

BETHLEHEM AUTHORITY

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POLICE – SPECIAL OFFICER

INTER-DEPARTMENTAL MEMORANDUM

Date: January 4, 2013

To: Mr. Eric Evans
President, Bethlehem City Council

From: Stephen Repasch
Executive Director, Bethlehem Authority

Subject: Proposed Wind Energy Project

President Evans,

As I believe you are aware, the Bethlehem Authority has been discussing the idea of developing a wind energy project in its watershed properties for over three years. Council had previously approved a Letter of Intent with Call Mountain Wind on March 28, 2011, to develop a similar wind energy project. The agreement however was never consummated, negotiations were ended, and the Authority sought out other potential partners to develop the project. Earlier this year the Authority started negotiating a License/Lease Agreement with Atlantic Wind, a wholly owned subsidiary of Iberdrola Renewables, the second largest wind energy developer in the world.

At its regular monthly meeting on December 13, 2012, the Authority approved the attached agreement with Atlantic Wind, and to send it on to City Council for the City's consideration. Also attached to this memo is a summary of what we believe to be the key terms in the agreement.

The purpose of this memo is to request this issue be forwarded to a City Council Committee of your choice at your earliest convenience. Since this issue may attract a fair amount of public opinion, we suggest that the Committee Meeting be

questions. Representatives from Iberdrola will attend, and if Council wishes, provide a short presentation, after which they can address any concerns and answer any questions Council or the public may have.

Thank you for considering this project, which we believe is important to the financial health of the Water System and is environmentally responsible on a global level, while protecting the pristine and sensitive qualities of the watershed and the high quality of drinking water for the City and its surrounding communities. I am available to answer any questions you may have or supply you with additional information you may need.

Cc: Mayor Callahan
Council Members
City Clerks
Bethlehem Authority Members
David Brong

Jim Broughal, Esq.
Chris Spadoni, Esq.
John F. Spirk Jr., Esq.
Dennis Reichard
Joseph Kelly

WIND ENERGY DEVELOPMENT PROJECT SUMMARY PROPOSED TERMS

- **DEVELOPER – Atlantic Wind, LLC, a wholly owned subsidiary of Iberdrola Renewables.**

- **AGREEMENT FRAMEWORK**
 - **License Term – The period of time from the execution date of the agreement through the study period, not to exceed 10 years. Studies include, but are not limited to, soil studies, wind studies using met towers, FAA Studies, and environmental studies, including fish, mammal and bird studies. During this period the developer will also apply for local, state and federal permits that are required to insure compliance with all applicable local, state and federal laws.**
 - **Lease Term or Extended Term – A 25 year period upon the completion of the License Term, and after receiving the necessary approvals, that the project will be constructed and operated, and is renewable for an additional 26 years.**

- **USE OF PROPERTY – The License Term covers the Wild Creek/Penn Forest watershed properties for study purposes. The Lease or Extended Term**

covers only the portions of the property that are designated for project development at the conclusion of the License Term.

- **LOCATION OF TURBINES – The location, size and number of turbines will not be known until the wind studies and permitting process are complete, which will take at least 18 months. It is likely though that there will be between 20-30 turbines located on or near the ridge tops on the property.**

- **FINANCIAL TERMS**
 - **License Period**
 - **Authority to receive \$10,000 per year for the first 5 years and \$100,000 per year through years 6 to 10.**
 - **Authority will be reimbursed for its consulting and advisory fees up to \$28,500.**
 - **Lease Period**
 - **Authority will receive an installation fee of \$1,000 per turbine installed.**
 - **During the operation of the project the Authority will receive an annual payment which will be the greater of \$100,000 or 3% of gross project revenues (generated electricity and REC's)**

WIND LICENSE AND WIND ENERGY LEASE AGREEMENT

This WIND LICENSE AND WIND ENERGY LEASE AGREEMENT (this "Agreement") is made, dated and effective as of _____ (the "Effective Date"), by and between Bethlehem Authority, a municipal authority, organized under the laws of the Commonwealth of Pennsylvania (the "Landowner"), and Atlantic Wind, LLC, An Oregon Limited Liability Company ("Atlantic").

BACKGROUND

Landowner owns certain real property located in Penn Forest Township, Carbon County, and Tunkhannock Township, Monroe County, Pennsylvania, consisting of approximately thirteen thousand seven hundred ninety-nine (13,799) acres as more particularly described in Exhibit A attached hereto (the "Property"). Atlantic wishes to obtain a license to enter the Property for a period of time while Atlantic reviews the possibility of developing a wind energy facility on the Property and certain adjacent properties (all such properties and the facilities to be developed thereon are referred to collectively as the "Project"), and to obtain the right to lease the Property for a period of time if Atlantic elects to proceed with the wind energy project

Now, therefore, intending to be legally bound hereby, Landowner and Atlantic hereby agree as follows:

1. **License; License Term.** In consideration of the warranties, fees, covenants and agreements hereinafter set forth, Landowner does hereby offer to Atlantic, and Atlantic does hereby accept from Landowner, an exclusive license to the Property for a period not to exceed ten (10) years from the Effective Date (the "License Term"), to, among other uses: Extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analysis on the Property as Atlantic deems necessary, useful or appropriate;

(a) Subject to Landowner's Consent (as hereinafter defined), construct, erect, install, reinstall, replace, relocate and remove from time to time, meteorological and wind measuring equipment, including but not limited to anemometer towers and all necessary and proper appliances and fixtures for use in connection with said towers, to determine the feasibility of wind energy conversion on the Property; and

(b) Install or utilize any other improvements, including roads, facilities, machinery and equipment, on the Property that Atlantic reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing. Any such improvements to be installed by Atlantic will be sited on a portion of the Property as determined by Atlantic with the prior written Consent of Landowner.

(c) Subject to the provisions of this Agreement, in the event Atlantic voluntarily terminates this Agreement during the License Term, Atlantic shall provide Landowner with a copy of any non-proprietary data regarding the Property that Atlantic may have collected during the License Term.

