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## **WIND DEVELOPMENT ASSETS ACQUISITION AND SALE AGREEMENT**

Dated as of [Date]

By and between

**PACIFICORP**

as Purchaser

and

[SELLER]

as Seller

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## **WIND DEVELOPMENT ASSETS ACQUISITION AND SALE AGREEMENT**

THIS WIND DEVELOPMENT ASSETS ACQUISITION AND SALE AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, 2008 between PacifiCorp, an Oregon corporation (“Purchaser”) and [SELLER], [State and form of entity] (“Seller”).

### **RECITALS**

A. Purchaser desires to acquire a windfarm development site in the State of [SITE LOCATION] and construct on such site wind energy generation facilities having an output of not less than [OUTPUT] megawatts (\_\_\_\_ MW) (the “Project”).

B. Seller is in the process of developing a site in [SITE LOCATION] (the “Site”) which includes the Property, for a wind energy generation project and in connection therewith has acquired certain real estate rights and other assets and commenced certain development activities.

C. Purchaser desires Seller to continue its development activities respecting the Site and, subject to the conditions set forth herein, to acquire Seller’s wind energy development assets related to the Site and to engage Contractor to construct wind energy generation facilities at the Site in accordance with the terms of the EPC Agreement.

D. Seller desires to continue its development activities with respect to the Site and to transfer its development assets related to the Site to Purchaser in accordance with the terms hereof.

## **AGREEMENT**

NOW THEREFORE, in consideration of the sums to be paid to Seller by Purchaser and the covenants and agreements set forth herein, the Parties agree as follows:

### **ARTICLE 1. DEFINITIONS AND RULES OF INTERPRETATION**

#### **1.1 Defined Terms.**

For purposes of this Agreement, the following terms shall have the following meanings:

**“Acquired Assets”**. All of Seller’s and its Affiliates’ right, title and interest in and to all properties, assets and rights of any kind, whether tangible or intangible, real or personal, owned (or hereafter acquired) by Seller or its Affiliates or in which Seller or its Affiliates has (or hereafter acquires) any interest whatsoever in connection with the Project, including without limitation, the Wind Data, the Contracts, the Permits, the Permit Applications, the Land Contracts, and all other rights of Seller or its Affiliates of any kind or nature in connection with the Project; provided, however, that the Acquired Assets shall not include (i) any corporation, limited liability company or other legal entity formed by or constituting Seller or its Affiliates, qualifications to conduct business as a foreign corporation or other entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, and other documents relating to the organization, maintenance, and existence of Seller or its Affiliates as business entities, and (ii) any of the rights of Seller under this Agreement, or under any agreement between Seller and Contractor relating to this Agreement or the EPC Agreement, and (iii) those items listed on Schedule 1.1; provided, further, that the Acquired Assets shall specifically include all right, title and interest of Seller and their Affiliates in and to the following assets:

- (i) the Wind Data;
- (ii) the Physical Assets;
- (iii) the Land Contracts;
- (iv) the Contracts;
- (v) the Permit Applications and Permits;
- (vi) the Reports;
- (vii) the Interconnection Rights;
- (viii) the Substation Fee Parcel; and
- (ix) Books and Records.

“Additional Development Services”. The term shall have the meaning set forth in Section 3.12.

“Affiliate”. With respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that Person. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership interests, by contract or otherwise.

“After Tax Basis”. Means: (1) for purposes of any provision of this Agreement that requires a payment to be made on an After-Tax Basis, such payment shall be made in an amount equal to the sum of (i) the payment to be made before adding the amounts referred to in clause (ii) of this sentence (the base payment) and (ii) an amount equal to the sum of any and all Taxes paid or required to be paid by or on behalf of the payee as a result of receipt or recognition of such payment (including, without limitation, any Taxes on such additional amounts) (the “additional payment”); *provided, however*, that no additional payment shall be payable if (a) the base payment is not includible in the payee’s gross income, (b) the base payment is being made to compensate the recipient for a loss or expense that is deductible or non-taxable for federal income tax purposes, or (c) the base payment compensates the payee for failure to receive an amount, other than a base payment, that would have been includible in the recipient’s gross income, had such amount been received, so that the net amount actually received and retained by the payee after payment of all Taxes on the base amount and the additional amount is equal to the payment otherwise required to be made to the payee under any provision of this Agreement; and (2) for purposes of determining the After-Tax Basis, Seller and Purchaser shall each be deemed to be subject to a marginal tax rate of forty-one percent (41%).

“Agreement”. This Wind Development Assets Acquisition and Sale Agreement, including all Exhibits and Schedules (as such Schedules may be updated in accordance with Section 6.19) hereto, as the same may be modified, amended or supplemented from time to time in accordance with Section 12.5.

“Assignment and Assumption Agreements”. The term shall have the meaning set forth in Section 3.1.1.1.

“Assumed Liabilities”. (a) Only those obligations of Seller or its Affiliates accruing or arising from and after the Closing Date under the Land Contracts, Permits, Permit Applications and Contracts (including any liability for Taxes for such Land Contracts, Permits, Permit Applications and Contracts) and (b) without in any way broadening the scope of Assumed Liabilities as described in the preceding clause, Assumed Liabilities shall not include (i) any Liability of Seller or its Affiliates for Taxes accruing or arising before the Closing Date (unless subject to proration pursuant to Section 2.5.1.2), (ii) any Liability of Seller or its Affiliates for the unpaid Taxes of any Person under Reg. § 1.1502-6 (or any similar provision of state or local Law), as a transferee or successor, by contract, or otherwise, (iii) any Liability of Seller or its Affiliate for costs and expenses incurred in connection with this Agreement and the transactions



contemplated hereby, or (iv) any Liability or obligation of Seller or its Affiliates under this Agreement entered into on or after the Closing Date.

“Authority”. Any federal, state, local or other governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity, or any political subdivision thereof having legal jurisdiction over the matter or Person in question.

“Bankruptcy Code”. The United States Bankruptcy Code, as in effect from time to time.

“Beam Path Study”. The Beam Path Study prepared by a consultant selected by Seller and approved by Purchaser (such approval not to be unreasonably withheld) that demonstrates that the construction and operation of the Project will not materially and adversely interfere with any microwave or other regulated point to point electromagnetic path.

“Bill of Sale”. The term shall have the meaning set forth in Section 3.1.1.2.

“Books and Records”. Any and all data, reports, correspondence, maps, surveys and other business records relating to the Project that are generated or obtained by Seller prior to Closing.

“Business Day”. Any day other than Saturday or Sunday or holiday, on which banks are generally open for business in Portland, Oregon.

“Claim”. Any indemnity, demand, demand letter, claim, cause of action, notice of noncompliance or violation, or other proceeding relating to the Project.

“Closing”. The term shall have the meaning set forth in Section 2.4.1.1.

“Closing Date”. The term shall have the meaning set forth in Section 2.4.1.1.

“Code”. The Internal Revenue Code of 1986, as the same may be amended from time to time, including any amendments or any substitute or successor provisions thereto.

“Collection System Easements”. Easements for the construction and operation of the electrical collection system required to transmit power from the wind turbines to the substation, that provide for a one-time payment of no greater than \$[\_\_\_\_] per foot/per electrical collector feeder line of easement and cover such property as approved by Purchaser (such approval not to be unreasonably withheld), and that are in the form set out in Exhibit C and with such additional modifications requested by the grantors of such easements, such approval not to be unreasonably withheld by Purchaser.

“Consents”. The term shall have the meaning set forth in Section 8.2.

“Contract”. Any of the agreements or contracts to which Seller or its Affiliates is a party and which are described in Schedule 6.14 of this Agreement.

“Contractor”. [\_\_\_\_\_]

“Corporate Documents”. Articles of Incorporation and bylaws of a corporation or the equivalent documents of a limited liability company or other legal entity.

“Cultural and Biological Study”. The cultural and biological study with respect to the Property to be prepared by a consultant selected by Seller and approved by Purchaser (which such approval shall not be unreasonably withheld) and delivered to Purchaser that demonstrates that there are no conditions with respect to the Property that could have a Material Adverse Impact on the Project, as such cultural and biological study may be revised and redelivered to Purchaser pursuant to Section 3.7.

“Development Costs”. The term shall have the meaning set forth in Section 10.2.2.

“Encumbrances”. Any claim, lien, pledge, mortgage, option, charge, easement, security interest, right-of-way, encumbrance, lease, interest, mineral reservations, covenant, conditional sales contract, title retention arrangement, adverse claim or restriction of any kind or other right of third parties.

“Environmental Laws”. All Laws that regulate or relate to (i) the protection or clean-up of the environment; (ii) the Handling of Hazardous Substances; (iii) the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources; and (iv) the health and safety of persons or property as it pertains to the environment, including, without limitation, protection of the health and safety of employees. Environmental Laws shall include, without limitation, the Resource Conservation & Recovery Act, Clean Water Act, Safe Drinking Water Act, Occupational Safety and Health Act, Toxic Substances Control Act, Clean Air Act, Comprehensive Environmental Response, Compensation and Liability Act, Emergency Planning and Community Right-to-Know Act, Hazardous Materials Transportation Act, and Centers for Disease Control guidelines, policies and procedures, and all analogous or related Laws.

“EPC Agreement”. That certain Turnkey Engineering, Procurement and Construction Services Agreement, dated as of the Closing Date, between Purchaser and Contractor, pursuant to which Contractor shall perform certain services in respect of the further development of the Project, the form of which is attached hereto as Exhibit A.

“Extension Payment”. The term shall have the meaning set forth in Section 11.1.1.1.

“FAA”. The U.S. Federal Aviation Administration.

“FAA No-Hazard Determinations”. The FAA No-Hazard Determinations related to the Project issued by the FAA.

“Facilities”. The wind power generating facilities (including the foundations, towers, wind turbine generators, electrical collection system, access roads and other equipment, materials and improvements associated therewith), for a total of [OUTPUT] megawatts (\_\_\_ MW) nameplate capacity, which are planned for development on the Property in connection with the Project.

“Geotechnical Report”. The geotechnical report prepared by a consultant selected by Seller and approved by Purchaser (such approval not to be unreasonably withheld) that demonstrates that, on the basis of representative sampling, there are no material adverse soil or other geologic conditions at the Site that would interfere with construction and operation of the Project.

“Guarantor”. \_\_\_\_\_, a \_\_\_\_\_.

“Governmental Approval”. Any authorization, approval, consent, waiver, exception, variance, order, publication, license, filing, registration, ruling, permit, tariff, certification, exemption and other action, requirement by or with, and notice to and declarations of or with, any Governmental Authority that are required in connection with the development, construction, ownership and operation of the Project.

“Governmental Authority”. Any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Purchaser, the Project or this Agreement, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“Guaranty”. The Guaranty Agreement in the form of Exhibit B executed by Guarantor and delivered concurrent with the full and mutual execution of this Agreement.

“Handling”. The production, use, treatment, storage, transportation, generation, manufacture, processing, distribution, disposal, emission, discharge, Release or threatened Release.

“Hazardous Substances”. All pollutants, contaminants, chemicals, wastes (including, without limitation, medical and infectious wastes), and any other carcinogenic, ignitable, corrosive, reactive, toxic, or otherwise hazardous substances or materials (whether solids, liquids or gases), including but not limited to any substances, materials, or wastes subject to regulation, control, or remediation under Environmental Laws. By way of example only, and without limitation, the term Hazardous Substances includes petroleum, urea, formaldehyde, flammable, explosive, and radioactive materials, PCBs, pesticides, herbicides, asbestos, sludge, slag, acids, metals, and solvents.

“Indebtedness”. With respect to any Person, means any indebtedness, whether or not contingent, in respect of borrowed money or evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or representing the balance deferred and unpaid of the purchase price of any property (including pursuant to capital leases), including any such balance that constitutes an accrued expense or a trade payable, and shall also include, to the extent not otherwise included, the guaranty of items which would be included within this definition.

“Interconnection Agreement”. The agreement to be entered into between Seller and the transmission provider and assigned to Purchaser at Project Substantial Completion providing for the interconnection of the Project with the transmission provider’s transmission system.

“Interconnection Rights”. Any and all of Seller’s rights and interests in the Project’s transmission interconnection queue position, the application for Project interconnection filed by Seller with the transmission provider, any studies, reports or other documents provided by the transmission provider, and any and all other rights relating to the interconnection of the Facility to the transmission grid with respect to this Project.

“Land Contracts”. The Windfarm Easements, the Collection System Easements and the Substation Agreement.

“Laws”. Any law, statute, rule, regulation, ordinance, standard, code, order, judgment, decision, writ, injunction, decree, certificate of need, award or other governmental restriction including, without limitation, policy or procedure issued or enforced by any Authority.

“Liabilities”. Any and all direct or indirect liability, Indebtedness, obligation, commitment, losses, damages, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or other.

“Long Stop Date”. [\_\_\_\_\_, 200\_].

“Material Adverse Impact”. Any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results of operations or condition (financial or otherwise) of the Project or the Project Site. Without limiting the foregoing, Material Adverse Impact includes any change in condition that actually has, or is reasonably likely to have, a significant adverse effect on (i) Purchaser’s ability to own, control, or operate the Project (financial or otherwise), (ii) the Project’s ability to operate and deliver energy, (iii) Seller’s ability, Contractor’s ability, or the Guarantors’ ability, to perform its respective obligations in accordance with the Contracts and/or Land Contracts to which it is, respectively, a party, (iv) Contractor’s ability to perform its respective obligations in accordance with the Contracts (v) the ability of Purchaser to enforce any of its material rights and remedies under the Contracts or the Land Contracts; or (vi) Seller fails to meet the requirements of ARTICLE 9 (“Credit Requirements”).

