

# WIND FARM EASEMENT AGREEMENT

This is a comprehensive agreement containing all of the parties' agreements regarding the proposed Top of Iowa Wind Farm, Phase II ("Wind Farm"). It includes a grant of easements and establishes the rights of the parties and their duties to each other with regard to the development, design, financing, construction, operation, repair, maintenance, replacement, and removal of all Wind Farm Improvements. Capitalized terms have the meanings given them in this agreement.

1. **PARTIES.** The parties to this agreement are Northern Iowa Windpower II, LLC, a Delaware limited liability company, and its successors in interest ("Northern II") whose contact and notice information for purposes of this agreement is:

Northern Iowa Windpower II, LLC  
c/o Midwest Renewable Energy Corporation  
Attention: Stephen F. Dryden  
740 Seaview Drive  
Juno Beach, FL 33408  
Work 561-691-3316  
Fax 561-691-3284  
E-Mail [steve.dryden@midwest-renewable.com](mailto:steve.dryden@midwest-renewable.com)

With copy to:

Terry Monson  
Nyemaster Law Firm  
700 Walnut, Ste. 1600  
Des Moines, IA 50309  
Work 515-283-8024  
Fax 515-283-3108  
E-Mail [tmonson@nyemaster.com](mailto:tmonson@nyemaster.com)

and

Vivian Thoen as life tenant, Vivian Thoen as Conservator for Dallas Thoen as life tenant, Dennis Thoen and Marlis Labonnie Thoen, husband and wife, Sandra Miner, a single person, Bonnie Stanton, a single person, Roxianne Reyerson and Travis Reyerson, wife and husband, Patricia Edenfield, a single person, Sherry Burns, a single person, and Shelly Juhl n/k/a Shelly Thoen, a single person, and their successors in interest ("Owner"), whose contact and notice information for purposes of this agreement is:

Vivian Thoen  
1133 410th Street  
Kensett, IA 50448

2. **EASEMENT PLANS AND EXHIBITS.** The property affected by this agreement is Owner's real property described on attached **Exhibit A** ("Owner's Property"). **Exhibit B** is the preliminary Easement Plan attached to this agreement at the time it is signed. **Exhibit B** shows the approximate planned location of all wind turbine generators ("Turbines"), electrical collection system facilities ("Collection Facilities"), meteorological towers ("Met Towers"), access roads, entrances, fences and gates, drainage systems, signs, information kiosk, television signal booster equipment and tower, operations and maintenance building, and other structures, rights and facilities used in the

construction, operation and maintenance of the Wind Farm (collectively, "Wind Farm Improvements"). **Exhibit B** also shows the location of the Turbine Site, Access, Collection Facilities, and Construction Easements as well as any Collection Line and Met Tower Site Easements that may be located on the Owner's Property. "**Exhibit C**" means the final as-built Easement Plan to be attached to this agreement as a replacement for **Exhibit B** after construction of the Wind Farm Improvements and will include any changes from **Exhibit B** agreed and approved by the parties during construction of the Wind Farm. **Exhibit C** will show the exact locations of all Wind Farm Improvements as constructed on Owner's Property and the location of the Turbine Site, Access, Collection Facilities, and Construction Easements as well as any Collection Line and Met Tower Site Easements as finally agreed and approved by the parties.

**3. GRANT AND TERM OF EASEMENTS.** Owner grants to Northern II and Northern II agrees to purchase from Owner and to use in compliance with this agreement the following easements (collectively, "Easements"). The portions of Owner's Property subject to the Easements are sometimes referred to as the "Easement Properties." The Access, Collection Facilities, Overhang, Construction, Wind Non-Obstruction, Noise and Shadow, and Collection Line Easements shall be perpetual for so long as the Wind Farm, the substation or any of the Wind Farm Improvements, including replacements, comprising substation and Wind Farm exist unless terminated in writing by Northern II. The term of the Turbine Site Easements ("Term") shall begin upon signing of this Easement by all parties and satisfaction of the conditions precedent in Section 4 ("Effective Date"), and shall end twenty-five (25) years after the Wind Farm begins Commercial Operation unless renewed or terminated as provided in this agreement. "Commercial Operation" for purposes of this agreement shall mean the date the Wind Farm Improvements are constructed, tested, interconnected with the transmission provider's transmission and distribution system, staffed and operational as determined by Northern II and specified in a Notice of Commercial Operation delivered by Northern II to Owner. Each of the Easements granted is irrevocable and for the exclusive use and benefit of Northern II unless otherwise specified in this agreement. The Easements are granted subject to Owner's retained right to use the Easement Properties for agricultural uses that do not and in Northern II's sole determination, informed by appropriate professional engineering and meteorological opinions, will not interfere with the Wind Farm or the enjoyment of the rights granted to Northern II in this agreement.

**3.1 Turbine Site Easement.** Owner grants Northern II a "Turbine Site Easement" to construct, operate and maintain a Turbine used to convert wind energy to electrical energy on each "Turbine Site" identified and located as shown on the Easement Plan attached as **Exhibit B**. A "Turbine" shall include the nacelle and its contents, the foundation, the tower on which it is mounted, a pad mounted turbine transformer, and batteries and other devices for storage of electrical energy serving the Turbine. Northern II may also locate Collection Facilities as defined in Section 3.3 (other than a Substation), as well as access roads, crane pads and parking areas on each Turbine Site. Each portion of Owner's Property subject to the burden of this Turbine Site Easement is referred to as a "Turbine Site Easement Property." After the Commercial Operation date, crop loss or damage on Turbine Site Easement Properties is at Owner's risk. No damages will be paid for compaction on the Turbine Site Easement Properties.

**3.2 Access Easement.** Owner grants Northern II an "Access Easement" on those portions of Owner's Property identified and located as shown on **Exhibit B** ("Access Easement Property") for unobstructed vehicular and pedestrian ingress to and egress from the Wind Farm Improvements, whether located on or off Owner's Property. Northern II shall have the right to travel over, across and along the Access Easement Property by means of existing roads and lanes, and by roads Northern II or Owner may construct or improve from time to time on, over, and across the Access Easement Property in the locations shown on **Exhibit B**.



Owner reserves the right to use all roads on the Access Easement Property, but agrees that Owner shall not obstruct or damage the roads and shall not permit others to do so or in any other way interfere with Northern II's rights under this Access Easement. Owner and Northern II grant to the owner of any property abutting Owner's Property an easement for ingress and egress to the abutting property, for the conduct of farming on the abutting property, over any portion of the Access Easement Property that is a part of the width of a larger access easement straddling a property line of the abutting property.