2. **Lease of Property; Term.**

2.1 **Extended Term; Renewal Term.** Atlantic shall have the right during the License Term to obtain a Lease to the Property on the terms and conditions herein for a period of twenty five (25) years, beginning on the date set forth in Section 2.2 (the “**Extended Term**”), and to further extend the term of this Lease for an additional twenty six (26) years (the “**Renewal Term**”). The procedures for Atlantic to exercise these rights are set out in Section 2.2 below

2.2 **Extensions of Term.**

(a) Atlantic’s rights under this Agreement continue throughout the License Term. If Atlantic or any designee of Atlantic either (a) begins any phase of construction of any of the Windpower Facilities (as defined below in Section 3.3) or (b) delivers notice to Landowner exercising Atlantic’s right to extend this Agreement for the Extended Term, then this Agreement shall automatically be extended for the Extended Term and the License Term shall terminate. In the event of any such extension for the Extended Term, the Extended Term shall commence on the first to occur of (i) Atlantic beginning any phase of construction as set forth in subsection 3.2, or (ii) the date Atlantic delivers notice to Landowner of Atlantic’s exercise of Atlantic’s right to extend this Agreement for the Extended Term, as set forth in subsection 2(b).

(b) During the Extended Term, Atlantic may, by notice to Landowner no later than thirty (30) days prior to the expiration of the Extended Term, elect to extend this Agreement for the Renewal Term. For purposes of this Agreement, the “**Term**” shall mean the License Term and, as applicable if exercised pursuant to this Agreement, the Extended Term and the Renewal Term. With respect to the extension of the Term of this Agreement, Landowner and Atlantic shall execute in recordable form, and Atlantic shall then record, a memorandum evidencing the extension, satisfactory in form and substance to Atlantic and Landowner.

2.3 **Commercial Operation Date.** The “**Commercial Operation Date**” is the date upon which the wind turbine generators have been installed on the Project and interconnected to a transmission system, and are capable of generating and transmitting electrical energy continuously and reliably to such transmission system in connection with commercial sales, excluding, however, electric energy delivered to such transmission system in connection with testing, start-up or commissioning. Atlantic shall, within fourteen (14) days after the achievement of the Commercial Operation Date, provide written notice of that fact to Landowner.

3. **Use of Property.**

3.1 **General Purposes.** Throughout the term of this Agreement, Atlantic shall have the sole and exclusive rights (in Atlantic’s sole discretion, provided that it is in accordance with the Term Conservation Easement and primary mission of the Landowner to produce potable water) to use the Property solely for wind energy purposes, and to convert all of the wind resources of the Property. For purposes of this Agreement, “wind energy purposes” means: wind resource evaluation; site evaluation; wind energy development; converting wind energy into electrical energy; collecting and transmitting the electrical energy converted from wind energy; and any and all other activities related

to wind energy purposes. Atlantic's rights under this agreement include, without limitation, the right to undertake any other activities that Atlantic determines are necessary, helpful, appropriate or convenient in connection with, incidental to or to accomplish any of the foregoing purposes or for the benefit of one or more projects, including conducting surveys and environmental, biological, cultural and other tests and studies. Without limiting the generality of the foregoing, the parties recognize that (a) power generation technologies are improving at a rapid rate and that Atlantic may (but shall not be required to) from time to time replace or repower the Windpower Facilities (as defined in Section 3.3 below) on the Property with newer model (and potentially larger) Windpower Facilities, and (b) the activities contemplated by this Agreement may be accomplished by Atlantic or by one or more third parties authorized by Atlantic.

3.2 **Extended Term and Renewal Term Uses.** If Atlantic elects to extend the term of this Agreement for the Extended Term and/or the Renewal Term, Atlantic shall have the right, to use the Property to construct, erect, use, install, reinstall, replace, relocate, maintain and remove from time to time any of the following on the Property, or on adjacent property or elsewhere:

(a) Wind turbines, steel towers, foundations and concrete pads, support structure, footings, anchors, fences and other fixtures and facilities, maintenance, security, office and/or guest facilities, staging areas for the assembly of equipment, power generation facilities to be operated in conjunction with large wind turbine installations, control buildings, laydown areas, crane pads, permanent met towers and related facilities and equipment;

(b) Electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures or underground and one or more substations or interconnection or switching facilities from which Atlantic may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights of way on, along, in and under the Property; and

(c) Any other improvements, including roads, facilities, machinery and equipment, on the Property that Atlantic reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing. Any such improvements to be installed by Atlantic will be sited on a portion of the Property as determined by Atlantic with the prior written Consent of Landowner.

3.3 All equipment, facilities, roads and structures installed on the Property under this Agreement, including but not limited to the items listed in subsections 3.2(a), (b) and (c) above shall be referred to as the "**Windpower Facilities.**"

3.4 **Access; Easements.**

(a) This Agreement includes the right of reasonable vehicular and pedestrian access, and ingress of and egress from the Windpower Facilities (whether located on the Property, or on adjacent property or elsewhere), during the Term over and across the Property by means of any existing roads and lanes thereon, and by such

other route or routes as Atlantic may construct on the Property from time to time with the prior written Consent of Landowner. Except the extent required (i) as a result of any emergency; or (ii) as required by any regulatory or governmental official, Atlantic shall communicate with Landowner not less than forty-eight (48) hours prior to entering onto the Property.

(b) In addition, Landowner hereby grants to Atlantic the following easements (together, the **"Operations Easements"**) for the term of this Agreement: (i) an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of wind currents and wind resources over and across the Property for the Term of this Agreement; and (ii) an exclusive easement to permit the rotors of Windpower Facilities located on adjacent properties to overhang the Property for the Term of this Agreement. To the extent that Landowner holds any access, utility, transmission or other easements, rights of way or licenses over lands in the general vicinity of the Property (the **"Landowner Easements"**), and Atlantic determines that such Landowner Easements could be used for the benefit of a Project, then the same are hereby included in this Agreement, and Atlantic shall be entitled to make full use thereof. Upon the request of Atlantic from time to time, Landowner shall grant to Atlantic (or a party designated by Atlantic), in recordable form and containing such terms and provisions as may reasonably be requested by Atlantic, for no additional consideration, one or more subeasements of the Landowner Easements (each, a **"Landowner Subeasement"**). The term of each Landowner Subeasement shall run concurrently with the Term (or for a shorter period of time as is provided in the applicable Landowner Easement, or as may be requested by Atlantic), and shall terminate upon the expiration or termination of this Agreement.