“Meteorological Stations”. The \_\_\_\_\_ meteorological stations currently installed (temporary) each of which shall include a wind anemometer, wind vanes, a guy-wired tower and a logger.

“Necessary Governmental Approvals”. All Governmental Approvals required in connection with (i) the due execution, delivery and performance by any party of the this Agreement and/or any Contract or Land Contract and (ii) the development, construction, operation and ownership of the Project.

“Non-disclosure Period”. The term shall have the meaning set forth in Section 8.5.1.

“Party”. Purchaser or Seller individually; and “Parties” means Purchaser and Seller collectively.

“Permit Applications”. Any application, petition or request made to any Authority on or before the Closing Date in order to obtain a Permit.

“Permits”. All licenses, consents, certificates (including permanent unconditional certificates of occupancy), approvals, permits and any authorizations of any sort whatsoever by or from any Authority, including, without limitation, any certificates of need, provider numbers and accreditation necessary, useful or incidental to the Acquired Assets and the development, construction and operation of the Project as described as “Obtained Permits” or “Required Permits” on Schedule 6.15 of this Agreement. The Permits do not include the Permit Applications.

“Permitted Liens”. “Permitted Liens” means: (a) liens for property taxes and installments of assessments and charges of Authorities not yet due and payable as of the Closing Date, (b) liens incurred in the ordinary course of business (including inchoate workman’s and mechanics liens and inchoate liens incurred in connection with worker’s compensation, unemployment insurance, social security and other Laws) which do not secure any amounts currently due and which do not currently present any risk of sale of the property subject to the lien, (c) prior to the Closing Date, liens incurred in the ordinary course of business which are discharged in full by the Closing Date, (d) liens created by the act or omission of Purchaser, and (e) the liens set forth on Schedule 3.8 to the extent they are acceptable to Purchaser in its sole discretion, reasonably exercised.

“Permitting Opinion”. A permitting opinion from [STATE] legal counsel selected by Seller and approved by Purchaser (such approval not to be unreasonably withheld) that describes all Permits required to develop, construct and operate the Project.

“Person”. Any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, decedent’s estate, organization, entity, or unincorporated organization or any Authority.

“Phase I Avian Risk Assessment”. The Phase I Avian Risk Assessment (which shall include but not be limited to bats) with respect to the Property to be prepared by a consultant selected by Seller and Approved by Purchaser (which such approval shall not be unreasonably withheld) and delivered to Purchaser that demonstrates that there are no conditions with respect to the Property that could have a Material Adverse Impact on the Project, as such Phase I Avian Risk Assessment may be revised and redelivered to Purchaser pursuant to Section 3.7.

“Phase I Environmental Assessment”. The Phase I Environmental Assessment with respect to the Property to be prepared by a consultant selected by Seller and approved by Purchaser (which such approval shall not be unreasonably withheld) and delivered to Purchaser that demonstrates that there are no conditions with respect to the Property that could have a Material Adverse Impact on the Project, as such Phase I Environmental Assessment may be revised and redelivered to Purchaser pursuant to Section 3.7.

“Physical Assets”. The term shall mean the Meteorological Stations and the Books and Records.

“Project”. The complete integrated wind-powered electricity generating plant (including the Facilities) with a nameplate capacity of [OUTPUT] megawatts (\_\_\_ MW) to be located on

the Property to be developed, designed, procured, constructed, tested and commissioned by Seller under this Agreement and by Contractor under the EPC Agreement.

“Project Substantial Completion”. The term shall have the meaning set forth in the EPC Agreement.

“Property”. All property that is the subject of the Land Contracts as further described in Schedule 6.16 and the Substation Fee Parcel as further described in Schedule 6.16.

“Purchase Price”. The term shall have the meaning set forth in Section 2.2, subject to modification pursuant to Section 11.2.

“Purchaser”. PacifiCorp, an Oregon corporation.

“Purchaser Affirmative Coverage”. The term shall have the meaning set forth in Section 3.8.

“Purchaser Conditions”. The term shall have the meaning set forth in Section 2.4.1.3.

“Purchaser Confidential Information”. The term shall have the meaning set forth in Section 8.3.1.

“Purchaser Damages”. The term shall have the meaning set forth in Section 10.3.1.

“Purchaser Documents”. The term shall have the meaning set forth in Section 7.2.

“Purchaser Indemnified Parties”. The term shall have the meaning set forth in Section 10.3.1.

“Purchaser’s Knowledge”. The actual and current knowledge, after reasonable inquiry, of any of the following Persons: \_\_\_\_\_.

“Release”. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment or the workplace of any Hazardous Substance, and otherwise as defined in any Environmental Law.

“Reports”. The Phase I Environmental Assessment, the Phase I Avian Risk Assessment, Cultural and Biological Study, the Beam Path Study, the RFI Report, the Geotechnical Report, the Wetlands Study, the Survey, the Title Abstracts, the Wind Study, the Permitting Opinion and any other study or report prepared by or for Seller in connection with the Project.

“Representative”. With respect to any Person, any officer, director, employee, principal, attorney-in-fact, agent, or other representative of such Person.

“RFI Report”. The radio frequency interruption engineering study prepared by a consultant selected by Seller and approved by Purchaser (such approval not to be unreasonably withheld) that demonstrates that the construction and operation of the Project will not materially and adversely interfere with any radio or other similar frequencies.

“Seller”. [SELLER], [Organizational type and State].

“Seller Conditions”. The term shall have the meaning set forth in Section 2.4.1.2.

“Seller Confidential Information”. The term shall have the meaning set forth in Section 8.4.1

“Seller Damages”. The term shall have the meaning set forth in Section 10.3.2.

“Seller Documents”. The term shall have the meaning set forth in Section 6.1.

“Seller Endorsements”. The term shall have the meaning set forth in Section 3.8.

“Seller Indemnified Parties”. The term shall have the meaning set forth in Section 10.3.2.

“Seller’s Knowledge”. The actual and current knowledge, after reasonable inquiry, of any of the following Persons: \_\_\_\_\_.

“Site”. The term shall have the meaning set forth in the recitals hereof.

“Substation Fee Parcel”. A parcel held in fee ownership by the Seller of at least five (5) acres at the Site that, in Purchaser’s reasonable opinion, will satisfy the transmission provider’s requirements for the property for an interconnection substation.

“Survey”. The ALTA-ACSM survey to be provided by Seller for the Property, which survey shall (i) be prepared by a surveyor reasonably acceptable to Purchaser, (ii) be prepared in conformance with the Minimum Standard Detail Requirements adopted in 1\_\_\_\_ by the American Land Title Association, the American Congress on Surveying and Mapping, and the National Society of Professional Surveyors, (iii) be certified to Purchaser as provided in such Minimum Standard Detail Requirements, (iv) certify (in addition to the foregoing certifications) that all access and other roads within the Site are public, (v) contain Table A Optional Surveyor Responsibilities and Specifications Nos. 2, 3, 4, 6, 8, 10, 11, 14 and 16, and (iv) show: (a) an overlay of the proposed Facilities on the Property; (b) any beam paths indicated from the Beam Path Study; (c) the tax assessor number(s) for each parcel of Property; (d) the boundaries of each parcel of the Property; (e) the boundaries of each Windfarm Easement or Collection System Easement that consists of less than an entire such parcel, (f) the name of the landowner(s) of each such parcel as currently vested; and (g) the property purchased pursuant to the Substation Agreement. Notwithstanding the foregoing, the Survey shall not be required to show any third party improvements except for those within 1,000 feet of the Facilities (or in the case of the electrical collection system, within 100 feet on both sides of the centerline).

“Taxes”. All federal, state, local, foreign and other net income, gross income, estimated, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property taxes and assessments, windfall profits, value added, commercial rent, customs duties, capital gain, social security, royalty, documentary or other taxes, fees, assessments, duties or charges of

any kind whatever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, and the term “Tax” means any one of the foregoing Taxes.

“Title Abstracts”. Either a full abstract, title report or pro forma policy showing all Encumbrances for each parcel of Property covered by a separate Land Contract and including a copy of all underlying report of liens (if a title report or pro forma policy) and all listed documents.

“Title Company”. The term shall have the meaning set forth in Section 3.8.

“Title Insurance”. The term shall have the meaning set forth in Section 3.8.

“Update Certificates”. The term shall have the meaning set forth in Section 6.21.

“Wetlands Study”. The Wetlands Study with respect to the Property to be prepared by a consultant selected by Seller and approved by Purchaser (which such approval shall not be unreasonably withheld) and delivered to Purchaser that demonstrates that there are no conditions with respect to the Property that would prevent the construction of the Project pursuant to a nationwide Section 404 permit, as such Wetlands Study may be revised and redelivered to Purchaser pursuant to Section 3.7.

“Wind Data”. Any and all wind data included, or included by reference, on Schedule 6.13 of this Agreement, provided by Seller or its Representatives to Purchaser in respect of the Project.

“Windfarm Easements”. Easements for the construction and operation of the Facilities with respect to parcels sufficient to construct and operate a [OUTPUT] megawatt (\_\_\_ MW) windfarm meeting the Wind Study output requirement and which is generally located within the boundary of the area shown in Exhibit D, and in the form set out in Exhibit C and with such additional modifications requested by the grantors of such easements, with approval of such requested modifications not to be unreasonably withheld by Purchaser.

“Wind Study”. A Project Wind Study prepared by \_\_\_\_\_ and verified by Purchaser’s wind consultant within 20 Business Days after receipt, which study concludes that, at 95% availability, the Project will have an expected average annual output of not less than \_\_\_\_\_ megawatt hours, as delivered to the point of interconnection with the transmission provider’s transmission system.

## 1.2 Rules of Interpretation

Unless otherwise expressly provided or unless required by the context in which any term appears:

- (a) capitalized terms used in this Agreement have the meanings specified in this Article;
- (b) the singular shall include the plural and the plural shall include the singular;



(c) references to “Articles,” “Sections,” “Schedules,” or “Exhibits” (if any) shall be to articles, sections, schedules or exhibits (if any) of this Agreement;

(d) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;

(e) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement;

(f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied;

(g) references to this Agreement shall include a reference to all schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time;

(h) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;

(i) the use of the word “including” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” or “including but not limited to” and shall not be construed to mean that the examples given are an exclusive list of the topics covered;

(j) relative to the determination of any period of time, “from” means “including and after,” “to” means “to but excluding” and “through” means “through and including”; and

(k) references to applicable Laws shall mean a reference to such applicable Laws as the same may be amended, modified, supplemented or restated and be in effect from time to time, including rules and regulations promulgated thereunder.

The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

## **ARTICLE 2.**

### **PURCHASE AND SALE OF ACQUIRED ASSETS**

#### **2.1 Purchase and Sale of Acquired Assets.**

Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Seller shall sell, convey, transfer, assign, and deliver to Purchaser, and Purchaser shall purchase from Seller, all of the Acquired Assets, which Acquired Assets shall be sold, conveyed, transferred, assigned and delivered to Purchaser for the consideration specified in Section 2.2 below.

#### **2.2 Purchase Price; Assumption of Liabilities.**

2.2.1.1 Purchase Price. Subject to the adjustments set forth in Sections 2.5 and 11.2(b). Purchaser agrees to pay to Seller pursuant to this Agreement a total price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “Purchase Price”), as follows:

2.2.1.2 upon execution and delivery of this Agreement, in consideration of Seller’s provision of exclusive Closing rights to Purchaser hereunder and the continuing efforts of Seller as provided hereunder \_\_\_\_\_ Dollars (\$\_\_\_\_\_);

2.2.1.3 upon the execution of Windfarm Easements and Collection System Easements required for the Project, \_\_\_\_\_ Dollars (\$\_\_\_\_\_);

2.2.1.4 upon obtaining all of the Permits, \_\_\_\_\_ Dollars (\$\_\_\_\_\_);

2.2.1.5 upon receipt of the final Wind Study, \_\_\_\_\_ Dollars (\$\_\_\_\_\_);

2.2.1.6 upon execution of the EPC, \_\_\_\_\_ Dollars (\$\_\_\_\_\_);

2.2.1.7 at Closing, \_\_\_\_\_ Dollars (\$\_\_\_\_\_); and

2.2.1.8 upon receipt of the signed Interconnection Agreement, \_\_\_\_\_ Dollars (\$\_\_\_\_\_);

2.2.1.9 at Project Substantial Completion the balance of the Purchase Price, adjusted as specified in Sections 2.5, and/or 11.2(b).

The Purchase Price shall be payable by wire transfer or, if so requested in writing by Seller, by delivery of other immediately available funds, and shall be due and payable as follows: the payment in Section 2.2.1.2 shall be due and payable on the date hereof, the payments in Section 2.2.1.3, 2.2.1.4, 2.2.1.5, 2.2.1.6 and 2.2.1.8 shall be due and payable within ten (10) Business Days after receipt by Purchaser of notice from Seller stating that the action has been completed together with copies of the Windfarm Easement and Collection System Easements, Substation Fee Parcel, Permits, the final Wind Study, \_\_\_\_\_, or the EPC Agreement, as the case may be, the payment in Section 2.2.1.7 shall be payable on or before the Closing Date, and the payment in Section 2.2.1.9 shall be payable within ten (10) Business Days after achievement of Project Substantial Completion.

