of Grantee, all information pertaining to the financial terms of or payments under this Agreement, Grantee's site or product design, methods of operation, methods of construction, power production or availability of the Windpower Facilities, and the like, whether disclosed by Grantee or discovered by Owner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Owner or its employees or agents, or (ii) 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. To the full extent permitted by law, Owner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Grantee.

13.3 Successors and Assigns. The Easement and the terms of 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 9 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 that hold a direct ownership interest in the Easement or this Agreement and actually are exercising rights under the Easement or this Agreement to the extent consistent with such interest.

13.4 Memorandum. Owner and Grantee agree to record, at Grantee's expense, a Memorandum of Agreement Regarding Easements that incorporates the terms of this Agreement for purposes of constructive notice to third parties, which such Memorandum shall be substantially in the form of Exhibit C hereof. The Memorandum has been executed concurrently herewith in recordable form. Owner hereby consents to the recordation of the interest of an Assignee in the Property and no further action by Owner shall be required to affect such recordation.

13.5 Notices. All notices or other communications required or permitted by this Agreement, including payments to Owner, shall be in writing and shall be deemed given when personally delivered to Owner or Grantee, or in lieu of such personal delivery services, five (5) days after deposit in the United States mail, first class, postage prepaid, addressed as follows:

If to Owner:

If to Grantee:

INVENERGY WIND DEVELOPMENT
LLC
c/o Invenergy LLC
One South Wacker Drive, Suite 1800
Chicago, Illinois 60606
Attn: General Counsel

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.

13.6 Entire Agreement; Amendments. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between Owner and Grantee respecting its subject matter, and supersedes any and all oral or written agreements. 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 a writing signed by both Parties. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party. Provided that no material default in the performance of Grantee's obligations under this Agreement shall have occurred and remain uncured, Owner shall cooperate with Grantee in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee for the purpose of implementing the provisions contained in this Agreement or for the purpose of preserving the security interest of any Assignee or Easement Mortgagee.

13.7 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Iowa. 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 courts located in the county in which the Property is situated. 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.

13.8 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. Notwithstanding any other provision of this Agreement, the Parties agree that in no event shall the term of this Agreement, the Easement, any Collection/Transmission Facilities Easement or any Access Easement be longer than, respectively, the longest period permitted by applicable law.

13.9 Tax and Renewable Energy Credits. If under applicable law, the holder of an easement becomes ineligible for any tax credit, renewable energy credit, environmental credit or any other benefit or incentive for renewable energy established by any local, state or federal government, then, at Grantee's option, Owner and Grantee shall exercise good faith and negotiate

an amendment to 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 credit, benefit or incentive.

13.10 Right to Record. Owner and Grantee agree that Grantee has the ongoing and continuous right to record this Agreement (which recordation may exclude payment terms set forth herein), at Grantee's sole discretion, in the public records of _____ County, Iowa. No further action by Owner shall be required to affect such recordation.

13.11 Succession. This Agreement supersedes and replaces any prior agreement related to the Easement between Owner and Grantee.

13.12 Exceptions and Special Conditions. Any exceptions or special conditions to this Agreement are set forth in Exhibit D attached hereto and incorporated herein.

13.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

13.14 Waiver of Right to Trial by Jury. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

13.15 Public Officials. Owner acknowledges that its receipt of monetary and other good and valuable consideration hereunder may represent a conflict of interest if Owner is a government employee or otherwise serves on a governmental entity with decision-making authority (a "**Public Official**") as to any rights Grantee may seek, or as to any obligations that may be imposed upon Grantee in order to develop and/or operate the Project ("**Development Rights**"), and Owner hereby agrees to (1) recuse him/herself from all such decisions related to Grantee's Development Rights unless such recusal is prohibited by law or is not reasonably practicable considering the obligations of such Public Official's position and (2) recuse him/herself from all such decisions related to Grantee's Development Rights if such recusal is required by law. If Owner is not required pursuant to (1) and (2) above to recuse him/herself from a decision related to Grantee's Development Rights, Owner shall, in advance of any vote or other official action on the Development Rights, disclose the existence of this Agreement (but not the financial terms therein) at an open meeting of the relevant governmental entity Owner serves on as a Public Official. Additionally, if Owner is a Public Official and any of Owner's spouse, child or other dependent has a financial interest in the Project, Owner shall disclose such relationship (but not the financial terms thereof) at an open meeting of the relevant governmental entity Owner serves

on as a Public Official, prior to participation in any decision related to Grantee's Development Rights.