(c) Upon Atlantic's request from time to time, Landowner shall grant to Atlantic (or a party designated by Atlantic) in recordable form and containing such terms and provisions as may reasonably be requested by Atlantic, for no additional consideration, the following stand-alone easements (each, a **"Separate Easement"**): (i) one or more nonexclusive irrevocable, easements for the Term of this Agreement for access rights on, over and across the Property, including for vehicular and pedestrian ingress, egress and access to and from one or more Projects; and (ii) one or more irrevocable, easements for the Term of this Agreement for Windpower Facilities on, under, over and across the Property.

(d) With respect to each Operations Easement, Landowner Subeasement and Separate Easement (each, an **"Easement"**): (i) to the extent permitted by applicable federal, State and local laws, statutes, ordinances, orders, rules and regulations (each, a **"Law"**), such Easement shall be appurtenant to the applicable leasehold estate; (ii) such Easement shall run with the Property and inure to the benefit of and be binding upon Landowner and the holder of the Easement and their respective successors and assigns, and all persons claiming under them; (iii) no act or failure to act on the part of Atlantic or the holder of the Easement shall be deemed to constitute an abandonment, surrender or termination thereof, except upon recordation by such holder of a quitclaim deed specifically conveying the Easement back to Landowner; (iv) nonuse of the Easement shall not prevent the future use of the entire scope thereof if the same is needed; and (v) no use of or improvement to the Property or any lands benefited by the Easement, and no assignment or sublease hereof or thereof, shall, separately or in the aggregate, constitute an overburdening of the Easement.

4. **Payments to Landowner.** During the Term of this Lease, Atlantic shall pay to Landowner the following amounts as consideration for Atlantic's use of Landowner's Property.

4.1 **License Term.** During the License Term, Atlantic shall pay Landowner the sum of Ten Thousand Dollars (\$10,000) per annum for the first five (5) years of the License Term and, One Hundred Thousand Dollars (\$100,000) per annum for the following five (5) years of the License Term. The first such annual payment will be made within sixty (60) days after the Effective Date, and each future annual payment will be made within fifteen (15) days after each anniversary of the Effective Date throughout the License Term, unless Atlantic terminates this Lease, or extends the Term for the Extended Term, before such anniversary. All payments made hereunder shall be nonrefundable.

4.2 **Extended Term Rent (Turbine Installed)** If Atlantic elects to extend the term of this Agreement for the Extended Term, then commencing on the Commercial Operation Date and for the remainder of the Extended Term, Atlantic shall pay to Landowner annually rent payments (the "**Extended Term Rent**"), which will be prorated for partial years. The annual Extended Term Rent will equal:

(a) Only if no wind turbines have been installed on the Property One Hundred Thousand Dollars (\$100,000) per annum (the "**Alternate Fixed Rent**") until such time as wind turbines are installed on the Property; and

(b) Once wind turbines have been installed on the Property, the greater of:

(i) One Hundred Thousand Dollars (\$100,000) (the "**Fixed Rent**"); or

(ii) An annual Operating Fee based on the net annual electrical generation of the wind turbines located on the Property. The "**Operating Fee**" will be calculated by:

(A) dividing the total number of megawatt hours ("**MWh**") of electricity generated by all the wind turbines located on the Property connected to the same Revenue Meter (as defined below) during the applicable Commercial Operation Year (as defined below), as measured by the meter located at each such wind turbine that is connected to such Revenue Meter, by the total number of MWh of electricity generated by all the wind turbines included in the Project connected to such Revenue Meter during the same Commercial Operation Year, as measured by the meter located at each such wind turbine that is connected to such Revenue Meter; and

(B) multiplying the result by the Project Gross Revenue (as defined below) associated with such Revenue Meter for the same Commercial Operation Year; and

(C) multiplying the result by the Lease Rate for such Commercial Operation Year. The "**Lease Rate**" for the Extended Term will be Three Percent (3.0%).

(c) A "**Revenue Meter**" is a meter which determines the amount of electrical energy and capacity paid for by third parties; wind turbines in a Project may be connected to different Revenue Meters but, for the avoidance of doubt, all wind turbines in the Project shall be connected to a Revenue Meter. The first "**Commercial Operation Year**" shall begin on the Commercial Operation Date,

and shall expire twelve (12) months thereafter, and each subsequent Commercial Operation Year shall commence upon the expiration of the prior Commercial Operation Year, and shall expire twelve (12) months thereafter.

(d) Example (for illustration purposes only): In the first full Commercial Operation Year (as defined below), if thirty (30) turbines are installed on the Project and all of the turbines are installed on the property Property:

- 157,680,000 MWh measured at all turbines on the Property
- 157,680 total MWh measured from all turbines in the Project
- \$13,402,800 in Project Gross Revenues
- 3.0% Lease Rate,

then Operating Fees for such first Commercial Operation Year would be calculated as $(157,680 \div 157,680 \times \$ 13,402,800 \times 3.0\%)$ and would therefore equal \$402,084.

(e) During each Commercial Operation Year, Atlantic shall make rental payments to Landowner on an annual basis as follows. Within thirty (30) days after the end of each year, Atlantic shall deliver to Landowner (i) a statement of: (A) the MWh of electric energy sold during that year from the wind turbine generators installed both (1) on the Property, and (2) with respect to the Project; (B) the Project Gross Revenue actually received during such year for the sale of those megawatts; (C) a determination of the Operating Fee due according to the provisions of this Section; and (ii) payment of the Operating Fees due according to the provisions of this Section.

(f) As used in this Agreement, "**Project Gross Revenue**" with respect to any Revenue Meter means total monies received from utility companies and all other purchasers derived from (i) the sale of electric energy and capacity produced, delivered to the grid, and sold from wind turbines in the Project that are connected to such Revenue Meter; and (ii) the sale of other certificates or entitlements associated with the delivery to the grid of each unit of wind-powered electricity from wind turbines in the Project that are connected to such Revenue Meter. Project Gross Revenue does not include (A) Production Tax Credits (defined as the renewable energy production tax credits described in Section 45 of the Internal Revenue Code, 1986, as amended), as determined with respect to the Federal tax liability of the owner of the wind turbines and associated equipment installed in connection with the Project, nor (B) grants from private or public entities, nor (C) insurance proceeds or reimbursements, payments from contractors and similar payments.