2.2.1.10 Assumption of Liabilities. Subject to the terms and conditions of this Agreement, the Purchaser agrees to assume and become responsible for all of the Assumed Liabilities as of and after the Closing Date. Other than as set forth in the Purchaser Documents, the Purchaser is not assuming and shall not assume or have any responsibility, however, with respect to any present or future debt, liability or other obligation or Liability of Seller or its Affiliates not included within the definition of Assumed Liabilities.

2.2.1.11 Allocation of Purchase Price. Purchaser shall prepare an allocation of the Purchase Price (and all other capitalized costs) among the Acquired Assets in accordance with section 1060 of the Code and Treasury Regulations thereunder (and any similar provisions of Law, as appropriate), which allocation shall be to Seller, provided that the allocation is in

accordance with Laws. Purchaser shall deliver such allocation to Seller within thirty (30) Business Days after the Closing Date. Seller and Purchaser and their Affiliates shall report, act, and file all Tax returns, form or reports (including, but not limited to, IRS Form 8594) in all respects and for all purposes consistent with such-prepared by Purchaser. Seller shall timely and properly prepare, execute, file and deliver all such documents, forms, returns (including, but not limited to, IRS Form 8594) and other information as Purchaser may reasonably request in preparing such allocation. Neither Seller nor Purchaser shall take any position (whether in audit, Tax returns, or otherwise or with any Authority) that is inconsistent with such allocation unless required to do so by applicable Law.

### 2.3 Conditions to Making Payments.

The obligation of Purchaser to make payments as set out in Section 2.2 (including payment of the Purchase Price at the Closing), is subject to the satisfaction on each date on which payment is due (each a “Payment Date”) of each the following conditions precedent:

2.3.1.1 Payments on Business Days. The Payment Date shall be a Business Day. If any Progress Payment becomes payable on a day that is not a Business Day, the Progress Payment shall be paid on the next succeeding Business Day. Seller shall bear the cost of any and all banking charges imposed by Seller’s bank with respect to any Progress Payment.

2.3.1.2 Representations and Warranties. (i) The representations and warranties made by Seller in each Contract and Land Contract to which it is a party shall be true and correct in all material respects on such Payment Date both before and after giving effect to the making of such payment, and (ii) the representations and warranties made by each counterparty in the Contract or Land Contract shall be true and correct in all material respects on such Payment Date both before and after giving effect to the making of such Payment. In each case such representations and warranties shall be deemed renewed and re-stated as of the date of such payment.

2.3.1.3 No Default. (i) No circumstance, event or condition shall exist which either immediately or with the passage of time or the giving of notice, or both, would permit Seller to withhold payment under any Contract or Land Contract; (ii) no breach, violation or default shall have occurred and be continuing under (A) this Agreement (B) any Guaranty; or (C) any Governmental Approval; and (iii) to the extent not already set forth in this Section 2.3.1.3, no circumstance, event or condition shall exist which either immediately or with the passage of time or the giving of notice, or both, would permit Seller’s counterparty to terminate any Contract or Land Contract.

2.3.1.4 No Proceeding or Litigation. No action, suit, proceeding or investigation by or before any Governmental Authority or any arbitrator shall be pending or to Seller’s knowledge threatened against or affecting the Property or the Project which would result in a Material Adverse Impact, unless such action, suit, proceeding or investigation has been initiated or threatened by Purchaser.

2.3.1.5 Material Adverse Impact. Since the date hereof, no Material Adverse Impact shall have occurred, except and to the extent that such Material Adverse Impact is a result of an act or omission of Purchaser.

2.3.1.6 Notice of Request for Progress Payment. Purchaser shall have received From Seller a notice of request for payment, together with all supporting documents reasonably requested by Purchaser.

2.3.1.7 Governmental Approvals. Except with respect to the Deferred Governmental Approvals, all Necessary Governmental Approvals required to be obtained by such time shall have been obtained and shall be in full force and effect.

## 2.4 Mechanics of Closing.

2.4.1.1 Closing. The consummation of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Purchaser in Portland, Oregon, at 10:00 a.m., local time, on the third Business Day following the date on which all of the conditions to each Party’s obligations set forth in ARTICLE 3 and ARTICLE 4, and Sections 5.1, 5.4, 5.6, 5.7, and 5.8 and have been satisfied or waived, or at such other place or time as the Parties may agree. The date and time at which the Closing actually occurs is hereinafter referred to as the “Closing Date.”

2.4.1.2 Failure to Satisfy All Seller Conditions. The conditions precedent to Seller’s obligations to perform hereunder are set forth in ARTICLE 4 (“Seller Conditions”). Only Seller has the right to waive any of Seller Conditions. If Purchaser and Seller are unable, despite their reasonable efforts, to satisfy all of Seller Conditions, Seller may elect to consummate the transactions contemplated herein in whole or not at all.

2.4.1.3 Failure to Satisfy All Purchaser Conditions. The conditions precedent to Purchaser’s obligations to perform hereunder are set forth in ARTICLE 3 and Sections 5.1, 5.4, 5.6, 5.7, and 5.8 (“Purchaser Conditions”). Only Purchaser has the right to waive any of the Purchaser Conditions. If Purchaser and Seller are unable, despite their reasonable efforts, to satisfy all of the Purchaser Conditions, Purchaser may elect to consummate the transactions contemplated herein in whole or not at all.

## 2.5 Closing Costs.

2.5.1.1 Expenses. Except as otherwise specified herein, each Party hereto shall pay its own legal, accounting, out-of-pocket and other expenses incident to this Agreement and to any action taken by such Party in preparation, negotiation, execution and performance of this Agreement.

2.5.1.2 Prorations. All property Taxes, rent, insurance premiums and other costs and expenses relating to the ownership and operation of the Land Contracts shall be prorated between Seller and Purchaser as of the Closing Date, so that Seller pays the prorated amounts for the period of time prior to the Closing Date, and Purchaser pays the prorated amounts from and after the Closing Date. Seller shall have the sole responsibility to pay past-due amounts prior to the Closing Date.

2.5.1.3 Transfer Taxes. Seller shall be responsible for paying any transfer taxes and any sales, use or other taxes imposed on Seller by applicable Law by reason of the transfer of the Acquired Assets to Purchaser as provided herein and any deficiency, interest, penalty or addition asserted with respect thereto, and Purchaser shall be responsible for paying any transfer taxes and any sales, use or other taxes imposed on Purchaser by applicable Law by reason of the transfer of the Acquired Assets to Purchaser as provided herein and any deficiency, interest, penalty or addition asserted with respect thereto.

### **ARTICLE 3.**

#### **PURCHASER'S CONDITIONS PRECEDENT TO THE CLOSING**

The obligation of Purchaser to purchase all of the Acquired Assets from Seller shall be subject to fulfillment at or prior to the Closing of each of the following conditions:

3.1 Deliveries by Seller. Upon the terms and subject to the conditions set forth in this Article 3, on or before the Closing Date Seller shall deliver, cause to be delivered, or concurrently with Purchaser's deliveries under Section 4.1, deliver, to Purchaser the following:

3.1.1.1 Assignment and Assumption Agreements. (i) two (2) original counterparts of the Assignment and Assumption Agreement in substantially the form of Exhibit E hereto (the "Assignment and Assumption Agreements"), in respect of the sale by Seller of all of its right, title and interest in the Contracts and Permits to Purchaser and the assumption by Purchaser of all of the Assumed Liabilities relating thereto, each such counterpart being properly executed by an authorized representative of Seller, (ii) such other instruments of assignment and assumption as Purchaser and its counsel may reasonably request, (iii) two (2) original counterparts of the Assignment and Assumption Agreement in substantially the form of Exhibit E hereto (the "Assignment and Assumption Agreements"), in respect of the sale by Seller of all of its right, title and interest in the Contracts and Land Contracts to Purchaser and the assumption by Purchaser of all of the Assumed Liabilities relating thereto, each such counterpart being properly executed by an authorized representative of Seller, (iv) two (2) original counterparts of the Assignment and Assumption Agreement in substantially the form of Exhibit E hereto (the "Assignment and Assumption Agreements"), in respect of the sale by Seller of all of its right, title and interest in the Contracts and Interconnection Rights to Purchaser and the assumption by Purchaser of all of the Assumed Liabilities relating thereto, each such counterpart being properly executed by an authorized representative of Seller; and (iv) two (2) original counterparts of a Consent to Assignment and Novation substantially in the form of Exhibit E-2 hereto between Seller and the applicable counterparty to each of the Contracts, Land Contracts and Interconnection Rights, each such counterpart being properly executed by an authorized representative of executed by Seller and the applicable counterparty.

3.1.1.2 Bills of Sale and Warranty Deeds. (i) two (2) original counterparts to the Bill of Sale in substantially the form of Exhibit F hereto (the "Bill of Sale"), each such counterpart being properly executed by an authorized representative of Seller in respect of the sale by Seller of all of its right, title and interest in the Physical Assets, the Wind Data and the Reports; (ii) for owned real property and interest in owned real property, including the Substation Fee Parcel, special warranty deeds in recordable form, properly executed and acknowledged, confirming to an conveying such real property interests held by or on behalf of

Seller, each such deed being properly executed by an authorized representative of Seller; and (iii) such other instruments of transfer as Purchaser and its counsel may reasonably request.

3.1.1.3 Guaranty. An original counterpart to the Guaranty properly executed by an authorized representative of Guarantor and the legal opinion required to be provided pursuant to such Guaranty.

3.1.1.4 Consents. Original executed copies of the Consents that may be requested by Purchaser to be provided by Seller in accordance with Section 8.2, each substantially in the form attached hereto as Exhibit H or otherwise in a form reasonably satisfactory to Purchaser; provided, however, that if requested by Seller Purchaser shall countersign such Consents to evidence Purchaser's assumption of the relevant Assumed Liability.

3.1.1.5 Certificates. Such certificates of Seller's officers and others as may be reasonably requested by Purchaser, which shall include, but not be limited to:

(a) A certificate executed by the President of Seller, certifying as of the Closing Date (a) a true and correct copy of the corporate action of Seller authorizing the execution, delivery and performance of this Agreement and the other Seller Documents to be executed by it, and the consummation of the transactions contemplated hereby and thereby and (b) incumbency matters.

3.1.1.6 An affidavit from Seller, stating, under penalty of perjury, Seller's United States taxpayer identification number and that Seller is not a foreign person, pursuant to section 1445(b)(2) of the Code and Treasury Regulation 1.1445-2(b)(2)(iii)(B) (or any similar provision of state or other Tax Law).

3.1.1.7 Tax Matters. Any document(s) that may be reasonably requested by Purchaser and required by any state taxing Authority in order to relieve Purchaser of any obligation to withhold Taxes with respect to any portion of the payments to Seller pursuant to this Agreement.

3.1.1.8 Additional Documents. All other documents which are reasonably necessary to consummate the transactions contemplated hereby or reasonably necessary to demonstrate or evidence the delivery of the items required to be delivered under ARTICLE 3 and Sections 5.1, 5.4, 5.6, 5.7, and 5.8.

3.2 Meteorological Stations. Seller shall have constructed the Meteorological Stations in accordance with industry practice.

3.3 Interconnection Study. Seller shall have obtained from the transmission provider to which the Project will be interconnected a completed interconnection study that shall have been approved by [TRANSMISSION PROVIDER] and shall be satisfactory to Purchaser.

3.4 Transmission Study. Purchaser shall have obtained from the transmission provider(s) which interconnect the Project to Purchaser's transmission grid, transmission service to be able to deliver not less than \_\_\_\_ MW to Purchaser's transmission grid and which shall be in form and substance satisfactory to Purchaser. If the transmission service request requires an additional

study, Seller shall reimburse Purchaser for any and all costs associated with such additional study.

3.5 Tax Abatement. Seller shall have obtained from each county in which the Project is located, the necessary actions such that the Project will be eligible for tax abatement in accordance with\_\_\_\_\_.

3.6 FAA No Hazard Determination. Seller shall have obtained from the FAA a No Hazard Determination for the Project.

3.7 Reports. Seller shall have delivered to Purchaser each Report in final form each such Report (and all Reports in the aggregate) shall not indicate any issues that would have a Material Adverse Impact on the further development, construction or operation of the Facilities. In the event there is a change in any findings or conclusions of a Report delivered and accepted as satisfactory by Seller prior to the Closing, Seller shall redeliver such Report to Purchaser in final form as revised to address such changes. Purchaser shall then have the right to determine, in the exercise of Purchaser's reasonable discretion, whether changes in such Report would have a Material Adverse Impact and, if Purchaser determines there would be a Material Adverse Impact, this condition shall be deemed not to have been met.

3.8 Title Abstracts and Title Insurance. Seller, at Seller's expense, shall deliver or cause to be delivered the Title Abstracts (and any amendments, updates and supplements thereto) to Purchaser promptly following the issuance of each such Title Abstract (or any such amendment, update or supplement) and shall deliver or cause to be delivered to Seller the last of such Title Abstracts (and the last of any such amendments, updates and supplements) no later than thirty (30) Business Days prior to the Closing. At Closing, Seller shall also cause Stewart Title Company (or another title insurance company mutually acceptable to the Parties (the "Title Company")) to issue an ALTA extended coverage owner's policy of title insurance (or a commitment to issue the same) that in each case (i) is in form and substance and contains such requirements, modifications and endorsements as Purchaser may reasonably approve, (ii) contains such additional affirmative coverage as Purchaser may reasonably request (the "Purchaser Affirmative Coverage"), (iii) is in such amount as Purchaser shall negotiate with the Title Company, but in no event greater than the expected value of Project, (iv) insures (or commits to insure, as applicable) that the Purchaser is the sole holder of all rights, title and interest granted under the Land Contracts, (v) names Purchaser as the insured, (vi) is issued as of the date of Closing by Title Company, (vii) specifies such reinsurance carriers and such reinsurance amounts as may reasonably be acceptable to Purchaser, and (viii) shows as exceptions only the Permitted Liens (as identified in Schedule 3.8 attached hereto).