3.3 Collection Facilities Easement. Owner grants Northern II an easement for the construction, operation, maintenance, replacement, relocation or removal of Collection Facilities (other than a Substation and Collection Line) on and under the Collection Facilities Easement Property identified and located as shown on **Exhibit B**. "Collection Facilities" means the electrical substation ("Substation"), batteries and other devices for storage of electrical energy, underground electrical cables and wires, and telecommunications lines, junction or splice boxes and all other devices and equipment used to connect the Turbines to electrical transmission lines connected to the power grid, and to the Wind Farm's Met Towers and operations and maintenance facilities. Collection Facilities located on the surface of the Collection Facilities Easement Property shall be limited to junction and splice boxes, if any, as and where shown on **Exhibit B**; all other Collection Facilities shall be buried at least forty-eight (48) inches beneath the surface of the Collection Facilities Easement Property except with the prior, written approval of Owner. After the Commercial Operation date, crop loss or damage and compaction on those portions of the Collection Facilities Easement Property located within the Turbine Site and Access Easement Properties shall be at Owner's risk. As to those portions of the Collection Facilities Easement Property located outside the Turbine Site and Access Easement Properties, crop damage and compaction damages will be paid as provided in the Construction Easement.

3.4 Overhang Easement. Owner grants Northern II an easement for the right and privilege to permit the rotors of Turbines located on adjacent properties to overhang (the "Overhang Easement Property") by no more than 150 feet at a height of at least 100 feet above the ground ("Overhang Easement"). Owner shall not interfere with the operation of Turbine rotors that overhang the Overhang Easement Property.

3.5 Construction Easement. Owner grants Northern II a "Construction Easement" for purposes of constructing, maintaining, repairing, replacing, and removing all or any part or element of the Wind Farm Improvements whether located on or off Owner's Property. The portion of Owner's Property subject to the burden of this easement is referred to as the "Construction Easement Property" and is identified and located as shown on **Exhibit B**. Northern II may exercise its right to use all or any part of the Construction Easement Property as and when Northern II deems it necessary or advisable to do so to perform the activities for which this Construction Easement is granted. This Construction Easement also shall permit workers on foot or in a pickup truck assisting with installation or removal of the rotor on any Turbine to go onto Owner's Property up to 800 feet in any direction from the base of the Turbine to hold tag lines securing the nacelle and rotor while they are being lifted into place. After each use of the Construction Easement, Northern II to the extent reasonably possible shall restore the Construction Easement Property to the condition it was in before Northern II's use.

Each time Northern II exercises its rights under this Construction Easement it shall compensate Owner for all crops lost or destroyed by reason of the use, but in no case shall Northern II be required to pay more than a single, total crop loss in any one crop year on any given property. Northern II shall pay Owner compaction damages if a use of this Construction Easement causes significant compaction of all or a part of the Construction Easement Property. The compensation paid by Northern II to Owner for that use shall be double the damages for the crops lost or destroyed in the area compacted as calculated below (i.e. if crop damage is \$10, compaction damages will be an additional \$10 for a

total payment of \$20 for that use of the Construction Easement). In consideration of this payment, no additional damages shall be paid in future years for that episode of compaction. Damages will be calculated by the following formula: Price x Yield Per Acre x Acres Damaged = Damages. Prices for damaged or destroyed crops will be based on the average of the last previous March 1<sup>st</sup> and September 1<sup>st</sup> Chicago Board of Trade prices for that crop. Yield will be the average of the previous three 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 Administration 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 have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent. Payment shall be made within 30 days after determining extent of crop or compaction damages.

3.6 Wind Non-Obstruction, Noise and Shadow Easements. Owner grants Northern II an irrevocable, exclusive Wind Non-Obstruction Easement for the right and privilege to use, maintain and capture the free and unobstructed flow of wind currents over and across the Owner's Property as described in **Exhibit A** ("Wind Non-Obstruction Easement Property"). Owner shall not engage in any activity on Owner's Property or elsewhere that might cause "Interference" with operation of the Wind Farm. "Interference" includes any activity that interferes with wind speed or direction over any Turbine Site or Met Tower Site Easement Properties in the Wind Farm; causes a decrease in the output or efficiency of any Turbine or accuracy of any meteorological equipment; or otherwise interferes with Northern II's exercise of any rights or the Easements granted in this agreement. Owner reserves the right to erect structures on Owner's Property in compliance with all applicable laws and ordinances except as specifically limited in this agreement. Owner must consult with and obtain Northern II's prior written approval as to the location of all structures greater than fifty (50) feet in height located six hundred fifty (650) feet or less from any Turbine or Met Tower in the Wind Farm. Approval shall be based on whether, in Northern II's sole judgment, informed by appropriate professional engineering and meteorological opinions, the proposed structures at the proposed location are likely to cause Interference. This grant of Wind Non-Obstruction Easement expressly includes the right of Northern II to enter on any part of Owner's Property to enforce Northern II's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference. Northern II shall consult with Owner before making any such removals.

Owner also grants Northern II a "Noise Easement" for the right and privilege to generate and maintain audible noise levels in excess of fifty-five (55) db(A) on and above the Noise Easement Property at any or all times of the day or night ("Noise Easement"). The "Noise Easement Property" shall mean Owner's Property up to but not including the outer wall of each presently existing occupied residence on Owner's Property. If noise levels emanating from the Turbines exceed fifty-five (55) db(A) at the outer wall of any presently existing occupied residence on Owner's Property more than five percent (5%) of the hours in any calendar month, as measured by an independent professional applying commonly accepted measurement instruments and standards, Northern II shall reduce the Turbine caused noise level at the outer wall of the residence to 55 db(A). Measures to be taken by Northern II may include installing landscaping, insulation, or other sound barriers at agreed locations on or off Owners' Property; installing insulation or sound deadening material in the offending Turbine(s); or, changing the operation of the Turbine(s) to reduce noise output.

In addition, Owner grants Northern II a "Shadow Easement" for the right and privilege to cast shadows of the Turbine towers and rotors and Met Towers, wherever located, onto Owner's Property. If in Owner's judgment the shadows cast at any presently occupied residence on Owner's Property substantially interfere with the use and enjoyment of the residence, Northern II shall promptly investigate the nature and extent of the problem and the best methods of correcting any problems found to exist. Northern II at its expense, with agreement of Owner, will then promptly undertake

measures such as tree planting or installation of awnings, draperies or other window treatments necessary to mitigate the effects of the offending shadow.

**3.7 Collection Line Easement.** If shown on **Exhibit B**, Owner grants Northern II a "Collection Line Easement" within a strip of Owner's Property identified and located as shown on **Exhibit B** ("Collection Line Easement Property") to construct, operate, maintain replace and remove underground and aboveground electrical collection lines, including related telecommunications lines, poles and appurtenances, connecting Collection Facilities lying in the Collection Facilities Easement to the Substation. Unless otherwise shown and approved by Owner on **Exhibit B**, the Collection Line Easement Property includes all of Owner's Property lying within the adjacent public road right of way (subject to prior approval of other easement holders within the road right of way) plus a twenty-five (25) foot strip of Owner's Property parallel and adjacent to the public road right of way. If aboveground Collection Lines are installed, poles shall be located in the public road right of way except with prior written approval of Owner as shown on **Exhibit B** and may have cross-arms up to twenty (20) feet in length that may overhang any part of the Collection Line Easement Property. There shall be no guy wires except as approved by Owner with compensation as provided in **Exhibit D**. If underground Collection Lines are installed, the Collection Lines shall be buried at least 48 inches below the surface in the public road right of way or within the Collection Line Easement Property as near the public road right of way as is technically feasible.

