

**ASSINIBOIA WIND ENERGY PROJECT  
LEASE AGREEMENT**

This Lease Agreement (“the Agreement” or “this Agreement”) is made as of July 11, 2011 (the “Effective Date”).

Between:

GORDON GLEN BRADLEY  
(individually and collectively, “Landowner”)

-and-

SEQUOIA ENERGY INC.,  
a Canadian corporation with an office at  
900 - 363 Broadway, Winnipeg, Manitoba,  
R3C 3N9 Canada, Facsimile (204) 927-0298 (“Sequoia”)

**WHEREAS** Landowner is the registered owner of an estate in fee simple, subject, however, to such interests contained in the existing certificate of title, of and in that certain parcel or tract of land situated in Saskatchewan and described in **Schedule “A”** (collectively, the “**Lands**”);

**AND WHEREAS** Sequoia is a developer of wind energy conversion facilities and desires to conduct feasibility studies on the Lands with the objective of constructing and operating such facilities on the Lands;

**AND WHEREAS** Landowner has agreed to lease the whole of the Lands for specific limited purposes subject to the terms and conditions contained below.

**NOW THEREFORE**, for good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by Landowner), Landowner and Sequoia agree to the following terms and conditions:

**1. Grant of Rights.**

1.1 Lease. Subject to all of the terms and conditions set forth in this Agreement, Landowner hereby grants, conveys and assigns an exclusive and irrevocable lease to Sequoia, and Sequoia hereby takes an exclusive and irrevocable lease from Landowner, in, upon, over, across, along, above and under the whole of the Lands (excluding mineral rights) for the following purposes (exclusive as against Landowner and Landowner’s executors, administrators, heirs, and assigns, as well as all third parties):

1.1.1 Temporary Wind Test Towers. The sole and exclusive option to construct, erect, operate and maintain wind analysis equipment, anemometers, SODAR devices, associated monitoring devices and instruments, and associated towers, support structures, footings, towers, guy lines, anchors and wires on the Lands (the “**Temporary Wind Test Tower**”). Landowner shall control all weeds around the Temporary Wind Test Tower in consultation with Sequoia. Sequoia shall pay Landowner the amount set out in Schedule “B” for weed control (the “**Weed Control Price**”). If Landowner fails to control the weeds, Sequoia may do so or arrange to do so by a third party and Landowner shall be responsible for the costs of such weed

control. If the Temporary Wind Test Tower is built in a location shared by cattle or other large livestock, Sequoia shall be responsible for building and maintaining fences around any support lines and dismantling such fences promptly upon removal of the Temporary Wind Test Tower. Landowner shall not be liable for any damages to the fences or Temporary Wind Test Tower caused by cattle or other large livestock.

1.1.2 Windpower Facilities and Project Operations. Constructing, installing, erecting, maintaining, using, operating, rebuilding, improving and replacing wind turbine generators (the "**Generating Units**"), overhead and underground transmission lines, distributor and collector lines, communication lines, electric transformers, substations, energy storage facilities, telecommunications equipment, control buildings, roads, fences, and other fixtures, improvements, facilities, machinery, and equipment that Sequoia determines are necessary or desirable in furtherance of wind energy conversion, including without limitation those items of tangible property listed in clauses a. through e. below and Section 1.1.3 (collectively, the "**Windpower Facilities**"), and the carrying on of the following activities (collectively, the "**Project Operations**");

a. The study of wind speed or wind direction or the gathering or analysis of meteorological data, including, without limitation, permanent wind analysis equipment, anemometers, SODAR devices, associated monitoring devices and instruments, and associated towers, support structures, footings, towers, guy lines, anchors and wires on the Lands (the "**Permanent Wind Test Tower**");

b. The storage, switching, metering, step-up, step-down, transmission, conducting, wheeling, or conveyance of electricity, or to connect one or more Generating Units to a utility's or other wheeling entity's power lines, including, without limitation, (i) transmission lines, (ii) power transfer, distribution and collector lines not in an overhead position, (iii) interconnection and switching facilities, (iii) transformers, circuit breakers, disconnect switches, and (iv) associated towers, support structures, footings, towers, poles, cross-arms, guy lines, anchors and wires;

c. The transmission, conveyance or transfer of data or communications necessary for a wind energy project, including, without limitation, underground wire-based control and communications systems, and wireless radio relay systems;

d. Constructing, reconstructing, erecting, installing, using, replacing, relocating and removing from time to time, and maintaining, repairing, preserving, servicing, overhauling, improving and operating the Windpower Facilities; and

e. Undertaking any other activities, whether accomplished by Sequoia or a third party authorized by Sequoia, (i) which are related to Sequoia's rights or obligations under this Agreement, or (ii) which Sequoia determines are necessary, desirable, helpful, appropriate or convenient in connection with, incidental to or to accomplish any of the foregoing purposes.

1.1.3 Access. Providing access and ingress to and egress from the Windpower Facilities, including, without limitation, for all construction, repair and maintenance vehicles and equipment, by means of any existing roads and lanes or by means of any new roads which may hereafter be constructed.

1.1.4 Overhang Rights. To permit the rotors of Generating Units located on adjacent real property to the Lands to overhang by no more than one half the rotor diameter of the Generating Unit at a height equal to the hub height of the Generating Unit.

1.1.5 Wind Non-Obstruction Rights. To use, maintain, and capture the free and unobstructed flow of wind currents over, through, and across the Lands. Pertaining to maintained residences existing on the Lands or neighbouring lands on the date that the Proposed Design is presented to Landowner under Section 1.2, Sequoia shall not erect any Generating Units on the Lands unless their locations are a minimum setback distance of 500 metres from those residences. For each structure installed or placed on the Lands by Landowner after the Effective Date, the following provisions shall apply:

a. Landowner shall obtain prior written permission from Sequoia for any proposed structure to be located 300 metres or less from a proposed or installed Generating Unit that is part of the Project. "Project" means Sequoia's wind energy project, as defined by Sequoia, located in the Rural Municipalities of Lake of the Rivers and Stonehenge, Saskatchewan, and includes all proposed and installed Windpower Facilities, whether located on or off the Lands.

b. Landowner shall obtain prior written permission from Sequoia for any proposed structure over 40 feet (or 12.19 metres) in height that is to be located over 300 metres but 1000 metres or less from a proposed or installed Generating Unit that is part of the Project.

c. Landowner shall obtain prior written permission from Sequoia for any proposed structure over 50 feet (or 15.24 metres) in height that is to be located over 1000 metres from a proposed or installed Generating Unit that is part of the Project.

d. Landowner shall obtain prior written permission from Sequoia to install or place any proposed single structure, or any cluster of separate structures, on the Lands which total area exceeds 85 metres in width by 85 metres in length or which are less than 200 metres apart and within 1000 metres from a proposed or installed Generating Unit that is part of the Project. Any such single structure or clusters of separate structures shall be no less than 200 metres away from any other such single structure or clusters of separate structures that may be contemplated to be built in the future.

e. Sequoia shall have thirty (30) business days within which to provide its consent or rejection, such consent not to be withheld in an unreasonable or arbitrary manner.

1.1.6 Noise Rights. To generate and maintain audible noise levels on and above the Lands up to sixty-five (65dB) decibels in excess of the ambient noise level measured at ground level at a point five hundred (500) metres in an upwind direction from the source of the noise, wherever originating, at any or all times of the day or night.

1.1.7 Shadow and Flicker Rights. To cast shadows, whether intermittent or constant, of the towers and rotors of the Generating Units and/or any and all other items forming the Windpower Facilities wherever located, onto the Lands.

1.2 Rights to Review and Comment. Prior to the date on which Sequoia commences construction (which for purposes of this Section 1.2 shall mean the commencement of any construction, grading of roads and the digging of foundations) of any Generating Units or other facilities indicated in Section 1.1.2 on any part of the Lands (and as a condition precedent to

such commencement of construction), Sequoia shall present for Landowner's review and comment a summary of the location and sites of such roads, Generating Units, and other Windpower Facilities proposed to be placed on the Lands (the "**Proposed Design**"). Landowner shall have ten (10) business days within which to comment in writing on the Proposed Design, and thereby raise any specific concerns or request any specific changes Landowner may have or desire. Sequoia shall make its best efforts to address all of Landowner's timely concerns and requests in writing, and shall not finalize its development and construction plans for the Project (the "**Final Design**") without first considering such concerns and requests, acting in good faith and exercising commercial reasonableness in the context of the Project taken as a whole.