3.9 Authorizations. The parties shall have or shall have caused to be delivered, made or obtained all notices to, declarations, designations, registrations, filings or submissions with, and authorizations, approvals, orders, consents or waivers from Governmental Authorities and other parties listed on Schedule 3.9, and the same shall not have been withdrawn, suspended or modified.

3.10 Representations, Warranties and Covenants of Seller. Seller shall have performed all agreements and covenants required hereby to be performed by it prior to, on or as of the Closing

Date and the representations and warranties of Seller set forth in ARTICLE 6 of this Agreement and in any document to be furnished to Purchaser pursuant hereto, or in connection with the transactions contemplated hereby, shall be true and complete in all material respects as of the date hereof and as of the Closing as if made as of such time.

3.11 Permits. Each of the Permits delivered to Purchaser pursuant to Section 3.1.1.1 shall be in a form and substance reasonably satisfactory to Purchaser; provided, however, that discretionary Permits shall either run with underlying land or be otherwise freely assignable to Purchaser without consent or other action (other than such consent or action which Seller shall have obtained prior to Closing) required by the applicable Authority.

3.12 Additional Development Services. In addition to the aforementioned development actions and recognizing that certain additional development actions and services (including, without limitation, obtaining assets, contracts, licenses, permits, approvals and rights in addition to those set forth above) will be required for a fully operational wind energy generation facility ("Additional Development Services"), Seller shall perform such Additional Development Services.

3.13 EPC Agreement. Contractor shall have delivered or, concurrently with Purchaser's deliveries under Section 4.1, shall deliver to Purchaser two (2) original counterparts to the EPC Agreement, each properly executed by an authorized representative of Contractor, along with the guaranty to be provided by Guarantor pursuant to the terms of the EPC Agreement.

#### **ARTICLE 4. SELLER'S CONDITIONS PRECEDENT TO THE CLOSING**

The obligation of Seller to sell, convey, transfer, assign, and deliver to Purchaser all of the Acquired Assets shall be subject to fulfillment at or prior to the Closing of each of the following conditions:

4.1 Deliveries by Purchaser. Upon the terms and subject to the conditions set forth in this ARTICLE 4, on or before the Closing Date, Purchaser shall deliver, shall cause to be delivered, or concurrently with Seller's deliveries under Section 3.1, deliver to Seller, the following:

4.1.1.1 Assignment and Assumption Agreement. (i) two (2) original counterparts to the Assignment and Assumption Agreement in respect of the sale by Seller of all of its right, title and interest in the Contracts, the Land Contracts and the Permits to Purchaser and the Assumption by Purchaser of all of the Assumed Liabilities relating thereto, each such counterpart being properly executed by an authorized representative of the Purchaser and (ii) such other instruments of assignment and assumption as Seller and its counsel may reasonably request.

4.1.2 Consideration. The Purchase Price.

4.1.2.1 Certificates. A certificate executed by the Secretary or Assistant Secretary of Purchaser, certifying as of the Closing Date (a) a true and correct copy of the corporate action of the Purchaser authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby and thereby, and (b) incumbency matters.



4.1.2.2 Additional Documents. All other documents which are reasonably necessary to consummate the transactions contemplated hereby or reasonably necessary to demonstrate or evidence the delivery of the items, required to be delivered under this ARTICLE 4.

4.2 Representations, Warranties and Covenants of Purchaser. Purchaser shall have performed all agreements and covenants required hereby to be performed by it prior to, on or as of the Closing Date and the representations and warranties of Purchaser set forth in ARTICLE 7 of this Agreement shall be true and complete in all material respects as of the date hereof and as of the Closing as if made as of such time.

## **ARTICLE 5. PURCHASER'S AND SELLER'S COVENANTS**

5.1 Seller Pre-Closing Actions. Seller covenants to obtain all Land Contracts and such other Windfarm Easements and Collection System Easements as may be identified by Seller or Purchaser as reasonably necessary or convenient for the construction or operation of the Project as soon as reasonably possible. For the avoidance of doubt, nothing in this Section 5.1 shall be construed as modifying Purchaser's closing condition hereunder that all of the Windfarm Easements and Collection System Easements be obtained and recorded and copies thereof delivered to Purchaser on or before the Closing Date. Seller shall be responsible for all costs associated with commencing, pursuing and obtaining all Windfarm Easements and Collection System Easements. Seller shall also cause its abstractor or the Title Company to deliver to Purchaser Title Abstracts (and any amendments, updates and supplements thereto) delivered to Seller concurrently with delivery of the same to Seller, but in any event no later than the deadline set forth in Section 3.8. Seller shall promptly disclose to Purchaser all information in its possession related to any of the Acquired Assets, as requested by Purchaser.

5.2 Purchaser Pre-Closing Actions. \_\_\_\_\_.

5.3 Notification of Status of Pre-Closing Actions. Each Party shall keep the other Party reasonably apprised with respect to the status of each of the actions set forth in Section 5.1 or Section 5.2 above undertaken by such Party as the case may be. Seller also agrees to provide Purchaser with copies of revised and updated wind data and reports when such data and reports become available (with the final report 20 Business Days prior to Closing) and to provide Purchaser with any additional information and access to Seller's employees or any Person performing Seller's obligations under Section 5.1 for Seller as may be reasonably requested by Purchaser. Notwithstanding the generality of the foregoing, Seller shall provide to Purchaser a bi-weekly status report that describes all actions completed by the Seller with respect to the easements, the Reports, and such other activities of Seller being performed in connection with this Agreement.

5.4 Other Seller Actions. Throughout the period prior to Closing, Seller shall continue to diligently perform those Project development activities necessary to timely obtain (i) final Reports, including a final Wind Study and (ii) any other Project-related conditions to Closing. After Closing, Seller shall execute and perform its obligations under the Interconnection

Agreement, and shall assign and transfer the Interconnection Agreement to Purchaser upon achievement of Project Substantial Completion.

5.5 Completion of Additional Development Services After Closing. To the extent any Additional Development Services are not completed on or before the Closing and the failure to complete such Additional Development Services on or before the Closing does not have a Material Adverse Impact on the further development, construction or operation of the Facilities or the Project, then Purchaser may, in its sole, absolute and unfettered discretion, permit Seller to perform such Additional Development Services after Closing on terms and conditions acceptable to Purchaser.

5.6 Notification of Completion or Failure of Conditions. Each Party to this Agreement will promptly notify the other Party of any satisfaction or failure of conditions under this Agreement; and Seller shall keep Purchaser reasonably apprised with respect to the status of Seller's satisfaction of the Purchaser Conditions. If Seller fails to satisfy the conditions under this Agreement, Purchaser shall have the rights set forth in Section 11.2.

5.7 Update Schedules. Pursuant to Section 6.21, Seller shall have the right and obligation to update the Schedules on a periodic basis (no less frequently than monthly) and with the delivery of each such update to Purchaser in accordance with Section 12.3, Seller shall make the same representation and warranty as made by it under Section 6.19.

5.8 Insurance. Seller shall maintain and shall require and cause its contractors, agents, and assigns to provide, pay for and continuously maintain in full force and effect with insurers having an A.M. Best insurance Reports rating of A-:VII or better the insurance coverages identified in Schedule 5.8 attached hereto and incorporated herein by reference.

## **ARTICLE 6. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Purchaser, as of the date hereof and subject to Seller's right to update the Schedules (but subject to Section 6.21) and thereby qualify the affected representations and warranties as of the Closing Date, as follows:

6.1 Organization. Seller is a [FORM OF ENTITY] duly formed, validly existing and in good standing under the Laws of the State of [\_\_\_\_\_].

6.2 Authorization. Seller has all requisite power and authority to execute and deliver this Agreement, and each other agreement, document or instrument to be executed by it in connection herewith (collectively, the "Seller Documents") and to perform the obligations hereunder and thereunder. Neither Seller's interest in any of the Acquired Assets nor Seller's performance of its obligations under Seller Documents requires any qualification, licensing or approval by any foreign jurisdiction

6.3 Organizational Documents. Seller has made available to Purchaser true and complete copies of its certificate of incorporation from the Secretary of State of [STATE]. Seller's Corporate Documents are in full force and effect. Seller is not in violation of its articles of incorporation or bylaws in any manner that would have a Material Adverse Impact on the Project

or on the completion of the transactions contemplated by this Agreement or by the Purchaser Documents

6.4 Right and Title to Acquired Assets. Except as set forth in Schedule 6.4, at Closing, Seller will have good and marketable title to all of the Acquired Assets, except to the extent that title to any Permits and Permit Applications may not be marketable by their express terms and the sale of the Acquired Assets to Purchaser hereunder will transfer title to Purchaser free and clear of all encumbrances and to Seller's Knowledge, there will exist no rights or interests of any third party relating to the Acquired Assets that are not expressly contemplated by Seller Documents and Seller has the full right, power and authority to transfer and deliver to Purchaser all right, title and interest in the Acquired Assets, except to the extent that title to any Permits and Permit Applications may not be transferable by their express terms.

6.5 Authorization and Enforceability. Seller has taken all action necessary to execute and deliver this Agreement and the other Seller Documents, as applicable, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder and thereunder, and except as described in the Schedules to this Agreement no other action or proceeding on the part of Seller is necessary to authorize this Agreement and the other Seller Documents and the transactions contemplated hereby and thereby. This Agreement and the other Seller Documents have been or, as applicable, at Closing, will have been duly executed and delivered by Seller. Assuming the due authorization, execution and delivery by the Purchaser of this Agreement and of the Seller Documents by the other counterparties to such Seller Documents, this Agreement and the other Seller Documents constitute legally valid and binding obligations of Seller, enforceable against Seller in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally and equitable principles.

6.6 Violation; Conflicts. Neither the execution, delivery and performance by Seller of this Agreement or the other Seller Documents nor the transfer of rights and consummation of the transactions contemplated hereby or thereby will result in (a) a violation of or a conflict with any provision of Seller's Corporate Documents; (b) except as set forth in Schedule 6.6, a breach or violation of, a conflict with or a default under, or the creation of any right of any Person to accelerate, terminate or cancel, any Contract, whether oral or written, express or implied; (c) a violation by Seller of any Laws, or (d) an imposition of any encumbrance on the business of Seller or on any of the Acquired Assets.

6.7 Consents and Approvals. Other than as set out in Schedule 6.7, no consent, approval or authorization of, permit from, declaration, filing or registration with, or notice to, any Authority, any third party payor or any other Person, is required to be made or obtained by Seller in connection with the execution, delivery, performance and validity of this Agreement and the other Seller Documents and the consummation of the transactions contemplated hereby and thereby.

6.8 Brokers. Neither Seller nor its Affiliates has any contract, arrangement or understanding with any broker, finder, agent or other intermediary with respect to the transactions contemplated by this Agreement.

6.9 Litigation. Other than as described in Schedule 6.9, there are no actions, suits or proceedings pending or, to Seller's Knowledge, threatened, against or affecting the Project or any of the Acquired Assets or Seller's transfer of rights and consummation of the transactions contemplated hereby, at law or in equity or before or by any Authority or instrumentality or before any arbitrator of any kind, and, to Seller's Knowledge, there is no valid basis for any such action, proceeding or investigation. Purchaser is assuming no liability with respect to any such action, suit or proceeding arising out of transactions, acts or omissions occurring prior to the Closing Date.

6.10 Compliance with Law. Other than as described in Schedule 6.10, Seller has not received any notification indicating any violation of, and to Seller's Knowledge, there is no violation of, or non-compliance with, any applicable Law, license, franchise, permit, authorization or concession, as such would apply to the Acquired Assets, the Project or the transactions contemplated hereby.

6.11 Tax Matters. Other than as set forth on Schedule 6.11, there are no liens for Taxes on Acquired Assets (other than liens on real property), other than for Taxes not yet due and payable as of the Closing Date. To Seller's Knowledge, there are no pending or threatened proceedings with respect to Taxes relating to Seller or the Acquired Assets. To Seller's Knowledge, there are no matters under discussion between Seller and any Authority with respect to Taxes relating to Seller or the Acquired Assets, and no extensions of the statute of limitations have either been requested or granted with respect to Taxes relating to Seller or the Acquired Assets.

6.12 No Other Agreements to Sell the Acquired Assets. Seller has no legal obligation, absolute or contingent, to any other Person or any nonbinding agreement in principle, letter of intent or similar understanding with any Person to sell or effect a sale of all or any portion of the Acquired Assets or to enter into any agreement or cause the entering into of any agreement with respect to the foregoing.

