

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Senator Stan Clark at 9:30 a.m. on March 11, 2003 in Room 231-N of the Capitol.

All members were present except: Senator Tyson, excused

Committee staff present: Raney Gilliland, Legislative Research
Bruce Kinzie, Revisor of Statutes
Ann McMorris, Secretary

Conferees appearing before the committee:
Rep. Larry Powell
Charles Benjamin, Attorney
Philip Ridenour, Attorney
Roni Strecker
Bernie Nordling
Doug Smith
John Crump, Southwest Royalty Owners
Scott Schneider, RES-NA

Others attending: See attached list

Tom Day of KCC delivered a paper from Larry Holloway regarding transmission costs on which the committee had questions on March 10. That response will be included with the March 10 minutes.

Chair opened hearing on

HB 2280 - requiring the recording of leases related to wind resources and technologies

Proponents:

Rep. Larry Powell (Attachment 1)
Charles Benjamin, Attorney (Attachment 2)
Philip Ridenour, Attorney (Attachment 3)
Bernie Nordling (Attachment 4)

John Pinegar - presented the testimony for Ridenour & Nordling who were unable to attend.

Opponents:

Scott Schneider, RES-NA (Attachment 5)

Discussion regarding leases and/or agreements; statutory authority on filing leases; and length of time for filing of five days. It was indicated there would be no problem for this 5 day period to be changed to 60 to 90 days. Revisor of statutes will research the statutes on requirements for filing of leases and provide a response. Closed the hearing on **HB 2280**.

Chair opened for action on

HCR 5007 - Resolution urging FERC to take action to ensure expansion and improvement of the electric transmission system.

Moved by Senator Barone, seconded by Senator Emler, HCR 5007 be moved out favorably. Motion carried.

Approval of Minutes

Moved by Senator Emler, seconded by Senator Tyson, approval of the minutes for meetings of the Senate Utilities Committee on February 21, 2003 and February 25, 2003. Motion carried.

The next meeting of the committee will be on March 12, 2003.

Adjournment.

Respectfully submitted,
Ann McMorris, Secretary
Attachments - 5

STATE OF KANSAS

LARRY POWELL
REPRESENTATIVE, 117TH DISTRICT
9555 N DEWEY RD
KALVESTA, KS 67835
ROOM 182-W STATEHOUSE
TOPEKA, KANSAS 66612-1504
(785) 296-7694



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIRPERSON: AGRICULTURE
MEMBER: AGRICULTURE AND NATURAL
RESOURCES BUDGET
EDUCATION
ENVIRONMENT

To: Senate Utilities Committee, Senator Stan Clark, Chairman.

From: Representative Larry Powell

Subject: HB 2280—An act concerning wind resources and technologies, requiring the recording of leases related thereto.

Date: March 11, 2003

I would like to thank Chairman Clark and the committee for allowing me to testify today on bill 2280.

The bill would require filing of memoranda of lease or easement involving generation of electricity from wind. The lessee or grantee of such an easement would be required to file the memorandum in the office of the register of deeds of the county in which the land is located. The memorandum would have to be filed within five business days after the lease or easement is executed.

I checked with some of the house committee members and their reason for the memoranda filing instead of the lease was the volume of the actual lease. I think that the actual lease should be filed so if the real estate changed hands, the buyer would be able to look at what was in the actual lease. With one million dollar generators I don't think the cost would be that great a burden for the wind generation companies.

The five day filing period might need to be increased to ten days to give a little more time in the case of owners of the real estate living out-of-state, etc.

I thank the committee for their time and I will stand for questions.

Rep. Larry Powell
117th District

Senate Utilities
March 11, 2003
Attachment 1-1

Charles M. Benjamin
Attorney at Law
P.O. Box 1642
Lawrence, Kansas 66044-8642
(785) 841-5902
(785) 841-5922 facsimile

Testimony to Senate Utilities Committee
Re: HB 2280

March 11, 2003

Mr. Chairman, members of the Committee, thank you for the opportunity to testify on a bill that would require the recording, in the county register of deeds office in which the land is located, any lease or easements involving wind resources and technologies to produce and generate electricity.

I wear several different hats with regard to wind energy development in Kansas. I represent the Kansas Chapter of the Sierra Club that is generally trying to promote renewable energy and energy conservation in Kansas. I also have been working with a wind farm company to develop several wind farm sites in Kansas. That work includes negotiating wind farm leases and easements. In addition, I have been advising a landowner who is negotiating a lease agreement on a wind farm with a wind farm development company (not with the company I am representing). Finally, I am representing a group of landowners in Butler County in a court challenge to the decision of the Butler County Commissioners to deny a conditional use permit for a wind farm. I am presenting this testimony to you on behalf of none of these clients and only as a "friend to the Committee."

I think HB 2280 is a good idea since it would require public notice that there are leases or easements for wind energy resources encumbering the property. This requires potential buyers of such property to undertake due diligence and make sure he or she is aware of any leases or easements that exist on property that he or she is considering purchasing. In this way all prospective buyers of property on which there are wind farm resources will be notified of easements and/or leases for wind resources encumbering the land. This type of public notification is good for the potential purchaser of such properties, good for the wind farm development company and good for the landowner because there will be no unpleasant surprises for anyone. I have attached to this testimony an example of a recording of a memorandum of wind farm easement agreement I filed on behalf of Prairie Wind Power, LLC and the landowner in Morris County this past December so that you will have an example of one of these memorandums.

Thank you for your time and attention.

Senate Utilities
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Attachment 2-1

COMPUTER
TRACT
MORTGAGE



STATE OF KANSAS, MORRIS COUNTY S.S.
This instrument was filed for Record on the
4 day of Dec A.D., 2002
at 10:20 o'clock A M. and duly Recorded
in Book 142 of Records
at Page 199-202 Fee \$ 20.00
By Mary Allen Register of Deeds
Deputy

ORIGINAL COMPARED WITH RECORD

(ABOVE SPACE FOR RECORDER'S USE ONLY)

MEMORANDUM OF EASEMENT AGREEMENT

This MEMORANDUM OF EASEMENT AGREEMENT (the "Memorandum") is made as of December 3, 2002 by and between Linda McDiffett and the Linda K. McDiffett Revocable Trust (together, "Grantor") and J.W. Prairie Wind Power LLC, a Kansas limited liability Company (the "Grantee"; Grantor and Grantee, collectively, referred to herein as the "Parties"), with reference to the following facts:

RECITALS

- A. Grantor is the owner of parcels of real property (the "Property") located in Morris and Wabaunsee Counties, Kansas, as more particularly described in Exhibit A attached hereto.
- B. Grantor and Grantee have entered into a certain Amended and Restated Easement Agreement dated December 3, 2002 by and between Grantor and Grantee (the "Easement Agreement").
- C. Pursuant to the Easement Agreement, Grantor has granted Grantee certain easements on and to the Property subject to the satisfaction of the terms and conditions of the Easement Agreement.
- D. The Parties desire to execute and record this Memorandum in order to give notice of the Easement Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the Easement Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. Upon the terms and conditions stated in the Easement Agreement, Grantor grants Grantee certain easements on and to the Property subject to the satisfaction of the terms and conditions of the Easement Agreement.

2. Interpretation. This Memorandum is not intended to modify or alter in any way the terms and conditions of the Easement Agreement. In the event of a conflict between provisions of this Memorandum and those of the Easement Agreement, the Easement Agreement shall control. Terms used in this Memorandum which begin with capital letters are defined terms which shall have the meanings given them in the Easement Agreement, unless the context of this Memorandum requires otherwise.

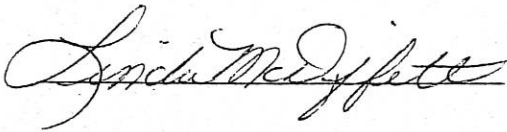
3. Inurement. This Memorandum shall be binding upon and shall inure to the benefit of the Parties, their respective successors-in-interest or assignees.

4. Incorporation by Reference. All of the terms, covenants and conditions of the Easement Agreement are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Easement Agreement as of the date first written above.

GRANTOR

Linda McDuffett, in her individual
Capacity:

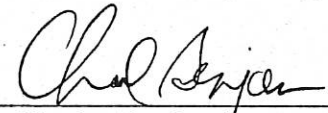


Linda McDuffett, as Trustee of the Linda
McDuffett Revocable Trust Dated May 25,
1999.



GRANTEE

J.W. Prairie Wind Power LLC,
a Kansas limited liability Company:

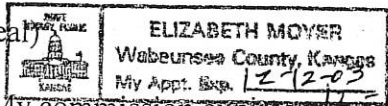
By 
Charles Benjamin
Attorney in Fact

STATE OF KANSAS)

County of Wabaunsee) ss.

The above and foregoing MEMORANDUM OF EASEMENT AGREEMENT was acknowledged before me on this 3 day of December, 2002 by Linda McDuffie, who acknowledged he has the authority to execute the same on behalf of GRANTOR. WITNESS my hand and official seal.

(seal)



My commission expires: 12-12-03

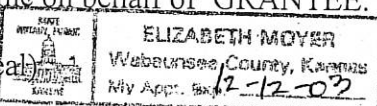
Elizabeth Moyer
Notary Public

STATE OF KANSAS)

County of Wabaunsee) ss.

The above and foregoing MEMORANDUM OF EASEMENT AGREEMENT was acknowledged before me on this 3 day of December, 2002 by J W Prairie Wind Power LLC, who acknowledged he has the authority to execute the same on behalf of GRANTEE. WITNESS my hand and official seal.

(seal)



My commission expires: 12-12-03

Elizabeth Moyer
Notary Public

EXHIBIT A

PROPERTY

The Southeast Quarter (SE/4) of Section Twenty-three (23), Township 14 South, Range Eight (8) East of the 6th P.M. in Morris County, Kansas.

The North Half (N/2), less County Highway and less that portion in the Northeast Quarter (NE/4) thereof, used for school purposes; the Northwest Quarter of the Southeast Quarter (NW/4 SE/4); the North Half of the Southwest Quarter (N/2 SW/4); and the Southwest Quarter of the Southwest Quarter (SW/4 SW/4); all in Section Twenty-four (24), Township Fourteen (14) South, Range Right (8) East of the 6th P.M. in Morris County, Kansas.

The East Half of the Southeast Quarter of Section 21, and the Southwest Quarter of the Section 22, all in Township 14 South, Range 9 East of the 6th P.M. in Morris County, Kansas.

and

The South Half of the Northwest Quarter (S1/2 NW1/4) and the Southwest Quarter (SW 1/4) of Section Thirteen (13), Township Fourteen (14) South, Range Eight (8) East of the 6th P.M. in Wabaunsee County, Kansas.

Sen. Stan Clark

From: Roni Strecker [strecker@ucom.net]
Sent: Monday, March 10, 2003 4:54 PM
To: sclark@ink.org; clark@senate.state.ks.us
Cc: Doug Smith; Bernie Nordling
Subject: HB 2280

March 10, 2003

Senator Stan Clark sent via email: clark@senate.state.ks.us
Room 449-N and sclark@ink.org
State Capitol Building
300 SW Tenth Avenue
Topeka, KS 66612
Re: Wind Farms

Dear Senator Clark:

I would like to submit the following statement on House Bill 2280, regarding wind farms.

I have represented clients and examined proposed wind farm leases for wind farms which were proposed in Kiowa, Butler, Gray, and Hamilton counties in Kansas, and I have in addition spoken with a farmer who has a wind farm lease in the Storm Lake, Iowa, wind farm development. In the course of these negotiations I have spoken with land men and several attorneys.

It has been my experience that once the wind farm leases are proposed and submitted to the farmers, the companies absolutely refuse to negotiate any changes in the terms. The wind farm lessees and their attorneys have advised me that the lease terms are approved in advance by bankers and other financiers, that the financing package is in place, and that absolutely no changes can be made in the terms of the lease. This results, in essence, in a "take-it-or-leave-it" lease; since we have never had these kinds of leases before in our experience, these are difficult leases for us to accept.

One discouraging provision in these form leases is one that turns the farmer-lessor into a guarantor of all operations on the property where the wind farm is situated. For example, in these form leases the farmer agrees that if people are on the property with his permission and damage is done to the wind farm installation, the farmer agrees to indemnify and reimburse the wind farm lessee. If the farmer contracts with a custom cutter, and a bearing falls off the custom cutter's combine setting the wheat field on fire which results in the heat warping the rotors, or if a hunter shoots at a pheasant and misses and hits a rotor, the farmer is liable for the damages. This concept of strict liability created by contract is a new concept in rural Kansas. At least in

3/10/2003

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my statement it is not in accord with sound public policy.

Finally, perhaps the most discouraging provision in these leases is that without exception the tenant-lessee is a shell corporation created for liability purposes. For example, the wind farm in southern Gray County is widely thought to have been installed by a major utility; in reality, the lease runs to some sort of wholly owned subsidiary or shell which has a rather minuscule net worth compared to the large public utility. The leases also, without exception, contain provisions permitting them to be assigned without any residual recourse on the assignor; again, this is an extraordinary provision here in rural Kansas. We are not accustomed to doing business with a company on Monday only to find that on Tuesday the company has assigned the contract to someone else and avoided all responsibility under the terms of the contract.

Thank you for taking the time to consider my statement.