This easement includes the right of free and unobstructed access to all of Northern II's improvements within the Collection Line Easement Property. After each use of the Collection Line Easement Property, Northern II to the extent reasonably possible shall restore the Collection Line Easement Property to the condition it was in before Northern II's use. Northern II shall have the absolute right to remove or destroy crops growing in the Collection Line Easement Property as reasonably necessary to enjoyment of its Collection Line Easement Property rights provided it compensates Owner for the damage in the manner provided in the grant of Construction Easement.

**3.8 Met Tower Site Easement.** If shown on **Exhibit B**, Owner grants Northern II an easement to construct, operate, maintain and remove a Met Tower and Collection Facilities (other than a Substation) on each Met Tower Site identified and located as shown on **Exhibit B**. Each Met Tower Site subject to the burden of this easement is referred to as a "Met Tower Site Easement Property." After the Commercial Operation date, crop loss or damage on Met Tower Site Easement Properties is at Owner's risk. No damages will be paid for compaction on the Met Tower Site Easement Properties.

**3.9 Television Signal Booster Tower Easement.** If shown on **Exhibit B**, Owner grants Northern II an easement to construct, operate, maintain and remove a Television Signal Booster Tower identified and located as shown on **Exhibit B**. After the Commercial Operation date, crop loss or damage on Television Signal Booster Tower Site Easement Property is at Owner's risk. No damages will be paid for compaction on the Television Signal Booster Tower Site Easement Properties.

#### **4. CONDITIONS PRECEDENT AND PROCEDURE FOR CHANGED OR PARTIAL PROJECT**

**4.1 Owner's Conditions Precedent.** This agreement shall be of no force and effect until Owner has reviewed and approved the location of all Wind Farm Improvements and Easements located on Owner's Property as shown on **Exhibit B**.

**4.2 Northern II's Conditions Precedent.** This agreement shall be of no force and effect until Northern II is reasonably satisfied all of the following have occurred:



4.2(a) Receipt by Northern II of environmental consultants' reports confirming there are no environmental conditions on the Easement Properties that would interfere with the Wind Farm Improvements or cause Northern II to incur environmental liability.

4.2(b) Receipt by Northern II of easements or other agreements from adjoining property owners as reasonably deemed necessary by Northern II to permit construction of the Wind Farm Improvements in the locations agreed by the parties.

4.2(c) Receipt by Northern II (after exhaustion of all administrative and judicial appeal rights, if Northern II in its sole discretion elects to exercise such rights) of all permits required for construction and operation of the Wind Farm Improvements comprising the Wind Farm, whether located on or off the Owner's Property.

4.2(d) Approval by Northern II of Owner's title to the Easement Properties based on title opinions or title insurance commitments obtained by Northern II at its expense.

4.2(e) Receipt by Northern II from third parties, such as mortgagees and tenants, of all subordination, non-disturbance and other agreements necessary to assure Northern II's right to undisturbed use and enjoyment of the Easement Properties according to the terms of this agreement.

4.2(f) Execution and regulatory approval of one or more power purchase agreements (collectively "PPA") assuring Northern II of an adequate return on its investment in development, construction, operation maintenance and removal of the Wind Farm Improvements as determined by Northern II in its sole discretion.

4.2(g) Availability of federal Production Tax Credits ("PTCs") equal to or better than those that expire December 31, 2003.

4.2(h) Receipt by Northern II of the above items in sufficient time to complete construction of the Wind Farm Improvements on a safe and reasonable schedule and place them into service by before expiration of the PTCs or such earlier date as may be required by the PPA.

4.3 Procedure for Partial Project. The Wind Farm is currently designed to consist of 67 1.5 MW Turbines with a total nameplate generating capacity of 100.5 MW. Northern II expects that sale of the power generated by the Wind Farm will be under a power purchase agreement or agreements (collectively, "PPA") providing for purchase of a set quantity of electrical energy at the full contract price. Final design of the Wind Farm to satisfy the requirements of the PPA or to assure adequate financial returns for investors may require elimination of certain Wind Farm Improvements, possibly including those proposed for Owner's Property, or changes in their number, type, and location. If Northern II cannot efficiently or economically use all properties included in the Wind Farm, Northern II may select for involvement in the Wind Farm only those properties it deems appropriate to satisfy the PPA and follow the procedure below as to properties not used.

4.3(a) If the changes are to the number, type or location of the Wind Farm Improvements shown on **Exhibit B**, the parties shall amend **Exhibit B** to reflect new, mutually acceptable locations for the remaining Wind Farm Improvements proposed for Owner's Property; the parties shall also amend **Exhibit D** to reflect these changes.

4.3(b) If the changes eliminate all Wind Farm Improvements on Owner's Property, Northern II at its option may:

4.3(b)(1) Elect to keep in force only the Wind Non-Obstruction, Noise and Shadow Easements in Section 3.6 of this agreement, and compensate Owner for only the retained Easements as shown on **Exhibit D**; or,

4.3(b)(2) Pay Owner a \$1,000 termination fee and without further liability, except for injuries or damages it caused by its physical activities on Owner's Property, terminate this agreement as to Owner's Property; or,

4.3(b)(3) Instead of paying a termination fee, extend this agreement for at least one Extension Period under the terms of Section 6.2 while it seeks an additional PPA for all or a part of the remaining planned capacity of the Wind Farm or to determine whether additional sites are needed for Wind Farm Improvements. No termination fee shall be due if Northern II pays Owner for at least one Extension Period.

**5. RENEWALS.** No less than one year and no more than two years before the end of the Term and each Renewal Term Northern II shall notify Owner of Owner's right to terminate this agreement as of the end of the then current Term or Renewal Term or to negotiate a Renewal Term as provided in this section. This notice shall be given by the means provided in Section 15. If the parties have not agreed to extend this agreement for a specific period of time ("Renewal Term"), and neither party has given notice of termination of this agreement at least one hundred twenty (120) days before expiration of the Term or then current Renewal Term, this agreement shall automatically and perpetually renew for additional consecutive ten (10) year Renewal Terms. Each Renewal Term shall begin on the expiration date of the Term or previous Renewal Term. Except for consideration to be paid by Northern II for the Turbine Site, the terms and conditions contained in this agreement shall govern the Renewal Terms. For each Renewal Term consideration for the Turbine Site Easements shall be an amount to be agreed by the parties; no additional consideration shall be payable for the Construction, Access, Collection, Wind Non-Obstruction, Noise and Overhang or other easements that are a part of this agreement. If the parties cannot agree on consideration to be paid for any Renewal Term, they shall select an MAI designated appraiser to determine the appropriate consideration which shall be the then current market rate consideration for similar Turbine Site Easements or leases affecting similar properties in the Midwest. If the parties cannot agree upon an appraiser, each shall select an MAI designated appraiser and the two appraisers thus selected shall select a third MAI designated appraiser with the average of the three appraisals thus obtained to be the consideration paid for the next Renewal Term.

**6. EASEMENT PURCHASE PRICE.** Northern II shall pay Owner the following amounts as the consideration for the Easements:

6.1 Signing Payment. Northern II will pay Owner \$500 within thirty days after all parties have signed this agreement which shall be non-refundable, even if this agreement is terminated as allowed by Section 4.3.