13.16 Condemnation. If eminent domain proceedings are commenced against all or any portion of the Property and the taking and proposed use of such property would prevent or adversely affect Grantee's construction, installation or operation of Windpower Facilities on the Property, the Parties shall either amend this Agreement to relocate the Windpower Facilities, or, at Grantee's option, this Agreement shall terminate in which event neither party shall have any further obligations hereunder. Grantee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Windpower Facilities, the loss of any such Windpower Facilities, or the loss of Grantee's use of the Easement Premises.

13.17 Indemnity.

(a) Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and such other Party's Related Persons (as defined below)(each, an "**Indemnified Party**") from and against any and all claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, costs and expenses, including reasonable attorneys', investigators' and consulting fees, court costs and litigation expenses (collectively, "**Claims**") suffered or incurred by such Indemnified Party, arising from:

(i) physical damage to the Indemnified Party's property to the extent caused by the Indemnifying Party or any Related Person thereof (which (i) in Grantee's case, shall include damage to any Windpower Facilities and (ii) in Owner's case, shall include damage to crops and livestock),

(ii) physical injuries or death to or of the Indemnified Party or the public, to the extent caused by the Indemnifying Party or any Related Person thereof (including by reason of any hunting on the Property),

(iii) any Default of any covenant which remains uncured beyond applicable cure periods, and any failure to be true of any representation or warranty, made by the Indemnifying Party under this Agreement,

(iv) the presence or release of Hazardous Materials in, under, on or about the Property, which are or were brought or permitted to be brought onto the Property by the Indemnifying Party or any Related Person thereof,

(v) the violation of any Environmental Law by the Indemnifying Party or any Related Person thereof, or

(vi) for Owner's protection and benefit only, Claims by neighboring or area landowners arising from Grantee's use of the Property;

(b) Notwithstanding, the foregoing, in no event shall the Indemnifying Party be responsible for defending, indemnifying or holding harmless any Indemnified Party to the extent of any Claim caused by, arising from or contributed to by the negligence or willful misconduct of such Indemnified Party or any Related Person thereof.

loss of: (c) The reference to property damage in this Section 13.17 does not include the

- (i) rent;
- (ii) business opportunities;
- (iii) profits and the like; or

(iv) crops or other damages specifically addressed in this Agreement, that may result from Grantee's exercising its rights granted pursuant to this Agreement (any such losses shall be compensated solely through the provisions of **Exhibits B** and/or **Exhibit C**, as applicable).

(d) The foregoing indemnity shall not extend to (i) property damage or personal injuries to Owner attributable to risks of known and unknown dangers associated with electrical generating facilities, such as flickering and electromagnetic fields or (ii) a Party's lawful enforcement of its rights under this Agreement.

(e) As used herein the term "**Related Person**" shall mean any affiliates, contractors, lessees, and sublessees of a Party, and each of their respective, principals, officers, employees, servants, agents, representatives, subcontractors, licensees, invitees, guests, successors and/or assigns, but explicitly excluding the other Party and its Related Persons.

(f) This indemnity shall survive expiration or earlier termination of this Agreement.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, Owner and Grantee, acting through their duly authorized representatives, have executed this Agreement with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Agreement.

“Owner”

“Grantee”

[Owner’s Name]

**INVENERGY WIND DEVELOPMENT
LLC**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

[Owner’s Name]

By: _____

Name: _____

Title: _____

EXHIBIT A
Legal Description

Schedule of Locations:

<u>Parcel Number</u>	<u>County</u>	<u>Township/ Range</u>	<u>Section</u>	<u>Acreage</u>
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Total

Legal Description:

EXHIBIT B

Financial Terms

1. **Annual Rent.** Grantee shall pay Owner an annual rental payment ("Annual Rent") of Ten and no/100 Dollars (\$10.00) per acre of Property subject to the Easement per year beginning on the Effective Date of this Agreement and continuing until the earlier of the Operations Date, the end of the Development Term or the termination date of this Agreement. The first payment of Annual Rent shall be made within forty-five (45) calendar days of the Effective Date of this Agreement and Annual Rent payments thereafter shall be paid within forty-five (45) calendar days of each annual anniversary of the Effective Date of this Agreement.