Respectfully submitted,

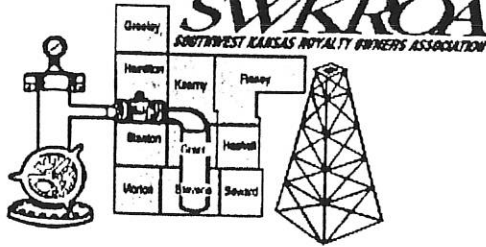
Philip Ridenour

rs

cc: Doug Smith
Bernie Nordling

3/10/2003

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209 E. 6th/ PO Box 250
Hugoton, Kansas 67951

Phone (620) 544-4333
Fax (620) 544-2230
Email: SWKROA@pld.com

**STATEMENT OF
BERNARD E. NORDLING, ASSISTANT EXECUTIVE SECRETARY
SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION
HUGOTON, KANSAS**

March 11, 2003

TO CHAIRMAN CLARK AND THE HONORABLE MEMBERS OF THE SENATE
COMMITTEE ON UTILITIES:

Re. House Bill No. 2280, as amended.

Mr. Chairman and Members of the Committee:

INTRODUCTION AND BACKGROUND

My name is Bernard E. Nordling, formerly of Hugoton, Kansas, and now a permanent resident of Lawrence, Kansas. I am a lawyer and a member of the Hugoton law firm of Kramer, Nordling, & Nordling LLC. I began practicing law in Hugoton in 1949 with A. E. (Gus) Kramer, the founder of the Southwest Kansas Royalty Owners Association. Mr. Kramer served as its first Executive Secretary from 1948 to 1968. I served in that capacity from 1968 until 1994 when my son, Erick, who is my law partner, assumed responsibility of the Secretaryship. My entire career as a lawyer has been representing landowners in the Hugoton Gas Field area.

While the Southwest Kansas Royalty Owners Association is mainly concerned with the protection of rights of royalty owners in the Hugoton Field, nevertheless, many of our members own the surface interest as well and would be affected by any wind energy leases or easements on lands in the southwest Kansas area so suitable for wind energy development.

CONCERNS OVER FAILURE TO RECORD FULL LEASE OR EASEMENT

It is my understanding your honorable Committee has before it today for present consideration and possible action House Bill No. 2280. I wish to make this statement on behalf of Kansas landowners, both as a landowner attorney and as Assistant Executive Secretary of the Southwest Kansas Royalty Owners Association, to express my concern about the passage of HB 2280, as currently amended.

The bill, as originally drafted, addresses the issue of requiring the filing of record any lease involving wind resources and technologies to produce and generate electricity. Because of the newness in Kansas of wind energy as an energy source, this legislation is appropriate to be consistent with the requirement of the filing of oil and gas leases, as well as water rights, of

record for the proper notification to prospective purchasers and mortgage of lands of any documents affecting property rights. However, by action of the House Committee on Utilities, the bill was amended to permit the filing only of a memorandum of lease or easement and not the full lease agreement or easement and therein lies the problem.

It is absolutely essential that any prospective purchaser or mortgagee of the lands covered by a wind energy lease or easement be fully apprized of the rights and obligations of the parties with respect to the agreement. If the full document is not placed of record, the difficulties faced by that prospective purchaser or mortgagee of knowing what the lease or easement provides and having to determine who might have a copy of the full document available for examination are obvious.

I must confess that because of my partial retirement from the practice of law and from the newness of wind energy leases in Kansas, I have only had the opportunity to examine a couple of wind energy leases and one wind energy easement to determine the rights and obligations of the respective parties to the agreement. I was absolutely shocked at the one-sidedness and over reaching of the wind energy lease agreements I examined. At the time, I told my clients the documents examined were the most one-sided I had ever seen in my fifty some years of practice!

For example, one lease in particular I examined was, among other things, 31 pages long, was very complicated and it was almost impossible to determine the compensation to be paid for use of the land. There was no factor to adjust for inflation in the payment of rent, and while for a specified term of thirty years, it could be renewed every 10 years at the option only of the lessee. Basically, the rights of the owner of the property were subservient to the rights of the wind energy lessee and notice had to be given to use the property other than for "hunting, ranching and agricultural purposes." It would seem a document such as I have described should be fully disclosed of record for full examination by an interested party without having to go to the trouble of chasing it down from the current owner or the wind energy lessee.

The argument may be made that filing a memorandum of lease of record rather than the full document is the same as having only to file a memorandum of a shopping center document but that is comparing apples to oranges. A wind energy lease is no different than an oil and gas lease and the full terms of an oil and gas lease must be placed of record, not just a memorandum of lease.

COMMENTS ON FISCAL NOTE FOR HB 2280

In the fiscal note section about HB 2280, it is recited that the bill would have no effect on any state fund. Also, the Kansas Association of Counties determined that the bill could bring some additional revenue to some counties but no estimation of the amount of revenue could be determined.

As a possible aid on that point, it is submitted that if the full lease is filed of record it must necessarily follow there will be additional revenues to the county in which the lease is filed of record. It is my understanding that currently the charge for filing documents of record in the

Register of Deeds office is \$8.00 for the first page and \$4.00 for each additional page. Taking an average of the two wind energy leases I have examined, there would be 25 pages to be recorded. This computes to revenue to the county of that one document of \$104.00. The shorter the leases, of course, the less revenue but obviously the recording of a two or three page memorandum of lease would raise only between \$12.00 or \$16.00 for the county.

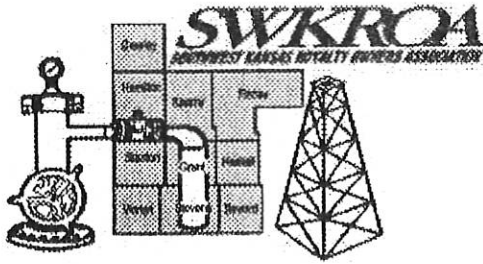
At such a critical time as our current budget crisis, the additional revenue to the county in which the leased property is located will be important to that county. However, the need for recording the full wind energy lease or easement for the reasons stated above should be of primary importance.

RECOMMENDATION ON ACTION TO BE TAKEN WITH REFERENCE TO HB 2280

It is respectfully submitted the appropriate action by your honorable Committee to take with reference to HB 2280, as amended, is to delete from Section 1, Line 1, the following words: "A memorandum of lease or" so that Section 1 of HB 2280 will read as follows: "Any lease or easement involving wind resources and technologies to produce and generate electricity given on land situated in this state shall be recorded by the lessee or the grantee of the easement in the office of the register of deeds of the county in which the land is located within five business days after the lease or easement is executed."

Respectfully submitted,

Bernard E. Nordling,
Assistant Executive Secretary
Southwest Kansas Royalty Owners Association



209 E. 6th P.O. Box 250
Hugoton, Kansas 67951

Phone (620) 544-4333
Fax (620) 544-2230
Email: SWKROA@pld.com

March 7, 2003

Senator Stan Clark
Chairman, Senate Utilities Committee
State Capitol, Room 449-N
Topeka, Kansas 66612

Dear Senator Clark:

For what it is worth, I would add my views to those expressed by Bernie Nordling in his message regarding House Bill No. 2280. I cannot, of course, equal his legal arguments, but would state that from a practical point of view, all energy companies should be treated similarly.

Oil and gas leases have, as I understand it, always been filed with County Registers of Deeds. Our association has urged landowners and royalty owners to file leases and amendments to leases without delay. To do less with wind energy companies would set an unfavorable precedent. As you can understand, I am worried that if wind energy companies are permitted to file only memoranda of leases, oil and gas companies would press for the same procedure and we would oppose that.

As you probably know, landowners follow a procedure of filing with Registers of Deeds any and all changes in a related field -- that of water rights. To illustrate, I drilled a new irrigation well last summer in a location 85 feet from the previous well. Upon the recommendation of the Division of Water Resources of the Kansas Department of Agriculture, I immediately filed with the Kearny County Register of Deeds a copy of the DWR Notice of Completion of that well. I believe this attention to detail should be followed for all dealings with the land -- water rights, oil and gas leases, and wind energy leases.

Thank you for your consideration.

John E. Crump
President
Southwest Kansas Royalty Owners Association

Sen. Stan Clark

From: Bernie Nordling [benordling@sunflower.com]
Sent: Monday, March 10, 2003 3:38 PM
To: Senator Stan Clark
Cc: John E. Crump; Phillip R. Dick; Doug Smith; Erick Nordling
Subject: HB 2280

Stan,

I have talked with my client and I now have her permission for you to share with the committee members my worksheets on the Texas wind energy lease. I hope that will be of some help to you at tomorrow morning's hearing on the bill.

Thanks for your help and patience on this important issue.

Bernie

3/10/2003

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This is about as one-sided agreement as I've ever seen.

GROUND LEASE AND EASEMENT AGREEMENT

THIS GROUND LEASE AND EASEMENT AGREEMENT ("Lease") is made and executed to be effective _____, 2001, by and between Donna Jerrye Van Leer ("Owner") and CIELO LAND AND CATTLE L.P., a Texas limited partnership ("Tenant").

WITNESSETH:

Exclusive all air rights

In consideration of the payments hereinafter reserved and the covenants and agreements herein contained, Owner does hereby exclusively demise and lease unto Tenant and grant certain easement rights unto Tenant, and Tenant does hereby take and lease from Owner and accept certain easement rights from Owner, over that certain parcel or parcels of unimproved land of approximately Five Thousand Six Hundred Sixteen (5,616) acres located in the County of Upton, State of Texas, and all air rights thereon, as more fully described and identified in Exhibit "A" attached hereto and incorporated herein by this reference ("Property"), for the purposes, for the term, for the payments and on the terms and conditions hereinafter set forth

** That should be more specific on when turning in well logs.*

1. Definitions and Certain Covenants. The following definitions shall apply for the purpose of this Lease:

What is WTG? Should spell it out here (page 1-16) page 5

1.1 Continuous WTG Construction Period shall mean a period of construction of WTGs on the Property by or on behalf of Tenant in which no more than six (6) months expire between the completion of the latest WTG to be constructed on the Property and the commencement of construction of the next WTG to be constructed on the Property. Continuous WTG Construction shall include each period of time during which production has temporarily ceased in connection with the Tenant's repair, maintenance, upgrading, repowering or replacement of WTGs on the Property. Tenant shall not use the Continuous WTG Construction Period provisions of this Lease to continue the term of the Lease unless such construction is necessary for the operation of the WTGs on the Property. Construction on a WTG shall be deemed "commenced" when the earliest of excavation, construction or installation of a WTG begins. Construction on a WTG shall be deemed "completed" when the WTG is ready for the production of electricity.

** [*

1.2 Force Majeure means causes beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure, including but not limited to acts of God, labor unrest including, but not limited to, slowdowns, picketing or boycotts, strikes, flood, earthquake, storm, fire, lightning, explosion, power failure or power surge, vandalism, theft, the cutting of power, transmission or other lines, wires or cables to the Project by persons other than Project employees, epidemic, war, revolution, riot, civil disturbance, sabotage, change in law or applicable regulation subsequent to the date hereof and action or inaction by any federal, state or local legislative, executive, administrative judicial agency or body which in any of the foregoing cases, by exercise of due foresight such party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome. The parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that they are unable to so perform or are prevented from performing by a Force Majeure, provided that:

- (a) the non-performing party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than sixty (60) days thereafter, gives the other party written notice describing the particulars of the occurrence;
- (b) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure;
- (c) the non-performing party use good faith and commercially reasonable efforts to remedy its inability to perform; and

Why is it necessary to be up in the action of land of the project owner and by page 5

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I would spell out in the very beginning what the property is being used for and for that purpose only (see 18.2 (page 20))

(d) as soon as the non-performing party is able to resume performance of its obligations excused as a result of the occurrence, it shall give prompt written notification thereof to the other party.

1.3 Gross Revenues and Tenant Covenants regarding Gross Revenues.

Gross Revenues shall mean and include for the Lease Term:

Need explanation of how PTCs affect payments

- 1.3.1 payments received by or on behalf of Tenant from any person or entity resulting from any contract or transaction for the sale of production, energy, electricity, power, capacity, and/or renewable energy credits, pollution credits or other associated credits (excluding PTCs) between Tenant and such person or entity,
- 1.3.2 payments received by or on behalf of Tenant from any person or entity as settlement or judgment amounts (a) to buy out or buy down, in whole or in part, any take or pay contracts related to the Property, or (b) to resolve any breach of such contracts, and
- 1.3.3 payments to Tenant by an insurer which are made specifically in lieu of revenues as defined in Section 1.6.1 and 1.6.2.