6.13 Wind Data. Schedule 6.13 of this Agreement is a true and complete list of the Wind Data. Seller will have delivered to Purchaser correct and complete copies of Wind Data listed on Schedule 6.13 in the format identified on said Schedule 6.13 at least twenty (20) Business Days prior to Closing and at Closing. With respect to each item of Wind Data identified on Schedule 6.13 of this Agreement:

6.13.1.1 Seller possesses all right, title, and interest in and to the item, free and clear of any lien, security interest, encumbrance, claim, license, or other restriction;

6.13.1.2 Seller has not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in such item;

6.13.1.3 there are no disputes, oral agreements, or forbearance programs in effect as to such item;

6.13.1.4 the item is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge;

6.13.1.5 no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to Seller's Knowledge, is threatened which challenges the legality, validity, enforceability, use, or ownership of the item; and

6.13.1.6 Seller has not agreed to indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect to the item.

6.14 Contracts. Schedule 6.14 of this Agreement contains a true and complete list of all Contracts (other than the Permits) that are included in the Acquired Assets. Seller has delivered to Purchaser a correct and complete copy of each Contract listed on Schedule 6.14 of this Agreement. With respect to each Contract identified on Schedule 6.14 of this Agreement and except as set forth on Schedule 6.14:

6.14.1.1 the Contracts are legal, valid, binding, and enforceable in accordance with their terms, and in full force and effect;

6.14.1.2 the consummation of the transactions contemplated by this Agreement (including the assignments and assumptions referred to in Articles 3 and 4 above) will not affect the legality, validity, binding nature or enforceability or force and effect of the Contract except with respect to the identity of the parties thereto as a result of the assignments and assumptions referred to in Articles 3 and 4 above;

6.14.1.3 no party to such Contract is in breach or default, and, to Seller's Knowledge, no event has occurred which with notice or lapse of time would constitute a breach or default, or permit termination, modification, or acceleration, under the Contract; and

6.14.2 no party has repudiated any provision of the Contract.

6.15 Permits. Except for (a) the licenses, consents, certificates, permits and authorizations listed on Schedule 6.15 as (i) "Excluded Permits (to be obtained by Contractor)" and (ii) "Required Permits (not yet obtained)" that may be acquired as Additional Development Services that Purchaser has consented to Seller undertaking under the EPC Agreement pursuant to Section 5.5 above; and (b) any "Required Permits (not yet obtained)" that has not been obtained and such failure has a Material Adverse Impact and that Purchaser has, nonetheless, waived and elected to proceed to Closing in accordance with Section 11.2 (a), as of Closing Seller possesses all licenses, consents, certificates, approvals, permits and any authorizations of any sort whatsoever by or from any Authority, including, without limitation, any certificates of convenience and necessity, provider numbers and accreditation necessary, for the Acquired Assets and the construction and operation of the Project at the locations and in the manner contemplated by this Agreement, other than those which by their terms are and are to be appropriately procured and maintained by Purchaser and which are listed on Schedule 6.15 (Purchaser Permits). Schedule 6.15 of this Agreement is a true and complete list of such Permits. Seller has delivered to Purchaser a correct and complete copy of each Permit listed on Schedule 6.15 of this Agreement. With respect to each Permit identified on Schedule 6.15:

6.15.1.1 the Permit is legal, valid, binding and enforceable in accordance with its terms, and in full force and effect;

6.15.1.2 the consummation of the transactions contemplated by this Agreement (including the assignments and assumptions referred to in Articles 3 and 4 above) will not affect the legality, validity, binding nature, enforceability or force and effect of such Permit except with respect to the identity of the parties thereto as a result of the assignments and assumptions referred to in Articles 3 and 4 above;

6.15.1.3 no party to such Permit is in non-compliance with the terms and conditions of such Permit, and, to Seller's Knowledge, no event has occurred which with notice or lapse of time would constitute non-compliance with such terms and conditions;

6.15.1.4 no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to Seller's Knowledge, is threatened which challenges the legality, validity, or enforceability of the Permit.

#### 6.16 Land Contracts.

6.16.1.1 As of the Closing Date, except for (i) Additional Development Services after Closing that Purchaser has consented to Seller undertaking pursuant to Section 5.5, and (ii) any items that have a Material Adverse Impact and that Purchaser has, nonetheless, waived and elected to proceed to Closing in accordance with Section 11.2 hereof, the Land Contracts:

6.16.1.2 comprise all of the property interests and other rights necessary in connection with the acquisition, development, construction, installation, completion, operation and maintenance of the Project in accordance with all Laws;

6.16.1.3 are sufficient to enable the Project to be located, constructed and operated as contemplated hereunder and under the EPC Agreement; and

6.16.1.4 provide legal and practical ingress and egress rights for any reasonable purpose in connection with the construction and operation of the Project.

6.16.1.5 For all Land Contracts, as of Closing, Seller has delivered to Purchaser correct and complete copies of the Land Contract and with respect thereto except as set forth in Schedule 6.16:

6.16.1.6 each Land Contract is legal, valid, binding and in full force and effect;

6.16.1.7 each Land Contract will continue to be legal, valid, binding and in full force and effect on identical terms immediately following the consummation of the transactions contemplated hereby (including any assignments and assumptions referred to in Articles 3 and 4 above);

6.16.1.8 to Seller's Knowledge, no party to any Land Contract is in breach or default, and to Seller's Knowledge, no event has occurred which, with notice or lapse of time and without a cure being completed, would constitute a breach or default or permit termination, or modification thereof, or acceleration thereunder;

6.16.1.9 to Seller's Knowledge, no party to any Land Contract has repudiated any provision thereof;

6.16.1.10 there are no disputes, oral agreements or representations, or forbearance programs in effect as to any Land Contract;

6.16.1.11 no Land Contract has been assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered by Seller; and

6.16.1.12 Schedule 6.16 of this Agreement contains a true and complete list of all Land Contracts that will be included in the Acquired Assets.

#### 6.17 Environmental Provisions.

6.17.1 Seller has provided Purchaser or its representatives with all environmental reports, assessments and audits, including reports, assessments and audits relating to wetlands, air and emissions or discharges, and studies relating to threatened or endangered species, prepared by or on behalf of Seller in connection with the Project or otherwise in Seller's possession or control with respect to the Site or the Project.

6.17.2 Other than as set out in Schedule 6.17, there has not been a Release of Hazardous Material on or otherwise affecting the Property that: (i) has imposed any material release-reporting obligations on Seller under any Environmental Law; or (ii) has imposed or would, if identified to appropriate authorities impose, any obligations on Seller under any Environmental Law to investigate, assess, monitor, clean-up, contain, remediate, mitigate, remove, store, transport, dispose and/or treat any contamination, prepare or implement any work plans related thereto, or respond to or prepare for, any inquiry, order, hearing or other proceeding by or before any Authority with respect to any contamination.

6.17.3 Other than as set out in Schedule 6. 6.17, there has not been a Release of Hazardous Material on or otherwise affecting the Property that: (i) has imposed any material release-reporting obligations on Seller under any Environmental Law; or (ii) has imposed or would, if identified to appropriate authorities impose, any obligations on Seller under any Environmental Law to investigate, assess, monitor, clean-up, contain, remediate, mitigate, remove, store, transport, dispose and/or treat any contamination, prepare or implement any work plans related thereto, or respond to or prepare for, any inquiry, order, hearing or other proceeding by or before any Authority with respect to any contamination.

6.17.4 Except as set out in Schedule 6.17, Seller has not received any currently-outstanding written notice of any material proceedings, action, or other claim or liability arising under any Environmental Law (including notice of potentially responsible party status under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 et seq. or any state counterpart) from any Person or Authority regarding the Property.

6.17.5 Except as set forth in Schedule 6.17, no portion of the Property contains or has ever contained any underground storage tank, surface impoundment or similar device used for the management of wastewater, or other waste management unit dedicated to the disposal, treatment, or long-term storage (greater than 30 Business Days) of waste materials.

6.18 Complete Project. Except (i) as set forth in Section 5.5, (ii) for any items that have a Material Adverse Impact and that Purchaser has, nonetheless, waived and elected to proceed to Closing in accordance with Section 11.2 hereof, and (iii) for any assets, contracts, licenses, permits, approvals and rights that Contractor is undertaking under the EPC Agreement, the Acquired Assets constitute all of the assets, contracts, licenses, permits, approvals and rights necessary for Purchaser to construct and operate the Project and no other land rights, permits, assets, approvals or rights are required in order to construct and/or operate such a Project.

6.19 Schedules. The Schedules to this Agreement are true, complete and contain all such information required with respect to such Schedule that is necessary to develop and complete the Project.

6.20 Reports. Except as set forth in the Schedules hereto, there has been no change in circumstances in any material matters described in a Report that would have a Material Adverse Impact on the further development, construction or operation of the Facilities.

6.21 Material Misstatements or Omissions. Subject to Seller's rights to revise the Schedules prior to the Closing Date under this Section 6.21, each representation and warranty set forth in this ARTICLE 6 is made as of, and is and will be true and complete as of, the Closing Date. No representation or warranty by Seller in this Agreement or any document furnished or to be furnished to Purchaser pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain, as of the Closing Date, any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make the statements or facts contained therein, as of the Closing Date, not misleading. At any time prior to Closing, Seller may revise and update the Schedules and provide exceptions thereto by providing a written certificate (each, an "Update Certificate") to Purchaser in accordance with Section 12.3 setting forth such information. At Closing, all representations and warranties shall be deemed modified by all such Update Certificates.

Seller shall be required to provide such Update Certificates to Purchaser not later than fifteen (15) Business Days prior to the earlier of (i) the proposed Closing Date and (ii) the Long-Stop Date. Upon receipt of the Update Certificate Purchaser shall have until the earlier of (i) ten (10) Business Days from receipt of the notice of the Update Certificates or (ii) the Long-Stop Date to determine whether such Update Certificate discloses a Material Adverse Impact and to notify Seller of such determination.

Notwithstanding the foregoing, in the event an Update Certificate delivered to Purchaser by Seller disclose a Material Adverse Impact, Purchaser shall have the rights set forth in Section 11.2.

## **ARTICLE 7. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows:



7.1 Organization. Purchaser is a corporation validly existing and in good standing under the Laws of the State of Oregon.

7.2 Authorization. Purchaser has all requisite power and authority to execute and deliver this Agreement and each other agreement, document or instrument to be executed by it in connection herewith identified in Schedule 7.2 (collectively with this Agreement, the “Purchaser Documents”) and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the other Purchaser Documents and the consummation of the transactions contemplated hereby by Purchaser have been duly authorized by all necessary action. This Agreement and the other Purchaser Documents to which Purchaser is a party have been duly executed and delivered by Purchaser. Assuming the due authorization, execution and delivery by Seller of this Agreement and of the Purchaser Documents by the other counterparties to such Purchaser Documents, this Agreement and the other Purchaser Documents to which Purchaser is a party constitute legally valid and binding obligation of Purchaser, enforceable against it in accordance with the respective terms thereof, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors’ rights generally and equitable principles.

7.3 No Conflict or Violation. Neither the execution, delivery and performance of this Agreement or the other Purchaser Documents nor the transfer of rights and consummation of the transactions contemplated hereby or thereby will result in a violation of or a conflict with any provision of the Purchaser’s Corporate Documents.

7.4 Consents and Approvals. Other than \_\_\_\_\_, and other than as set out in Schedule 7.4, no consent, approval or authorization of, permit from, declaration, filing or registration with, or notice to, any Authority, any third party payor or any other Person, is required to be made or obtained by Purchaser in connection with the execution, delivery, performance and validity of this Agreement and the other Purchaser Documents and the consummation of the transactions contemplated hereby and thereby.

7.5 Brokers. Purchaser does not have any contract, arrangement or understanding with any broker, finder, agent or other intermediary with respect to the transactions contemplated by this Agreement.

7.6 Litigation. Other than \_\_\_\_\_, and other than as described in Schedule 7.4, there are no actions, suits or proceedings pending or, to Purchaser’s Knowledge, threatened, that would prevent the Purchaser from performing under this Agreement, at law or in equity or before or by any Authority or instrumentality or before any arbitrator of any kind, and, to Purchaser’s Knowledge, there is no valid basis for any such action, proceeding or investigation.

## **ARTICLE 8. CERTAIN COVENANTS**

Each of the following covenants are made by Purchaser or Seller, as applicable.

8.1 No Breach of Representations and Warranties by Seller. Seller shall not engage in any practice, take any action, embark on any course of inaction or enter into any transaction or

agreement that would violate any provision of this Agreement or any of the other Seller Documents or would cause or result in any of the representations and warranties set forth in ARTICLE 6 to be untrue as of the Closing Date or after giving effect to any such practice, action, course of inaction, transaction or agreement, nor take any action which would hinder the transactions contemplated by this Agreement or the other Seller Documents, as applicable, or render such transactions materially less desirable to Purchaser.

8.2 Consents and Reasonable Efforts. Purchaser and Seller shall use their respective commercially reasonable efforts to obtain, or to assist in obtaining, all consents, approvals, transfers, permissions, waivers, orders, reissuances and authorizations of (and make all necessary filings or registrations with) all Authorities and other third parties which are required to be obtained or made by them in connection with the consummation of the transactions contemplated by this Agreement or in connection with the Project (collectively, the “Consents”). At the request of Purchaser, Seller shall promptly execute and deliver, or cause to be executed and delivered as applicable, such other documents, instruments of transfer or assignment, estoppels, files, books and records and do all such further acts and things as may be reasonably requested by Purchaser to carry out or evidence the terms and provisions of this Agreement. At the request of Seller, Purchaser agrees to promptly execute and deliver, or cause to be executed and delivered as applicable, such other documents, instruments of transfer of assignments, estoppels, files, books and records and do all such further acts and things as may be reasonably requested by Seller to carry out or evidence the terms and provisions of this Agreement.