1.3 Reservations. Notwithstanding the foregoing:

1.3.1 Use Reservations. Subject to Section 1.3.3, Landowner hereby reserves for Landowner, Landowner's executors, administrators, heirs, and grantees, the right to, without obtaining Sequoia's consent, (a) use, cross, and conduct activities on, and enter into any other leases, subleases, easements of, on or in connection with, the Lands, (b) grant such other rights and dedications as Landowner deems necessary or desirable of or in connection with the Lands, (c) cause the recordation of final, parcel or other maps or restrictions affecting the Lands and (d) take any and all other actions with respect to, or use for any other purpose or purposes, the Lands; and Landowner hereby reserves the right to grant, assign or otherwise transfer some or all of such rights to one or more persons or entities (the "**Use Reservations**"); provided, however, that neither Landowner's activities, nor the activities of Landowner's executors, administrators, assigns, heirs, or grantees, nor the exercise of any rights given or granted by Landowner to any other person or entity (whether exercised on the Lands or elsewhere) shall, currently or prospectively, interfere with (i) Sequoia's use and enjoyment of the Lands, (ii) the exercise of Sequoia's rights under this Agreement, (iii) the availability, accessibility, flow, frequency, speed or direction of air and wind over and above the Lands and lands adjacent to the Lands (including, but not limited to, by planting trees or constructing buildings or other structures, or by engaging in any other activity on the Lands or elsewhere that would have the effect of (a) interfering with the wind flow to Generating Units located on the Lands or lands adjacent to the Lands, or (b) causing a decrease in the output or efficiency of any Generating Unit or accuracy of any meteorological equipment), and (iv) the transmission of electric, electromagnetic or other forms of energy to or from the Lands. Sequoia shall have the quiet use and enjoyment of the Lands in accordance with the terms of this Agreement without any suit, trouble or interference of any kind by Landowner or any person or entity claiming through Landowner. Furthermore, Landowner agrees that the Use Reservations shall not interfere with the ability of Sequoia to perform any of the Project Operations. Within ten (10) business days of Sequoia's written request, Landowner agrees to obtain and deliver to Sequoia an executed **Consent and Acknowledgement of Third Party Lessee** in the form attached as **Schedule "C"** from any person or entity who has, prior to the Effective Date, been granted and received any Use Reservations.

1.3.2 Exclusivity. Notwithstanding anything in this Agreement, Landowner shall not enter into any other leases, licenses, subleases, easements, or agreements for the purposes of renewable energy studying, testing, development, or generation of any kind on the Lands.

1.3.3 Right of First Refusal. Any proposed option, lease, sublease, easement, license, assignment or agreement by Landowner with respect to the use of any land having a common boundary or connected to the Lands which are owned by Landowner (or which Landowner has the right to use), for the purposes of renewable energy studying, testing, development or generation shall be subject to a right of first refusal of Sequoia. Landowner shall deliver written

notice to Sequoia of any such proposed option, lease, easement, license, assignment or agreement at any time and from time to time during the Term. Sequoia shall have fifteen (15) days following receipt of such notice from Landowner setting forth the material terms to deliver written notice to Landowner of Sequoia's intent to exercise such right of first refusal. If Sequoia does not respond within such fifteen-day period, Sequoia shall have waived its right with respect to such right of first refusal but not as to any such right in the future.

1.4 Nonuse. Nonuse of any of the rights granted under this Agreement shall not prevent Sequoia in the future from exercising any of its rights under this Agreement.

1.5 Bifurcation. If Sequoia from time to time so requests, Landowner shall promptly bifurcate this Agreement by entering into two or more new agreements that provide Sequoia or its partner, affiliate or designate with separate leases to different portions of the Lands, as designated by Sequoia. Each of such new agreements shall (a) contain the same terms and conditions as this Agreement, including this Section 1.5 (except that any requirements that have been fulfilled by Sequoia prior to the execution of such new agreements may be omitted), (b) be for a term equal to the remaining term of this Agreement, and (c) enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landowner. Further, in the event of an uncured Event of Default (as defined below) by Sequoia under any such new agreement, such default shall not constitute a cross-default, or otherwise affect, or cause a termination of, any other such new agreement or any rights or interests granted to Sequoia under such other new agreement. The portions of the Lands covered by each new agreement may or may not be contiguous with the other portions of the Lands covered by the same agreement.

## 2. Term.

2.1 The Term. The term of this Agreement shall begin on the Effective Date and shall continue for fifty (50) years after the Commercial Operation Date (as defined below) unless sooner terminated as provided in this Agreement (the "**Term**"); provided, however, that if Sequoia does not Commence Construction (as defined below) on or before the tenth (10th) anniversary of the Effective Date, then Landowner may (but shall not be obligated to), by written notice to Sequoia, terminate this Agreement. Landowner and Sequoia acknowledge that the Project may be developed in more than one phase. "**Commercial Operation Date**" means the first day of the month following the date that the Project has been commissioned and has achieved commercial operation in the opinion of the manufacturer and the installation contractor of the Generating Units and a certificate of commercial operation has been issued to Sequoia. "**Commence(s) Construction**" or "**Commencing Construction**" means that Sequoia shall have begun, in good faith, any significant construction work on any of the lands supporting the Project for the purposes of constructing the Windpower Facilities, or begun any procurement of and pre-payment for any long lead items necessary for the Windpower Facilities, such as the Generating Units.

2.2 If No Default. Provided that Sequoia is not in default under this Agreement, Sequoia shall have the option to renew the Agreement for an additional twenty-five (25) years, subject to the same terms and conditions as contained herein, and shall provide Landowner with its notice in writing of its intention to renew the Agreement no less than one month prior to the end of the Term.

### 3. Consideration and Payment.

3.1 Amount of Consideration. Sequoia shall pay Landowner the amounts set out in the attached **Schedule "B"** as consideration for the rights granted to Sequoia under this Agreement, pursuant to the terms and conditions set out in Schedule "B".

3.2 Lands Relinquished. Sequoia shall have the right, at its sole discretion, exercisable at any time by written notice to Landowner, to surrender possession of and relinquish to Landowner Sequoia's interest in all or portions of the Lands granted hereunder, if the Lands or portions thereof are not within the Project Area or if no Generating Units, roads or improvements are constructed by Sequoia on such portion or portions of the Lands, in which case the acreage surrendered and relinquished shall no longer be part of the Lands hereunder, and this Agreement shall be deemed amended by such total or partial surrender and relinquishment but shall remain in full force and effect with respect to all other Lands not so surrendered and relinquished. On receipt of written request, Sequoia will execute, deliver and record an amendment or other document appropriate to further evidence such partial surrender and relinquishment of the Lands from the scope and coverage of this Agreement. The "**Project Area**" will be the area within an established perimeter in which all Generating Units are included and will be defined by Sequoia and based on the final Project layout. Sequoia reserves the right to change Generating Unit locations and therefore its established perimeter of the Project Area.

3.3 Possible Purchase of Lands. As may be mutually agreed upon, Sequoia may purchase a portion of the Lands for substations or other permanent facilities (other than Generating Units or access roads) from Landowner rather than pay the amounts set out in Schedule "B". Sequoia would negotiate a price with Landowner for the required land.

3.4 Payment of Consideration. Each payment under Sections 3 shall be payable to Landowner by electronic transfer or by mailing a cheque or draft payable in Canadian funds to Landowner or his/her agents at the address as set forth in this Agreement, or to such other person or entity or such other place as Landowner may from time to time designate by written notice to Sequoia. Payments shall be deemed to have been made at the time of electronic transfer or mailing of such cheque or draft. Notwithstanding anything that may be construed to the contrary herein, the expiration or earlier termination of this Agreement shall not relieve Sequoia from the obligation to pay any consideration that accrued for the period of time prior to such expiration or termination, and such obligation shall survive such expiration or termination.