Gross Revenues shall not include:

Why exclusions? Need explanation on these items

- 1.3.4 any proceeds from any lump sum payment or payments to cancel or modify any obligation under any energy or electricity or capacity purchase contract or other contract relating to the Project or payment of liquidated or other damages under any energy or electricity or capacity purchase contract or other contract relating to the Project,
- 1.3.5 any sales, use, or other taxes imposed on such sales,
- 1.3.6 any amounts for energy used in the operations of the Project, from any lump sum payment or payments to cancel or modify any obligation under any contract relating to the Project (other than energy or electricity or capacity purchase contracts),
- 1.3.7 payment of liquidated or other damages under any contract relating to the Project (other than energy or electricity or capacity purchase contracts),
- 1.3.8 any proceeds received from the sale, lease or other disposition of any WTG or any other of Tenant's Improvements (or any interest therein),
- 1.3.9 any rental or lump sum payment received by Tenant in exchange for Tenant's assigning, subleasing, mortgaging or otherwise transferring all or any interest of Tenant in this Lease; provided, however, that no such disposition or transfer shall purport to, or have the effect of, assigning to any other person or entity, the right to receive the percentage of Gross Revenues as defined herein which would otherwise be due to Owner under Article 4 hereof, and

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any energy or electricity or capacity purchase contract or other contract relating to the Project or payment of liquidated or other damages under any energy or electricity or capacity purchase contract or other contract relating to the Project,

- 1.3.5 any sales, use, or other taxes imposed on such sales,
- 1.3.6 any amounts from parasitic or other loss (i.e., electrical energy used to power Windpower Facilities or Operations, or lost in the course of transforming, shaping, transporting or delivering the electricity);
- 1.3.7 payment of liquidated or other damages under any contract relating to the Project (other than energy or electricity or capacity purchase contracts),
- 1.3.8 any proceeds received from the sale, lease or other disposition of any WTG or any other of Tenant's Improvements (or any interest therein),
- 1.3.9 any rental or lump sum payment received by Tenant in exchange for Tenant's assigning, subleasing, mortgaging or otherwise transferring all or any interest of Tenant in this Lease; provided, however, that no such disposition or transfer shall purport to, or have the effect of, assigning to any other person or entity, the right to receive the percentage of Gross Revenues as defined herein which would otherwise be due to Owner under Article 4 hereof, and
- 1.3.10 any PTCs accruing to Tenant related to the operation of WTGs on the Property.

Tenant covenants that:

- 1.3.11 if production, energy, electricity, power, capacity, and/or renewable energy credits, pollution credits or other associated credits excluding PTCs related to the Project is sold at the same time under more than one price, Tenant shall pay Owner based upon the weighted average of all such prices,
- 1.3.12 each power purchase agreement or other transaction providing for the sale of production, energy, electricity, power, capacity, and/or renewable energy credits, pollution credits or other associated credits

17030420311, Mar-9-03 6:05PM; Page 5/11

excluding PTCs entered into by Tenant that results in Gross Revenue to Tenant shall be the product of arms-length negotiations;

1.3.13 if Tenant receives any proceeds from any lump sum payment or payments to cancel or modify any obligation under any energy or electricity or capacity purchase contract relating to the Project, or Tenant receives payment of liquidated damages or other damages under any energy or electricity purchase contract relating to the Project and, following such cancellation or modification or receipt of such liquidated or other damages, the price required to be paid under such energy or electricity or capacity purchase contract for energy from the WTGs located on the Property has been reduced for any period during the term of the contract (a "Reduced Price Period"), then Tenant agrees that Gross Revenues for energy sold from the WTGs located on the Property during a Reduced Price Period shall be calculated using the price or prices applicable to energy purchases under such energy or electricity or capacity purchase contract during the applicable Reduced Price Period without giving effect to such reduction; and

1.3.14 Tenant shall not enter into any contract or transaction providing for the sale of production, energy, electricity, power, capacity and/or renewable energy credits, pollution credits or other associated credits excluding PTCs from the Project to a person or entity affiliated with or in any way related to Tenant, unless the contract is an arms length bona fide transaction or is the result of bona fide good faith and commercially reasonable efforts to obtain a fair market value price for the sale of production, energy, electricity, power, capacity and/or renewable energy credits, pollution credits or other associated credits excluding PTCs from the Project.

Tenant and Owner agree to the following:

1.3.15 All Gross Revenues from the sale of energy, electricity or capacity shall be calculated without offset for any cost of producing, gathering, storing, transporting, marketing or otherwise making

electricity, energy, or capacity ready for sale or use and delivering it at the Point of Interconnection.

1.3.16 To the extent there is a loss of production between each WTG and the point of delivery to the Point of Interconnection, measurement of kWh production at each WTG shall only be reduced by a factor calculated based on variances between the aggregate of all WTG production measurements and the total measured kWh production at the point of delivery to the Point of Interconnection.

1.3.17 Owner or its designated representative(s) shall have the right upon three business days' notice, during normal business hours, to inspect all records and documents related to the determination of Gross Revenues, including any records of readings of meters maintained for the purpose of measuring electrical generation by the Project. Such audit shall be performed during Tenant's normal business operations and hours. If any Rent paid to Owner by Tenant shall be found to be less than ninety-seven percent (97%) of the amount payable as shown by audit (unless justifiably disputed by Tenant), then Tenant shall pay the reasonable cost of such audit as well as the additional Rent shown to be payable by Tenant to Owner plus interest at twelve percent (12%) per annum; otherwise the cost of such audit shall be paid by Owner. Tenant promptly shall pay Owner any unpaid amounts, and Owner promptly shall refund any overpaid amounts, revealed by such audit. In order to verify the accuracy of the Production Rent paid to Owner, Owner may examine Tenant's records relating to the Production Rent during Tenant's regular business hours at the location in which Tenant normally keeps such records.

1.4 Improvements shall mean all facilities, structures, equipment, machinery, wires, conduit, fiber, cable, poles, materials and property of every kind and character which are constructed, installed and/or placed on, above or below Property on behalf of Tenant, including without limitation roadways, substations, transmission lines and all other Interconnection Facilities.

1.5 Interconnection Facilities shall mean all Improvements whose purpose is to deliver electrical power from the Project to a utility grid or other system,

~~No extension notice required lease~~
~~Shant~~

the occurrence of a Regulatory Suspension, a Continuous WTG Construction Period or an event of Force Majeure, Owner shall have the right to terminate the Lease during such Additional Extension Term upon not less than sixty (60) days' notice to Tenant unless Tenant, during the sixty (60) days following the receipt of such notice, recommences Production In Paying Quantities. Tenant may exercise its right to the Extension Terms by giving Owner written notice thereof not less than three (3) months and not more than two (2) years before the expiration of the Initial Term or immediately preceding Extension Term, as the case may be. The terms and conditions set forth in this Lease (including the Rent and other amounts to be paid by Tenant to Owner) shall continue and remain in effect during the Extension Terms.

JK

Make them limit type of property to wind development. That's what they are paying for.

2.4 Regulatory Suspension During Extension Term. Upon the occurrence of a Regulatory Suspension during any Extension Term, Tenant shall give written notice to Owner of such Regulatory Suspension and the circumstances thereof within thirty (30) days after the commencement of the Regulatory Suspension. Tenant shall then have a period of twelve (12) months after the commencement of the Regulatory Suspension to resume payment of Production Rent (as defined herein) to Owner, during which period of time the Lease Term shall continue and the Lease shall remain in effect on the same terms and conditions set forth in this Lease. If Tenant is able to resume payment of Production Rent within the twelve-month period, then the Extension Term will be deemed to have been suspended during the Regulatory Suspension, and the result of such suspension shall be that the Extension Term is extended one day beyond its original expiration date for each day of the suspension. If, however, Tenant is not able to resume payment of Production Rent by the end of such twelve-month period of Regulatory Suspension, the Extension Term shall terminate effective as of the last day of the month following the end of such a twelve-month period. A Regulatory Suspension shall not reduce or defer Tenant's obligations to make Minimum Rent payments as specified in the other portions of this Lease.

2.5 Force Majeure. A Force Majeure shall not operate to terminate any Lease Term and, during the continuance of any Force Majeure event suffered by Tenant, the Lease Term shall be suspended; the result of such suspension shall be that the then current Lease Term is extended one day beyond its original expiration date for each day of the suspension.

3. Use of the Property by Tenant.

3.1 Use by Tenant. Tenant exclusively may (i) use the Property for the development, construction, installation, operation, maintenance, repair, replacement and removal of the Project, including all WTGs, and all related Interconnection Facilities and other Improvements, and all other activities associated therewith such as, but not limited to, performing wind and environmental studies and soil tests, installing, maintaining, operating, monitoring and removing meteorological equipment, constructing roads and surveying the Property; (ii) use and convert all of the wind resources on the Property; and (iii) possess the Property for such purposes and to undertake any other activities related to the Project and the Improvements (including, without limitation, communications systems development associated with the operation of the Project and eco-tourism as provided herein), whether accomplished by a third party authorized by Tenant or by Tenant, that are compatible with such uses and do not substantially interfere with any use reserved to the Owner. Nothing in this Lease shall be interpreted as imposing on Tenant any obligation to install WTGs or other Improvements or to operate any Projects on the Property.

3.2 Separate Leases. Tenant may use the Property for one Project or Tenant may divide the Property into multiple separate Projects. In the event that Tenant elects to have more than one Project, then Owner shall enter into new and separate leases, and amend this Lease, to permit each such separate Project to have a separate lease which is specific for it with no requirement for additional consideration from Tenant in connection therewith. All such new and separate leases shall have the same terms and conditions as this Lease, except that (i) the Property shall be defined specifically in each case; (ii) the Rent shall be a prorated portion of the amounts set forth in Article 4 hereof; (iii) Owner shall grant separate easements to the then tenants (which need not be the same entity as Tenant) under the other leases for such things as non-obstruction, overhang, access and transmission; and (iv) the Owner under each separate lease shall be the fee owner(s) of the real property covered by that lease. Tenant shall reimburse Owner its reasonable costs up to \$1,000.00 for each transaction effected pursuant to this Section 3.2.

Use way too broad should be limited to current project

Make them limit each lease to separate projects

Way too broad

What's the matter?

4-11

*This doesn't make sense. Why should
Owner pay expense of compliance*

3.3 Compliance With Laws. Owner shall not be responsible for obtaining any governmental permits and approvals necessary for the construction and operation of the Project. Owner shall cooperate with Tenant as necessary to obtain any governmental or utility approvals or permits, at no cost or expense to Tenant, provided that Tenant shall reimburse Owner for all its reasonable out-of-pocket expenses directly incurred in connection with such cooperation.

3.4 Uses Reserved by Owner. Owner expressly reserves the right to use the Property for all other purposes not granted to Tenant under this Lease, including hunting, oil and gas development, ranching and agricultural purposes, that do not interfere in any way with Tenant's use of the Property under this Lease or the enjoyment of the rights herein demised and leased; provided, however, that Owner shall reimburse Tenant for all damage to the Project or any other improvement, and hereby indemnifies and holds Tenant harmless for any harm to life or limb occurring on the Property, caused by the discharge of any firearm or other weapon. Owner shall give sixty (60) days prior written notice to Tenant of any use other than hunting, ranching and agricultural purposes. If Tenant believes that interference with Tenant's use will result from the proposed use, Owner shall cooperate with Tenant in good faith to facilitate the compatibility of Owner's proposed use with Tenant's leasehold interest. *Here to give notice of oil & gas development. Why?*

3.5 No Interference. During the term of this Lease, Owner covenants and agrees that neither Owner nor its agents, lessees, invitees, guests, licensees, successors or assigns will (i) interfere with, impair or prohibit the free and complete use and enjoyment by Tenant of its rights granted by this Lease; (ii) take any action which will interfere with or impair the availability, accessibility, flow, frequency, or direction of air and wind over and above the Property; (iii) take any action which will in any way interfere with or impair the transmission of electric, electromagnetic or other forms of energy to or from the Property; or (iv) take any action which will interfere with or impair Tenant's access to the Property for the purposes specified in this Lease or impair Tenant's access to any or all improvements. *No interference should work both ways.*

3.6 Quiet Enjoyment. Tenant shall peacefully hold and enjoy the Property for the purposes stated herein, and any and all other rights granted by this Lease, for the entire Lease Term without hindrance or interruption by Owner or any other person or persons claiming by, through or under Owner at law or in equity. *Should be some requirement of Tenant for use of property by Owner (see 3.4)*

3.7 Zoning. Owner hereby agrees that Tenant may, if it so elects and at any time following execution of this Agreement, commence taking any and all actions as may be necessary or proper for effectuating change of zoning and such other land use regulation of the Property and may apply for any applicable permits or approvals to allow wind energy development on the Property for the exercise of any of the other uses granted to Tenant hereunder. Owner shall cooperate with Tenant in Tenant's efforts to effectuate the zoning and/or other change or application; provided, however, all costs and expenses that may be incurred or assessed directly or indirectly with respect to effectuating the said change shall be borne by Tenant. *above contract*

This appears to make it "net" revenue instead of "gross"

4. Rent

4.1 Production Rent. During each Lease Year, Tenant shall pay rent to Owner in the amount of Three percent (3%) of the annual Gross Revenues received by Tenant for the sale of electricity produced by WTGs located on the Property ("Production Rent"). At no time shall the Production Rent be less than \$0.001 per kilowatt hour (KWh) sold as measured at the point of delivery of electricity to the closest interconnect to a common transmission carrier. Owner agrees that all electricity production from the Property shall have deductions or losses, directly or indirectly, for producing, gathering, transforming, transporting, and otherwise making electricity produced ready for sale or use and delivered at the closest common carrier transmission circuit. Tenant shall not calculate Production Rent by averaging the Gross Revenues received in respect of WTGs located on the Property with revenues received with respect to WTGs located on other properties; provided, however, that nothing contained herein shall prevent Tenant from interconnecting Improvements with any facilities of Tenant or any other person not located on the Property.