6.2 Extension Payments. If Northern II has not signed a PPA by January 1, 2004, or has signed a PPA for only a part of the planned output of the Wind Farm, Northern II may keep this agreement in force for no more than three additional, consecutive one-year periods (each an "Extension Period"). To keep this agreement in force, Northern II shall by January 31<sup>st</sup> of the each year beginning with 2004 make a payment for Extension Period in the amount provided in **Exhibit D**. If construction has not begun by December 31, 2007, this agreement shall terminate.

6.3 PPA Signing Bonus. Within thirty days after signing all PPAs necessary to sell the planned output of the Wind Farm, Northern II shall pay Owner a bonus in the amount shown on **Exhibit D**.

6.4 Purchase Price. The purchase price for the Easements shall be paid in the amounts shown and according to the payment option selected by Owner on attached **Exhibit D**. For calculation of the purchase prices, each Turbine Site Easement shall include 24,000 square feet of Access Easement. If an annual installment payment option is selected for the Turbine Site Easements, annual installment payments for partial years shall be prorated based on the number of days in the partial year beginning with the Commercial Operation date and ending on the last day of the Term or Renewal Term. If the Turbine Sites on Owner's Property require an average of more than thirty-six thousand (36,000) square feet of Access Easement per Turbine Site as finally identified and shown on **Exhibit C**, Northern II shall pay additional consideration at the per acre rate shown on **Exhibit D** for any additional acreage included in the Access Easement. After the parties have approved **Exhibit C**, **Exhibit D** shall be amended as necessary to conform to **Exhibit C** and any necessary payment adjustments shall be paid within thirty (30) days by Northern II or credited against the next payment due from Northern II to Owner. If a part of the Wind Farm Improvements is removed before the end of the Term or a Renewal Term, future Annual Installment Payments due on the purchase price of the Easements shall be reduced by the amount attributable to the Wind Farm Improvements removed. If a part of the Wind Farm Improvements remains after the end of the Term (or, if applicable, the final Renewal Term) Northern II shall continue to make Annual Installment Payments at the rate paid for the last year of the Term or Renewal Term until Northern II's Removal Obligations are fulfilled ("Removal Date").

6.5 Payment Schedule. The financial closing on purchase of the Easements ("Financial Closing") shall occur when all conditions in Sections 4.1 and 4.2, above, are satisfied or waived, and all other documents required by Northern II have been signed and delivered by Owner. All lump sum easement purchase price payments provided in **Exhibit D** shall be paid in full at the Financial Closing. If Owner selects the annual installment payment option for payment of the purchase price for the Turbine Site Easements, the annual installment payments shall be due on or before December 31<sup>st</sup> of each calendar year during the Term and any Renewal Terms. The final Annual Installment Payment shall be made on the last day of the Term (or, if applicable, the last day of the final Renewal Term) or on the Removal Date if that is earlier. The purchase price for all Easements except the Turbine Site and Met Tower Site Easements, in the amounts shown in **Exhibit D**, shall be paid in a single lump sum at the Financial Closing.

6.6 Increases in Annual Installment Payments. The amount of the annual installment payments shall be increased by 2% each year, compounded, beginning with the first calendar year that begins at least one full year after the Effective Date. For example, assuming the Effective Date is December 15, 2003, and that the installment payment involved is \$1,000, the installment payments for calendar years 2003 - 2007 would be: 2003 - \$41.66 (prorated per Section 6.4, covers last half of December); 2004 - \$1,000; 2005 - \$1020; 2006 - \$1040.40; and 2007 - \$1,061.21.

6.7 Payments for Extended Use of Access Easement. If Northern II continues to use the Access Easement after the end of the Term or any Renewal Terms, Northern II shall pay Owner the then fair market value of the Access Easement determined by agreement of the parties or in the manner provided in Section 5.

7. TAXES. Northern II shall pay any increase in the real property taxes on Easement Properties that is directly attributable to the installation of Wind Farm Improvements or to a reclassification of the Easement Properties because of creation of this agreement. Northern II shall request that the Wind Farm Improvements be separately assessed and that taxing authorities bill Northern II directly for taxes attributable to the Wind Farm Improvements. Northern II shall not be liable for taxes attributable to facilities installed by Owner or others on the Easement Properties, to the underlying value of the Easement Properties themselves, or for any increase due to any other cause. Northern II agrees to reimburse Owner for any taxes paid by Owner that are properly payable by Northern II



under the terms of this agreement. To receive reimbursement, Owner must submit any real property tax bill to Northern II for reimbursement within thirty (30) days after Owner receives the bill from a taxing authority. The parties agree to fully cooperate to obtain any available tax refunds or tax abatements.

**8. OTHER PAYMENTS TO OWNER.** In addition to payments for purchase of the Easements, Northern II shall make the following payments to Owner:

8.1 Payments from Third Parties and for Non-Wind Energy Purposes. Northern II shall pay to Owner ten percent (10%) of any rent received by Northern II from third parties such as telecommunications providers for equipment of the third party located on or in the Wind Farm Improvements. If Northern II locates its own telecommunications or other equipment not directly related to or used for Wind Energy Purposes on or in the Wind Farm Improvements, Northern II shall negotiate in good faith with Owner to reach agreement as to reasonable compensation to Owner for this additional use. This section shall not be interpreted to require Northern II to pay Owner any amounts received by Northern II for sale of the electric power generated by the Wind Farm Improvements nor for television signal booster equipment located in or on Wind Farm Improvements.

8.2 Payments for Crop Damage on Easement Properties Before Effective Date. Northern II will pay Owner for crop loss or destruction on the Easement Properties due to Northern II's activities before the Effective Date according to the formula in the Construction Easement. Payment shall be made within 30 days after determining the extent of damage.

**9. NORTHERN'S DUTIES AND REPRESENTATIONS.**

9.1 Care and Appearance. Northern II shall at all times maintain the Wind Farm Improvements in a neat, clean and presentable condition. Northern II shall not willfully destroy Owner's Property and shall keep the Turbine Site, Access, Collection Facilities, and Construction Easement Properties clean and free of debris created by Northern II, its contractors, or others brought on to the Owner's Property by Northern II. Northern II shall be responsible for weed control on those portions of the Turbine Site and Access Easement Properties not actively farmed by Owner. Northern II shall not use the Easement Properties for storage except for materials, construction equipment and vehicles directly associated with construction or maintenance of Wind Farm Improvements on Owner's Property or adjacent properties.

9.2 Owner Approval of Plans. Before beginning construction, Northern II shall consult with Owner and obtain Owner's approval of **Exhibit B** showing the location of the Turbine Site, Access, Collection Facilities, and Construction Easements and the location of all Wind Farm Improvements on Owner's Property including roads, cattle guards, and gates. If Northern II desires to locate its own equipment, or that of third parties, not directly related to or used for wind energy purposes in or on the Wind Farm Improvements, Northern II shall first consult with and obtain Owner's approval, which may be withheld in Owner's sole discretion. Plans to satisfy Northern II's Removal Obligations shall be subject to Owner's review and approval before Northern II begins work on removal of Wind Farm Improvements located on Owner's Property.