### 8.3 Purchaser Confidential Information.

8.3.1 Seller acknowledges that the Purchaser Confidential Information (as defined below) is valuable and proprietary to the Project and Seller agrees not to, directly or indirectly, use, publish, disseminate, describe or otherwise disclose any Purchaser Confidential Information in respect of the Project without the prior written consent of Purchaser. For purposes of this Agreement, “Purchaser Confidential Information” shall mean (i) any and all information provided by Purchaser to Seller and identified by Purchaser as confidential and (ii) any and all information provided by Purchaser to Seller with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be Purchaser Confidential Information if (i) it has become generally known or available within the industry or the public through no act or omission of Seller, (ii) Seller can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of Seller; (iii) it was rightfully received by Seller from a third party who became aware of it through no act or omission of Seller and who is not under an obligation of confidentiality to Seller, or (iv) Seller can demonstrate it was independently developed by employees or consultants of Seller. The Wind Data, the Reports and the Books and Records are being acquired by Purchaser pursuant to this Agreement shall be considered Purchaser Confidential Information and Seller may not use, publish, disseminate, describe or otherwise disclose any Wind Data, or disclose any information from the Reports or Books and Records without the prior consent of Purchaser; provided however, Seller shall be permitted to use the Wind Data for its own internal use in connection with reviewing the wind resource of other potential projects.

8.3.2 Seller shall maintain any Purchaser Confidential Information which has been or will be disclosed directly or indirectly to Seller by or on behalf of Purchaser or their Affiliates in confidence and shall not disclose or cause to be disclosed by them or any third person without Purchaser's prior express written consent; provided, however, that Seller may disclose the Purchaser Confidential Information to persons who provide legal, accounting, or other services to Seller in connection with Seller's evaluation or implementation of the transactions contemplated by this Agreement, provided that such persons have first been provided with a copy of this Agreement and has been informed of the duties required hereby, and that Seller shall remain liable for any misuse or disclosure of Purchaser Confidential Information by such party or parties. If Purchaser Confidential Information is disclosed under the provisions of this Section 8.3.2, Seller shall notify Purchaser of the same in writing not later than five (5) Business Days following the disclosure.

8.3.3 Notwithstanding the preceding clause (b), Purchaser Confidential Information may be disclosed if required by any governmental or regulatory Authority or court or otherwise by Law; provided, however, that: (i) such Purchaser Confidential Information is submitted under any and all applicable provisions for confidential treatment and (ii) if Seller is permitted to do so, Purchaser is given written notice of the requirement for disclosure promptly after such disclosure is requested, so that it may take whatever action it deems appropriate, including intervention in any proceeding and seeking a protective order or an injunction, to prohibit such disclosure. If Purchaser Confidential Information is disclosed under the provisions of this Section 8.3.3, Seller shall notify Purchaser of the same in writing not later than five (5) Business Days following the disclosure.

8.3.4 Seller agrees that it will not make any use of any Purchaser Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement, unless specifically authorized to do so in writing, and this Agreement shall not be construed as a license or authorization to Seller to utilize the Purchaser Confidential Information except for such purpose.

8.3.5 Upon Purchaser's request, Seller shall return to Purchaser or destroy as promptly as practicable, but in a period not to exceed ten (10) Business Days, (a) all Purchaser Confidential Information provided to Seller, including without limitation, all copies of such Purchaser Confidential Information, and (b) all notes or other documents in digital or other format in its possession or in the possession of other persons to whom Purchaser Confidential Information was properly provided by Seller. Non-destruction of electronic copies of materials or summaries containing or reflecting Confidential Information that are automatically generated through data backup and/or archiving systems and which are not readily accessible by a Party's business personnel, and those contained in official records that must be retained for audit or compliance with laws or regulation, shall not be deemed to violate this Agreement, so long as the Confidential Information contained in or reflected in such electronic backup records is not disclosed or used in violation of the other terms of this Agreement.

8.3.6 Seller acknowledges that a breach of the covenants contained in this Section 8.3 will cause irreparable damage to Purchaser, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, Seller agrees that if Seller breaches any of the covenants contained in this Section 8.3, in addition

to any other remedy that may be available at law or in equity, Purchaser shall be entitled to specific performance and injunctive relief, without posting bond or other security.

#### 8.4 Seller Confidential Information.

8.4.1 Purchaser acknowledges that Seller Confidential Information (as defined below) is valuable and proprietary to Seller and Purchaser agrees not to, directly or indirectly, use, publish, disseminate, describe or otherwise disclose any Seller Confidential Information in respect of the Project without the prior written consent of either Seller. For purposes of this Agreement, “Seller Confidential Information” shall mean (i) any and all information provided by Seller to Purchaser and identified by Seller as confidential and (ii) any and all information provided by Seller to Purchaser with respect to the Project or the transactions contemplated hereby. Information shall not be deemed to be Seller Confidential Information if (i) the Closing has occurred and such information is also an Acquired Asset under this Agreement; (ii) it has become general known or available within the industry or the public through no act or omission of Purchaser; (iii) Purchaser can demonstrate that, prior to disclosure in connection with the transactions contemplated hereby, such information was already in the possession of Purchaser; (iv) it was rightfully received by Purchaser from a third party who became aware of it through no act or omission of Purchaser and who is not under an obligation of confidentiality to Purchaser; or (v) Purchaser can demonstrate it was independently developed by employees or consultants of Purchaser.

8.4.2 Purchaser shall maintain any Seller Confidential Information which has been or will be disclosed directly or indirectly to Purchaser by or on behalf of Seller in confidence by it and shall not disclose or cause to be disclosed by Purchaser or any third person without either Seller’s prior express written consent; provided, however, that Purchaser may disclose Seller Confidential Information to persons who provide financial analysis, banking, legal, accounting, or other services to Purchaser in connection with Purchaser’s evaluation or implementation of the transactions contemplated by this Agreement, provided that such persons have first been provided with a copy of this Agreement and has been informed of the duties required hereby. If Seller Confidential Information is disclosed under the provisions of this Section 8.4, Purchaser shall notify Seller of the same in writing not later than five (5) Business Days following the disclosure.

8.4.3 Notwithstanding the preceding clause (b), Seller Confidential Information may be disclosed if required by any governmental or regulatory Authority or court or otherwise by Law; provided, however, that such Seller Confidential Information is submitted under any and all applicable provisions for confidential treatment.

8.4.4 Purchaser agree that they will not make any use of any Seller Confidential Information received pursuant to this Agreement except in connection with the transactions contemplated by this Agreement, unless specifically authorized to do so in writing, and this Agreement shall not be construed as a license or authorization to Purchaser to utilize Seller Confidential Information except for such purpose.

8.4.5 Upon Seller’s request, the Purchaser shall return or destroy as promptly as practicable, but in a period not to exceed ten (10) Business Days, (a) all Seller Confidential

Information or Purchaser Confidential Information (as applicable) provided to Purchaser, as appropriate, including, without limitation, all copies of such Seller Confidential Information, and (b) all notes or other documents in digital or other format in their possession or in the possession of other persons to whom Seller Confidential Information was properly provided by Purchaser. Non-destruction of electronic copies of materials or summaries containing or reflecting Confidential Information that are automatically generated through data backup and/or archiving systems and which are not readily accessible by a Party's business personnel, and those contained in official records that must be retained for audit or compliance with laws or regulation, shall not be deemed to violate this Agreement, so long as the Confidential Information contained in or reflected in such electronic backup records is not disclosed or used in violation of the other terms of this Agreement.

8.5 Confidentiality Re: Tax Matters. Notwithstanding anything to the contrary in this Agreement or in any other written or oral understanding or agreement to which the Parties are parties or by which they are bound, each Party to this Agreement has been and is permitted to disclose the federal tax treatment and federal tax structure of the purchase of the Acquired Assets. This permission to disclose includes the ability of each Party to this Agreement to consult, without limitation of any kind, any tax advisor (including a tax advisor independent from all other entities involved in the Transaction) regarding the federal tax treatment or federal tax structure of the Transaction; provided, however, that this Section 8.5 shall not be deemed to authorize the disclosure of any information relating to the federal tax treatment or federal tax structure of the purchase of the Acquired Assets to the extent that such information is required to be kept confidential pursuant to, or in order to comply with, any applicable federal or state securities Laws. This provision is intended to qualify for the exception from confidential transaction status set forth in Section 1.6011-4(b)(3)(ii)(B) of the Treasury Regulations and shall be interpreted to authorize disclosure only to the extent necessary to so qualify.

8.5.1 Non-Disparagement. From the date hereof until the earlier of the termination date of this Agreement or the third anniversary of the Closing Date (the "Non-Disclosure Period") neither Seller nor Purchaser shall make any statement or other communication that impugns or attacks the reputation or character of the Project or each other or any of Seller's or Purchaser's respective Affiliates or Representatives, or that damages the goodwill of the Project or each other or any of Seller's or Purchaser's respective Affiliates or Representatives, take any action that would interfere with any contractual or customer relationships of the Project or each other or any of Seller's or Purchaser's respective Affiliates or Representatives, including but not limited to any action that would result in a diminution of business, or otherwise take any action detrimental to the interests of the Project, or each other or any of Seller's or Purchaser's respective Affiliates or Representatives (except to assert Seller's rights or Purchaser's rights, as applicable, under this Agreement).

8.6 Access to Properties, Information and Employees. Through the Closing Date, Seller will afford to Purchaser and its employees and other representatives full and free access to the Acquired Assets and related records during normal working hours in order for Purchaser to make such due diligence investigation as it shall determine and to satisfy itself with respect to the conditions precedent contained in ARTICLE 3 and ARTICLE 4, and Sections 5.1, 5.4, 5.6, 5.7, and 5.8.

**ARTICLE 9.**  
**CREDIT REQUIREMENTS**

**9.1     Credit Requirements**

9.1.1 Seller is to provide credit assurances in the amount of \$\_\_\_\_\_, which shall be determined by PacifiCorp in its sole and reasonable discretion and will be based upon the Credit Rating of Seller or the entity providing credit assurances on behalf of Seller, and the size of the Project.

9.1.2 The Credit Rating will be the lower of: (x) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is not available) from Standard & Poor's (S&P), or (y) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is not available) from Moody's Investor Services. If Option (x) or (y) is not available, the Credit Rating will be determined by Purchaser's Credit Dept. through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with a third party.

9.1.3 If requested by Purchaser, Seller shall, within thirty (30) days, provide Purchaser with copies of its most recent annual and quarterly financial statements prepared in accordance with GAAP.

**9.2     Credit Assurances**

(a) The form of credit assurances required shall include, but not be limited to, a guaranty in a form acceptable to Purchaser or a Letter of Credit.

(b) If required by Purchaser, Seller shall, within five (5) Business Days after the Effective Date, submit to Purchaser a Letter of Credit in the amount as set forth in Section 9.1.1. The terms of the Letter of Credit shall meet the requirements of the attached Exhibit K as well as the requirements of this Agreement and be issued by a bank satisfactory to Purchaser. The Letter of Credit shall provide for payment to Purchaser of the Letter of Credit face value if Seller defaults under the terms of this Contract. Purchaser shall have the right to call the entire amount of the Letter of Credit if Seller has not renewed the Letter of Credit by thirty (30) days prior to its expiration date. Seller's expenses of complying with this Letter of Credit requirement shall be paid by Seller.

**ARTICLE 10.**  
**ACTIONS BY SELLER AND PURCHASER AFTER THE CLOSING DATE**

10.1 Records. Seller and Purchaser agree that each will cooperate with and make available to the other Party, during normal business hours after reasonable advance notice, all books and records retained and remaining in existence after the Closing Date that are necessary in connection with any Tax inquiry, audit, investigation or dispute, any litigation or investigation or any other matter requiring any such books and records. The Party requesting any such books and records shall bear all of the out-of-pocket costs and expenses (including without limitation, attorneys' fees) reasonably incurred in connection with providing such books and records.

10.2 Survival. Sections 8.3,8.4, 8.5, 8.6 and 10.3, and ARTICLE 12 shall survive closing or termination of this Agreement.

10.3 Indemnifications.

10.3.1 By Seller. From and after the Closing Date, Seller shall indemnify, save and hold harmless, on an After Tax Basis, Purchaser, its Affiliates, and their respective employees, Representatives, officers, directors and agents (collectively, the “Purchaser Indemnified Parties”) from and against any and all costs, losses (excluding, however, diminution in value and any other damages other than direct damages payable to third parties), liabilities (including, without limitation, liabilities arising under principles of strict or joint and several liability), damages, lawsuits, deficiencies, claims and expenses arising out of third-party claims, including without limitation, interest, penalties, additions, travel expenses, wages allocable to loss of employee time, reasonable attorneys’ fees and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively, the “Purchaser Damages”), incurred in connection with or arising out of or resulting from (i) any material breach of any representation, warranty, covenant or agreement made by Seller in this Agreement or any other Seller Document, or (ii) any liability, obligation or commitment of Seller of any nature (absolute, accrued, contingent or otherwise) relating to the Acquired Assets and not assumed by Purchaser pursuant to this Agreement. Any indemnity payment required hereunder shall be accompanied by a statement, certified to by an officer of Purchaser, showing in reasonable detail the calculation of the amount of the indemnity payment.

10.3.2 By Purchaser. From and after the Closing Date, Purchaser shall indemnify, save and hold harmless, on an After Tax Basis, Seller, its Affiliates, and their respective employees, Representatives, officers, directors and agents (collectively, the “Seller Indemnified Parties”) from and against any and all costs, losses (excluding, however, diminution in value and any other damages other than direct damages payable to third parties), liabilities (including, without limitation, liabilities arising under principles of strict or joint and several liability), damages, lawsuits, deficiencies, claims and expenses arising out of third-party claims, including without limitation, interest, penalties, additions, travel expenses, wages allocable to loss of employee time, reasonable attorneys’ fees and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively, the “Seller Damages”), incurred in connection with or arising out of or resulting from incurred in connection with or arising out of or resulting from (i) any material breach of any representation, warranty, covenant or agreement made by Purchaser in this Agreement or any other Purchaser Document, or (ii) if the Closing occurs, the Assumed Liabilities. Any indemnity payment required hereunder shall be accompanied by a statement, certified to by an officer of Seller, showing in reasonable detail the calculation of the amount of the indemnity payment. The foregoing indemnity shall survive until the date provided in Section.