Need detailed projection of gross revenues before signing. Also an explanation of what \$0.001 per kWh means by way of compensation.

4-12

Need your calculations of rent due to inflation. Should try to put in a provision to renegotiate rent after 10 years.

Rent should be payable in advance. Minimum should be raised. There will be no production payment during Construction Period

Minimum Rent. Tenant's rent payments to Owner during each Lease Year shall be Ten Thousand and No/100 Dollars (\$10,000.00) per Lease Year. For each annual period, the Minimum Rent shall be due sixty (60) days after the end of each Lease Year only to the extent the Production Rent otherwise payable or paid during such Lease Year was less than the Minimum Rent payable. Minimum Rent and Production Rent are collectively referred to as "Rent". Any Minimum Rent owed shall be proportionately reduced for any period of Regulatory Suspension or Force Majeure. No Regulatory Suspension, Force Majeure, or Continuous WTG Construction Period shall reduce or defer Tenant's obligations to make Minimum Rent payments as specified above.

4.3 Payment of Production Rent. Tenant shall pay Production Rent to Owner on a monthly basis, and such Production Rent shall be due and payable on the 15th day of each month. Production Rent not paid by the 15th day of the month following each month during which such Production Rent was due and payable shall accrue interest at the rate of eight (8) percent per annum. For months when Production Rent amounts due Owner total less than One Thousand Dollars (\$1,000.00), then Tenant may elect to accrue and defer payment of Production Rents due for up to twelve (12) months without interest or penalty, so long as the total Production Rents for which payment has been deferred, plus Production Rents due on each succeeding Production Rent payment date, do not exceed One Thousand Dollars (\$1,000.00).

NO

Tenant shall make rental payments to Owner at:

(I thought projections were way above this amount!!!)

Address: Donna Jerrye Van Leer
5213 Branchwood Court
Lawrence, KS 66049

They're raising your money interest fees

or such other address as Owner indicates in writing at least ten (10) business days before the next payment due.

5. Taxes and Assessments
Need justification of how much taxes will increase and why should owner be responsible for tenants taxes?

5.1.1 Owner's Taxes. Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("Taxes") levied or assessed against the Property and improvements thereon other than Tenant's Improvements ("Owner's Taxes").

5.1.2 Tenant's Taxes. Subject to timely receipt from Owner of the relevant Taxes statement pursuant to this Section 5.1.2, Tenant shall pay to Owner prior to delinquency the amount of any increase in the Taxes levied against the Property as a result of Tenant's leasehold interest or the installation of the Improvements on the Property ("Tenant's Taxes"). Tenant shall not be responsible for Taxes attributable to improvements installed by Owner or others on the Property, or to the underlying value of the Property itself. Owner shall submit the annual statement for Taxes to Tenant within two (2) weeks after the date Owner receives the statement from the taxing authority. Tenant may elect to have the statement for Taxes sent directly to Tenant. In such event, Tenant shall pay all Taxes to the appropriate taxing authority prior to delinquency, and Owner shall pay to Tenant Owner's share of such Taxes prior to delinquency (or Tenant may offset such amount against Rent). If Tenant receives such statement directly, Tenant shall submit a copy of the statement for Taxes to Owner within two (2) weeks after the date Tenant receives the statement from the taxing authority.

Why wait until delinquency?

5.1.3 Failure to Pay. In the event of the failure of either party to pay the above Taxes prior to delinquency, the non-defaulting party shall have the right to cure such default by payment of those Taxes and any penalties or interest on such Taxes which are due, and to credit or deduct, as the case may be, such payments to Rent due hereunder.

4-13

What recourse does Owner have if Tenant fails to pay taxes when due?

5.2 Tenant's Right to Contest. Tenant may contest the legal validity or amount of any such Taxes, for which it is responsible under this Lease, and may institute such proceedings as it considers necessary, provided that Tenant shall bear all expenses in pursuing such contest or proceeding. With respect to any Taxes which may constitute a lien on the Property, Tenant shall promptly pay such Taxes unless the proceeding in which it contests such Taxes shall operate to prevent or stay the collection of the Taxes so contested or unless Tenant removes any such lien by bonding or otherwise. Owner agrees to render to Tenant all reasonable assistance in contesting the validity or amount of any such Taxes, including joining in the signing of any reasonable protests or pleading which Tenant may deem advisable to file; provided, however, that Tenant shall reimburse Owner for its reasonable out-of-pocket expenses, including attorneys' fees incurred in connection with providing such assistance.

6. Liens. Tenant hereby indemnifies and agrees to hold Owner and the Property free, clear and harmless of and from all mechanics' liens and claims of liens and all other liability, claims and demands, including attorneys' fees, that arise as a result of work on the Project, and that have not been removed or discharged as of the date that is thirty (30) days after termination or expiration hereof.

7. Maintenance of the Property.
7.1 Maintenance. Throughout the term of this Lease, Tenant shall, at Tenant's sole cost and expense:

Owner should have control

when roads are located

Maintain ^{used} property in good condition also

- (a) maintain all roads on the Property in good condition; all such roads shall be paved caliche or better.
- (b) use reasonable efforts to cause any areas disturbed by construction to be substantially returned to their original condition by the date that is required under Section 11.3 hereof.
- (c) not bring onto the Property any of the following types of plant: golden rods, bitter weeds, mesquite or African rue.
- (d) not remove or disturb any archaeological artifacts located on, in or under the Property without approval of the State Historic Preservation Office ("SHPO"); any artifacts removed after obtaining such approval shall be promptly delivered to Owner (or as the SHPO may otherwise direct) and shall belong to Owner.
- (e) not remove or possess any plants or animals located on, in or under the Property.
- (f) not bring or grant permission to any person to bring any firearms onto the Property.

Need provisions to protect you from environmental liability (EPA regs) see 2007 Regs 2.27

Need provisions to protect you from environmental liability (EPA regs) see 2007 Regs 2.27

Need provisions to protect you from environmental liability (EPA regs) see 2007 Regs 2.27

The above notwithstanding, Tenant shall have no obligation to repair or maintain as provided above to the extent such repair or maintenance is necessary because of the negligent or intentional acts of Owner or its agents and employees. Any and all repair and maintenance obligations which arise due to Owner's negligent or intentional acts or omissions shall be repaired by Owner at its sole cost and expense upon notice by Tenant.

8. Improvements: Preparatory Work.

8.1 Ownership. All Improvements shall at all times remain the property of Tenant or its successors and assigns and the Owner shall have no right, title or interest therein.

8.2 Removal. All Improvements constructed or placed on the Property by Tenant during the term of this Lease, or any extension thereof, may be repaired, replaced, added to or expanded upon

4-14

by Tenant at any time during the Lease Term, and upon the termination of the Lease shall be subject to Section 11.3 below.

8.3 Water and Caliche. Tenant may use water from Owner's existing wells only upon payment to Owner of \$0.25 per barrel of water used. To the extent allowed by law, Tenant may construct its own water wells upon the Property; in such event, Tenant shall not be charged for use of the water, but Tenant shall allow Owner to use water from such wells at no cost to Owner. Upon termination of this Lease and request by Owner, Tenant shall disassemble water wells that it has constructed and cause such area of the Property to be returned to its approximate original condition as existed before the installation of Tenant's water well, all at Tenant's sole cost and expense, all in accordance with Section 11.3 hereof. Tenant may excavate and use caliche from the Property only upon payment to Owner of the then prevailing market price.

9. Indemnity.

9.1 Indemnity by Tenant. Tenant shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "Liability") resulting from the gross negligence, willful misconduct, or breach of this Lease by Tenant, its agents, contractors or employees, invitees, licensees and permittees; such indemnification shall include without limitation damages arising from fires, casualties, environmental damages, U.S. Fish & Wildlife related damages, and personal injury damages; provided, however, that such Liability is not due to any negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees. Owner hereby waives any claims against Tenant for damages or injury directly suffered by Owner arising as a result of any audible or electromagnetic noise, electrical interference and radio frequency interference, attributable to Tenant's operations on the Property.

9.2 Indemnity by Owner. Owner shall defend, indemnify, protect, and hold Tenant harmless from and against all Liability resulting from the negligence, willful misconduct, or breach of this Lease by Owner, its agents, contractors or employees, invitees, licensees and permittees; such indemnification shall include without limitation damages arising from fires, casualties, environmental damages, U.S. Fish & Wildlife related damages, and personal injury damages; provided, however, that such Liability is not due to any negligence, willful misconduct, or breach by Tenant, its agents, contractors, employees, invitees, licensees, or permittees.

9.3 Survival. The obligations of the parties under this Article 9 shall survive expiration or other termination of this Lease.

10. Assignment and Sublease.

10.1 By Tenant. Tenant and its successors and assigns may assign this Lease, and/or enter into a sublease or other agreement creating possessory interests pertaining to all of the Property subject to Owner's rights under this Lease, without Owner's prior consent; provided that Owner receives written notice of any such assignment or sublease within ninety (90) days after the effective date thereof; the assignee under any such assignment, or further assignment of a prior Assignee's interest, is hereinafter referred to as "Assignee." Any Assignee of Tenant's interest under this Lease, or any sublessee of Tenant's interest under this Lease, shall be entitled to all of the rights and privileges of Tenant hereunder with respect to this Lease and the Assignee or the sublessee shall thereafter, in the case of an assignment, or during the term of the sublease, in the case of a sublease, be solely entitled to exercise the rights and privileges of the Tenant hereunder, whether or not reference is specifically made herein to such assignee or sublessee; provided, that if the original Tenant under this Lease (hereinafter, the "Original Tenant") assigns all or a portion of its interest under this Lease, notwithstanding any other term or provision of this Lease, the Original Tenant shall have and retain the rights set forth under Section 9.1 hereof. Any reference to the rights of Tenant hereunder shall, following any such assignment or sublease, include a reference to such Assignee or sublessee. Tenant shall have the right to grant licenses for ingress and egress in connection with any assignment or sublease, provided such licenses do not extend beyond the Lease Term of this Lease and are otherwise consistent with the provisions of this Lease. Upon any assignment, the assigning tenant shall be released and shall have no further obligation or liability under this Lease as of the date of the assignment with respect to the portion of

Why not give Dione option to his water wells at expiration of lease w/o cost to Dione.

Can assign lease without Owners Consent.

Sublease has right of assignment?

Very good
These provisions are very good

4-15

Warning of this paragraph, you're let the original lease off hook and you have no control of the new tenant?

the Lease assigned, provided that the new tenant shall agree in writing to assume and be bound by all of the terms and conditions hereof; simultaneously with the assignment or sublease, Owner releases the assigning or subletting Tenant from all claims and obligations under this Lease, and Owner agrees to reasonably execute any document, as requested by the assigning Tenant, evidencing such release. The assigning tenant shall not be relieved of any obligations arising or accruing prior to the date of the assignment. Without limiting the foregoing, if Tenant enters into a sublease or other agreement creating possessory interests pertaining to the Property, the sublessee or party acquiring such interests shall be entitled to receive from Owner copies of all notices from Owner (including, without limitation, all notices of default sent to Tenant) and have the right to perform all of Tenant's obligations hereunder and cure any defaults by Tenant hereunder. Upon the expiration or termination of any assignment of part of the Lease Term or any sublease, and if a portion of the Lease Term remains unexpired, Tenant may (i) elect to continue its performance under this Lease for the remainder of the Lease Term, in which case Tenant shall cure any and all defaults of the previous Assignee or sublessee, or (ii) Tenant may elect to terminate this Lease pursuant to its rights in Section 11.1, in which case Tenant shall not be liable for any damage caused by the previous Assignee or sublessee and shall not be required to cure any defaults of the previous Assignee or sublessee.

Warning of partial assignment is known

10.2 Partial Assignment or Sublease. If Tenant or its successors and assigns at any time hereafter wish to assign their interest in this Lease with respect to less than all of the Property, or to sublease or create possessory interests pertaining to less than all of the Property, Owner agrees that it will, within twenty (20) days following receipt of a written request by Tenant or its successors or assigns, execute and deliver to Tenant (i) an amendment of this Lease that eliminates from the description of the Property the portion thereof to be included in the partial assignment or sublease, and (ii) a new Lease on the same terms as this Lease with respect to the portion of the Property to be included in the partial assignment or sublease. Tenant shall be obligated to reimburse Owner for its reasonable costs and expenses in connection with Owner's review, execution, and delivery of such documents in an amount not to exceed \$1000.00 for each such assignment transaction. The then-possessory tenant shall remain liable for the payment of Minimum Rent hereunder notwithstanding any such assignment. No such assignment shall amend or otherwise modify the terms of this Lease other than as specifically allowed by this Section 10.2.