9.3 Owner Approval of Disposition of Excavated Materials. Northern II will obtain Owner's approval as to removal of excavated materials from and disposition of excavated materials on the Easement Properties. All topsoil will be reserved and replaced on the Easement Properties unless otherwise agreed in advance by the parties. Any delay longer than three (3) business days shall be deemed an approval by Owner of construction decisions such as disposition of excavated materials.

9.4 Drainage Tiles. Northern II will repair any drainage tiles damaged by its activities on the Easement Properties and will pay crop damages if any crops are flooded due to tiles broken by Northern II's activities.

Should Owner desire to instal drainage tiles that will cross Turbine Site, Access, Collection Facilities, or Construction Easements, Owner shall first consult with Northern II and obtain Northern II's approval of the plans, specifications, exact depths and locations of the proposed tile prior to construction. Because of danger of damage to Northern II's Wind Farm Improvements and the safety hazard to persons working in the vicinity of Northern II's Collection Facilities and other equipment, Owner shall give Northern II at least five (5) days' notice as to when installation of the tile will take place within Turbine Site, Access, Collection Facilities, and Construction Easements. Owner shall coordinate work in these areas to permit Northern II's representative to be present at all times tiling or excavation work is performed within these areas. Owner agrees to indemnify Northern II against liability for injuries and claims resulting from Owner's failure to comply with the requirements of this section. If installation of the tile damages Northern II's roads, Owner at Owner's expense shall promptly repair the road to the condition it was in before installation of the tile. If Owner complies with the above notice and work coordination requirements, Northern II shall reimburse Owner up to \$500 per crossing for the actual additional costs incurred to install tile below Northern II's road or above or below Northern II's underground lines. Northern II will make no more than one such reimbursement per length of road or underground cable up to 750 feet long located within the Easement Properties during the Term of this agreement.

9.5 Fences and Gates. At Owner's request, Northern II shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Northern II's activities on Owner's Property. Fences removed from the Easement Properties, if replaced, shall be re-built by Northern II at its expense in mutually agreeable locations off the Turbine Site, and Access Easement Properties. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. To minimize the need for temporary fencing, Owner will cooperate with Northern II to avoid pasturing animals on or near the effected Easement Properties during periods of construction, maintenance or removal activity by Northern II.

9.6 Insurance and Indemnity. Northern II shall maintain liability insurance insuring Northern II and Owner against loss caused by use of the Easement Properties under this agreement by Northern II, its employees, agents, contractors, tenants, and invitees. The amount of insurance shall be not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage. Northern II shall provide certificates of this insurance coverage to Owner upon Owner's written request.

Northern II will indemnify and defend Owner against liability for injuries and claims for direct damage to the extent that they are caused by the exercise of rights granted in this agreement by Northern II, its employees, agents, contractors, tenants, and invitees. This indemnity agreement does not cover losses of rent, business opportunities, crop production, profits and the like that may result from Owner's loss of use of the Easement Properties occupied by Wind Farm Improvements or affected by easement rights granted in this agreement. This indemnity agreement includes the following if asserted by third parties (other than Owner's immediate family or business entities or trusts in which Owner has any interest, a "Related Party") against Owner, but not if asserted by Owner or a Related Party against Northern II: (a) any claims for property damage or personal injuries attributable to risks of known and unknown dangers associated with electrical generating facilities; (b) claims of nuisance based on shadow, interference with radio and television signal reception or the construction, appearance, sound, operation, maintenance or removal of the Wind Farm Improvements; or (c) claims for damages arising from use of the Easements or Easement Properties, including use by trespassers on Owner's Property, except those claims for which Owner is responsible under Section 10.5. Owner authorizes Northern II to take reasonable safety measures to reduce the

risk that the Wind Farm Improvements will cause harm or injury to people, livestock, other animals and property.

9.7 Requirements of Governmental Agencies. Northern II shall comply in all material respects with valid laws applicable to the Wind Farm Improvements. Northern II shall have the right, in its sole discretion and at its sole expense, in its name or Owner's name, to contest the validity or applicability to the Easement Properties or Wind Farm Improvements of any law, ordinance, statute, order, regulation, property assessment or the like made by any governmental agency or entity. Northern II shall control any such contest and Owner shall cooperate with Northern II in every reasonable way in such contest, at no out-of-pocket expense to Owner.

9.8 Mechanic's Liens. Northern II shall not permit any mechanic's liens arising out of Northern II's use of the Easement Properties under this agreement to be filed against the Easement Properties. If Northern II wishes to contest any such lien, Northern II shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security Owner may reasonably request, or remove such lien from the Easement Properties in the manner provided by applicable law.

9.9 Hazardous Materials. Northern II shall not violate, and agrees to indemnify Owner against, any violation on the Easement Properties by Northern II, its agents or contractors, of any applicable law or regulation relating to any substance, material or waste classified as hazardous or toxic, or which is regulated as waste.

9.10 Removal of Wind Farm Improvements. Owner shall have no ownership or other interest in any Wind Farm Improvements installed on the Easement Properties, and Northern II shall have the express right, at any time and in its sole discretion, to remove one or more Turbines or other Wind Farm Improvements from the Easement Properties. Owner expressly waives any statutory or common-law liens to which Owner might be entitled. Upon full or partial termination of any of the Easements, Northern II shall remove all physical material pertaining to the Wind Farm Improvements from the affected Easement Properties to a depth of forty-eight inches (48") beneath the soil surface, and restore the area formerly occupied by the Wind Farm Improvements to substantially the same physical condition that existed immediately before the construction of the Wind Farm Improvements (the "Removal Obligations"). If Northern II fails to complete its Removal Obligations within twelve (12) months of full or partial termination of the applicable Easement, Owner may do so, in which case Northern II shall reimburse Owner for reasonable costs of fulfilling Northern II's Removal Obligations incurred by Owner, less any salvage value reasonably recoverable by Owner.

## **10. OWNER'S DUTIES AND REPRESENTATIONS.**

10.1 Owner's Authority. Owner is the sole owner of the Owner's Property including the Easement Properties and has the unrestricted right and authority to sign this agreement and to grant Northern II the Easements and other rights granted in this agreement. When signed by both parties, this agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

10.2 Exclusivity. Owner agrees that Northern II shall have the exclusive right to convert all of the wind resources of the Owner's Property. Owner's activities and any grant of rights Owner makes to any third party, whether located on the Easement Properties or elsewhere, shall not, now or in the future, interfere in any way with Northern II's exercise of any rights granted under this agreement.

10.3 Liens and Tenants. Owner shall provide Northern II with all information reasonably required for Northern II, at its expense, to identify all liens and other exceptions to Owner's fee title ownership of the Easement Properties (collectively, "Liens;" holders of Liens and tenants are referred to as



"Lienholders"). Owner shall cooperate with Northern II to obtain a non-disturbance agreement from each Lienholder (recorded or unrecorded), which provides that the Lienholder shall not disturb Northern II's possession or rights under this agreement or terminate this agreement or the Easements so long as Owner is not entitled to terminate this agreement or the Easements. If Northern II and Owner are unable to obtain a non-disturbance agreement from a Lienholder, Northern II shall be entitled (but not obligated) to withdraw from this agreement or to make payments in fulfillment of Owner's obligations to the Lienholder and may deduct the amount of such payments from amounts due to Owner under this agreement.