(g) The Fixed Rent shall be adjusted up or down annually to reflect any price inflation that occurs from the Commercial Operation Date to the next anniversary thereof (based on the Consumer Price Index for the Northeast Region of the Bureau of Labor Statistics published by the United States Department of Labor, Bureau of Labor Statistics ("CPI") or some other similar index selected by

Atlantic, if the CPI is no longer available (the applicable index is herein called the "Index"), as measured by the most recent Index published before the commencement of Commercial Operation and the most recent Index published at least thirty (30) days before the next anniversary thereof.

4.3 **Renewal Term Rent.** The rent payments for the Renewal Term, if Atlantic elects to renew this Lease, shall be calculated in the same manner as for the Extended Term.

4.4 **Installation Fee.**

(a) If Atlantic elects to extend the term of this Agreement for the Extended Term and Atlantic installs one or more wind turbines on Landowner's Property, then in addition to the Extended Term Rent, Atlantic shall pay to Landowner a one-time non-refundable Installation Fee for each wind turbine installed on the Property by Atlantic in any particular phase of construction. The "Installation Fee" shall equal One Thousand Dollars (\$1,000) for each wind turbine installed on the Property by Atlantic. No additional Installation Fee shall be due upon any replacement or repower of an existing turbine or installation of a wind turbine on a relocated turbine site within the boundaries of the Property during the Term. The Installation Fee shall be paid upon Commencement of Construction (as defined below) of such wind turbine. "Commencement of Construction" shall mean the commencement of work consisting of the installation or construction of a wind turbine on the Property for the particular phase of construction, but shall not include survey or wind measurement work.

4.5 **Reimbursement of Reasonable Attorney and Advisor Fees.** Atlantic shall reimburse Landowner for Landowner's reasonable and actual attorney and advisor fees charged by Landowner's third party advisors in an amount up to, but not exceeding the following amounts during the respective periods of the Term:

(a) Seven thousand five hundred dollars (\$7,500) for fees incurred on or in the negotiation of this Agreement on or before the three (3) month anniversary of the Effective Date;

(b) Three thousand dollars (\$3,000) for fees incurred during Atlantic's evaluation of the Project in the period beginning on the Effective Date and ending on the twenty-four (24) month anniversary of the Effective Date; and

(c) Twenty-eight thousand five hundred dollars (\$28,500) for fees incurred during Atlantic's development of the Project in the period beginning on the twelve (12) month anniversary of the Effective Date and ending on the forty-eight (48) month anniversary of the Effective Date.

It is a condition to Landowner's right to reimbursement under this Section 4.5 that Landowner or Landowner's attorney or Landowner's advisor submit a statement showing Landowner's attorney's and/or advisor's hourly billable rate and the total time spent by such attorney or advisor advising on this Agreement. Such payments shall be aggregated with any payments previously made to or on behalf of the Landowner by the Atlantic for such purposes. All such sums shall be paid not later than forty-five (45) days after Landowner shall have submitted the request for payment, together with all required documentation.

5. **Permitted Areas; Layout Plan.**

5.1 **Permitted Areas.** Notwithstanding anything to the contrary contained herein, the only areas within the Property in which Atlantic has the right to install Windpower Facilities are those areas shown on **Exhibit B** attached hereto ("**Permitted Areas**"), which areas have been approved by Landowner. Atlantic has the right to adjust those portions of the Property depicted on **Exhibit B** to the extent that Atlantic reasonably determines that such additional areas are or will be used or needed for or in connection with the rights granted to Atlantic pursuant to this Agreement, such adjustment subject to the Consent (as defined in Section 10.9) of Landowner.

5.2 **Layout Plan.** Prior to the commencement of construction of the Windpower Facilities, Atlantic shall provide to Landowner a plan indicating the proposed location of the Windpower Facilities (the "**Windpower Facilities Layout Plan**"). Atlantic shall consult with Landowner and obtain Landowner's Consent, on the Windpower Facilities Layout Plan. The Windpower Facilities Layout Plan shall then become **Exhibit C** to this Agreement. Atlantic may, from time to time upon written notice to Landowner and with Landowner's Consent, make changes to the location of Windpower Facilities from the location(s) shown on the then current Windpower Facilities Layout Plan, and the Windpower Facilities Layout Plan shall be deemed to be modified to reflect such changes. Notwithstanding the preceding sentence, with regard to any change required by Atlantic in the location of roads on the Property (from the location(s) shown on the then current Windpower Facilities Layout Plan), Atlantic will obtain Consent of Landowner.

5.3 **Remaining Property.** After the completion of construction of the Project, Atlantic shall deliver to Landowner legal descriptions (together with an as-built drawing generally depicting the same) of those portions of the Property depicted on **Exhibit B** designated as the Operating Area (as such Operating Area may be modified as permitted pursuant to this Agreement). The "**Operating Area**" shall consist of (a) leasehold areas with a diameter of approximately Five Hundred (500) Feet around each wind turbine and (b) easement corridors for the access rights described in Section 3.4 and for the Easements described in Section 2.4 (the "**Retained Easement Corridors**"). At such time Atlantic, in Atlantic's sole discretion, by written notice to Landowner (which notice may include such legal descriptions and drawing(s)), shall terminate the lease as to any portion of the Property that is not part of the Operating Area (the "**Remaining Property**"). In such event, Atlantic shall promptly thereafter execute and record a release of all of its right, title and interest in and to such Remaining Property; provided, however, that (and the release shall so provide): (A) the Remaining Property shall in any event remain, for the entire Term, subject to and burdened by (i) the easements, if any, on, over, across, along and above the Operating Area, (ii) the Easements created by Section 3.4 over all of the Property, and (iii) the rights granted to Atlantic in this Lease related to the Property; (B) Landowner shall be free to use and develop the Remaining Property subject in all events to Section 9.1, and (C) in the event that in connection with a repowering of a Project or any portion thereof Atlantic reasonably determines that a Retained Easement Corridor needs to be relocated or amended, and subject to the Consent of Landowner, then (x) Landowner shall, promptly upon request therefor, execute and deliver to Atlantic an instrument that implements and grants the applicable rights for such relocation or amendment, and (y) Atlantic shall, promptly upon request therefor, execute and deliver to Landowner a release of any part of the previous Retained Easement Corridor that Atlantic reasonably determines is no longer needed.