New owner bound by lease terms

10.3 By Owner. Subject to Section 10.2 hereof, in the event of any assignment, sale or other transfer by Owner of any or all of Owner's interest in the Property, the assignee, purchaser or transferee shall, expressly for the benefit of Tenant or its successors or assigns, assume this Lease and agree to be bound by all of its terms and provisions with respect to that portion of the Property so transferred. Owner shall thereupon be relieved of any and all obligations pertaining solely to the interest or interests which are the subject of said transfer and shall have no further rights therein; provided, however, that Owner shall not be relieved of any obligations arising or accruing prior to such assignment, sale or transfer, unless such obligations are explicitly assumed by the Assignee in a writing in form and substance acceptable to Tenant in its reasonable discretion. No Mortgagee of the Owner shall be obligated to assume this Lease and be bound by all its terms and conditions unless and until such Mortgagee forecloses (at which time it shall be subject to the first sentence of this Section 10.3), although each such Mortgagee's interest shall be subject to Tenant's rights hereunder.

10.4 Other Assignments Prohibited. Any assignment, sale or other transfer by Owner done without complying with Section 10.3 shall, at the option of Tenant, be null and void and shall constitute a default by Owner under this Lease. Any assignment, sale or other transfer by Tenant done without complying with Section 10.1 shall, at the option of Owner, be null and void and shall constitute a default by Tenant under this Lease.

11. Termination.

11.1 Termination by Tenant. Subject to the prior written approval of any Leasehold Mortgagee, but notwithstanding any other provisions of this Lease, Tenant shall have the right on thirty (30) days notice to Owner to terminate this Lease and surrender to Owner all of Tenant's right, title and interest in and to the Property in which event all further rights and obligations of Owner and Tenant shall cease and terminate as of the date of such termination, except for those obligations that expressly survive termination of

Tenant can terminate lease with the giving of 30 days notice !!!

*No warranty!!!
I refuse to be responsible for what*

*With
out
because Tenant has complete control of property*

4-16

What about rights of termination after primary term -

this Lease, including the obligations described in Section 11.3 below and all Minimum Rent and/or Production Rent payments accrued as of the date of termination.

11.2 Surrender. Upon any termination, surrender, or expiration of this Lease, Tenant shall peaceably deliver up to Owner possession of the Property or any part thereof, and other rights granted by this Lease, and shall execute, at Owner's request, any and all documents reasonably required to record or evidence such termination.

11.3 Removal of Improvements. Within one (1) year after termination, surrender, or expiration of this Lease, Tenant shall, upon the written request of Owner, remove to eighteen (18) inches below surface level, all of the Tenant's Improvements at the Property and restore the Property to its approximate original condition that existed before Tenant installed any improvements upon the Property, all at Tenant's sole cost and expense. *Should be removed for surface*

12. Default and Remedies.

12.1 Tenant Default and Notice. If Tenant shall (a) fail to pay any undisputed Rent, charges or sums due and payable hereunder within thirty (30) business days from receipt of written notice from Owner that such amounts are due, or (b) fail to pay any disputed Rent, charges or sums due and payable hereunder to a mutually agreeable neutral third party in Travis County, Texas (or failing such agreement to a court registry in Travis County, Texas) within thirty (30) business days from receipt of written notice from Owner requesting the escrow/deposit of such sums, then Tenant shall be in default hereunder and, subject to Article 16 hereof, Owner shall have the following remedies which shall not be exclusive but cumulative and in addition to any remedies now or later available to Owner in law or equity.

12.1.1 Continue Lease. Owner may continue this Lease in effect as long as Owner does not terminate Tenant's right to possession, and Owner shall have the right to collect Rent, including subrents, plus accrued interest, if any, when due. *would you want to con*

12.1.2 Cure Default. Owner may cure any default by Tenant after Tenant's cure period has expired. If Owner at any time by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Owner shall be due immediately from Tenant to Owner as additional rent hereunder, together with any interest due (calculated at the prime interest rate at Chase Bank of Texas, N.A. (or its successor) on the date of default plus two percent per annum).

12.1.3 Terminate Lease. Subject to Article 16 hereof, Owner may terminate this Lease; provided that Owner shall not terminate this Lease by reason of nonpayment of Rent if Tenant in good faith disputes the amount of Rent claimed by Owner and if, within the period of cure set forth above, Tenant pays to Owner the undisputed portion of Rent.

12.1.4 Surrender Property. Notwithstanding the above, subject to the prior written approval of any sublessee and any Leasehold Mortgagee, Tenant may at any time surrender the Property to Owner pursuant to Section 11.1.

The breach by Tenant of any provision hereof, other than the breach set forth in Section 12.1, may only result in a cause of action by Owner under applicable law and, other than as set forth in Section 2.2 and this Section 12.1, Owner hereby waives all other rights it may have, in law or in equity, to terminate this Lease prior to the expiration of the Extension Term elected by Tenant. In the event of any such breach by Tenant, Owner shall, at least sixty (60) days prior to commencing any cause of action, give written notice of the cause of breach to Tenant, any Leasehold Mortgagee and sublessee (of which it has been notified in writing) concurrently, specifying in detail the alleged event of breach and the required remedy. If Tenant does not cure or commence curing such breach within thirty (30) days of receipt of notice, the Leasehold Mortgagee or the sublessee shall have the absolute right to substitute itself for the Tenant and perform the duties of the Tenant hereunder for the purposes of curing such breach. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee or the sublessee (or their respective

if look like Owner has no right to terminate lease, except for failure to pay rent

Owner can't terminate lease in 60 days before

is way?

4-17

*I can't see where obligations
of Owner are spelled out,
what are they?*

employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Tenant hereunder.

12.2 Owner Default and Notice. Owner shall be in default of this Lease if it shall fail to meet any of its obligations under the terms of this Lease and shall not cure such default within thirty (30) days after receiving notice thereof from Tenant (or if such default cannot be cured through the exercise of reasonable diligence within such thirty day period, if Owner fails to commence corrective action within such thirty day period and thereafter diligently prosecutes same to completion) ("Landlord Events of Default")

12.2.1 Tenant's Remedies. Upon the occurrence of a Landlord Event of Default described in Section 12.2 above, Tenant shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

They don't have to go to court to terminate lease
a. Terminate this Lease without being liable for prosecution or any claim of damages therefor.

b. Pursue any and all other action or remedies that may be available to Tenant at Law or in Equity, including but not limited to all loss or damage which Tenant may suffer by reason of a termination or dispossession of the Property and the loss of the value of its leasehold estate.

13. Condemnation

13.1 Complete Taking. If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Property, or all of the Project thereon, for any public use or otherwise, then the interests and obligations of Tenant under this Lease in or affecting the Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Property or the Project thereon, (ii) the date that Tenant is, in its sole judgement, no longer able or permitted to operate the Project on the Property in a commercially viable manner, or (iii) the date of the condemnation judgment, provided, however, that in such situation Tenant shall have the right to terminate the Lease. Tenant shall continue to pay all amounts payable hereunder to Owner until the earlier of such dates, at which time Owner and Tenant shall be relieved of any and all further obligations and conditions to each other under this Lease.

13.2 Partial Taking. If, at any time during the term of this Lease, any authority having the power of eminent domain shall condemn one or more, but not all, of the WTGs, any Interconnection Facilities, and/or any portion of the Improvements or the Property, then the interest and obligations of Tenant under this Lease as to those WTGs, Interconnection Facilities, and/or any portion of the Improvements or the Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such WTGs, Interconnection Facilities, and/or any portion of the Improvements or the Property, (ii) the date that Tenant is, in its reasonable judgement, no longer able or permitted to operate the Project on the Property, or any portion thereof, in a commercially viable manner, or (iii) the date of the condemnation judgement, and, unless this Lease is terminated as hereinafter provided, this Lease shall continue in full force and effect as to the remainder of the WTGs, Interconnection Facilities, Improvements or the Property. If the remainder of the WTGs, Interconnection Facilities, and/or any portion of the Improvements or the Property is or becomes insufficient or unsuitable for Tenant's purposes hereunder, as determined by Tenant in its reasonable discretion, then subject to the rights of any Leasehold Mortgagee under Article 16, Tenant shall have the right to terminate this Lease as to the portion of the Property to which Tenant continues to hold the rights, at which time Owner and Tenant shall be relieved of any further obligations and duties to each other under this Lease.

13.3 Apportionment, Distribution of Award. On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Tenant may sustain in the removal and relocation of Tenant's Improvements, to Tenant;

In case of condemnation, they get first crack at any award.

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- (b) Any portion of the award by the court for Tenant's anticipated or lost revenues or profits, to Tenant;
- (c) Any portion of the award by the court for Owner's lost revenues, to Owner;
- (d) Any portion of the award by the court for the taking of the real property constituting the Property to Owner, except the "added value" or "bonus value" in the Lease shall be awarded to Tenant; and
- (e) All remaining amounts of the award, to Owner or Tenant consistent with Texas Law.

14. Representations and Warranties of Owner. Owner hereby makes the following representations and warranties:

14.1 Physical Condition of Property. Owner has no actual knowledge of any physical conditions of the Property which would prevent or significantly restrict Tenant's development of the Property for the purposes specified in Article 3 hereof or which could, with the passage of time, or the giving of notice, constitute a violation of any governmental law, ordinance, order, rule or regulation.

14.2 Legal Restrictions Affecting Property: No Violation. Without having made any specific investigation thereof, and without undertaking to do so, Owner has no actual knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Tenant's development of the Property pursuant to Article 3 hereof. This Lease does not violate any contract, agreement, instrument, judgment or order to which Owner is a party or which affects the Property. To the best of Owner's knowledge, the Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Property.

14.3 Title to Property. Owner is the holder of a One Hundred percent (100%) interest in the fee title to the Property and has full power and authority to enter into and perform its obligations under this Lease, and this Lease shall not violate any contract, agreement, instrument, judgment, or order to which Owner is a party or which affects the Property. Owner, previous to the time of execution of this Lease, has not leased any portion of the Property under any lease or other instrument that is currently effective and the Property is not subject to any options or right of first refusal. The leasehold estate created hereby with respect to the Property is free from liens and encumbrances done, made, or suffered by Owner, or any person claiming under him, except for such liens and encumbrances that are of record and those title exceptions, each of which is specified in Exhibit "B" attached hereto and made a part hereof, and as to which Owner has fully complied with Article 17 to the satisfaction of Tenant and Tenant's Leasehold Mortgagees.

14.4 No Litigation. No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Property, Owner shall give Tenant prompt notice thereof.

The representations and warranties set forth in this Article 14 shall survive the execution and delivery hereof.

15. Consent to Mortgage.

15.1 Consent. Tenant may from time to time, without the prior written consent of Owner, encumber Tenant's interest in this Lease, the rights granted hereunder and/or Tenant's interest in the Improvements or the Project by one or more Mortgages (individually, "Leasehold Mortgage"), provided that any Leasehold Mortgage and all rights acquired under it shall be subject to all rights and interests of Owner. Without limiting the generality of the foregoing, nothing contained in any Leasehold Mortgage shall release or

Should not consent to mortgage unless you have protection from it.

What about any consent after lease? Must should be required to take property subject to existing leases.

Cant be subject to any other leases. Must be out of the way.

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What remedy for failure to perform

be deemed to relieve Tenant from full and faithful observance and performance of the terms, covenants and conditions herein contained to be observed and performed by Tenant or from any liability for the non-observance or non-performance of any of the terms and conditions hereof, nor be deemed to constitute a waiver of any rights of Owner hereunder, except as expressly provided for herein. If Tenant hereafter enters into a sublease with respect to this Lease pursuant to Section 10.1 hereof, thereafter the Tenant, as sublessor, shall no longer have any right to enter into a Leasehold Mortgage with respect to the Tenant's retained interest as sublessor under this Lease. The sublessee may enter into a Leasehold Mortgage of its interest as sublessee of the property and the Leasehold Mortgagee (as hereinafter defined) shall be entitled to all of the rights and privileges granted hereunder with respect to a Leasehold Mortgage with respect to the interests of the sublessee hereunder, including the right to receive all notices required to be given to the Leasehold Mortgagee by Owner pursuant to this Lease.

15.2 Assignment. Tenant may assign this Lease and the rights granted hereunder without Owner's consent to a Mortgagee of a Leasehold Mortgage ("Leasehold Mortgagee").

15.3 Statement by Owner. Within twenty (20) days following receipt of a written request of Tenant or Leasehold Mortgagee (specifying the information sought), Owner shall execute, acknowledge and deliver to Tenant, any assignee or sublessee, or Leasehold Mortgagee a written statement declaring: (i) either that the Lease is unmodified and in full force and effect, or the manner in which the Lease had been modified and whether the Lease as so modified is in full force and effect; (ii) the dates to which Tenant's monetary obligations hereunder have been paid in advance; (iii) whether Tenant is or is not then in default hereunder, and if Owner claims Tenant is in default, specifying such defaults; and (iv) whether any past defaults have been fully cured. The failure of the Owner to deliver such statement within such time shall be conclusive upon such Owner that this Lease is in full force and effect and has not been modified and there are no uncured defaults in the performance of the Tenant under this Lease.