10.4 Requirements of Governmental Agencies. Owner shall assist and fully cooperate with Northern II, at no out-of-pocket expense to Owner, in complying with or obtaining any zoning and land use permits and approvals, building permits, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Wind Farm Improvements, including execution of applications for such approvals.

10.5 Indemnity. Owner agrees to indemnify Northern II against all injuries and claims to the extent caused by the negligence or fault of Owner or Owner's invitees, employees, agents, contractors or tenants.

10.6 Hazardous Materials. Owner represents and warrants to the best of Owner's knowledge and belief that there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Easement Properties; that the Easement Properties do not contain levels of petroleum or hazardous substances which require remediation; and, that the Easement Properties are not subject to any judicial or administrative action, investigation or order under any applicable environmental laws or regulations. Owner warrants that Owner has done nothing to contaminate the Easement Properties with petroleum, hazardous substances or wastes. Owner agrees to indemnify and hold Northern II harmless against any claims or losses resulting from violation of any applicable environmental laws, except those resulting from Northern II's activities on the Easement Properties.

11. **DEVELOPMENT AND USE RESTRICTIONS.** In consideration of the payments made by Northern II to purchase the Easements, Owner imposes the following development and use restrictions (collectively "Restrictive Covenants") on those portions of Owner's Property described in each of the Restrictive Covenants.

11.1 Hunting. Northern II and Owner shall agree on appropriate measures with respect to hunting and the discharge of firearms on and near the Easement Properties to ensure the safety of Northern II's site personnel and the protection of Wind Farm Improvements on the Easement Properties during and after construction of the Wind Farm Improvements.

11.2 Snowmobiling. Owner shall retain control of access to Owner's Property and may allow Owner's guests to use the Owner's Property and the Easement Properties, except the Turbine and Met Tower Site Properties, for recreational purposes except at times or under circumstances that adversely affect public health and safety or operation and safety of the Wind Farm Improvements. Northern II and Owner shall agree on appropriate measures with respect to use of snowmobiles on and in the vicinity of the Easement Properties to ensure the safety of Owner's guests, Northern II's site personnel, and the protection of Wind Farm Improvements on the Easement Properties during and after construction of the project.

11.3 Construction. Owner may not construct any buildings nearer to any Turbine than a distance equal to the maximum height of the Turbine with a blade extended upward.

## 12. TERMINATION.

12.1 Northern II's Right to Terminate. Northern II shall have the right to terminate this agreement as to all or any part of the Easement Properties, or as to any Turbine or other Wind Farm Improvement, at any time, effective upon thirty (30) days' written notice to Owner.

12.2 Owner's Right to Terminate. Except as specifically allowed by this Section 12, this agreement and the Easements shall not be terminable by Owner under any circumstances. Owner's sole remedy for Northern II's breach of its duties under this agreement (except its duty to timely pay Annual Installment Payments and failure to timely fulfill its Removal Obligations after termination under Section 9.10) shall be an action at law or in equity for money damages or specific performance.

Except as qualified by Sections 13 and 14, and notwithstanding any other provisions of this agreement, Owner shall have the right to terminate this agreement and the Easements only as to those Easement Properties where: (a) a material default in the payment by Northern II of annual installment payments under this agreement shall have occurred and remains uncured; (b) Owner simultaneously gives Northern II and all Mortgagees and Assignees written notice of the default setting forth in reasonable detail the facts pertaining to the default and specifying the method of cure; and, (c) the default shall not have been remedied within thirty (30) days after Northern II, or within ninety (90) days in the case of all Assignees and Mortgagees, receives the written notice.

12.3 Effect of Termination. Upon full or partial termination of this agreement, whether as to all of the Easement Properties or only as to some or parts of the Easement Properties, Northern II shall: (a) upon written request by Owner, execute and record a quitclaim deed to Owner of all of Northern II's right, title and interest in the Easement Properties, or in those parts of the Easement Properties as to which this agreement has been terminated, and (b) as soon as reasonably practicable after termination, remove all Wind Farm Improvements from those Easement Properties as to which this agreement was terminated in compliance with its Removal Obligations. If Northern II when obligated to do so under (a) above fails to file a quitclaim deed, Owner may file Owner's affidavit of full or partial termination of this agreement and proof of service of a copy of the affidavit on Northern II and all Mortgagees according to the notice procedures in Section 15 of this agreement. Unless Northern II or a Mortgagee files in the public records a written objection or denial of termination within thirty (30) days after service on it of the affidavit, the affidavit shall have the same effect as a Northern II's quitclaim deed.

## 13. FINANCING AND ASSIGNMENT BY NORTHERN.

13.1 Right to Mortgage and Assign. Northern II may, upon notice to Owner, without Owner's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this agreement, the Easements, the Easement Properties, or the Wind Farm Improvements (collectively, its "Wind Farm Assets"). These various security interests in all or a part of the Wind Farm Assets are collectively referred to as "Mortgages" and the holders of the Mortgages, their designees and assigns are referred to as "Mortgagees." Northern II shall also have the right without Owner's consent to sell, convey, lease, or assign all or any portion of its Wind Farm Assets on either an exclusive or a non-exclusive basis, or to grant sub-easements co-easements, separate easements, leases, licenses or similar rights, however denominated (collectively, "Assignment"), to one or more persons or entities (collectively, "Assignees"). Assignees and Mortgagees shall use the Wind Farm Assets only for the uses permitted under this agreement. Assignees and Mortgagees shall have all rights and remedies allowed them under then existing laws except as limited by their individual agreements with Northern II, provided that **under no circumstances shall any Mortgagee or Assignee have any greater rights of ownership or use of Owner's Property than the rights granted to Northern II in this agreement.**

13.2 Owner Obligations. Owner agrees to consent in writing to financing documents as may reasonably be required by Mortgagees. As a precondition to exercising any rights or remedies related to any alleged default by Northern II under this agreement, Owner shall give written notice of the default to each Mortgagee and Assignee at the same time it delivers notice of default to Northern II, specifying in detail the alleged event of default and the required remedy. Each Mortgagee and Assignee shall have the same amount of time to cure the default as to Northern II's entire interest or its partial interest in the Wind Farm Assets as is given to Northern II and the same right to cure any default as Northern II or to remove any property of Northern II, Mortgagees or Assignees located on the Easement Properties. The cure period for each Mortgagee and Assignee shall begin to run at the end of the cure period given to Northern II in this agreement, but in no case shall the cure period for any Mortgagee or Assignee be less than thirty (30) days after receipt of the default notice. Failure by Owner to give a Mortgagee or Assignee notice of default shall not diminish Owner's rights against Northern II, but shall preserve all rights of the Mortgagee or Assignee to cure any default and to remove any property of Northern II, the Mortgagee or Assignee located on the Easement Properties.