3.5 Inspection of Books and Records. Landowner shall have the right, upon fifteen (15) days prior written notice and during normal business hours at Sequoia's business premises as described above, to inspect any books and records of Sequoia that are necessary to verify the correctness and accuracy of any calculation of consideration due to Landowner hereunder.

3.6 Taxes. Landowner shall pay before delinquency any and all lands taxes which are assessed, levied, charged, confirmed or imposed by any public authority upon the Lands as valued without the improvements placed by Sequoia on the Lands in connection with this Agreement. Sequoia shall pay before delinquency all lands and personal property taxes and assessments, general or special, levied or assessed by any governmental authority against the improvements placed by Sequoia on the Lands in connection with this Agreement. Sequoia shall make all payments of taxes directly to the charging governmental authority. Sequoia may contest the legal validity or amount of any taxes or assessments payable by it hereunder, and may institute such proceedings as Sequoia considers necessary or appropriate in connection therewith, in the name of Landowner and with Landowner's full cooperation, and may withhold or defer payment thereof or pay the same under protest; provided, however, that Sequoia shall

protect Landowner and Landowner's affiliates from and against any lien imposed in connection with such non-payment.

#### **4. Conduct of Operations and Use of Lands.**

4.1 Compliance with Law. Sequoia shall, at its sole cost and expense, comply with all applicable Canadian, provincial and local statutes, laws, ordinances, rules, regulations, orders and permits (collectively, "Laws") and with all covenants, conditions and restrictions set forth in this Agreement, regulating the use of the Lands or the Windpower Facilities. Sequoia shall have the right to contest by appropriate legal proceedings the validity or applicability of any Law. Sequoia hereby accepts the Lands subject to all such Laws and to any other matters affecting the Lands that exist as of the Effective Date. Sequoia acknowledges that Landowner has not made any representation or warranty with respect to the suitability of the Lands for the Project Operations.

4.2 Restrictions on Access. During the Term, Sequoia shall use commercially reasonable efforts to restrict all private consultants and governmental personnel to areas of the Lands impacted by the proposed Windpower Facilities; provided, however, that Landowner acknowledges that private consultants and governmental personnel may require access to all areas of the Lands without limitation in order for the issuance of Permits and other approvals in connection with the Project Operations and such access granted to the private consultants and governmental personnel shall not result in a violation of the covenant set forth in this Section 4.2.

4.3 Permits and Approvals. Landowner agrees to assist, fully co-operate, and execute, at no out-of-pocket expense to Landowner, any applications for zoning changes, subdivision approval, approval under the *Planning and Development Act* (Saskatchewan), general plan changes, use permits, other land use permits, or environmental impact reviews (collectively, the "Permits") to allow the construction, installation, erection, maintenance, use, operation, rebuilding, improvement and replacement of the Windpower Facilities, and the carrying on of Project Operations. Sequoia shall hold Landowner harmless from any Permit requirements or mitigation measures required for environmental impacts, including any financial liability imposed on the Windpower Facilities by any governmental agency or private lender.

4.4 Assignment in connection with Transmission or Distribution Lines. Subject to Section 1.2, and solely in connection with the exercise of the rights of Sequoia hereunder for the purposes of the Project, Sequoia, in its sole discretion without further act of Landowner, shall have the right to grant any utility, regulatory or transmission authority the right to construct, operate and maintain electrical transmission line or distribution line interconnections and switching facilities on the Lands pursuant to any standard form of easement, leasehold, or any other agreement used for or proposed by the utility, regulatory or transmission authority.

#### **4.5 Hazardous Substances.**

4.5.1 Compliance. The Project Operations shall comply in all material respects with all Laws governing or relating to Hazardous Substances (as that term is defined below) or pertaining to the protection of human health or safety or the environment, that are now in effect or which may come into effect during the term of this Agreement, including, without limitation, the *Environmental Management and Protection Act*, the *Dangerous Goods Transportation Act*, the *Canada Hazardous Products Act*, *Canadian Environmental Protection Act* and the *Canada Water Act* and all applicable regulations promulgated pursuant thereto (collectively, "Environmental Laws").

4.5.2 Written Notice. Sequoia shall not bring, place, hold, treat or dispose of any Hazardous Substances on, under or at the Lands or any portion thereof, except in strict compliance with all Environmental Laws. Sequoia shall provide Landowner with prompt written notice if any Hazardous Substances have come or will come to be located on or beneath the Lands as a result of Sequoia's presence or activities on the Lands, if Sequoia discovers or has reasonable cause to believe of the presence of such Hazardous Substances.

4.5.3 Definition. "Hazardous Substances" means any chemical, compound, substance or other material that (a) is defined as a hazardous substance, hazardous material, hazardous waste or toxic substance under any Environmental Law or (b) is controlled or governed by any Environmental Law.

4.6 Maintenance of Generating Units; Construction of Roads. Sequoia shall have sole responsibility for any and all maintenance, repair, restoration or replacement of the Generating Units. Sequoia shall be responsible for construction and maintenance of any roads, relocation of any fences, gates or structures needed for the Project Operations.

4.7 Surrender and Removal. No later than twelve (12) months after the date of expiration or earlier termination of this Agreement, Sequoia shall (a) remove from the Lands the Windpower Facilities and other personal property owned, located, installed or constructed by or on behalf of Sequoia thereon, (b) remove the foundations of the Generating Units to three (3) feet below the surface, (c) cover up all pit holes, trenches and other borings and excavations made by or on behalf of Sequoia on the Lands with suitable topsoil, and (d) leave the surface of the Lands free from debris arising from the foregoing or from the operations or activities of Sequoia.

4.8 Standard of Care. Sequoia shall (a) conduct its activities and business in accordance with sound and prudent engineering, operation and maintenance practices; (b) keep its Windpower Facilities, including all roads constructed by Sequoia for the Project Operations, in good condition and repair, in good and efficient working order and in a clean and safe condition; and (c) maintain weed control over the Lands in the immediate vicinity of any of the Windpower Facilities, including all roads constructed by Sequoia for the Project Operations. All grading and excavations shall be conducted using proper soil management practices for control of erosion. With respect to grading and excavations, Sequoia shall prepare a site restoration plan for review and approval by Landowner prior to the date on which Sequoia first commences any grading work on the Lands. Landowner agrees to review such site restoration plan, and provide any comments or requests for changes, as soon as reasonably practicable, but in any event within thirty (30) days after it has been submitted to Landowner. The approval of Landowner shall not be unreasonably withheld, conditioned or delayed.

4.9 Insurance.

4.9.1 Policies. Prior to Commencing Construction, and thereafter at all times during the Term, Sequoia shall obtain and keep in full force and effect a comprehensive or commercial general liability insurance policy for the Windpower Facilities on an "occurrence" basis, including coverage for fire, premises/operations, explosion, collapse and underground hazards, products/completed operations, broad form property damage, with primary coverage limits of no less than two million dollars (\$2,000,000.00) (the "Minimum Primary Coverage"). Within six (6) months after the fifth (5<sup>th</sup>) anniversary of the Commercial Operation Date, and continuing every five (5) years thereafter, Sequoia shall increase the Minimum Primary Coverage by an amount equal to the Consumer Price Index for the preceding five (5) years.

4.9.2 Named Insureds. Landowner shall be at all times an additional insured under such policies. On receipt of written request, Sequoia shall within thirty (30) days provide Landowner with a copy of the certificate(s) of insurance evidencing said insurance and the fact that Landowner is an additional insured thereunder.

4.10 Builders' Liens. Sequoia may contest the validity of any builders' lien or claim; provided, however, that Sequoia shall, at its sole expense, defend and protect Landowner and the Lands against the same, and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof, upon the condition that if Landowner shall so require, Sequoia shall furnish to Landowner a surety bond reasonably satisfactory to Landowner in an amount equal to such contested lien or claim, indemnifying Landowner, and Landowner's affiliates, against liability for the same and holding the Lands free from the effect of such lien or claim.