16. Protection of Leasehold Mortgagee and Sublessee. Any Leasehold Mortgagee shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, and any sublessee shall, during the term of the sublease, be entitled to the following protection, upon delivery to Owner of notice of its name and address:

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

16.2 Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Tenant, Owner shall give written notice of the default to each Leasehold Mortgagee and sublessee (of which it has been notified in writing) concurrently with delivery of such notice to Tenant, specifying in detail the alleged event of default and the required remedy. In the event the Owner gives such written notice of default, the following provisions shall apply:

16.2.1 Curing Default. The Leasehold Mortgagee and a sublessee or assignee 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 Tenant after Tenant's receipt of notice of default, plus in the case of a Leasehold Mortgagee, sixty (60) days after receipt of the notice of default, provided that such sixty-day period shall be extended for the time reasonably required to complete such a cure, including the time required for the Leasehold Mortgagee to perfect its right to cure such default by obtaining possession of the Property (including possession by the receiver) or by instituting foreclosure proceedings, if required, provided the Leasehold Mortgagee acts with reasonable and continuous diligence (the "Initial Cure Period"). The Leasehold Mortgagee or the sublessee shall have the absolute right to substitute itself for the Tenant and perform the duties of the Tenant hereunder for the purposes of curing such defaults. Owner expressly

No. Why deny this responsibility

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consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee or the sublessee (or their respective employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Tenant hereunder. Owner shall not have the right to terminate the Lease prior to each Leasehold Mortgagee and sublessee having received the notice specified in Section 16.2 and expiration of the cure periods available to a Leasehold Mortgagee and sublessee as set forth above.

16.2.2 Deemed Cure by Leasehold Mortgagee. Any default by Tenant hereunder that cannot be remedied by any such Leasehold Mortgagee shall nevertheless be deemed to have been remedied if within the Initial Cure Period any such Leasehold Mortgagee shall have acquired such portion of Tenant's right, title, or interest in the Property or in this Lease or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, such Leasehold Mortgagee shall diligently prosecute any such proceedings to completion, such Leasehold Mortgagee shall take reasonable measures within its control to continue the operations of Tenant on the Property in accordance with the terms of this Lease, such Leasehold Mortgagee shall have fully cured within the Initial Cure Period any defaults that do not require possession of such portion of the right, title, or interest in the Property or in this Lease and shall thereafter continue to faithfully perform all obligations and after gaining possession of such portion of Tenant's right, title, or interest in the Property or in this Lease such Leasehold Mortgagee shall perform all the obligations of Tenant hereunder which arise thereafter.

16.2.3 Extension of Cure Periods. If any such Leasehold Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any bankruptcy, reorganization, insolvency, or other debtor-relief proceeding from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, then the times specified in Sections 16.2.1 and 16.2.2 of this Lease for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided, however, that such Leasehold Mortgagee shall have fully cured any default that does not require possession of such portion of the right, title, or interest in the Property or in this Lease, and shall continue to pay and perform such obligations as and when they fall due and shall have taken reasonable measures within its control to continue the operations of Tenant or such Leasehold Mortgagee upon the Property as provided herein.

16.2.4 Copies of Notices to Leasehold Mortgagee. Owner shall deliver to each Leasehold Mortgagee and sublessee (of which it has received notice or a mailing address of such person), a duplicate copy of any and all written notices that Owner may from time to time give to or serve upon Tenant pursuant to the provisions of this Lease, and such copies shall be delivered to each such Leasehold Mortgagee and sublessee and Original Tenant at the same time such notices are given to or served upon Tenant. No notice by Owner to Tenant hereunder shall be deemed to have been given unless and until a copy thereof shall have been delivered to each such Leasehold Mortgagee and sublessee.

16.2.5 Continuation of Lease. During any period of possession of the Property by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/ or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid the Rent and all other monetary charges payable by Tenant hereunder which accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Tenant's leasehold estate by the Leasehold 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 Lease shall continue in full force and effect and the Leasehold Mortgagee or party acquiring title to Tenant's leasehold estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Owner's right to terminate this Lease based upon such defaults shall be deemed waived; provided, however, the Leasehold Mortgagee or party acquiring title to Tenant's leasehold estate 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 Tenant's interest in this Lease by such party. Failure of Tenant to pay the Minimum Rent or the Production Rent shall not be considered a "non-curable default." A foreclosure upon the rights held by Tenant under this Lease must comply with applicable Texas law; the party exercising such foreclosure rights

must bring all Minimum Rent payments current within sixty (60) days of such foreclosure in order for the Lease to remain in full force and effect following such foreclosure.

16.2.6 No Liability After Assignment. Any Leasehold Mortgagee or other party who acquires Tenant's leasehold interest pursuant to foreclosure or assignment in lieu of foreclosure, shall not be liable to perform the obligations imposed on Tenant by this Lease incurred or accruing after such Tenant no longer has ownership of the leasehold estate or possession of the Property, and such Leasehold Mortgagee shall have the right to freely assign such portion of the right, title, or interest in the Property or in this Lease to any person or entity. Notwithstanding any other provision of this Lease, in the event that any Leasehold Mortgagee (i) performs any monetary or other obligation of Tenant under this Lease; (ii) acquires any portion of Tenant's right, title, or interest in the Property or in this Lease; (iii) continues Tenant's operations on the Property under this Lease; and/or (iv) becomes personally liable to Owner hereunder, then such Leasehold Mortgagee's obligations and liability to Owner shall be limited by and to such Leasehold Mortgagee's right, title and interest, if any, in this Lease and the Property, and Owner shall have no recourse against such Leasehold Mortgagee in excess of, and other than to proceed against, such right, title and interest.

16.2.7 Bankruptcy and Insolvency. Neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating the Lease as long as the Rent and all other monetary charges payable by Tenant hereunder are paid by the Leasehold Mortgagee and/or any sublessee in accordance with the terms of this Lease.

16.2.8 Foreclosure Discontinued. Nothing herein shall be construed to extend the Lease beyond the Lease term or to require a Leasehold Mortgagee to continue foreclosure proceedings after the default has been cured. If the default is cured and the Leasehold Mortgagee discontinues foreclosure proceedings, the Lease shall continue in full force and effect.

16.3 New Lease. If this Lease terminates because of Tenant's default or if the leasehold is foreclosed, or if the Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Owner shall, upon written request from any Leasehold Mortgagee or any sublessee within ninety (90) days after any such event, enter into a new lease of the Property with Leasehold Mortgagee or any sublessee, on the following terms and conditions:

16.3.1 Terms and Conditions. The term of the new lease shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the term of the Lease, or in the case of a sublease for the term of such sublease, at the same Rent and subject to the same terms and conditions set forth in this Lease. Such new leases shall be subject to all existing subleases, provided the subtenants are not then in default.

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

16.3.3 Designee. At the option of the Leasehold Mortgagee, the new lease may be executed by a designee of such Leasehold Mortgagee without the Leasehold Mortgagee assuming the burdens and obligations of Tenant thereunder.

16.3.4 Subleases. After the termination, rejection or disaffirmation of this Lease and during the period thereafter during which any Leasehold Mortgagee shall be entitled to enter into a new lease of the Property, Owner will not terminate any sublease or the rights of any sublessee hereunder unless such sublessee shall be in default under such sublease. During such period, if Owner shall receive any Rent and other payments due from sublessee, including a sublessee whose attornment it shall have agreed to accept, it will do so as agent of such Leasehold Mortgagee and shall deposit such rents and payments in a separate and segregated account in trust subject to a right of set-off against amounts due to Owner; and, upon the execution and delivery of such new lease, shall account to the tenant under said new lease for the rent and other payments made under said subleases; and the tenant shall thereupon assign the rent and other payments due under said subleases to any Leasehold Mortgagee under the Lease. The collection of rent by the Owner acting as an agent pursuant to this Section 16.3.4 shall be continued following the expiration of any period during which a Leasehold Mortgagee may be granted a new lease in which case such attornment shall take place upon such expiration but not before. Owner shall not be under any obligation to enforce any subleases.

16.3.5 Other Leasehold Mortgagees. If more than one Leasehold Mortgagee makes a written request for a new lease pursuant hereto, the new lease shall be delivered to the Leasehold Mortgagee requesting such new lease whose Leasehold 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.

16.3.6 Survival After Termination. The provisions of this Section 16.3 shall survive the termination, rejection or disaffirmance of the Lease and shall continue in full force and effect thereafter to the same extent as if Section 16.3 were a separate and independent contract made by Owner, Tenant and such Leasehold Mortgagee and/or sublessee, and, from the effective date of such termination, rejection or disaffirmance of the Lease to the date of execution and delivery of such new lease, such Leasehold Mortgagee or sublessee 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 lease as set forth herein are complied with.

The party requesting Owner to execute documents pursuant to this Section 16.3 shall reimburse Owner its reasonable costs up to \$1,000.00 for each transaction effected pursuant to this Section 16.3. No action effected pursuant to this Section 16.3 shall substantively modify or amend the terms of this Lease other than as specifically permitted by this Section 16.3.

16.4 Leasehold Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of the Lease to the contrary, the parties agree that so long as there exists an unpaid Leasehold Mortgage or any sublease, this Lease shall not be modified or amended and Owner shall not accept a surrender of the Property or any part thereof or a cancellation or release of this Lease from Tenant, and shall not terminate this Lease pursuant to Article 2, prior to the expiration of the then-effective Lease Term without the prior written consent of each Leasehold Mortgagee and sublessee. This provision is for the express benefit of and shall be enforceable by each such Leasehold Mortgagee and sublessee.

16.5 No Waiver. No payment made to Owner by a Leasehold Mortgagee or sublessee shall constitute an agreement by such payor that such payment was, in fact, due under the terms of the Lease; and a Leasehold Mortgagee or sublessee having made any payment to Owner pursuant to Owner's wrongful, improper or mistaken notice or demand shall be entitled to the credit of any such payment toward future amounts owed under this Lease.

16.6 No Merger. There shall be no merger of the Lease, or of the leasehold estate created by the Lease, with the fee estate in the Property by reason of the fact the Lease or the leasehold 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 Leasehold Mortgagees or any sublessee) having an interest in the Lease or in the estate of Owner and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

16.7 Liens. On the commencement of the Lease Term, the Property shall be free and clear of all liens other than those expressly approved by Tenant and set forth in Exhibit "B". Thereafter, any mortgage, deed of trust or other monetary liens placed on the Property by Owner or permitted to be placed or remain thereon by Owner shall be subject to (i) this Lease and to each Leasehold Mortgage and sublease then in existence on the leasehold estate created hereby, to (ii) Tenant's right to encumber the leasehold estate, (iii) to any sublessee's right to encumber its sublease estate, and (iv) to any and all other documents executed or to be executed by Owner in connection with Tenant's development of the Property or any portion thereof.

16.8 Further Amendments. At Tenant's or any sublessee's request, Owner shall amend this Lease to include any provision which may reasonably be requested by a proposed Leasehold Mortgagee; provided, however, that such amendment does not impair any of Owner's rights under this Lease or materially increase the burdens or obligations of Owner hereunder. Upon the request of any Leasehold Mortgagee or sublessee, Owner shall execute any additional instruments reasonably required to evidence such Leasehold Mortgagee's or sublessee's rights under this Lease. The party requesting Owner to execute documents pursuant to this Section 16.8 shall reimburse Owner its reasonable costs up to \$1,000.00 for each transaction effected pursuant to this Section 16.8.

17. Prior Encumbrance. Owner represents and warrants, as of the date hereof, that all of the Mortgages encumbering the Property (each, a "Prior Encumbrance") are set forth in complete detail on Exhibit "B" attached hereto and made a part hereof. Owner agrees to make all payments under each such Prior Encumbrance when due. In the event that Owner receives from the Mortgagee of any such Prior Encumbrance any notice that payments under such Prior Encumbrance are overdue, Owner shall so notify Tenant and each Leasehold Mortgagee by sending a copy of such notice to Tenant within the earlier of (i) five (5) days of receipt, and (ii) three business days prior to the date by which a default under or in respect of such Prior Encumbrance could occur. If Tenant or any Leasehold Mortgagee determines that it would be in Tenant's interest to make such payments under such Prior Encumbrance on Owner's behalf, whether as a result of receiving such notice or otherwise, Tenant shall have the right to make such payments and to credit the payments so made against Rent next due under the Lease. Owner represents and warrants that it has, contemporaneously with execution of this Lease, supplied to Tenant a true and correct copy of each Prior Encumbrance together with copies of all related promissory notes and other documentation, including a schedule of past and future payments to be made under each such Prior Encumbrance, certified as true and correct by Owner. Owner has provided to Tenant, contemporaneously with the execution of this Lease, an executed and duly acknowledged Subordination, Non-Disturbance and Attornment Agreement ("Non-Disturbance Agreement"), in a form reasonably acceptable to Tenant, from each Mortgagee under each such Prior Encumbrance, pursuant to which such Mortgagee agrees, among other things, not to disturb Tenant's possession of the Property. Owner shall, at its sole cost and expense, record each such Non-disturbance Agreement in the official real estate records of Upton County, State of Texas. In the event Owner has failed to deliver a Non-Disturbance Agreement from each holder of a Prior Encumbrance, Tenant may, at its sole option, either terminate this Lease immediately upon written notice to Owner or take such action as it deems reasonably necessary to effect the rights granted to Tenant hereunder, and off-set all amounts expended in such efforts against Rent and any other amounts due hereunder or in respect hereof.

18. Grant of Express Easements to Tenant. Owner hereby grants unto Tenant the Access Easement, Transmission Easement, Wind Non-Obstruction Easement and Overhang Easement (collectively, the "Tenant Easements") described in this paragraph.