13.3 Mortgagee/Assignee Obligations. Any Mortgagee or Assignee that does not directly hold an interest in the Wind Farm Assets, or whose interest is held solely for security purposes, shall have no obligation or liability under this agreement prior to the time the Mortgagee or Assignee directly holds an interest in this agreement, or succeeds to absolute title to Northern II's interest. A Mortgagee or Assignee shall be liable to perform obligations under this agreement only for and during the period it directly holds such interest or absolute title. Any Assignment permitted under this agreement shall release Northern II or other assignor from obligations accruing after the date that liability is assumed by the Assignee.

13.4 Right to Cure Defaults/Notice of Defaults/Right to New Easement.

13.4(a) To prevent termination of this agreement, the Easements, or any partial interest in this agreement and the Easements, Northern II, any Mortgagee or Assignee shall have the right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this agreement or any interest in the Wind Farm Assets.

13.4(b) In the event of an uncured default by the holder of Northern II's entire interest in this agreement, or in the event of a termination of this agreement by agreement, by operation of law or otherwise, each Mortgagee or Assignee of a partial interest in the Wind Farm Assets that is not in default of its obligations, shall have the right to have Owner either recognize the Mortgagee's or Assignee's interest or grant new easements substantially identical to the Easements. Under the new easements, the Mortgagee or Assignee shall be entitled to, and Owner shall not disturb, Mortgagee's or Assignee's continued use and enjoyment for the remainder of the Term (or the Renewal Term), or such shorter term as an Assignee may otherwise be entitled pursuant to its Assignment.

13.5 Extended Cure Period. If any default by Northern II under this agreement cannot be cured without obtaining possession of all or part of the Wind Farm Assets, then any such default shall be deemed remedied if a Mortgagee or Assignee: (a) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Wind Farm Assets, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (b) diligently prosecutes any such proceedings to completion; and (c) after gaining possession of all or part of the Wind Farm Assets performs all other obligations as and when the same are due in accordance with the terms of this agreement. If a Mortgagee or Assignee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.



13.6 Certificates, etc. Owner shall execute estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this agreement, if such be the case), consents to assignment and non-disturbance agreements as Northern II or any Mortgagee or Assignee may reasonably request from time to time. Owner and Northern II shall cooperate in amending this agreement from time to time to include any provision that may be reasonably requested by Northern II or any Mortgagee or Assignee to implement the provisions contained in this agreement or to preserve a Mortgagee's security interest.

**14. MORTGAGEE PROTECTION.** Any Mortgagee, upon delivery to Owner of notice of its name and address, for so long as its Mortgage is in existence shall be entitled to the following protections which shall be in addition to those granted elsewhere in this agreement:

14.1 Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (a) to assign its Mortgage; (b) to enforce its lien and acquire title to all or any portion of the Wind Farm Assets by any lawful means; (c) to take possession of and operate all or any portion of the Wind Farm Assets and to perform all obligations to be performed by Northern II under this agreement, or to cause a receiver to be appointed to do so; and (d) to acquire the all or any portion of the Wind Farm Assets by foreclosure or by an assignment in lieu of foreclosure and thereafter without Owner's consent to assign or transfer all or any portion of the Wind farm Assets to a third party.

14.2 Opportunity to Cure.

14.2(a) During any period of possession of the Easement Properties by a Mortgagee (or a receiver requested by a Mortgagee) and/or while any foreclosure proceedings instituted by a Mortgagee are pending, the Mortgagee shall pay or cause to be paid the fees and all other monetary charges payable by Northern II under this agreement which have accrued and are unpaid at the commencement of the period and those which accrue thereafter during the period. Following acquisition of all or a portion of the Wind Farm Assets by the Mortgagee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this agreement shall continue in full force and effect and the Mortgagee or party acquiring title to Northern II's Easement shall, as promptly as reasonably possible, commence the cure of all defaults under this agreement and thereafter diligently process such cure to completion, whereupon Owner's right to terminate this agreement based upon such defaults shall be deemed waived; provided, however, that the Mortgagee or party acquiring title to Northern II's Easement shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("non-curable defaults"). Non-curable defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of Northern II's interest in this agreement by such party.

14.2(b) Any Mortgagee or other party who acquires Northern II's interest in the Wind Farm Assets pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Northern II by this agreement incurred or accruing after the party no longer has ownership or possession of the Wind Farm Assets.

14.2(c) Neither the bankruptcy nor the insolvency of Northern II shall be grounds for terminating this agreement as long as all Annual Installment Payments and all other monetary charges payable by Northern II under this agreement are paid by the Mortgagee in accordance with the terms of this agreement.

14.3 New Easement.

14.3(a) If this agreement terminates because of Northern II's default, if the Easements are foreclosed, or if this agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Northern II or any Mortgagee or Assignee shall have arranged to the reasonable satisfaction of Owner for the payment of all fees or other charges due and payable by Northern II as of the date of such event, then Owner shall execute and deliver to Northern II or such Mortgagee or Assignee or to a designee of one of these parties, as the case may be, new easements to the Easement Properties which (i) shall be for a term equal to the remainder of the Term (or the Renewal Term, if applicable) before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this agreement (except for any requirements that have been fulfilled by Northern II or any Mortgagee or Assignee prior to rejection or termination of this agreement); and, (iii) shall include that portion of the Wind Farm Assets in which Northern II or such other Mortgagee or Assignee had an interest on the date of rejection or termination.

14.3(b) After the termination, rejection or disaffirmation of this agreement and during the period thereafter during which any Mortgagee shall be entitled to enter into new easements for the Easement Properties, Owner will not terminate the rights of any Assignee unless in default under its Assignment.

14.3(c) If more than one Mortgagee makes a written request for new easements pursuant to this provision, the new easements shall be delivered to the Mortgagee requesting such new easements 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.

14.3(d) The provisions of this Section 14 shall survive the termination, rejection or disaffirmation of this agreement and shall continue in full force and effect thereafter to the same extent as if this Section 14 were a separate and independent contract made by Owner, Northern II and each Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this agreement to the date of execution and delivery of such new easements, such Mortgagee may use and enjoy the Easement Properties without hindrance by Owner or any person claiming by, through or under Owner; provided that all of the conditions for the new easements as set forth above are complied with.

14.3(e) The party requesting or receiving the new easement shall pay Owner's reasonable legal fees and other out of pocket expenses related to preparation, review, execution and delivery of the new easement agreement.

14.4 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 Mortgagee, this agreement shall not be modified or amended, and Owner shall not accept a surrender, cancellation or release of all or any part of the Wind Farm Assets from Northern II, prior to expiration of the Term (or Renewal Term, if applicable) without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by each Mortgagee as if it were a party named in this agreement.

14.5 No Merger. There shall be no merger of this agreement or of the Easements with the fee estate in the Easement Properties by reason of the fact that this agreement or any interest in the Easements may be held, directly or indirectly, by or for the account of any person or persons who shall own any interest in the fee estate. No merger shall occur unless and until all persons at the time having an interest in the fee estate in the Easement Properties and all persons (including each

Mortgagee) having an interest in this agreement or in the estate of Owner and Northern II shall sign and record a written instrument effecting such merger.