10.3.3 Defense of Claims. If any action or proceeding (including any governmental investigation or inquiry) shall be brought or asserted or threatened to be brought or asserted against an indemnified party in respect of which indemnity may be sought from an indemnifying party, such indemnified party shall promptly notify the indemnifying party in writing as promptly as practicable (and in any event within ten (10) Business Days after the service of the citation or summons); provided, however, that the failure of the indemnified party to give timely

notice hereunder shall relieve the indemnifying party of its indemnification obligations hereunder only if, and only to the extent that, such failure caused the Purchaser Damages or Seller Damages (as applicable) for which the indemnifying party is obligated to be greater than they would have been had the indemnified party given timely notice, and the indemnifying party promptly shall assume the defense thereof, including the employment of counsel satisfactory to such indemnified party and the payment of all expenses. Such indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be the expense of such indemnified party unless (i) the indemnifying party has agreed to pay such fees and expenses or (ii) the indemnifying party shall have failed to assume the defense of such action or proceeding or shall have failed to employ counsel reasonably satisfactory to such indemnified party in any such action or proceeding in either case, promptly and no more than five (5) Business Days after the receipt of notice pursuant to the preceding sentence or such shorter period of time as shall be reasonable under the circumstances, or (iii) the named parties to any such action or proceeding (including any impleaded parties) include both such indemnified party and the indemnifying party, and such indemnified party shall have been advised by counsel that there may be one or more legal defenses available to such indemnified party that are different from or additional to those available to the indemnifying party (in which case, if such indemnified party notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such action or proceeding on behalf of such indemnified party). The indemnifying party shall not be liable for any settlement of any such action or proceeding effected without its written consent (unless such consent is unreasonably withheld), but if settled with its written consent or without its written consent (if such written consent is unreasonably withheld), or if there be a final judgment for the plaintiff in any such action or proceeding, the indemnifying party shall indemnify and hold harmless such indemnified parties from and against any loss or liability by reason of such settlement or judgment. The indemnified party shall not be required to consent to the settlement of any action or proceeding if such settlement involves anything other than the payment of money by the indemnifying party in full settlement of such action or proceeding.

10.4 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS AND IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT TO THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO, HOWSOEVER CAUSED. THE SELLER'S LIMITATION OF LIABILITY SHALL BE LIMITED TO THE PURCHASE PRICE.

10.5 Further Assurances.

10.5.1 Each of the Parties hereto shall use commercially reasonable efforts to take all action and to do all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement. Seller shall cooperate in the preparation and audit of any financial statements required to be filed with any Person, including by giving Purchaser and their independent certified public accountants reasonable access to work papers and other records, documents and written information of Seller and Seller's independent certified public accountants used to prepare or audit, or reasonably related to the preparation or audit of, all



financial statements of Seller to the extent reasonably required for the preparation of such financial statements.

10.5.2 Each Party hereto agrees to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance (including access to books and records) relating to Seller and the Project as is reasonably necessary for the preparation of any return with respect to Taxes, claim for refund or audit, and the prosecution or defense of any claim, suit or proceeding relating to any proposed adjustment with respect to Taxes.

## **ARTICLE 11. EXTENSION AND TERMINATION**

### **11.1 Termination After Long Stop Date or for Material Breach; Extension.**

11.1.1 Except as otherwise provided in this Article 11, this Agreement shall terminate:

11.1.1.1 by either Purchaser, on the one side, or Seller, on the other side, upon written notice to the other Party of such termination, in the event the Closing Date has not occurred on or before the Long Stop Date; provided, however, Purchaser shall have the option to extend such Long Stop Date to \_\_\_\_\_ by providing notice of the exercise of such option to Seller on or before \_\_\_\_\_.

11.1.1.2 by either Purchaser, on the one side, or Seller, on the other side, upon written notice to the other Party if there has been a material violation or breach by such other Party of its agreements, representations or warranties contained in this Agreement which (x) are not susceptible to cure (or if so susceptible are not the subject of diligent efforts on the part of the breaching Party to cure) or (y) are susceptible to cure but continue unremedied for a period of ten (10) Business Days from the date on which notice of such material violation or breach shall have been received by such other Party.

11.1.1.3 In the event of termination of this Agreement by either Seller or Purchaser as provided in Section 11.1.1.1 above, there will be no liability or obligation on the part of either Party to the other. In the event of termination of this Agreement by either Seller or Purchaser as provided in Section 11.1.1.2 above, the non-breaching Party shall be entitled to equitable relief, injunctive relive and specific performance, as well as all other rights and remedies available at law or in equity.

### **11.2 Seller's Failure to Timely Satisfy Conditions; Purchaser's Right to Terminate or to Close with Adjusted Purchase Price**

If (i) the conditions set forth in ARTICLE 3 and Sections 5.1, 5.4, 5.6, 5.7, and 5.8 are not timely satisfied on or before the Long Stop Date, subject to extension pursuant to Section 11.1.1 or (ii) Update Certificates are delivered to Purchaser in accordance with Section 6.21 which disclose a Material Adverse Impact, then Purchaser may elect one of the following courses of action:

(a) Purchaser may waive the requirement of compliance with such conditions and proceed to consummate the transactions contemplated hereby provided that Contractor has

agreed to deliver the EPC Agreement and Guarantor has agreed to deliver the guaranty required under the EPC Agreement; and in such event, Seller shall be entitled to the full Purchase Price as set forth in Section 2.2.1.1 above; or

(b) Purchaser may elect to close on the acquisition of the Acquired Assets hereunder; provided, however, that in the event of any such election, (i) the Purchase Price shall be reduced to \$\_\_\_\_\_ (which shall be the adjusted Purchase Price (and not liquidated damages or a penalty) agreed to by Purchaser and Seller to reflect that one or more material conditions to Closing were not timely satisfied by Seller), and (ii) the Acquired Assets will be sold by Seller to Purchaser on an “AS-IS, WHERE-IS” basis, without representation or warranty of any kind, or

(c) Purchaser may elect to terminate the Agreement and receive the return of any portion of the Purchase Price previously paid.

### 11.3 Default; Remedies

In the event that either Party (a) fails to use its commercially reasonable efforts to cause the conditions to closing to occur, if and to the extent, such Party is required to do so under this Agreement, (b) following or upon satisfaction of the conditions of such Party’s performance hereunder, such Party fails to perform, or (c) at or following Closing a breach of a representation or warranty of a Party occurs or is first discovered by the other Party, and such matter remains uncured for a period of ten (10) Business Days after written notice from the other Party, it shall constitute an “Event of Default” hereunder. Subject to the other provisions of ARTICLE 10 and this ARTICLE 11, upon the occurrence of an Event of Default, the non-defaulting party shall have all remedies at law and in equity, including solely with respect to any failure of Seller to transfer the Acquired Assets at Closing (whether the Closing was to occur pursuant to Section 2.3, 11.2 (a) or 11.2(b)), the remedy of specific performance, it being acknowledged and agreed that the remedy of specific performance or mandatory injunction shall not be available in any other circumstance.

## **ARTICLE 12. MISCELLANEOUS**

12.1 Payment Instructions. All amounts under this Agreement which are payable to Seller shall be made by Purchaser to Seller pursuant to payment instructions provided by Seller to Purchaser in writing on or before the Closing Date.

12.2 Assignment. Seller may not assign any of its rights or obligations under this Agreement. Purchaser may not assign any of its rights or obligations under this Agreement; provided, however, that upon prior notice to Seller, Purchaser may assign its rights or obligations under this Agreement to any Affiliate of Purchaser.

12.3 Notices; Transfer of Funds. All notices, requests, demands and other communications which are required or may be given under this Agreement, including, without limitation, all documents delivered pursuant to this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic or digital transmission method; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express or

UPS); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to:

If to Seller, to:

[SELLER]

Facsimile:  
Telephone:

with a copy to:

If to Purchaser, to:

PacifiCorp  
825 NE Multnomah  
Portland OR 97232  
Attention: \_\_\_\_\_  
Facsimile: (503) 813-\_\_\_\_\_  
Telephone: (503) 813-\_\_\_\_\_

with a copy to:

or to such other place and with such other copies as a Party may designate as to itself by written notice to the other Party.

#### 12.4 Choice of Law; Consent to Jurisdiction; Service of Process.

12.4.1 This Agreement shall be construed, interpreted and the rights of the Parties determined in accordance with the Laws of the State of Oregon without reference to its choice of law provisions.

12.4.2 The Parties hereto agree that prior to the initiation of any claim or law suit, the Parties shall undertake reasonable efforts to reach amicable settlement within forty-five (45) Business Days of notification by one Party to the other that a dispute or controversy arising out of or relating to the performance or interpretation of this Agreement has arisen.

12.4.3 The Parties hereto hereby irrevocably submit to the jurisdiction of the federal or state courts located in Multnomah County, Oregon, over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each Party hereby irrevocably agrees that all claims in respect of such dispute or proceeding shall be heard and determined in such court. Each Party hereby irrevocably waives, to the fullest extent permitted

by applicable Law, any objection which it may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum.

12.4.4 Each of the Parties hereto hereby consents to process being served by the other Party to this Agreement in any suit, action or proceeding of the nature specified in Section 12.4.3 above by mailing of a copy thereof in accordance with the provisions of Section 12.3 hereof.

12.5 Entire Agreement; Amendments and Waivers. This Agreement and all exhibits and schedules hereto and any other written agreements entered into herewith shall constitute the entire understanding of the Parties as to the subject matter hereof and thereof and fully supersede all prior oral and written agreements and understandings between the Parties with respect to such subject matter. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

12.6 Multiple Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.7 Expenses. Except as set forth below or as otherwise specified herein, each Party hereto shall pay its own legal, accounting, out-of-pocket and other expenses incident to this Agreement and to any action taken by such Party in preparation for carrying this Agreement into effect.

12.8 Invalidity. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein (other than a requirement to make payments hereunder), shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by Law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

12.9 Titles. The titles, captions or headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

12.10 Burden and Benefit. This Agreement shall be binding upon and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. The Purchaser Indemnified Parties and Seller Indemnified Parties shall be third party beneficiaries of this Agreement and shall be entitled to indemnification, with full rights of enforcement as though each such person was a signatory to this Agreement. Except as provided in this Section 12.10, there shall be no third party beneficiaries of this Agreement.

12.11 Cumulative Remedies. All rights and remedies of either Party hereto are cumulative of each other and of every other right or remedy such Party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

12.12 No Partnership or Joint Venture. The Parties hereto do not intend to create a partnership or joint venture by virtue of this Agreement. No Party shall owe any fiduciary duty to any other Party by virtue of this Agreement or any other Seller Document or Purchaser Document or otherwise.

12.13 No Merger. This Agreement is a fully integrated complete agreement and is not merged with or extinguished by any other agreement.

12.14 Public Announcements. Seller shall not issue any public announcement or other statement with respect to this Agreement or the transactions contemplated hereby without the prior consent, which shall not be unreasonably withheld or delayed, of the Purchaser, unless required by applicable Law or order of a court of competent jurisdiction. In the event of a breach of this Section 12.14, in addition to and not in lieu of any legal or equitable remedies that may otherwise be available, Purchaser may, in its sole discretion, issue public announcements. Purchaser shall deem to be appropriate in its sole discretion to supplement, correct or amplify the announcement or statement made by the Seller.

12.15 Non-Compete. Seller agrees that as long as the Project is operating it will not develop, construct or operate a wind-powered electricity generating project within a distance of fifteen rotor blade diameters of the turbines in the Project.

12.16 Time of the Essence. Time is of the essence in the performance of Seller's actions to complete the development of the Project and to satisfy the Purchaser Conditions.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, all as of the day and year first above written.

**PURCHASER:**

PACIFICORP

By: \_\_\_\_\_  
Name:  
Title:

**SELLER:**

[SELLER]

By: \_\_\_\_\_  
Name:  
Title:

**Schedule 1.1.1**  
**Excluded Assets**

**Schedule 3.8**  
**Permitted Liens**

Mortgages and tenancies that have been subordinated to the affected Land Contracts using a form of subordination agreement in substantially the form attached hereto.



When recorded return to:

Prepared by:

Name

Street Address

City, State, Zip

Telephone

### **SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between \_\_\_\_\_ (“**Lender**”), and \_\_\_\_\_, a \_\_\_\_\_, the Developer (“**Developer**”) under the Easement defined below.

#### **RECITALS**

A. Lender is the sole current holder of that certain mortgage (the “**Mortgage**”) granted by \_\_\_\_\_ in favor of \_\_\_\_\_, on \_\_\_\_\_, \_\_\_\_\_, and recorded on \_\_\_\_\_, \_\_\_\_\_, under Document Reference No. \_\_\_\_\_, [and assigned to Lender on \_\_\_\_\_, \_\_\_\_\_, under assignment recorded on \_\_\_\_\_, \_\_\_\_\_, under Document Reference No. \_\_\_\_\_], in \_\_\_\_\_ County, [STATE], encumbering all or a portion of the real property described in Exhibit A attached hereto (the “**Property**”), together with the Promissory Note or other evidence of indebtedness secured thereby.