18.1 Access Easement. Owner hereby grants unto Tenant, its successors, assigns, lessees, and others authorized to utilize its Lease or easement rights (any reference to the rights of Tenant hereunder shall include any such successors, assigns, lessees and others authorized to utilize its Lease or easement rights), an irrevocable, non-exclusive easement, for vehicular and pedestrian ingress to or egress from the Improvements (whether such Improvements are located on the Property, or on adjacent property, or on other property now or subsequently owned or leased by Tenant, or elsewhere), over, across and along the Property by means of roads or lanes thereon if existing, or otherwise by such route or routes as Tenant, an assignee or lessee of Tenant, or Owner may construct from time to time. The grant of easement herein contained shall include the right to enter upon the Property to survey for and locate Improvements.

Too broad. You should have some say as to location of roads

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18.2 Transmission Easement. Owner hereby grants unto Tenant, its successors, assigns, lessees or others authorized to utilize its Lease or easement rights, an exclusive easement for the construction, installation, maintenance, use, operation, replacement, relocation or removal of Interconnection Facilities on, over, across and under the Property, and for vehicular and pedestrian ingress to or egress from the Interconnection Facilities (whether such Interconnection Facilities are located on the Property, or on adjacent property, or on other property now or subsequently owned or leased by Tenant, or elsewhere), over, across and along the Property by means of roads and lanes thereon if existing, or otherwise by such route or routes as Tenant, an assignee or lessee of Tenant, or Owner may construct from time to time.

18.3 Wind Non-Obstruction Easement. Owner hereby grants unto Tenant, its successors, assigns, lessees, and all others authorized to utilize its Lease or easement rights (any reference to the rights of Tenant hereunder shall include any such successors, assigns, lessees and others authorized to utilize its Lease or easement rights), an irrevocable, exclusive easement appurtenant to the leasehold created by the Lease, for the right and privilege to use, maintain and capture the free and unobstructed flow of wind currents over and across the Property; Owner shall not interfere, and shall not cause or permit any other party to interfere, with the free, unobstructed and natural wind flow, wind speed or wind direction over and across the Property, whether by constructing buildings or other structures on the Property, by planting trees or erecting walls on the Property, or by engaging in any other activity on the Property or elsewhere that might cause a decrease in the output or efficiency of the Project. This grant of easement expressly includes the right of Tenant to enter upon any part of the Property to enforce Tenant's rights hereunder, including the physical removal of trees or structures which interfere with the Wind Non-Obstruction Easement. Tenant shall consult with Owner before making any such removals.

18.3.1 Reservation of Rights. Owner reserves the right to erect buildings, temporary structures or windmills, intended for ordinary agricultural use, on the Property; provided, however, that Owner must consult with and obtain Tenant's prior written approval as to the location, height and profile of such buildings, windmills or temporary structures. Tenant's approval shall be based upon whether such buildings, windmills, or temporary structures might interfere with wind flow, wind speed, or wind direction over a portion of the Property or other adjacent parcels upon which the Project is or may in the future be located, or cause any decrease in the output or efficiency of the Project, or cause any interference with Tenant's operations on the Property. Notwithstanding the foregoing, Owner may, without the necessity of obtaining Tenant's consent, erect new structures on the Property or plant trees on the Property that do not exceed five (5) meters in height above the ground level.

18.4 Overhang Easement. Owner grants unto Tenant, its successors, assigns, lessees, and all others authorized to utilize its Lease or easement rights an irrevocable, exclusive easement appurtenant to the leasehold created by the Lease, for the right and privilege to permit the rotors of WTGs located on adjacent properties to overhang the Property by no more than 125 feet at a height of at least 75 feet above the ground. Owner shall not interfere with the operation of WTG rotors that overhang the Property.

18.5 Lateral Support. Tenant shall have and exercise the right of subjacent and lateral support to whatever is necessary for the operation and maintenance of the Project, including the Improvements (e.g., including without limitation guy wires and supports). Owner expressly covenants that Owner shall not take any action which would impair the lateral or subjacent support for the Project, including the Improvements (e.g., including without limitation guy wires and supports).

18.6 Further Documentation. Owner agrees to execute and deliver, without any additional consideration, any additional documents which are prepared by Tenant, in order to evidence Owner's grant of the Tenant Easements.

18.7 Runs With The Land. The Tenant Easements shall run with the land and shall be binding upon, and inure to the benefit of, Owner and Tenant and their respective successors, assigns, heirs, personal representatives, or tenants, or persons claiming through them.

You can't put any improvements on your property w/o their consent

If they want other easements, make them

4-25

18.8 Assignability. Tenant (or any successor or assign), in its sole discretion and without further action by Owner, shall have the right to assign or convey all or any portion of its rights pursuant to the Tenant Easements to an assignee or tenant on either an exclusive or a nonexclusive basis.

18.9 Assignment in Connection With Certain Interconnection Facilities. Tenant (or any successor, assign or tenant of Tenant, a successor or assign), in its sole discretion and without further action by or payment to Owner, shall have the right to grant to any utility company the right to construct, operate and maintain electric transmission, interconnection and switching facilities on the Property pursuant to any standard form of lease, easement or other agreement used or proposed by such utility company, but only if such grant relates to Project.

18.10 Term. The Tenant Easements shall last throughout the Lease Term, including the Extension Terms, and any and all other renewals or continuations thereof, and the Tenant Easements shall not terminate until one (1) year after the final termination of the Lease.

18.11 Legal Enforcement. The Tenant Easements shall be governed by and interpreted in accordance with the laws of the State of Texas, and the parties shall be entitled to all available judicial and non-judicial remedies for enforcement of its rights, including, but not limited to, restraining orders and preliminary or permanent injunctions. The parties agree to first attempt to settle any dispute arising out of or in connection with the Tenant Easements by good-faith negotiation. Should any provision of the Tenant Easements be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions hereof shall remain in full force and effect. In this regard, the parties agree and acknowledge that the rights granted under the Tenant Easements are unique and irreplaceable, and that the failure of Owner, its successors or assigns to perform under the Tenant Easements would result in damage to Tenant, its successors and assigns, that could not be adequately compensated by a monetary award. The rights and remedies granted in the Tenant Easements are cumulative, and the exercise of such rights or remedies shall be without prejudice to the enforcement of any other right or remedy authorized by law or the Tenant Easements. Pursuit of any right or remedy provided for in the Tenant Easements shall not constitute a waiver of any other right or remedy. No waiver of any violation shall be deemed or construed to constitute a waiver of any other violation or other breach of any of the terms, provisions, and covenants contained in the Tenant Easements, and forbearance to enforce one or more of the rights or remedies provided herein shall not be deemed or construed to constitute a waiver of such violation or of any other right or remedy provided for in the Tenant Easements.

18.12 Additional Easements. Owner hereby acknowledges that Tenant may acquire or lease property adjoining the Property to develop the Project or another wind energy project thereon. In order to enable Tenant to properly develop such adjoining property and to enjoy the full benefits of the Property leased hereunder, Owner hereby agrees to grant to Tenant or Tenant's designees (at no extra cost or expense to Tenant) such additional easements, right-of-way and other rights on or over the Property for access, non-obstruction of wind, overhangs and encroachment of Improvements, transmission and other incidental uses as may be reasonably necessary or appropriate for the use and development of a wind energy project on such adjoining property or on the Property, each such grant of rights to continue for so long as this Lease shall remain in effect.

19. Additional Wind Access Agreement. In order to maximize efficient development of the Property for wind power generation, Owner and Tenant each agree to enter into agreements with each other or with other adjacent property owners, as the case may be, (i) to provide for a waiver of any set backs from property lines for WTG installation that may be required by applicable governmental authorities, and (ii) to permit the encroachment during the Lease Term of wind turbine blades over property lines; provided, however, that Tenant and/or such other party benefiting from such agreement shall bear reasonable costs up to \$1,000.00 and otherwise be responsible for obtaining such agreements with the other adjacent property owners. Such agreements shall be in the form, if any, required by applicable governmental authorities.

*Make them take property as
w/o warranty - take "as is"*

20. Hazardous Materials.

~~20.1 Owner's Covenants Regarding Hazardous Materials. Owner represents and warrants that to the best of Owner's knowledge, the property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("Environmental Laws"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Property is in any violation of any Environmental Laws. "Hazardous Materials" shall mean any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation. Owner represents and warrants that, except as disclosed to Tenant in writing on Exhibit "B" attached, to the best of Owner's knowledge, no underground storage tanks and no Hazardous Material are or were located on the Property during or prior to Owner's ownership of the Property. Owner shall not violate in a material way any Environmental Law relating to the Property.~~

~~20.2 Owner's Obligations Regarding Hazardous Materials. Prior to granting to any party the right to use any portion of the Property, Owner shall require such party to enter into an agreement that includes the following provision:~~

~~"Environmental Hazards. *Tenant* [the party being given access to the Property] shall use the highest degree of care and all reasonable safeguards to prevent contamination or pollution of any environmental medium, including soil, surface waters, groundwater, sediments, and surface or subsurface strata, ambient air or any other environmental medium in, on, or under, the Property, by any waste, pollutant, or contaminant. User shall not bring or permit to remain on the Property any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation ("Hazardous Materials"), except ordinary products commonly used in connection with the Permitted Use and stored in the usual manner and quantities. User's violation of the foregoing prohibition shall constitute a material breach and default hereunder and User shall indemnify, hold harmless and defend Owner and any other tenant or user of the Property from and against any claims, damages, penalties, liabilities, and costs (including reasonable attorneys' fees and court costs) caused by or arising out of (i) a violation of the foregoing prohibition or (ii) the presence, release, or disposal of any Hazardous Materials on, under, or about the Property during User's occupancy or control of the Property. User shall clean up, remove, remedy and repair any soil or ground water contamination and damage caused by the presence or release of any Hazardous Materials in, on, under, or about the Property during User's occupancy of the Property in conformance with the requirements of applicable law. User shall immediately give Owner and any other tenant or user of the Property written notice of any breach or suspected breach of this Paragraph, upon learning of the presence or any release of any Hazardous Materials which may affect the Property. The obligations of User hereunder shall survive the expiration or earlier termination, for any reason, of this agreement."~~

*Make this
apply to
tenant*

20.3 Tenant's Covenants Regarding Hazardous Materials. Not later than the date required under Section 11.3, Tenant shall, at Tenant's sole cost and expense, promptly take removal or remedial action required by Applicable Law with regard to any material violation of any Applicable Law with regard to any Hazardous Materials brought onto the Property by Tenant or its employees, agents, or contractors. Owner shall cooperate with Tenant with regard to any scheduling or access to the Property in connection with any action required hereunder.

20.4 Tenant's Indemnity Regarding Hazardous Materials. Tenant shall indemnify, defend, protect and hold Owner, and Owner's employees, agents, equity owners, and their respective heirs and successors in interest free and harmless from any Liability based on: (i) the Release of Hazardous Materials in, on, under or about the Property caused by Tenant or its employees, agents, or contractors, or (ii) the

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violation by Tenant or its employees, agents, or contractors of any Environmental Law. The indemnity obligations set forth herein shall be in addition to those set forth in Article 9, and shall survive termination of this Lease.

21. Exclusive Right for Wind Development. Tenant shall have the exclusive right to develop any and all wind projects on the Property. Owner shall not enter into any agreements to purchase and/or lease any adjoining properties owned by Owner that would materially affect the operation of Tenant's wind project. No other exclusive right is granted or implied by the granting of an exclusive right for wind development.

22. Notice.

22.1 Writing. All notices given or permitted to be given hereunder shall be in writing.

22.2 Delivery. Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Tenant: Cielo Land and Cattle L.P.
823 Congress Avenue, Suite 500
Austin, TX 78701
Attention: Walter Hornaday

Notice to Owner: Donna Jerrye Van Leer
5213 Branchwood Court
Lawrence, KS 66049

22.3 Change of Recipient or Address. Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

22.4 Meaning of "Day". As used in this Lease with respect to time of notice or performance, the term "day" shall refer to business days, that are normal business days for major banks in Austin, Texas.

23. Confidential Materials.

23.1 No Disclosure. Except as set forth in this Section 23.1, Owner and Tenant shall hold in confidence for the Lease Term and any Extension Term and for a period of either five (5) years from the date of termination, or two (2) years from the scheduled date of expiration hereof, as the case may be, any information supplied by either party to the other. Each party shall inform its affiliates, subsidiaries, subcontractors, suppliers, vendors and employees of its obligations under this Section 23.1 and cause such persons to comply with the requirements hereof. Notwithstanding the foregoing, Owner and Tenant may disclose the following categories of information or any combination thereof:

(i) information which was in the public domain prior to receipt thereof by such party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such party;

(ii) information that such party can show was lawfully in its possession prior to receipt thereof from the other party through no breach of any confidentiality obligation;

If they're acting in good faith or compensation paid other provisions, they don't need this.

- (iii) information received by such party from a third party having no obligation of confidentiality with respect thereto;
- (iv) information at any time developed independently by such party providing it is not developed from otherwise confidential information;
- (v) information disclosed pursuant to and in conformity with the law or a judicial order or in connection with any legal proceedings or litigation;
- (vi) information required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries;
- (vii) information necessary to be disclosed to a bona fide prospective buyer or encumbrancer of the Property and, in the case of Tenant, prospective purchasers, investors, partners, lenders, assignees and subtenants (provided that each such person signs a confidentiality agreement substantially in conformity with this Article 23);
- (viii) information disclosed to a party's attorney, accountant or expert witness in connection with any disclosures permitted hereunder, provided that Owner and Tenant shall take reasonable steps to prevent further dissemination of the disclosed information.