4.11 Restrictions on Sequoia. Without the consent of Landowner, the following general restrictions shall apply to Sequoia: (i) all gates shall be closed after entering and leaving the Lands, (ii) no hunting or other uses not related to Project Operations shall be allowed on the Lands, (iii) no fires shall be allowed on the Lands, (iv) Sequoia shall use reasonable efforts to notify Landowner at least 24 hours in advance of all tests and inspections that might impact the Lands, and Landowner shall have the right to observe such testing and inspection, (v) access to the Lands shall be restricted to those persons involved in the Project Operations at that time, (vi) no cutting of firewood shall be allowed on the Lands.

4.12 Relocation and Replacement of Windpower Facilities. Sequoia shall have the right to reconstruct, relocate and replace Generating Units at any location on the Lands and to use the Lands for related activities subject to required governmental approvals, if any; provided, however, that Sequoia shall present for Landowner's review and comment a summary of the proposed reconstruction, relocation or replacement of Generating Units or use of the Lands for related activities. Landowner shall have fifteen (15) business days within which to comment on the presentation in writing, and thereby raise any specific concerns or request any specific changes Landowner may have or desire. Sequoia shall address all of Landowner's timely concerns and requests in writing, and shall not proceed with its relocation or replacement of Generating Units or use of the Lands for related activities without first considering such concerns and requests, acting in good faith and exercising commercial reasonableness in the context of the Project taken as a whole. Landowner shall not unreasonably withhold, condition or delay its consent to any such reconstruction, relocation or replacement.

4.13 Ownership. Landowner shall have no right, title, ownership or other interest in (i) any of the improvements, personal property or trade fixtures installed or erected by Sequoia on the Lands, (ii) any green credit, offset, or other environmental attributes resulting from the Project Operations, or (iii) any data, evaluation or studies obtained by or on behalf of Sequoia with respect to the Lands. All improvements installed or erected on the Lands by Sequoia shall not be deemed to be permanent fixtures (even if permanently affixed to the Lands) and shall be and remain the sole personal property of Sequoia. Without limiting the generality of the foregoing, Landowner hereby waives any statutory or common law lien that Landowner might otherwise have in or to such improvements.

4.14 Subordination. Concurrently with the execution of this Agreement or at any time subsequent, Landowner shall obtain for the benefit of Sequoia, if requested by Sequoia because a postponement is deemed insufficient or for any other reason, and at Sequoia's cost if and to the extent that the nature and amount of each such cost item is approved in advance by Sequoia in writing, a subordination or non-disturbance agreement (in a form and containing

provisions reasonably acceptable to Sequoia) from each mortgagee of the Lands and from each person or entity (a "Lienholder"), that holds a lien that might delay, interfere with or impair the construction or operation of the Windpower Facilities or the exercise of any of Sequoia's rights under this Agreement. Each such subordination or non-disturbance agreement shall provide that (i) if Sequoia shall not be in default of the terms and provisions of this Agreement, then Sequoia's rights under this Agreement shall not be disturbed or affected as a result of the exercise of any remedy said mortgagee may have pursuant to its mortgage, and (ii) if Landowner fails to make any payment or perform any obligation required to be made or performed to such mortgagee or Lienholder, then Sequoia shall be entitled (but not obligated) to make the required payment or perform the required obligation in fulfillment of Landowner's obligations to such mortgagee or Lienholder, whereupon Landowner shall, upon demand, reimburse Sequoia for the amount of such payment and the cost of such performance or, at Sequoia's option, Sequoia may offset the amount of such payment and/or the cost of such performance against any amounts due to Landowner hereunder. If Landowner cannot obtain any such subordination or non-disturbance agreement for the amount of cost that Sequoia is willing to pre-approve in writing, then Landowner's obligation to obtain it shall be suspended unless and until Sequoia has negotiated a mutually satisfactory resolution of the cost issue with Landowner and/or the Lienholder, as the case may be. Further, Landowner shall not be deemed to be in default of Landowner's obligations under this Agreement if, having utilized Landowner's best efforts, Landowner is unable to obtain a subordination or non-disturbance agreement on the terms set out herein as a result of any Lienholder refusal.

4.15 Lot Line Setbacks. To the fullest extent applicable, Landowner hereby waives any and all rights Landowner may have to pursue any remedies under any Provincial, zoning or local rules, ordinances or requirements related to setback dimensions and requirements applicable to the Generating Units from front, side, and rear lot lines of the Lands and/or any adjacent lands, and agrees not to bring any complaint, suit or action or intervene in any investigation or inquiry by any person or entity with respect thereto. Landowner agrees to use commercially reasonable efforts to assist, cooperate and participate in any proceeding and petition prepared by Sequoia in connection with any modification or variance to an existing setback requirement.

4.16 Signal Reception. To the fullest extent applicable, Landowner hereby waives any and all rights Landowner may have to pursue any remedies related to any potential interference with radio and television signal reception that may be caused by the Windpower Facilities or the Project Operations.

4.17 Other Development. During the portion of the Term commencing on the Effective Date and ending on the date on which Sequoia has its (a) Final Design, and (b) an executed power purchase agreement (PPA), or a letter from a utility stating that Sequoia has the exclusive option to negotiate a PPA, to sell power generated by the Windpower Facilities, nothing in this Agreement shall be construed so as to prohibit or restrict oil, gas, or mineral development, or pipeline infrastructure on or under the Lands. For the remaining portion of the Term, any proposed new oil, gas or mineral development or pipeline infrastructure may only be situated on or under the Lands if it does not interfere with the Wind Power Facilities and Project Operations, as determined by Sequoia acting reasonably.

4.18 Aerial Application. Any aerial application services or other services involving the operation of aircraft over the Lands at low altitude may be conducted by or on behalf of Landowner within the Project area. If Landowner first provides Sequoia with reasonable prior notice of the intended schedule (beginning and end times) and flight path of the aerial application services, Sequoia will cause any Generating Units within the intended flight path to be shut-down during the scheduled aerial application services only. Landowner shall

immediately notify Sequoia of any changes to the intended schedule and flight path of the aircraft, and notify Sequoia once the aerial application services have been completed; provided, however, that Sequoia may re-start any Generating Units within the intended flight path at the end of the scheduled aerial services schedule notwithstanding Landowner's failure to notify Sequoia that the aerial application services have been completed. Further, notwithstanding anything above or any provisions of this Agreement to the contrary, Sequoia shall in no way be liable for, and Landowner waives all claims for injuries, loss or damages of any nature whatsoever arising from the operation of aircraft over the Lands at low altitude that are authorized (expressly or impliedly) by Landowner or anyone acting for Landowner.

## **5. Assignment.**

5.1 **Right of Transfer.** Landowner may, at any time and from time to time, without obtaining the consent of Sequoia but always subject to Sequoia's rights of exclusivity of purpose and non-interference described in Section 1, transfer, assign, alienate, license or grant, to any person or entity, all or any portion of Landowner's right, title or interest under this Agreement whether by assignment, sublease, grant or otherwise (a "**Transfer**"). If Landowner effects a Transfer of any of Landowner's right, title or interest under this Agreement, then the transferee, assignee, licensee or lessee shall be subject to and bound by all of the terms and provisions hereof. Within seven (7) days of effecting a Transfer, Landowner shall provide Sequoia with written notice of the Transfer and a copy of the instrument effecting the Transfer. It is Landowner's obligation to provide a copy of this Agreement to the transferee.

5.2 **Security Interest, Sublet.** Sequoia may, at any time and from time to time, and without obtaining the consent of Landowner, directly or indirectly effect a Transfer of or create a security interest in all or any portion of its right, title and interest under this Agreement whether by assignment, sublease, grant or otherwise. If Sequoia effects a Transfer of any of its rights under this Agreement, then the transferee, assignee, lessee or sublessee shall be subject to and bound by all of the terms and provisions hereof.

## **6. Default, Remedies and Termination.**

6.1 **Default.** If either Party fails to perform any of its material obligations under this Agreement (an "**Event of Default**"), then such Party shall be in default hereunder unless the defaulting Party shall have cured such Event of Default within sixty (60) days after receipt of written notice of such default from the non-defaulting Party (a "**Notice of Default**"); provided, however, that if the nature or extent of the obligation or obligations is non-monetary and is such that more than sixty (60) days are required for performance of such obligation(s), then the defaulting Party shall not be in default hereunder if the defaulting Party commences such performance within such sixty (60) day period and thereafter pursues the same to completion with commercially reasonable diligence.