6. **No Representation.** Other than those representations and warranties set forth in Section 9 below, Atlantic has neither made, nor makes, any representations or warranties, verbally, in any written estimates of production, in this Agreement or otherwise, concerning the likelihood that Atlantic will install Windpower Facilities on the Property or that any Windpower Facilities installed on the Property will be operated or will generate electricity sufficient to create any entitlement in Landowner to any Extended Term Rent during any period of time. The decision as to whether or not to install Windpower Facilities on the Property, or to generate electricity from any Windpower Facilities, shall be made by Atlantic in Atlantic's sole discretion, and Atlantic shall have no liability to Landowner if Atlantic elects not to install (or operate) Windpower Facilities on the Property except for the payments provided for in Section 4.1 and 4.2(a) of this Agreement. Landowner acknowledges that the operation of any Windpower Facilities actually installed on the Property is subject to adverse weather, lack of wind, equipment failures and other events beyond the control of Atlantic which may interrupt or prevent electricity generation.

7. **Ownership of Windpower Facilities.** Landowner shall have no ownership or other interest in any Windpower Facilities installed on the Property or any environmental attributes produced therefrom, including without limitation any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Windpower Facilities or the electric energy, capacity or other generator-based products produced therefrom. The preceding sentence shall not negatively impact Landowner's right to receive any payment due pursuant to Section of this Agreement. The manner of operation of the Windpower Facilities, including but not limited to decisions on when to conduct maintenance, is within the sole discretion of Atlantic.

8. **Taxes.**

8.1 Atlantic acknowledges that, as of the Effective Date, there are no real property taxes levied against the Property. Atlantic shall pay any increase in the real property taxes levied against the Property directly attributable to the installation of Windpower Facilities on the Property, including any reclassification of the Property as a result of the Windpower Facilities or this Agreement, to the extent that such increase is not separately assessed to Atlantic and paid directly by Atlantic to the taxing authorities. Atlantic shall not be liable for taxes attributable to facilities installed by Landowner or others on the Property, or to the underlying value of the Property itself. It is a condition to Landowner's right to receive payment or reimbursement of any such increased taxes hereunder that Landowner submit the real property tax bill to Atlantic the earlier of (a) thirty (30) days after Landowner receives the bill from the taxing authority, or (b) thirty (30) days prior to the due date of such real property tax bill. Atlantic shall have the right to pay its portion of the real property taxes directly to the taxing authority. Landowner shall pay its portion of the real property taxes, if any, and if Landowner fails to do so, Atlantic shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to the taxing authority, and in such case Atlantic may offset the amount of such payments from amounts due Landowner under this Agreement.

8.2 Atlantic shall pay any and all Pennsylvania Real Estate Transfer Taxes assessed because of the execution of this Agreement by Landowner.

9. **Atlantic's Representations, Warranties and Covenants.** Atlantic hereby represents, warrants and covenants to Landowner as follows:

9.1 **Landowner Activities.** Landowner expressly reserves the right to use the Property for any and/or all other lawful purposes including the uses set forth in the Term Conservation Agreement and the Landowner's use of the Property for the production of potable water and any related uses thereto (the 'Primary Uses'), but only to the extent that (i) any such use by Landowner does not, except for the Primary Uses, currently or in the future, interfere with Atlantic's operations hereunder or enjoyment of the rights hereby granted to Atlantic; (ii) any such use does not include wind energy development or the installation or use of any facilities related to wind energy development or generation (which rights and uses are exclusively granted to Atlantic in this Agreement), and (iii) any leases and easements entered into by Landowner with respect to the Property after the Effective Date shall expressly provide that they are subject and subordinate in all respects to this Agreement and to the rights of Atlantic and any Lender or Assignee hereunder. Notwithstanding the foregoing and subject to Landowner's rights under this Agreement, if there is any conflict or disagreement between Landowner and Atlantic regarding their respective rights to develop and utilize the Permitted Areas or Easements, then Atlantic's use (for the purposes permitted in this Agreement and except for the Primary Uses) shall have first priority. Atlantic shall make reasonable efforts not to disturb Landowner's activities on the Permitted Areas or Easements to the extent such activities are consistent with Atlantic's rights under this Agreement. Atlantic shall post (and shall have the right to gate) the access roads Atlantic constructs going to the Windpower Facilities as being private roads only for use by authorized personnel in connection with the Windpower Facilities. Landowner may use or cross such roads only to the extent that Landowner does not interfere with Atlantic's rights under this Agreement.

9.2 **Insurance.** Atlantic shall, at its expense, maintain a commercial general liability insurance policy (including pollution liability coverage) insuring Atlantic and Landowner against loss or liability caused by Atlantic's occupation and use of the Property under this Agreement, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. Such insurance coverage shall include a noncontributory, standard owner loss payee endorsement naming Landowner as loss payee and an additional insured, as its interests may appear, and provide for written notice to Landowner at least thirty (30) days prior to cancellation, non-renewal or amendment thereof. Certificates of such insurance evidencing the coverages required by this Agreement shall be provided to Landowner at Landowner's reasonable request. Atlantic shall have the right to use a qualified program of self-insurance to meet the insurance requirements.

9.3 **Indemnity.** Atlantic will defend, indemnify and hold harmless Landowner for, from and against liability for physical damage to property and for physical injuries or death to Landowner or its employees, representatives, tenants, invitees, contractors or the public, to the extent caused by the operations, activities, negligence or willful misconduct of Atlantic or its invitees, permittees or tenants. The reference to property damage in the preceding sentence does not include any damages to crops (which are governed solely by the provisions of Section 9.7 below) or any losses of rent, business opportunities, profits and the like that may result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Windpower Facilities pursuant to this Agreement. Landowner authorizes Atlantic, at Atlantic's sole expense, to take reasonable safety and security measures to reduce the risk of damage to the Windpower Facilities or the risk that the Windpower Facilities will cause damage, injury or death to people, livestock, other animals and property, including fencing

around the perimeter of the Windpower Facilities, as Atlantic may deem necessary or appropriate to secure or enclose the same, without unduly burdening Landowner's use of the Property, and with the Consent of Landowner.