14.6 Liens. On the commencement of the Term, the Easement Properties shall be free and clear of all monetary liens other than those expressly approved by Northern II. Thereafter, any assignment of this agreement, mortgage, deed of trust or other monetary lien placed on the Easement Properties by Owner, or permitted by Owner to be placed or to remain on the Easement Properties, shall be subject to this agreement, to any Assignment or Mortgage then in existence on the Wind Farm Assets as permitted by this agreement, to Northern II's right to encumber the Wind Farm Assets, and to any and all documents executed or to be executed by Owner in connection with Northern II's development of all or any part of the Easement Properties. Owner agrees to cause any monetary liens placed on the Easement Properties by Owner in the future to incorporate the conditions of this Section 14.6.

14.7 Further Amendments. At Northern II's request, Owner shall amend this agreement to include any provision which may reasonably be requested by a proposed Mortgagee; provided, however, that such amendment does not impair any of Owner's rights under this agreement or substantially increase the burdens or obligations of Owner under this agreement. Upon the request of any Mortgagee, Owner shall execute any additional instruments reasonably required to evidence such Mortgagee's rights under this agreement.

## 15. NOTICES.

All notices or other communications required or permitted by this agreement shall be in writing. Notices and payments to Owner, shall be deemed given or made when personally delivered; five (5) days after deposit in the United States mail, first class, postage prepaid, certified; or, one (1) business day after dispatch by Federal Express or other overnight delivery service of national scope. All notices and payments shall be sent to the parties at their addresses provided in Section 1. Notices may also be given by facsimile or electronic mail sent to a party at the facsimile number or electronic mail address in Section 1, provided the party giving notice must on request furnish proof that the notice was actually received. Notice or payment to any Assignee or Mortgagee shall be sent to the address of the Assignee or Mortgagee as shown in the recorded instrument evidencing the Assignment or Mortgage. Any party may change its address for purposes of this section by giving written notice of the change to the other parties in the manner provided in this section.

## 16. MISCELLANEOUS.

16.1 Unavoidable Delays. If either party is delayed, hindered in or prevented from performing any act required under this agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, natural disasters, war, civil strife or other violence, the affected party, upon giving notice to the other party, shall be excused from performing the act (except payment of consideration) for the period of the delay. The affected party shall use its reasonable efforts to avoid or remove the causes of nonperformance and shall continue performance whenever the causes for nonperformance are removed.

16.2 Confidentiality. Owner shall not disclose to others (except Owner's family, legal counsel, prospective Mortgagees and Assignees, and financial advisors who recognize and agree to preserve and maintain the confidentiality of such information) the terms of this agreement and information about Northern II's methods, power production, or availability of Wind Farm Improvements unless the information is already in the public domain. Owner also agrees not to use such information for Owner's own benefit or permit its use by others for their benefit or to the detriment of Northern II.



16.3 Run With the Land. The Easements and any restrictions in this agreement shall run with the land affected and shall be binding on, and inure to the benefit of, Owner and Northern II, Mortgagees, Assignees, and their respective successors and assigns, heirs, personal representatives, tenants, or persons claiming through them.

16.4 Memorandum. Owner and Northern II shall execute in recordable form, and Northern II at its expense shall then record, a memorandum of this agreement satisfactory in form and substance to Northern II and Owner. Owner consents to the recordation of the interest of any Mortgagee or Assignee in the Easement Properties.

16.5 Entire Agreement/Amendments. This agreement constitutes the entire agreement between Owner and Northern II respecting its subject matter and replaces and supersedes any prior agreements. Any agreement, understanding or representation respecting the subject matter of this agreement not expressly set forth in this agreement or a later writing signed by both parties, is null and void. This agreement and the Easements shall not be modified or amended except in a writing signed by the parties or their successors in interest.

The parties understand that following construction of the Wind Farm Improvements it will be necessary to amend this agreement to substitute **Exhibit C** for **Exhibit B**. The parties agree to cooperate in this approval and substitution of exhibits and in executing any additional agreements or amendments, including amendments to conform names and property descriptions to information revealed by abstracts of title, reasonably needed by the parties for their business purposes so long as they do not adversely affect the rights of either party or violate the terms and spirit of this agreement.

16.6 Legal Matters. This agreement shall be governed by and interpreted in accordance with the laws of the State of Iowa. The parties agree to first attempt to settle any dispute arising out of or in connection with this agreement by good-faith negotiation. If the parties are unable to resolve amicably any dispute arising out of or in connection with this agreement, each shall have all remedies available at law or in equity. **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.** Time is of the essence with regard to the terms and conditions of this agreement.

16.7 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 of this agreement 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 (or a Renewal Term, if applicable) be for longer periods than the longest periods permitted by applicable law.

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

16.9 Approvals. No approval required by this agreement shall be unreasonably delayed. Unless a longer or shorter time is specified, all approvals required of either party shall be given or refused in writing within ten (10) business days after receipt of the request for approval. Any delay of a requested approval longer than ten (10) business days shall be deemed an approval. Approvals shall not be unreasonably withheld except in instances where this agreement specifically permits a party to act in its sole discretion.

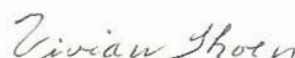
16.10 Authorization of Other Users. Northern II in its discretion may authorize other persons or entities to use the Easement Properties for the purposes stated in this agreement.

16.11 Lateral Support. Northern II shall have and exercise the right of subjacent and lateral support for Wind Farm Improvements on the Easement Properties to whatever extent is necessary for the safe construction, operation and maintenance of Wind Farm Improvements. Owner expressly covenants that Owner shall not excavate so near the sides of or underneath the Wind Farm Improvements as to undermine or otherwise adversely affect their stability.

**Northern Iowa Windpower II, LLC**

By:   
Stephen F. Dryden, Manager

**Owner(s):**


By:   
Vivian Thoen, Individually and as  
Conservator for Dallas Thoen

By:   
Roxianne Reyerson

By:   
Travis Reyerson

This is a signature page for a Wind Farm Easement Agreement for the Top of Iowa Wind Farm, Phase II that will be signed in counterparts by the owners of Owner's Property in various locations. All signature pages will then be compiled and attached to a single original of this document with a copy furnished to all signers on completion.

By:   
Dennis Thoen

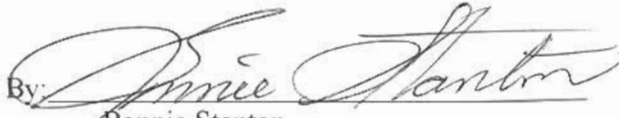
By:   
Marlis Labonnie Thoen



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By:   
Sandra Miner

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By:   
Bonnie Stanton

This is a signature page for a Wind Farm Easement Agreement for the Top of Iowa Wind Farm, Phase II that will be signed in counterparts by the owners of Owner's Property in various locations. All signature pages will then be compiled and attached to a single original of this document with a copy furnished to all signers on completion.

By: Patricia Edenfield  
Patricia Edenfield



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By:   
Sherry Burns

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By:   
Shelly Juhl n/k/a Shelly Thoen