6.2 **Options.** Whenever any Event of Default shall have occurred and be continuing after all applicable cure periods have lapsed (including under Section 7.5 hereof), the non-defaulting Party may, at its option, take any one or more of the following actions, as it in its sole discretion shall elect, to the extent permitted by and subject to compliance with applicable Law:

6.2.1 **Termination.** Solely in the case of a default arising from Sequoia's failure to pay any consideration due under Schedule "B", Landowner shall have the right to terminate this Agreement, and Landowner shall be entitled to recover from Sequoia the unpaid consideration which had been earned at the time of termination.

6.2.2 Recovery. In the case of a default by Sequoia, Landowner shall be entitled to recover consideration as it becomes due, including the right to collect, by suit or otherwise, all sums that become due hereunder, or to enforce, by suit or otherwise, performance or observance of any agreement, covenant or condition hereof on the part of Sequoia to be performed or observed, and shall be entitled to reimbursement from Sequoia for reasonable lawyers' fees and costs; provided, however, that Landowner shall use Landowner's best efforts to retain a common lawyer with all other landowners bringing an identical or similar suit against Sequoia (the "**Common Suit**") with the intent that Sequoia may be liable for only one set of lawyers' fees and costs.

6.2.3 Reimbursement. In the case of a default by Landowner, Sequoia shall be entitled to reimbursement from Landowner for (i) any and all costs and expenses incurred by Sequoia in the performance of Landowner's obligation hereunder, and (ii) any and all liability, damage, loss, cost or expense (including, but not limited to, reasonable lawyers' fees and costs) suffered as a result of the Event of Default by Landowner, including but not limited to, business losses and lost tax benefits suffered by Sequoia as a consequence of said Event of Default. Sequoia may deduct and offset against the consideration due or to become due to Landowner under this Agreement all amounts to which Sequoia is entitled to reimbursement hereunder.

6.2.4 Other Remedies. Exercise any other right or remedy that may now or hereafter be available to it under applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

6.3 Termination by Sequoia. Sequoia has no obligation to cause Project Operations and may terminate this Agreement, for any reason, without cause upon providing Landowner with at least thirty (30) days written notice. If such termination occurs after any Windpower Facilities have been installed on the Land, Sequoia shall commence the removal of the Wind Power Facilities, and any subsequent remediation as provided for in Section 4.7 of this Agreement within sixty (60) days after such written notice.

6.4 Non-exclusive Remedies. No remedy referred to in this Section 6 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the non-defaulting Party at law or in equity; and the exercise or beginning of exercise by the non-defaulting Party of any one or more of such remedies shall not preclude the simultaneous or later exercise by the non-defaulting Party of any or all of such remedies.

## 7. Lender Protections.

7.1 Pledge. Sequoia shall be entitled to hypothecate, mortgage or pledge all or any portion of Sequoia's right, title or interest under this Agreement and/or any of its Windpower Facilities to the Lender as security for the repayment of any indebtedness and/or performance of any obligation relating in whole or in part to the Windpower Facilities and/or to the Project Operations on the Lands (the "**Lender's Lien**"); provided, however, that in no event shall any such hypothecation, mortgage or pledge affect or encumber any right, title or interest of Landowner's in the Lands or any portion thereof. As used herein, the term "**Lender**" includes any financial institution or other person or entity that from time to time collectively provides such secured financing, including any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, and their representatives, successors, and assigns. Upon Sequoia's giving the Lender a Lender's Lien, Sequoia or the Lender shall give notice of the same (including the address of the Lender) to Landowner; provided, however, that the failure to give such notice shall not constitute a default under this Agreement, but rather shall only have the effect of not

binding Landowner with respect to the Lender or Lender's Lien until such notice shall have been given.

7.2 Lender Payments. The Lender shall have the right, but not the obligation, to (a) make any payments due from Sequoia under this Agreement and (b) do any other act or thing that may be necessary or appropriate to be done by Sequoia in the performance and observance of the terms hereof. All payments so made and all things so done and performed by the Lender shall be as effective to prevent or cure any Event of Default under this Agreement as they would have been if made, done and performed by Sequoia, and Landowner agrees to accept such performance, payment and cure.

7.3 No Amendment. Landowner agrees for the benefit of the Lender that Landowner will not, without the prior written consent of the Lender: (a) amend or modify, or take any action causing, consenting to or accepting the amendment or modification of this Agreement, if such amendment or modification would reduce the rights or remedies of the Lender hereunder or impair or reduce the security for the Lender's Lien, or (b) by agreement with Sequoia, cancel, terminate or suspend, or take any action causing, consenting to or accepting the cancellation, termination or suspension of, this Agreement.

7.4 Notice of Default. Landowner shall deliver to the Lender a duplicate copy of any and all Notices of Default that Landowner may from time to time deliver to Sequoia hereunder, and such copies shall be delivered to the Lender at the same time such Notices of Default are delivered to Sequoia. No such Notice of Default shall be deemed to have been given to Sequoia hereunder unless and until a copy thereof shall have been given to the Lender.

7.5 Lenders' Cure Period. Upon Sequoia's failure to cure any Event of Default hereunder within the time provided in Section 6.1 hereof, the Lender shall have an additional forty-five (45) days thereafter to cure such Event of Default; provided, however, that if such Event of Default is non-monetary and cannot reasonably be cured within such additional forty-five (45) day period, then the Lender shall have such additional time to cure such Event of Default as may be reasonably necessary. Any Event of Default that cannot be cured by the Lender shall nevertheless be deemed to have been cured and remedied if (a) on or before forty-five (45) days after receiving the Notice of Default from Landowner, the Lender shall have acquired Sequoia's then-remaining right, title and interest in the Agreement, or shall have commenced foreclosure or other appropriate proceedings for such purposes and shall be prosecuting such proceedings to completion with commercially reasonable diligence, (b) the Lender shall have fully cured within such forty-five (45) day period any failure to perform any monetary obligations of Sequoia hereunder and shall thereafter continue to perform such monetary obligations, and (c) after obtaining Sequoia's then-remaining right, title and interest in the Agreement, the Lender commences performance of the obligations of Sequoia hereunder. All rights of Landowner to terminate this Agreement as a result of the occurrence of an Event of Default in accordance with Section 6.2.1 hereunder shall be expressly conditioned upon (i) the Lender having first received a copy of the Notice of Default as and when provided in Section 7.4 hereof and (ii) the Lender having failed to cure the Event of Default or acquire possession of this Agreement or commence foreclosure or other appropriate proceedings as set forth, and within the time specified, in this Section 7.5.

7.6 Extension. If the Lender is prohibited by any process or injunction issued by, or by reason of any action of, any court having jurisdiction over any bankruptcy, reorganization, insolvency or other debtor-relief proceeding from commencing or prosecuting foreclosure or other appropriate proceedings, then the times specified in Section 7.5 hereof for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such

prohibition; provided, however, that the Lender shall have fully cured, within the time specified in Section 7.5 hereof, any failure to perform any monetary obligations of Sequoia hereunder, and shall thereafter continue to perform such monetary obligations when and as due hereunder.

**7.7 Foreclosure.** The transfer of Sequoia's interest under this Agreement to the Lender and/or to one or more purchasers (a) at a foreclosure sale by judicial or nonjudicial foreclosure and sale, (b) by a conveyance by Sequoia in lieu of foreclosure or (c) by any other assignment or conveyance, including, without limitation, by the Lender following foreclosure and sale, or as a result of any other legal proceeding, shall not require the consent of Landowner, and Landowner agrees that upon such foreclosure, sale, conveyance, assignment or other proceeding, Landowner will recognize the Lender or such other purchaser(s) as the successor to Sequoia under this Agreement.

**7.8 New Agreement.** In the event that this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if this Agreement is terminated for any reason other than an Event of Default which could have been but was not cured by the Lender as provided in this Section 7, and if, within forty-five (45) days after receiving notice of such rejection or termination, the Lender shall so request, then Landowner shall execute and deliver to the Lender or its designee a new agreement, which new agreement shall be on the same terms and conditions and provide the same rights and interests as this Agreement, for the remaining term of this Agreement before giving effect to such rejection or termination.