9.4 **Requirement of Governmental Agencies.** Atlantic, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Windpower Facilities whether local, state or federal. In its sole discretion and through appropriate legal proceedings brought in the name of Atlantic or in the names of both Atlantic and Landowner where appropriate or required, Atlantic shall have the right to contest the validity or applicability to the Property or Windpower Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Except to the extent it is inconsistent with Landowner's obligations pursuant to the Pennsylvania Municipal Authorities Act (53 Pa. C.S.A. 301 et seq.), Landowner shall cooperate in every reasonable way in such contest, provided Atlantic reimburses Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Atlantic has approved such expense in advance. Any such contest or proceeding, including any maintained in the name of Landowner, shall be controlled and directed by Atlantic, but Atlantic shall protect and indemnify Landowner from Atlantic's failure to observe or comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

9.5 **Construction Liens.** Atlantic shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Atlantic's use of the Property pursuant to this Agreement and indemnify and hold Landowner harmless from any such liens and claims; provided, however, that if Atlantic wishes to contest any such lien, Atlantic shall, within sixty (60) days after Atlantic receives notice of the filing of such lien, remove or bond around such lien pursuant to applicable law.

9.6 **Hazardous Materials.** Atlantic shall not violate, and shall indemnify Landowner against, any violation by Atlantic or Atlantic's agents or contractors of any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

9.7 **Timber Damage.** Atlantic may cause the cutting of trees on the Property as may be necessary for the exercise of the rights granted to Atlantic pursuant to this Agreement. At least thirty (30) days prior to any cutting of trees by Atlantic, Atlantic will inform Landowner of the trees that are required to be cut and will obtain Landowner's Consent therefore. Landowner understands that, as the Project alignment may transect the boundaries of properties owned by third parties, the removal of trees from the Property may be necessary for the benefit of the performance of wind turbines located on adjacent property, as removal of trees on adjacent property may be necessary for the benefit of the performance of wind turbines located on the Property. Landowner agrees that, subject to the requirement for written notice contained in this Section 9.7, trees may be removed from the Property as required for the efficient operation of wind turbines located on the Property with the Consent of Landowner.

10. **Landowner's Representations, Warranties and Covenants.** Landowner hereby represents, warrants and covenants to Atlantic as follows:

10.1 **Landowner's Authority.** Landowner is the sole owner of the Property and has, subject to the requirements of Landowner's charter and any approvals required by any governmental authorities with responsibility for the management of Landowner including but not limited to Bethlehem City Council ("Council") and the City of Bethlehem, the unrestricted right and authority to execute this Agreement and to grant to Atlantic the rights granted hereunder. No rights to convert the wind resources of the Property or to otherwise use the Property for wind energy purposes have been granted to or are held by any party other than Atlantic. Each person signing this Agreement on behalf of Landowner is authorized to do so, and all persons having any ownership or possessory interest in the Property (including spouses) are signing this Agreement as Landowner. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms.

10.2 **No Interference.** Except for the Primary Uses, Landowner's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or in the future, impede or interfere with rights granted to Atlantic under this Agreement with respect to: (i) the development, siting, permitting, construction, installation, maintenance, operation, replacement, relocation or removal of Windpower Facilities, located on the Permitted Area ; (ii) the flow of wind, wind speed or wind direction over the Property; (iii)

access over the Property to Windpower Facilities, whether located on the Permitted Area or elsewhere on the Property; or (iv) the undertaking of any other activities of Atlantic permitted under this Agreement. In no event during the Term of this Agreement shall Landowner construct, build or locate or allow others to construct, build or locate any wind energy conversion system, wind turbine or similar project on the Property.

10.3 Title Review and Cooperation. Except to the extent it is inconsistent with Landowner's obligations pursuant to the Pennsylvania Municipal Authorities Act (53 Pa. C.S.A.. 301 et seq.) and Lease Agreements with the City of Bethlehem, Landowner shall cooperate with Atlantic to obtain nondisturbance, subordination and other title curative agreements from any person with a lien, encumbrance, mortgage, lease or other exception to Landowner's fee title to the Property to the extent necessary to eliminate any actual or potential interference by any such person with any rights granted to Atlantic under this Agreement. If Atlantic and Landowner are unable to obtain such agreements from any third party holding an interest in the Property, Atlantic, in addition to any other rights provided for herein, shall be entitled (but not obligated) to make payments in fulfillment of Landowner's obligations to such third party and may offset the amount of such payments from amounts due Landowner under this Agreement. Landowner shall also provide Atlantic with any further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or otherwise reasonably requested by Atlantic. Atlantic acknowledges that the Property is subject to the provisions of the Term Conservation Easement between Landowner and The Nature Conservancy dated April 14, 2011, and a Lease Agreement with the City of Bethlehem (the "City Lease") and, except as otherwise agreed to by the parties to that Term Conservation Easement, and City Lease this Agreement is subordinate thereto. Landowner further agrees that, to the extent Blue Source LLC or any other third party seeks to claim any benefit or damages from Atlantic pursuant to the provisions of any Agreement for the Development, Verification, Registration, and Marketing of Greenhouse Gas Emission Reduction Benefits or any similar agreement pursuant to which Landowner has granted any rights related to any marketing credits, offsets, incentives, and other environmental benefits created by projects which reduce carbon dioxide and other emissions, or which create renewable energy credits or equivalents for tons of emissions reduced or kilowatts produced, then Landowner shall indemnify and hold Atlantic harmless from any damages related to any such claim. Landowner further represents that upon approval of this Agreement by Council, the use of the Property pursuant to the terms of this Agreement will not violate the terms of the City Lease or any other agreement to which Landowner is a party.