2. **Installation Fee.** Grantee agrees to pay the following amount (the "Installation Fee"):

(a) For Properties Where Grantee Intends to Construct Wind Turbines – within forty-five (45) days after the commencement of construction of a wind turbine foundation on the Property, Grantee shall make a one-time payment to Owner of Two Thousand and no/100 Dollars (\$2,000.00) per wind turbine that will be installed on the Property, or

(b) For Properties Where Grantee Does Not Intend to Construct Wind Turbines But Intends to Construct Other Windpower Facilities – within forty-five (45) days after the commencement of construction of Windpower Facilities on the Property (where Grantee does not intend to construct a wind turbine), Grantee shall make a one-time payment to Owner of One Thousand and no/100 Dollars (\$1,000.00).

In addition, Grantee shall make another payment of the applicable Installation Fee to Owner in the event that the Operations Date has not occurred within one (1) year after the date of the initial payment by Grantee to Owner of the Installation Fee.

3. **Operating Fees.** Grantee shall pay to Owner the amounts set forth in this Section 3 of Exhibit B (collectively, the "Operating Fees") which such Operating Fees shall be payable prospectively on an annual basis as follows: the initial annual payment of the Operating Fees shall be made by Grantee to Owner within forty-five (45) days after the Operations Date and subsequent annual payments of the Operating Fees shall be paid by Grantee to Owner within 45 days after each anniversary of the Operations Date for and during the Operations Term and the Extended Term (if applicable), unless the Agreement is terminated earlier by either Party in accordance with the terms of this Agreement. After the end of the term of this Agreement, Grantee shall pay to Owner the Operating Fee for the applicable Windpower Facility (i.e., wind turbine generator, turbine access road, Collection/Transmission Facilities, or permanent meteorological tower) until the applicable Windpower Facility is physically removed from the Property in accordance with the terms of this Agreement.

3.1 **Wind Turbine Payment.** Five Thousand and no/100 Dollars (\$5,000.00) per megawatt of installed nameplate capacity for each wind turbine generator installed on the Property.

3.2 Turbine Access Road Payment. One and no/100 Dollars (\$1.00) per lineal foot of turbine access road installed on the Property.

3.3 Collection/Transmission Facilities Payment. Twenty Five Cents (\$0.25) per lineal trench foot of underground Collection/Transmission Facilities installed on the Property and Two Dollars (\$2.00) per lineal foot of the Property corridor traversed by overhead Collection/Transmission Facilities installed on the Property.

3.4 Acreage Payment. Thirty and no/100 Dollars (\$30.00) per acre of Property subject to the Easement.

3.5 Permanent Meteorological Tower Payment. Two Thousand and no/100 Dollars (\$2,000.00) for each permanent meteorological tower installed on the Property.

Grantee shall receive a credit for any Annual Rent prepaid for the year in which the Operations Term begins for Annual Rent paid and applicable to the Operations Date and any time periods thereafter. Commencing on the first anniversary of the Operations Date, such Operating Fees shall be adjusted upwards by the greater of two percent (2%) per year on a compounded basis or by the percentage change, if any, in the GDPIPD for the preceding available four quarters. "GDPIPD" means the gross domestic product implicit price deflator, as computed and published quarterly by the U.S. Department of Commerce (Index 2000=100), as presented and revised from time to time in the "Gross Domestic Product: [applicable quarter] Quarter 'Final' Press Release" released periodically by the Bureau of Economic Analysis.

4. Payment Instructions. All payments issued hereunder will be paid to Owner, as set forth in this Agreement, or its permitted successors and assigns. If Owner is comprised of more than one person or entity, then all payments will be issued by a single check payable to all such persons or entities, unless otherwise indicated below. Each person or entity holding record title to the Property hereby acknowledges and agrees that all payments are legally permitted to be made as set forth below and that no other party shall have any right to such payments or to contest the payments and allocations as set forth below. Each person receiving payment hereunder agrees to fully indemnify and hold harmless Grantee against claims by any third party in connection with its payments hereunder to the person/entities set forth herein. *Check one below:*

- A single check should be issued payable to all persons/entities comprising Owner.
- Separate checks should be issued to each person/entity comprising Owner as set forth below:

Owner:	Name 1	Name 2	Name 3	Name 4
Payment Allocation:	[]%	[]%	[]%	[]%