**7.9 No Obligation.** The Lender shall not have any duty, obligation or liability under this Agreement prior to the time of its acquiring Sequoia's rights under this Agreement or its commencement of performance of Sequoia's obligations under this Agreement or under a new agreement entered into as provided in Section 7.8 hereof. In the event that the Lender elects to perform Sequoia's obligations under this Agreement or to enter into a new agreement as provided in Section 7.8 hereof, then there shall be no recourse against such Lender or any of its stockholders or other owners, officers, directors or employees, for any liability to Landowner arising in connection with any breach or default under this Agreement, and the sole recourse of Landowner in seeking the enforcement of such obligations shall be to the Lender's interest in this Agreement, and the Windpower Facilities and Sequoia's rights and interests hereunder. In the event that the Lender assigns its interest in this Agreement or in a new agreement entered into pursuant to Section 7.8 hereof to any person or entity, then, provided that such transferee assumes the obligations of Sequoia (or the Lender, as the case may be) under this Agreement, the Lender shall be released from any further liability hereunder.

**7.10 Amendments.** The Parties shall cooperate in including herein, by suitable amendment from time to time, any provision which the Lender or any proposed Lender reasonably requests for the purpose of implementing or amending the provisions of this Section 7 or affording the Lender or proposed Lender reasonable protection of its Lender's Lien in the event of a default by Sequoia; provided, however, that Landowner shall not be required to include herein any additional term or provision that materially limits, reduces or impairs the rights of Landowner under this Agreement, or obligations of the Parties hereunder; and provided, further, that all costs associated with such amendment shall be borne by Sequoia. The Parties agree to execute and deliver (and to acknowledge, if necessary for recording purposes) any document or instrument reasonably necessary to give effect to any such provision.

**7.11 Estoppel Certificate.** Each Party (the "**Responding Party**") shall, upon not less than ten (10) days prior written notice from the other Party (the "**Requesting Party**"), execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified, (b) certifying that to the best of the Responding Party's knowledge there are no

unincurred defaults or Events of Default hereunder (or, if any unincurred defaults or Events of Default exist, stating with particularity the nature thereof), and (c) containing any other certifications relating to this Agreement as may reasonably be requested and which do not have the effect of amending this Agreement. Any such statements may be conclusively relied upon by the Requesting Party and by any Lender or proposed Lender. The failure of the Responding Party to deliver such statement within such time shall be conclusive upon the Responding Party that (i) this Agreement is in full force and effect and has not been modified and (ii) there are no unincurred defaults or Events of Default hereunder.

## **8. Indemnification and Exculpation.**

8.1 Indemnity. Each Party (the "**Indemnifying Party**") agrees to indemnify, defend, and hold harmless the other Party and such other Party's officers, directors, employees, members, mortgagees, financing parties, affiliates, successors, assigns, administrators, and heirs (the "**Indemnified Party**") against any and all losses, damages (excluding consequential damages), claims, expenses and other liabilities, including, without limitation, reasonable attorneys' fees, resulting from or arising out of (a) physical damage to property (including the personal property of the Indemnified Party) or physical injury to or death of any person, in each case to the extent caused by the Indemnifying Party, (b) any violation by the Indemnifying Party of any Environmental Law; provided, that where Sequoia is the Indemnifying Party, Sequoia's indemnity hereunder shall extend only to such violations that are caused by Sequoia; and provided, further, that in the case where Landowner is the Indemnifying Party, Landowner's indemnity hereunder shall extend to all other such violations including, without limitation, any such violations existing prior to the Effective Date, and (c) any material failure by the Indemnifying Party to perform its obligations under this Agreement, excluding, in each of the foregoing instances, any losses, damages, expenses and liabilities arising from the gross negligence or willful misconduct of the Indemnified Party. The indemnification set forth in this Section 8 shall survive until the expiration of the applicable statute of limitations.

8.2 Sole Risk. Sequoia agrees that all of its Windpower Facilities, trade fixtures and other personal property of whatever kind at any time located in, on or about the Lands, whether owned by Sequoia or any of Sequoia's affiliates, shall be at the sole risk of Sequoia or its affiliates, and that Landowner shall not be liable for any damage to or loss of such property, except for loss or damage covered by the indemnification in Section 8.

9. **Representations and Warranties of Landowner.** Landowner represents and warrants to Sequoia:

9.1 Organization. If a corporation, Landowner is duly organized, validly existing, in good standing and no action relating to insolvency, liquidation or general suspension of payments has been taken.

9.2 Authorization. The execution, delivery and performance of this Agreement by Landowner has been duly authorized by all necessary action on the part of Landowner and do not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Landowner or any other party to any other agreement with Landowner which has not been obtained.

9.3 Validity. This Agreement has been duly executed and delivered by Landowner. This Agreement constitutes the legal, valid, binding and enforceable obligation of Landowner.

9.4 No Consent. No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any governmental authority is required on the part of Landowner in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which Landowner anticipates will be timely obtained in the ordinary course of performance of this Agreement.

9.5 Sole Holder. Landowner is the sole holder of the fee simple interest in the Lands.

9.6 Compliance. To Landowner's knowledge, the Lands are not and have not been in violation of any Environmental Law, and Landowner has not received any communication from any governmental authority alleging that the Lands are in violation of any Environmental Law. To Landowner's knowledge there are no hazardous or toxic substances in, on, under or about the Lands in such quantities or circumstances that may reasonably be expected or anticipated to in any way pose a substantial danger to persons or property exposed thereto.

10. Representations and Warranties of Sequoia. Sequoia represents and warrants to Landowner:

10.1 Organization. Sequoia is duly organized, validly existing, in good standing, and in respect of which no action relating to insolvency, liquidation or general suspension of payments has been taken.

10.2 Execution. The execution, delivery and performance of this Agreement by Sequoia have been duly authorized by all necessary action on the part of Sequoia and do not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Sequoia or any other party to any other agreement with Sequoia which has not been obtained.

10.3 Validity. This Agreement has been duly executed and delivered by Sequoia. This Agreement constitutes the legal, valid, binding and enforceable obligation of Sequoia.

10.4 No Consent. No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any governmental authority is required on the part of Sequoia in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which Sequoia anticipates will be timely obtained in the ordinary course of performance of this Agreement.

11. Condemnation; Expropriation. The Party receiving any notice of a taking described in this Section 11 shall promptly give the other Party notice of the receipt, contents and date such notice is received.

11.1 Taking of Entire Lands. Should title or possession of all of the Lands be taken in condemnation proceedings or by expropriation by a government agency or governmental body, or should a partial taking render the remaining portion of the Lands wholly unusable for Sequoia's use, then this Agreement shall terminate upon the vesting of title or taking of possession at which time Landowner and Sequoia shall be relieved of any further obligations and liability to each other under this Agreement with respect to the Lands.

11.2 Partial Taking. Should title or possession of a portion of the Lands be taken in condemnation proceedings or by expropriation by a government agency or governmental body, then this Agreement shall terminate at Sequoia's election upon the vesting of title or taking of possession. If Sequoia elects to terminate this Agreement, Landowner and Sequoia shall be relieved of any further obligations and liability to each other under this Agreement with respect

to the Lands upon the vesting of title or taking of possession. If Sequoia does not elect to terminate this Agreement, this Agreement shall remain in full force and effect, covering the remaining portion of the Lands; provided, however, that the Consideration, the Reserve Fees, the Consideration for Roads on Lands Without Generating Units and the Additional Payment for the portion of the Lands not so taken, shall be adjusted if and as necessary to achieve an equitable result.