10.4 Requirements of Governmental Agencies/Lenders. Except to the extent it is inconsistent with Landowner's obligations pursuant to the Pennsylvania Municipal Authorities Act (53 Pa. C.S.A.. 301 et seq.), the Primary Uses, and the provisions of this Agreement, Landowner shall assist and fully cooperate with Atlantic in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Atlantic in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of Windpower Facilities, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Atlantic shall reimburse Landowner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Atlantic has approved such expenses in advance. Landowner shall

make available to Atlantic copies of all field tiling surveys, environmental, geotechnical and other site assessments, surveys, plans and other such records of Landowner to the extent such information relates directly to the proposed Windpower Facilities.

10.5 **Indemnity.** Landowner will defend, indemnify and hold harmless Atlantic for, from and against liability for physical damage to property (including, without limitation, Atlantic's roads) and for physical injuries or death to Atlantic or its tenants, invitees, contractors or the public, to the extent caused by the gross negligence or willful misconduct of Landowner or its invitees, permittees or tenants.

10.6 **Hazardous Materials.** Landowner represents that to its best knowledge but without having conducted any independent investigations anywhere on the Property, (i) no substance, material or waste which is now or at the time of discharge classified as hazardous or toxic, or which was or is regulated under federal, state or local laws or regulations ("Hazardous Materials") has been deposited on the Permitted Area in the past, (ii) there are no ongoing activities which might result in such deposits, and (iii) no Hazardous Materials, as defined as of the date of this Agreement, are existing on or under the Permitted Area. Landowner warrants not to engage in any deposit of Hazardous Materials, as defined as of the date of this Agreement, on the Permitted Area. Further, Landowner shall not violate, and shall indemnify Atlantic for, from and against any violation (past, present or future) by Landowner or Landowner's agents or contractors of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Material or any other substance, material or waste which is regulated under current or future federal, state or local laws or regulations, on or under the Permitted Area.

10.7 **Quiet Enjoyment.** Landowner covenants and warrants that Atlantic shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire Term without hindrance or interruption by Landowner or any other person or entity subject to the terms of this Agreement.

10.8 **Waiver of Nuisance.** Landowner has been informed by Atlantic and understands that the presence and operations of the improvements on the Permitted Area and on adjacent property will potentially result in some nuisance to Landowner, such as: (i) higher noise levels than currently occur at the Permitted Area and the surrounding area; (ii) visual impact; (iii) "flickering" reflections and/or shadowing from the wind turbine rotors. Landowner hereby accepts such nuisance and waives any right that Landowner may have to object to such nuisance (and Landowner releases Atlantic from any claims Landowner may have with respect to any such nuisance). Atlantic will exercise reasonable efforts to keep such nuisances, if any, to a minimum.

10.9 **Landowner Consent.** For the purposes of this Agreement, Landowner's Consent, shall mean that Landowner shall, within thirty(30) days after Landowner's receipt of Atlantic's written request for such Consent, either (a) consent to Atlantic's request; or (b) give notice of its reasons for not consenting to Atlantic's request (which may include, without limitation, any reasons which may be adverse in any degree to the Primary Uses of the Property and Landowner's purpose of water generation or may be in violation of the terms and conditions of the Term Conservation Easement), then Landowner and Atlantic shall promptly meet to discuss Landowner's comments and concerns, and Landowner and Atlantic shall use their respective

best efforts to address such comments and concerns in a reasonable manner. Under no circumstances shall Landowner's Consent be unreasonably withheld, conditioned or delayed unless it effects the Primary Uses or the Term Conservation Easement terms and provisions, in which case, Landlord may deny such Consent for such reason. In the event a resolution is not reached, Atlantic and Landowner shall be entitled to pursue all of their respective rights and remedies contained herein. In the event Landowner fails to either consent to Atlantic's request or give Atlantic notice of its reasons for not consenting to Atlantic's request within that ten (10) day period, Landowner shall conclusively be deemed to have given its Consent.

11. Assignment; Subleases; Cure.

11.1 Assignees. Atlantic and any Assignee (as defined below) shall have the right, at any time and without the Consent of Landowner but with written notice to Landowner, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more Assignees (as defined below); or sell, convey, lease, assign, finance, mortgage, encumber or transfer to one or more Assignees or Lenders (as defined in Section 12.1), or any right or interest in this Agreement, or any or all right or interest of Atlantic in the Property or in any or all of the Windpower Facilities that Atlantic or any other party may now or hereafter install on the Permitted Area. An "Assignee" is any of the following: (i) any Lender that, through exercise of its rights under its mortgage, deed of trust or other security interest(s), or through a deed in lieu of foreclosure, or otherwise, succeeds to title to an interest in this Agreement; (ii) any one or more parties who succeed to the leasehold interest of Atlantic as an Assignee or to whom a sublease is conveyed by Atlantic or an Assignee; (iii) any purchaser or Atlantic of any of the Windpower Facilities, or any purchaser of all or substantially all of the membership interests in Atlantic, or of all or any portion of Atlantic's interest in this Agreement, or any investor in Atlantic or in any Windpower Facilities; or (iv) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Atlantic's or Atlantic's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. Any "Assignee" of Atlantic pursuant to the terms of this Agreement shall have all of the rights and benefits of Atlantic under this Agreement. Atlantic or an Assignee that has assigned an interest under this Agreement, or that has conveyed a sublease, will give notice of such assignment or sublease (including the address of the assignee or sublease thereof for notice purposes) to Landowner, provided that 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 such assignment or sublease until such notice shall have been given.

11.2 Lender/Assignee Obligations. No Lender or Assignee that does not directly hold an interest in this Agreement, and no Lender or Assignee that holds an interest in or lien on or security interest in this Agreement for security purposes, shall have any obligation or liability under this Agreement prior to the time that such Lender or Assignee directly holds an interest in this Agreement or, in the case of an interest, lien or security interest for security purposes, the holder thereof succeeds to absolute title to such interest, in this Agreement. Any such Lender or Assignee shall be liable to perform obligations under this Agreement only for and during the period such Lender or Assignee directly holds such interest or absolute title. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the Assignee.