B. Developer is the dominant estate holder under that certain Windpark Easement Agreement pertaining to the Property (the “**Easement**”) dated as of \_\_\_\_\_, \_\_\_\_\_, and recorded in the official records of \_\_\_\_\_ County [STATE] as Document No. \_\_\_\_\_ by and between \_\_\_\_\_, as Owner and Developer.

C. The Easement provides for an option on the part of Developer to develop portions of the Property for wind resource evaluation, wind energy development, energy transmission and related wind energy uses (the “**Windpark**”).

D. Developer would not develop the Windpark on the Property without obtaining assurances from Lender that Developer’s rights under the Easement and to operate the Windpark will not be disturbed by Lender’s exercise of its rights under the Mortgage.

E. Lender desires the Property to be improved with the Windpark and understands that its execution and delivery of this Agreement is a necessary prerequisite therefor.

#### **AGREEMENT**

1. Nondisturbance of Easement. Lender agrees for the benefit of Developer, its successors and assigns, that the lien of the Mortgage and any amendments thereto and extensions thereof (a) does not

and shall not encumber the Windpark or other interests of Developer therein, and (b) is and shall be subordinate to Developer's interests in the Property under the Easement and any amendments thereto and extensions thereof with the effect that in the event of any foreclosure, trustee's sale or conveyance in lieu of foreclosure or trustee's sale of the Mortgage, Developer shall not be named as a defendant therein, Developer's rights and interests under the Easement shall not be affected or impaired thereby and the Easement shall continue in effect in accordance with its terms. Except for the lien of the Mortgage, this Agreement shall not affect or subordinate any of the terms or provisions of the Mortgage and shall not apply to any lien granted to Developer in the Easement or any amendment thereof.

2. Attornment. Developer agrees that if Lender acquires title to the Property by foreclosure or trustee's sale of the Mortgage or any conveyance in lieu thereof it shall recognize Lender as the Owner under the Easement so long as Lender continues to hold such title and that during that period Lender shall have all of the rights of the Owner under the Easement.

3. Lender's Liability. Developer agrees that this Agreement shall not impose upon Lender any liability under the Easement, and if Lender acquires title to the Property it shall have no liability for the defaults, breaches, acts or omissions of any prior owner, including any of the persons who executed the Easement as Owner, and Lender shall only be responsible for the performance of Owner's obligations that are attributable to the period during which it holds title to the Property. Upon the conveyance of such title to any third party, Lender shall automatically be released from any liability under the Easement, which pertains to any period following the date of such conveyance.

4. Enforcement. The parties intend that this Agreement be specifically enforceable. If any action is brought to interpret or enforce the provisions of this Agreement the substantially prevailing party therein shall be entitled to recover from the losing party all of its costs and reasonable attorneys' fees incurred in connection therewith.

5. Notices. Any notices given in connection with this Agreement shall be sent by certified mail, return receipt requested, with postage prepaid and addressed to the recipient at the address stated below its signature herein.

6. Successors. The terms and provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns and are specifically intended to be relied upon and enforceable by any person holding a mortgage or deed of trust against the Lease.

7. Entire Agreement. This Agreement supersedes all previous oral and written understandings and agreements with respect to the priority of the Mortgage and the Easement, the effect of a foreclosure on the Mortgage on the Easement, and the extent of the Lender's liability under the Easement, and comprises the entire agreement of the parties with respect thereto. No provisions of this Agreement may be modified or waived except through the execution and recordation of a subsequent written agreement by the party to be charged therewith.

8. Execution in Counterparts. This Agreement may be executed in counterparts, both of which shall constitute but one and the same contract.

9. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of [STATE].

IN WITNESS WHEREOF, Lender and developer have executed this Agreement as of the day and year first above written.

**LENDER:**

**DEVELOPER:**

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Name Title

\_\_\_\_\_  
Name Title

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date Executed

Date Executed

STATE OF [STATE], COUNTY OF \_\_\_\_\_, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for the State of [STATE], personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn did say that he/she is the \_\_\_\_\_ of the corporation executing the within and foregoing instrument and that \_\_\_\_\_ as officer acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by him/her voluntarily executed.

\_\_\_\_\_  
Notary Public, State of [STATE]

STATE OF [STATE], COUNTY OF \_\_\_\_\_, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

\_\_\_\_\_  
Notary Public, State of [STATE].

When recorded return to:

Prepared by:

Name

Street Address

City, State, Zip

Telephone

### TENANT SUBORDINATION AGREEMENT

THIS TENANT SUBORDINATION AGREEMENT ("**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and among \_\_\_\_\_ ("**Owner**"), \_\_\_\_\_ ("**Tenant**"), and \_\_\_\_\_, a \_\_\_\_\_, the Developer ("**Developer**") under the Easement defined below.

#### RECITALS

A. Owner and Tenant entered into a lease agreement (the "**Lease**") dated \_\_\_\_\_, \_\_\_\_\_ [and recorded on \_\_\_\_\_, \_\_\_\_\_ in the Official Records of \_\_\_\_\_ County, [STATE] as Document Reference No. \_\_\_\_\_], whereby Owner, as landlord, granted certain rights to Tenant, as tenant, over all or a portion of the real property located in \_\_\_\_\_ County, [STATE], as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

B. Developer is the dominant estate holder under that certain Windpark Easement Agreement pertaining to the Property (the "**Easement**") dated as of \_\_\_\_\_, \_\_\_\_\_, and recorded in the official records of \_\_\_\_\_ County, [STATE], as Document Reference No. \_\_\_\_\_ by and between Owner and Developer.

C. The Easement provides for an option on the part of Developer to develop portions of the Property for wind resource evaluation, wind energy development, energy transmission and related wind energy uses (the "**Windpark**").

D. The parties hereto desire to expressly subordinate the leasehold interest under the Lease to the Easement and the rights and benefits of Developer thereunder.

#### AGREEMENT

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that, subject to the terms hereof, the Lease, the leasehold interests and estates created thereby, and the rights, privileges and power of the Tenant and Owner thereunder, be and the same are hereby, and with full knowledge and understanding of the effect thereof, made subject and subordinate to the Easement, the interests and estates created thereby, and the rights, privileges and powers of the Developer thereunder, subject to the following terms:

1. Subordination of Lease. Owner and Tenant declare and acknowledge for the benefit of Developer, its successors and assigns, that each hereby intentionally waives, relinquishes and subordinates the priority and superiority of the Lease, the leasehold interests and estates created thereby, and the rights, privileges and powers thereunder, in favor of the Easement and the interests and estates created thereby, and that each understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, Developer may be developing the Property for wind energy production and the transmission of electricity, which development would not be made but in said reliance upon this waiver, relinquishment and subordination. Tenant consents to the use of the Property by Developer as provided in the Easement, and Tenant agrees and acknowledges that Tenant's use of the Property shall not in any way interfere with the quiet use and enjoyment by Developer of the rights and easements granted to Developer pursuant to the Easement. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, any provisions of the Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby.

2. Enforcement. The parties intend that this Agreement be specifically enforceable. If any action is brought to interpret or enforce the provisions of this Agreement, the substantially prevailing party therein shall be entitled to recover from the losing party all of its costs and reasonable attorneys' fees incurred in connection therewith.

3. Notices. Any notices given in connection with this Agreement shall be sent by certified mail, return receipt requested, with postage prepaid and addressed to the recipient at the address stated below its signature herein.

4. Successors. The terms and provisions of this Agreement shall run with the land and shall be binding upon inure to the benefit of the parties hereto and their respective heirs, administrators, executors, legal representatives, successors and assigns and are specifically intended to be relied upon and enforceable by any person holding a mortgage or deed of trust against the Easement.

5. Entire Agreement. This Agreement supersedes all previous oral and written understandings and agreements with respect to the priority of the Lease and the Easement and comprises the entire agreement of the parties with respect thereto. No provisions of this Agreement may be modified or waived except through the execution and recordation of a subsequent written agreement by the party to be charged therewith.

7. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute but one and the same contract.

8. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of [STATE].

IN WITNESS WHEREOF, Owner, Tenant and Developer have executed this Agreement as of the day and year first above written.

**OWNER:**

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

Name

Address: \_\_\_\_\_

\_\_\_\_\_

Date Executed

**DEVELOPER:**

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

Name

Title

Address: \_\_\_\_\_

\_\_\_\_\_

Date Executed

**TENANT:**

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

Name

Title

Address: \_\_\_\_\_

\_\_\_\_\_

Date Executed

STATE OF [STATE], COUNTY OF \_\_\_\_\_, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008 before me, the undersigned, a Notary Public in and for the State of [STATE], personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn did say that he/she is the \_\_\_\_\_ of the corporation executing the within and foregoing instrument and that \_\_\_\_\_ as officer acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by him/her voluntarily executed.

\_\_\_\_\_  
Notary Public, State of [STATE]

STATE OF [STATE], COUNTY OF \_\_\_\_\_, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

\_\_\_\_\_  
Notary Public, State of [STATE].

STATE OF [STATE], COUNTY OF \_\_\_\_\_, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

\_\_\_\_\_  
Notary Public, State of [STATE]

## **Schedule 5.8**

### **Insurance**

- a. Employers' Liability insurance with a minimum limit of \$1,000,000.
- b. Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 with \$3,000,000 annual aggregate to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the work performed under this Agreement.
- c. Umbrella or Excess Liability insurance with minimum limits of \$10,000,000 per occurrence and \$10,000,000 annual aggregate to cover claims in excess of the underlying limits for Employer's Liability, General Liability, and Automobile Liability.
- d. Business Automobile Liability insurance with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to Seller's vehicles whether owned, hired or non-owned, assigned to or used by Seller in the performance of the work.
- e. Professional Liability insurance (Errors and Omissions) with a minimum single limit of \$1,000,000 to cover claims arising out of Consultant's professional services hereunder. This policy shall be maintained until one year after Purchaser's acceptance of Consultant's work.
- f. Transit and Installation insurance with a minimum single limit of \$500,000 to cover damage to property and other claims arising out of the loading, unloading, transportation, lifting, lowering, or other handling of such property.
- g. For Commercial General Liability insurance, the policy shall include:
  - 1. Provisions or endorsements naming Purchaser, its Board of Directors, officers and employees as additional insured;
  - 2. Cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.
- h. All policies, except professional liability and transit and installation, shall include provisions that such insurance is primary insurance with respect to the interests of Purchaser and that any other insurance maintained by Purchaser is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without:
  - 1. Ten (10) days' prior written notice to Purchaser if canceled for nonpayment of premium; and
  - 2. Thirty (30) days' prior written notice to Purchaser if canceled for any other reason.



i. A certificate in a form satisfactory to Purchaser certifying to the issuance of such insurance shall be furnished to Purchaser and included at Exhibit \_\_\_\_.

j. Commercial general liability coverage written on a “claims-made” basis, if any, shall be specifically identified on the certificate.

j. If requested by Purchaser, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to Purchaser.

k. Insurance coverage provided on a “claims-made” basis shall be maintained by Seller for a minimum period of five (5) years after the completion of any award and for such other length of time necessary to cover liabilities arising out of the work.

l. Insurance coverage provided on a “claims-made” basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the Work.

**Schedule 6.4**  
**Marketable Title to Acquired Assets**

**Schedule 6.6**  
**Violation: Conflicts**

**Schedule 6.7**  
**Seller Consents and Approvals**

**Schedule 6.9**  
**Seller Litigation**

**Schedule 6.10**  
**Compliance with Law**

**Schedule 6.11**  
**Tax Matters**

**Schedule 6.13**  
**Wind Data**

The Wind Data includes all data collected from the Meteorological Stations. Wind Data information will be updated at closing and will include all data downloaded and saved from the Meteorological Stations, all Wind Studies, and any other Project associated wind information

As of the Closing Date, Purchaser and Seller agree to the following with regard to ownership of and disposition of rights to the Wind Data:

- (1) Seller shall provide all Wind Data in Seller's or its Affiliates' possession collected through the Closing Date to Purchaser within ten (10) Business Days of the Closing Date;
- (2) Seller, at no cost to Purchaser, shall continue to collect and administer wind data from the Property up to the Closing Date.



**Schedule 6.14**  
**Contracts**

**Schedule 6.15**  
**Permits**

I. Permits

A. Obtained Permits

None.

B. Required Permits (not yet obtained)

**Local/County**

**Federal**

C. Excluded Permits (to be obtained by Contractor)

**Local/County**

**State**

**Federal**

D. Purchaser Permits

II. Permit Applications

See Item B above

**Schedule 6.16**  
**Land Contracts**

**Schedule 6.17**  
**Environmental Matters**

**Schedule 6.18**  
**Substation Fee Parcel**

**Schedule 7.4**  
**Purchaser Consents and Approvals**

**Schedule 7.6**  
**Purchaser Litigation**

EXHIBIT A  
to Acquisition Agreement  
**EPC Agreement.**



EXHIBIT B  
to Acquisition Agreement

GUARANTY

EXHIBIT C  
to Acquisition Agreement

See attached Forms of Easement Agreements



EXHIBIT D  
to Acquisition Agreement

MAP SHOWING PROJECT BOUNDARY

EXHIBIT E  
to Acquisition Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT F  
to Acquisition Agreement

BILL OF SALE

EXHIBIT G  
to Acquisition Agreement

FORM OF INTERCONNECTION AGREEMENT

EXHIBIT H  
to Acquisition Agreement

CONSENT TO ASSIGNMENT BY [THIRD PARTY]