24. Expense and Enforcement. If any party hereto brings any proceedings to enforce any of the terms, covenants or conditions hereof the prevailing party shall be entitled to recover from the other party or parties thereto reimbursement for all reasonable expenses, costs and attorneys' fees incurred in connection therewith.

Set law apply

25. Further Assurance. The parties hereto shall at all times hereafter execute any documents and do any further acts which may be necessary or desirable to carry out the purposes of the Lease and to give full force and effect to each and all of the provisions hereof.

26. Approvals and Consents Generally. Whenever in this Lease the approval or consent of either party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld or delayed.

27. Amendments. This Lease shall not be amended or modified in any way except as provided in this Lease or by an instrument signed by Owner and Tenant and consented to by any sublessee and the Leasehold Mortgagee, if any.

28. Severability. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law.

29. Governing Law. Except as otherwise provided herein, this Lease shall be governed by the laws of the State of Texas, and Travis County, Texas shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Lease.

30. Article and Section Headings. The Article and Section headings herein are inserted only for convenience of reference and shall in no way define, limit or describe the scope or intent of any provision of this Lease.

31. Entire Agreement. This Lease shall constitute the entire agreement between parties and supersedes all other prior writings and understandings.

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TENANT:

CIELO LAND AND CATTLE LP
a Texas limited partnership

By: **Cielo Wind Power LLC**
a Texas limited liability company
Sole General Partner

By: _____
Walter Hornaday, President
823 Congress Ave., Suite 500
Austin, Texas 78701

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me by Walter Hornaday, President of Cielo Wind Power L.L.C., a Texas limited liability company, general partner of Cielo Land and Cattle L.P., a Texas limited partnership, on behalf of said partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal this ___ day of _____, 2001.

[Stamped Notary Seal]

NOTARY PUBLIC IN AND FOR
THE STATE OF _____
Notary's Name (Printed): _____
My commission expires: _____

4-31

EXHIBIT "A"

All of Owner's undivided One Hundred Percent (100%) interest, whether held collectively or individually, in real property situated in the County of Upton, State of Texas, such real property more particularly described as follows:

1. Section 1, G.C. & S.F. RR. Co. Survey, Abstract No. 182;
2. Section 2, G.C. & S.F. RR. Co. Survey, Abstract No. 1239;
3. E/2 of Section 6, Block B-2, G.C. & S.F. RR. Co. Survey, Abstract No. 1041 (approximately 331 acres);
4. All but 32 acres of Section 1, H. & G.N. RR. Co. Survey, Abstract No. 236 (approximately 608 acres);
5. Section 2, H. & G.N. RR. Co. Survey, Abstract No. 1149;
6. Section 10, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 1017;
7. Section 11, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 538;
8. Section 12, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 1238;
9. Section 13, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 539; and
10. Part of Section 14, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 916 (approximately 440.9 acres).

EXHIBIT "B"

Existing hazardous materials, easements, leases, and exceptions to title:

All of record.

EXHIBIT "C"

Form of First Amendment to Lease and Easement Agreement

FIRST AMENDMENT TO GROUND LEASE AND EASEMENT AGREEMENT

Reference is made herein to that certain Ground Lease and Easement Agreement (the "Lease") dated _____, 20____, by and between Donna Jerrye Van Leer (as "Owner") and Cielo Land and Cattle LP, a Texas limited partnership (as "Tenant") regarding the Property more particularly described in the Lease. This First Amendment to Ground Lease and Easement Agreement (this "First Amendment") is entered into to be effective as of the effective date of the Lease, by and between Owner and Tenant. Capitalized terms used in this First Amendment shall have the same meaning ascribed to such terms in the Lease, except where this First Amendment adopts different meanings.

WHEREAS, Owner and Tenant desire to amend the Lease by replacing the legal description of the Property therein with a more accurate legal description;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Exhibit A to the Lease is hereby deleted in its entirety and replaced by the Exhibit A that is attached to this First Amendment.
2. There are no amendments to the Lease except for this First Amendment.
4. Except as amended herein, all terms of the Lease remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to be effective as of the date first written above.

OWNER:

By: _____
Donna Jerrye Van Leer

STATE OF _____ §
COUNTY OF _____ §
§

Before me, the undersigned authority, on this day personally appeared Donna Jerrye Van Leer, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal this ___ day of _____, 2001.

[Stamped Notary Seal]

NOTARY PUBLIC IN AND FOR
THE STATE OF _____
Notary's Name (Printed): _____
My commission expires: _____

4-34

TENANT:

CIELO LAND AND CATTLE LP
a Texas limited partnership

By: Cielo Wind Power LLC
a Texas limited liability company
Sole General Partner

By: _____
Walter Hornaday, President
823 Congress Ave., Suite 500
Austin, Texas 78701

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me by Walter Hornaday, President of Cielo Wind Power L.L.C., a Texas limited liability company, general partner of Cielo Land and Cattle L.P., a Texas limited partnership, on behalf of said partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal this ____ day of _____, 2001.

[Stamped Notary Seal]

NOTARY PUBLIC IN AND FOR
THE STATE OF _____
Notary's Name (Printed): _____
My commission expires: _____

4-35

EXHIBIT A
TO FIRST AMENDMENT TO GROUND LEASE AND EASEMENT AGREEMENT

All of Owner's undivided One Hundred Percent (100%) interest, whether held collectively or individually, in real property situated in the County of Upton, State of Texas, such real property more particularly described as follows:

1. Section 1, G.C. & S.F. RR. Co. Survey, Abstract No. 182, as more particularly described in the metes and bounds attached hereto as Exhibit A-1;
2. Section 2, G.C. & S.F. RR. Co. Survey, Abstract No. 1239, as more particularly described in the metes and bounds attached hereto as Exhibit A-2;
3. E/2 of Section 6, Block B-2, G.C. & S.F. RR. Co. Survey, Abstract No. 1041 (approximately 331 acres), as more particularly described in the metes and bounds attached hereto as Exhibit A-3;
4. All but 32 acres of Section 1, H. & G.N. RR. Co. Survey, Abstract No. 236 (approximately 608 acres), as more particularly described in the metes and bounds attached hereto as Exhibit A-4;
5. Section 2, H. & G.N. RR. Co. Survey, Abstract No. 1149, as more particularly described in the metes and bounds attached hereto as Exhibit A-5;
6. Section 10, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 1017, as more particularly described in the metes and bounds attached hereto as Exhibit A-6;
7. Section 11, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 538, as more particularly described in the metes and bounds attached hereto as Exhibit A-7;
8. Section 12, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 1238, as more particularly described in the metes and bounds attached hereto as Exhibit A-8;
9. Section 13, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 539, as more particularly described in the metes and bounds attached hereto as Exhibit A-9; and
10. Part of Section 14, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 916 (approximately 440.9 acres), as more particularly described in the metes and bounds attached hereto as Exhibit A-10.

Page 1

Comments

Proposed lease

1. Memorandum of Agreement

- a. Could be perpetual (unlimited extension every 10 years)
- b. Lease will not be filed of record. Prevents landowners from finding out going compensation.
- c. Can assign lease w/o landowner consent

Ground Lease & Easement Agreement

- 1. What is WTA? (i. Definitions, Page 1)
- 2. I have no clue on Gross Revenue. Need an expert to determine fairness of proposal (Page 2)
- 3. 1, 4. Improvements - Need control of what goes onto property. Make them be more specific what they intend to build on property. Should give owner right to say no on what they put on and also be compensated for use of land other than for the turbines.

(314) 702-7909
Edna Cox

Page 2

- 1.14 (Page 5) Law amended legal description of maturity - should have legal determined in beginning. I would think
2. Lease terms (Page 5)

Donna's work sheet.

After Recording Return to:
Cielo Land and Cattle, LP
823 Congress Avenue, Suite 500
Austin, Texas 78701

MEMORANDUM OF GROUND LEASE AND EASEMENT AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF _____ §

a. THAT, on _____, 2001, _____, Donna Jerrye Van Leer ("Owner") and Cielo Land and Cattle LP, a Texas limited partnership ("Tenant"), did enter into a certain Ground Lease and Easement Agreement with respect to land in Upton and Crockett Counties, Texas, described in Exhibit "A" attached hereto and made a part hereof for all purposes (the "Property"), whereby Owner leased the Property to Tenant for an initial term of Twenty (20) years, with unlimited extensions of the term for ten (10) years each if certain conditions in said Ground Lease are met

This Memorandum of Ground Lease and Easement Agreement does not alter, amend or modify said Ground Lease and Easement Agreement, but is executed solely for the purpose of giving notice of the existence of said Ground Lease and Easement Agreement and the terms and conditions therein, which Ground Lease and Easement Agreement is incorporated herein by reference for all purposes to the same extent and with the same effect as is set forth herein in full.

wasnt intend to file lease of record - only memorandum

Owner acknowledges that Tenant has the right to assign its interest as Tenant in the Ground Lease and Easement Agreement to another party, and that this Memorandum of Ground Lease and Easement Agreement will continue to be effective with respect to any assignment of the Ground Lease and Easement Agreement by Tenant.

never had right to Cielo to assign lease w/o consent

EXECUTED to be effective on the ___ day of _____, 2001.

OWNER:

By: _____
Donna Jerrye Van Leer

STATE OF _____ §
 §
COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared Donna Jerrye Van Leer, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal this ___ day of _____, 2001.

[Stamped Notary Seal]

NOTARY PUBLIC IN AND FOR
THE STATE OF _____
Notary's Name (Printed): _____
My commission expires: _____

4-39

TENANT:

CIELO LAND AND CATTLE LP
a Texas limited partnership

By: Cielo Wind Power LLC
a Texas limited liability company
Sole General Partner

By: _____
Walter Hornaday, President
823 Congress Ave., Suite 500
Austin, Texas 78701

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me by Walter Hornaday, President of Cielo Wind Power L.L.C., a Texas limited liability company, general partner of Cielo Land and Cattle L.P., a Texas limited partnership, on behalf of said partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal this ____ day of _____, 2001.

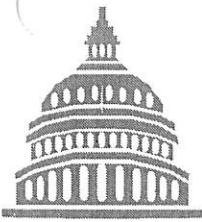
[Stamped Notary Seal]

NOTARY PUBLIC IN AND FOR
THE STATE OF _____
Notary's Name (Printed): _____
My commission expires: _____

EXHIBIT "A"

All of Owner's undivided One Hundred Percent (100%) interest, whether held collectively or individually, in real property situated in the County of Upton, State of Texas, such real property more particularly described as follows:

1. Section 1, G.C. & S.F. RR. Co. Survey, Abstract No. 182;
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3. E/2 of Section 6, Block B-2, G.C. & S.F. RR. Co. Survey, Abstract No. 1041 (approximately 331 acres);
4. All but 32 acres of Section 1, H. & G.N. RR. Co. Survey, Abstract No. 236 (approximately 608 acres);
5. Section 2, H. & G.N. RR. Co. Survey, Abstract No. 1149;
6. Section 10, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 1017;
7. Section 11, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 538;
8. Section 12, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 1238;
9. Section 13, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 539; and
10. Part of Section 14, Block G, T.W.N.G. RR. Co. Survey, Abstract No. 916 (approximately 440.9 acres).



Gaches, Braden, Barbee & Associates

Governmental Affairs & Association Management

300 SW EIGHTH • THIRD FLOOR • TOPEKA, KANSAS 66603-3912 • 785-233-4512 • FAX 785-233-2206

March 3, 2003

**Testimony before the Senate Utilities Committee
Regarding HB 2280**

**Presented by Scott J. Schneider, of Gaches, Braden, Barbee & Associates
On behalf of RES-NA**

Mr. Chairman and members of the committee, my name is Scott Schneider. I am representing Renewable Energy Systems North America, (RES –NA). RES North America, LLC is a member of the Renewable Energy Systems group of companies, one of the world's leading wind energy developers. To date, RES-NA has built over 540MW of wind power capacity in the United States.

RES-NA was recruited by the Wichita County Economic Development group. They were seeking to have a wind farm placed in Wichita County. A few weeks ago, we were pleased to announce the development of the Sunflower Electric Wind Farm in Wichita County and look forward to doing business in Kansas.

We oppose HB 2280 for three reasons. First, we currently file with every county a memorandum of lease. This document puts the public on notice that the land is encumbered by possible wind development activity. Second, the amendment requiring a five-day period to file a lease interferes with our ability to fully arrange a project. Our concern is what happens if the five-day period is not met? The House amendment could create a presumption of invalidity and allow gamesmanship to occur between developers. Third, HB 2280 treats one industry engaged in similar activities different than another. I have not been able to find any other industry that is required to file a private land contract with the county. Again, we already file with the county because it is a good business practice.

To conclude, it is our opinion that the interest of the State, balanced against our right to make business decisions, does not rise to such a level that these restrictions should be placed on this emerging industry.

Thank you for the opportunity to present our concerns, I will stand for questions.

Senate Utilities
March 11, 2003
Attachment 5-1