11.3 Awards and Damages. The Parties acknowledge and agree that in any condemnation or expropriation proceedings with respect to any taking as described in this Section 11, each of them has the right to an award associated with each of their respective interests in the Lands. Landowner has the right to an award for (a) Landowner's ownership of the Lands and any business and/or property thereon, other than the Windpower Facilities, the Generating Units and the Project Operations, and (b) any other amounts to which Landowner is entitled under any Laws and Sequoia has the right to an award for (i) the reasonable removal and relocation costs of any property that Sequoia has the right to remove from the Lands, (ii) the loss and damage to any such property that Sequoia elects or is required not to remove, (iii) the loss of use of the Lands by Sequoia, (iv) the lost revenues and tax benefits, and (v) any other amounts to which it is entitled under any Laws. Each of Landowner and Sequoia shall have the right to maintain a separate claim, suit and/or action in its name against the condemnor in any condemnation or eminent domain proceedings with respect to any taking as described in this Section 11. Additionally, Sequoia shall have the right to join, participate and negotiate directly in any condemnation or expropriation proceedings related to the Lands to which Landowner is party (including any settlement proceedings) with respect to any taking as described in this Section 11 for the recovery of award to which it is entitled.

12. Notices. Any notices, statements, demands, correspondence or other communications required or permitted to be given hereunder shall be in writing and shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, (c) by overnight or other courier or delivery service, freight prepaid, or (d) by facsimile transmission, to the addresses set out on the first page hereof for Landowner and Sequoia, and if to the Lenders, at the address indicated in the notice to Landowner provided under Section 7.1 hereof. Notices delivered by hand shall be deemed delivered when actually received, and notices sent by certified or registered mail or by overnight or other courier or delivery service shall be deemed delivered and received on the first to occur of (a) three (3) days after deposit in the Canadian mail or with such overnight or other courier or delivery service, addressed to such address, (b) written acceptance of delivery by the recipient or (c) written rejection of delivery by the recipient. Notices transmitted by facsimile facilities shall be deemed to have been given at 9:00 A.M. (local time) on the first business day following transmission to the party to whom it is being given, so long as such facsimile facilities confirm that the material so transmitted has been received at a receiving facsimile facility at the facsimile number of the party to whom it is being given. Each Party may change its address for receipt of notices by sending notice hereunder of such change to the other Parties in the manner specified in this Section.

13. Cooperation; Further Assurances; Confidentiality. Each Party shall promptly cooperate with the other Party in good faith and shall perform such further acts as may be necessary or appropriate to carry out and accomplish the intent of this Agreement, and each Party shall promptly execute and deliver and, if appropriate, acknowledge and cause to be recorded, any such additional documents, instruments and certificates as the other Party may reasonably request to carry out and fulfill the transactions, and permit the exercise of such rights and obligations, as are contemplated hereunder, or to otherwise effectuate the purpose and intent of this Agreement; provided, however, that all costs associated with such cooperation,

performance and execution shall be borne by the Party requesting the same. Landowner and Sequoia shall keep the terms of this Agreement confidential.

**14. Dispute Resolution.** If the Parties are not able to resolve any dispute hereunder through good faith negotiations within thirty (30) days, or such longer period as the Parties may agree, the unresolved disputes shall be submitted to binding arbitration in accordance with the rules of *The Arbitration Act of Saskatchewan* before one (1) arbitrator. Notwithstanding any provisions of such rules, the Parties shall have the right to obtain oral and documentary discovery regarding the subject matter of the arbitration. The determination of the arbitrator shall be final and shall not be subject to judicial review; provided, however, that any award or determination rendered by the arbitrator may be entered and enforced in any court of competent jurisdiction. The prevailing Party shall be entitled to recover its actual lawyers' fees, consultants and expert witness' fees, and court and other costs incurred.

**15. Miscellaneous.** The use herein of the neuter gender includes the masculine and the feminine, and the singular number includes the plural, whenever the context so requires. Headings in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any of the terms hereof. All Schedules referred to herein are incorporated herein by reference. This Agreement shall be construed and enforced in accordance with the laws of Saskatchewan and Canada, as applicable. Time is of the essence of this Agreement, and of each and every covenant, term, condition and provision hereof. This Agreement shall be construed equally as between the Parties, and shall not be construed against the Party responsible for its drafting. It is not the intention of the Parties to create, nor shall this Agreement be construed as creating, any partnership, joint venture or other association between the Parties. In the event that any term, covenant, condition, provision or agreement herein contained is held to be invalid, void or otherwise unenforceable by a court of competent jurisdiction, the fact that such term, covenant, condition, provision or agreement is invalid, void or otherwise unenforceable shall in no way affect the validity or enforceability of any other term, covenant, condition, provision or agreement herein contained and the Parties shall immediately negotiate in good faith to replace such term or provision to effectuate the same intent and to eliminate such invalidity or unenforceability. No waiver, modification or amendment of any provision hereof shall be effective unless it is in writing and signed by the Party against whom it is sought to be enforced. Except with respect to any rights expressly conferred upon the Lender hereunder (which Lender and its successors and assigns are hereby expressly made third party beneficiaries hereof to the extent of their respective rights hereunder), the covenants contained herein are made solely for the benefit of the Parties, and shall not be construed as benefiting any person or entity who is not a party to this Agreement. A Party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of such Party's consent to, or approval of, any subsequent or similar act, or be construed as the basis of an estoppel to enforce any provision of this Agreement requiring such consent. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, and heirs. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

**16. Force Majeure.** Neither Party shall be liable to the other for any delay or non-performance of its obligations hereunder in the event and to the extent that such delay or non-performance is due to an Event of Force Majeure which occurs after the Effective Date. "Event of Force Majeure" means any event beyond the reasonable control of the Party concerned, which wholly or partly prevents or delays the performance of any obligation of such Party arising under this Agreement, and which cannot be overcome without unreasonable expense to such Party, and shall include, but not be limited to, any of the following: (a) acts of God or the public

enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, public disorders, rebellion, violent demonstrations, revolution, terrorist acts, or sabotage; (b) any effect of unusual natural elements, including fire, subsidence, earthquakes, floods, lightning, tornadoes, unusually severe storms, unusually high or low winds or similar conditions, cataclysmic occurrences or other unusual natural calamities; (c) environmental and other contamination at or affecting the Lands; (d) explosion, accident or epidemic; (e) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties; (f) the general unavailability of labor, fuel, power or raw materials; (g) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation, or quarantine; (h) nuclear emergency, radioactive contamination or ionizing radiation or the release of any hazardous waste or materials; (i) air crash, shipwreck, train wrecks or other failures or delays of transportation; (j) any expropriation or confiscation of facilities, compliance with any order of any governmental authority; (k) any action or inaction by any Canadian, Provincial or local legislative body or executive, administrative or judicial agency or body; and (l) changes of law.

**17. Interest Registrations.** Landowner hereby expressly permits and authorizes Sequoia to register an interest, at its expense, giving notice of this Agreement against title to the Lands and agrees to execute such further and other documents as may be required to effect such registration in the Saskatchewan Land Titles Registry and further agrees not to take any proceedings to remove said interest if and for so long as Sequoia is not in default under this Agreement. Sequoia agrees to execute a postponement document without cost upon the reasonable request of Landowner. It is understood and agreed by the Parties hereto that Sequoia will cause its solicitor to prepare and have executed a registrable discharge of the above mentioned interest registration to be held by Sequoia's solicitor in trust and remitted to Landowner upon request after termination of this Agreement. In addition to the foregoing, should the Province of Saskatchewan amend *The Land Titles Act* (2000) to create wind turbine titles, Landowner hereby expressly permits and authorizes Sequoia to obtain the issuance of such a wind turbine title for the Lands, and agrees to execute such further and other documents as may be required to effect the issuance of such wind turbine title in the Saskatchewan Land Titles Registry. **(EXECUTION PAGE FOLLOWS)**

IN WITNESS WHEREOF, Landowner and Sequoia have duly executed this Agreement as of the Effective Date.

**LANDOWNER:**

Where Landowner is an individual or individuals:

  
Gordon Glen Bradley

Signed and Delivered in the presence of:

  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**SEQUOIA ENERGY INC.**


Per: \_\_\_\_\_



Robert Millard  
Director, Corporate & Legal

**SCHEDULE "A"**  
**LAND DESCRIPTION**

<u>Legal Description</u>	<u>Title</u>	<u>Acres</u>
NE 13 08 30 2	109812034	159.59
NW 18 08 29 2	109812023	159.92
SE 24 08 30 2	109812045	160.07
SW 19 08 29 2	109812056	159.84

*Part.*  


**SCHEDULE "B"**  
**COMPENSATION**

1. **Lease Signing Price.** Upon the signature of Landowner of this Agreement, Landowner will receive five hundred dollars (\$500.00) within 60 days of execution by Sequoia.
2. **Power Purchase Agreement Execution Payment.** Within 60 days of execution of a power purchase agreement between Sequoia and SaskPower (or other utility) for the Project, Sequoia shall pay Landowner three dollars twenty five cents (\$3.25) for each acre of land forming the Lands.
3. **Commercial Operation Date Payment.** Within 60 days of reaching the Commercial Operation Date, Sequoia shall pay landowner three dollars twenty five cents (\$3.25) for each acre of land forming the Lands within the perimeter of the Project Area.
4. **Project Gross Revenue Payments.** Sequoia shall pay to Landowner its share (calculated in accordance with subsection (d)) of a percentage of the Project Gross Revenue (defined in subsection (c)).
  - (a) The applicable "Project Gross Revenue Percentage" to be allocated among landowners with lands within the Project shall be equal to the percentage set forth in the chart below for the applicable time period following the Commercial Operation Date:

Years	Project Gross Revenue Percentage
Years One (1) to Ten (10)	One and one half Percent (1.5 %) of Project Gross Revenues (as defined below)
Years Eleven (11) through Twenty (20)	Two Percent (2.0 %) of Project Gross Revenues
Years Twenty-one (21) through to the expiration of the Term	Two and one half Percent (2.5%) of Project Gross Revenues

- (b) For purposes of clarification, Year One in subsection (a) above refers to the period from the Commercial Operation Date to the first 12-month anniversary of the Commercial Operation Date. Project Gross Revenue Payments shall be paid in semi-annual installments within forty-five (45) days following the 6-month and 12-month anniversaries of the Commercial Operation Date each year.
- (c) "Project Gross Revenues" means the aggregate amount of gross revenues actually received by Sequoia from the sale of electrical power or capacity generated from the operation of the Generating Units located within the Project, less any transmission, balancing and integration cost required to deliver the power to the specified point of delivery for any off taker agreements. "Project Gross Revenues" shall not include any federal tax, production or other credits received by, or paid to, Sequoia by any governmental entity or quasi-governmental entity, or any other federal income tax credits, or any provincial or local property tax credits or abatements. In addition, "Project Gross Revenues" shall not include: amounts obtained by Sequoia from financing activities, sales, leases, subleases or other dispositions of the Windpower Facilities, or this Agreement or other agreements; any amounts recovered from third parties arising out of the construction, repowering or repair of the Windpower Facilities (such as damages for breach of contract or liquidated damages for delays in completion or equipment performance); amounts received as reimbursements or compensation for wheeling costs or

other electricity transmission or delivery costs; or any proceeds received by Sequoia as a result of damage to the Windpower Facilities.

(d) Landowner's share of the applicable Project Gross Revenue Percentage shall be equal to the sum of the following two components calculated as follows: (1) seventy-five percent (75%) of the applicable Project Gross Revenue Percentage multiplied by the ratio of the installed nameplate capacity of operational Generating Units, if any, located on Landowner's Lands to the total installed nameplate capacity of operational Generating Units within the Project; plus (2) twenty-five percent (25%) of the applicable Project Gross Revenue Percentage multiplied by the ratio of the acreage of Landowner's Lands subject to this Agreement to the total acreage within the Project.

**5. Guaranteed Minimum Payment.** Within 45 days following each 12-month anniversary of the Commercial Operation Date, Sequoia shall allocate among landowners with lands within the Project an amount, if any, by which the product of Two Thousand Five Hundred Dollars (\$2,500.00) multiplied by the mega-watts of installed nameplate capacity of operational Generating Units within the Project exceeds Sequoia's aggregate Project Gross Revenue Percentage payments to landowners under Paragraph 2 above for the preceding year ("**Guaranteed Minimum Payment Amount**").

If Sequoia is required to allocate a Guaranteed Minimum Payment Amount pursuant to the foregoing paragraph, Sequoia shall pay to Landowner a share of the Guaranteed Minimum Payment Amount equal to the sum of the following two components calculated as follows: (1) seventy-five percent (75%) of the Guaranteed Minimum Payment Amount multiplied by the ratio of the installed nameplate capacity of operational Generating Units, if any, located on Landowner's Lands to the total installed nameplate capacity of operational Generating Units within the Project; plus (2) twenty-five percent (25%) of the Guaranteed Minimum Payment Amount multiplied by the ratio of the acreage of Landowner's Lands subject to this Agreement to the total acreage within the Project.

**6. Substations or Other Permanent Facility Payments.** For each substation or other permanent facility (other than Generating Units and access roads) Sequoia installs on the Lands, Sequoia shall pay Landowner an annual payment of Two Hundred Fifty Dollars (\$250) per acre for the land utilized for each such substation or other permanent facility. Such payment shall be increased at the rate of two percent (2%) on the anniversary of each payment date. Such payments for any substation or other permanent facility are due and payable within forty-five days (45) following the end of the calendar year in which Sequoia begins construction of such substation or other permanent facility with subsequent annual payments due on the anniversary of such date.

**7. Access Road Payment.** For any road(s) constructed or improved by Sequoia across a given quarter section of land being part of the Lands upon which Sequoia has not installed at least one Generating Unit, Sequoia shall make to Landowner an annual payment of Two Hundred Fifty Dollars (\$250) per acre for that portion of the Lands utilized for the completed road bed. Such payment shall be increased at the rate of two percent (2%) on the anniversary of each payment date. Such payments are due and payable within forty-five days (45) following the end of the calendar year in which Sequoia begins construction of such access road(s) with subsequent annual payments due on the anniversary of such date.

**8. Crop Damage Compensation Payment.** If during construction of the Windpower Facilities or if Sequoia's activities on the Lands otherwise directly cause crop damage in one or more successive years ("**Crop Damage**"), then Sequoia shall make to Landowner a payment of one and three tenths (1.3) times the value of any crops that are damaged. Each time Sequoia exercises its rights under this Agreement and causes Crop Damage, it shall compensate

Landowner for the Crop Damage, but in no case shall Sequoia be required to pay more than a single, total crop loss in any one crop year on any given lands forming the Lands.

**Crop Damages Compensation** will be calculated by the following formula:

Unit Price x Unit Yield Per Acre x Acres Damaged x 1.3 = Crop Damage Compensation.

The Unit Price for damaged crops will be based on the average of the previous March 1st and September 1st local market prices for that crop. The Parties shall use their best efforts, acting in good faith, to agree to the yield and acreage affected. If the Parties cannot agree, they shall have the area measured and the extent of damage assessed by an impartial party, such as a crop insurance adjuster or extension agent. Payment shall be made within sixty (60) days after determining the yield and acreage affected.

#### **9. Wind Test Tower Payments.**

- a) **Temporary Wind Test Towers.** Sequoia shall pay to Landowner on an annual basis: (i) five hundred dollars (\$500) for each 60 metre tower on the Lands, (ii) six hundred fifty (\$650) for each 80 metre tower on the Lands, and (iii) one hundred fifty dollars (\$150) for each SODAR unit on the Lands.
- b) **Weed Control Price.** Sequoia shall pay to Landowner on an annual basis (i) two hundred dollars (\$200) for weed control for each 60 metre Temporary Wind Testing Tower on the lands where crops are grown, and (ii) two hundred fifty dollars (\$250) for weed control for each 80 metre Temporary Wind Testing Tower on the Lands where crops are grown.
- c) **Permanent Wind Test Towers.** For each Permanent Wind Testing Tower that Sequoia installs on the Lands, Sequoia shall pay to Landowner the amount of Five Hundred Dollars (\$500) on an annual basis.

Payment under this section shall be made within 60 days of installation of a Temporary or Permanent Wind Test Tower and annually thereafter within 60 days of the anniversary of installation.

The terms of this Agreement shall supersede and replace in their entirety the terms of any other agreement(s) between Sequoia and Landowner related to any Temporary or Permanent Wind Testing Tower on the Lands.