11.3 Right to Cure Defaults/Notice of Defaults/Right to New Lease. To prevent termination of this Agreement or any partial interest therein, Atlantic or any Assignee shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of Atlantic or any Assignee hereunder or necessary to cure any default and to prevent the termination of this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged default by Atlantic or an Assignee, Landowner shall give written notice of the default to each Assignee who has registered their name and address with Landowner pursuant to Section 11.1 of this Agreement, concurrently with delivery of such notice to Atlantic, specifying in reasonable detail the alleged event of default and the required remedy. Each such Assignee shall have the same period after receipt of the default notice as is given to Atlantic to remedy or cause to be remedied the default plus, in each instance, (i) an additional fifteen (15) days after receipt of the default notice in the event of any monetary default (meaning any failure to pay when due any rent, real property taxes, insurance premiums or other monetary obligation under this Agreement); and (ii) an additional thirty (30) days after receipt of the default notice in the event of any other type of default, provided that such 30-day period shall be extended for the time reasonably required to complete such cure, provided the Assignee acts with reasonable and continuous diligence. For the avoidance of doubt, the foregoing notice requirements shall be deemed to run parallel with, and not in addition to the times periods set forth in Section 12.3 and 13.2 regarding termination of this Agreement. If Atlantic or an Assignee holds an interest in less than all the rights and interests under this Agreement, the Property or the Windpower Facilities, any default under this Agreement shall be deemed remedied, as pertaining to Atlantic's or such Assignee's partial interest, and Landowner shall not disturb such partial interest, if Atlantic or the Assignee shall have cured its pro rata portion of the default by paying the fees attributable to the Windpower Facilities in which Atlantic or the Assignee holds an interest. In the event of an uncured default by Atlantic, or by an Assignee of Atlantic's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, each Assignee of a partial interest in this Agreement shall have the right to demand, and the Landowner shall grant and enter into, a new lease, substantially identical to this Agreement, by which such Assignee of a partial interest in the rights and interests under this Agreement shall be entitled to, and Landowner shall not disturb, the continued use and enjoyment by such Assignee of the Property, or portion of the Property, for the full Term of this Agreement, as set forth in Sections 1 and 2 of this Agreement, or such shorter term as said Assignee may otherwise be entitled pursuant to its assignment or sublease. Further, in the event of an uncured default by Atlantic or by an Assignee of Atlantic's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, Landowner hereby agrees that, if and for so long as (i) any Assignee who is a sublessee of Atlantic or of an Assignee is not in default under the sublease (beyond any period given Atlantic or an Assignee under this Agreement to cure such default), (ii) such Assignee attorns to the Landowner, and (iii) the terms and conditions of such Assignee's sublease do not contravene the terms and conditions of this Agreement, Landowner shall (a) recognize such sublease, (b) not diminish nor interfere with such Assignee's possession of the portion of the Property covered by the sublease or with any term extension or renewal rights in the sublease, and (c) not disturb such Assignee's occupancy of such portion of the Property for the full term of this Agreement or such shorter term to which such Assignee may be entitled under the sublease. An Assignee, which is, or in the future

becomes, a sublessee of Atlantic, or a sublessee of an Assignee, is an intended third party beneficiary of the provisions of this Section 11.3 and entitled to enforce this provision.

11.4 **Acquisition of Interest.** The acquisition of all or any portion of Atlantic's or an Assignee's interest in the Property or the Windpower Facilities or this Agreement by a Lender, another Assignee or any other person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof or any conveyance in lieu thereof, shall not require the consent of Landowner or constitute a breach of any provision or a default under this Agreement, and upon such acquisition or conveyance Landowner shall recognize the Lender, the Assignee, or such other party, as Atlantic's or such other Assignee's proper successor, provided however, that (i) at the time of acquisition Assignee is not in default of this Agreement, and (ii) the acquiring entity provides written notice to same within fifteen (15) days of the acquisition .

12. **Lender Protection.**

12.1 **Atlantic's Right to Pledge.** Atlantic may, at any time and without the consent of Landowner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "Lender") one or more mortgages, trust deeds or similar security interests in all or any part of its interests under this Agreement and/or its interest in the Windpower Facilities (a "Mortgage"). In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 12.1, upon delivery to Landowner of notice of its name and address.

12.2 **Consent to Modification, Termination or Surrender.** So long as any Mortgage remains in effect, this Agreement shall not be modified, and Landowner shall not accept a surrender of any of the Permitted Area or a termination or release of this Agreement prior to expiration of all periods described in Section 13.2, without the prior written consent of all Lenders who provided notice to Landowner.

12.3 **Notice of Default; Opportunity to Cure.** As a precondition to exercising any rights or remedies for any alleged default under this Agreement, Landowner shall give written notice of the default to each Lender from whom Landowner as received notice from Section 12.1 above, concurrently with delivery of such notice to Atlantic or any Assignee, as applicable, specifying in reasonable detail the alleged default and the required remedy. In such event, the following provisions shall apply:

(a) The Lender shall have the same period after receipt of the default notice as is given to Atlantic or Assignee to remedy or cause to be remedied the default plus, in each instance, (i) an additional fifteen (15) days after receipt of the default notice in the event of any monetary default (meaning any failure to pay when due any rent, real property taxes, insurance premiums or other monetary obligation under this Agreement); and (ii) an additional thirty (30) days after receipt of the default notice in the event of any other type of default, provided that such thirty (30) day period shall be extended for the time reasonably required to complete such cure, including the time required for the Lender to perfect its right to cure such default by obtaining possession of the Permitted Area (including possession by a receiver) or by instituting and completing foreclosure proceedings (including, if the Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Atlantic or any defaulting Assignee from commencing or prosecuting the proceedings described above, any such additional time

necessitated by such prohibition), provided the Lender acts with reasonable and continuous diligence. For the avoidance of doubt, the foregoing notice requirements shall be deemed to run parallel with, and not in addition to the times periods set forth in Sections 11.3 and 13.2 regarding termination of this Agreement. Lenders shall have the absolute right to do any act or thing required to be performed by Atlantic or any Assignee under this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any rights under this Agreement as if done by Atlantic or the Assignee itself.

(b) During any period of possession of the Permitted Area by a Lender (or a receiver requested by such Lender) and/or during the pendency of any foreclosure proceedings instituted by a Lender, the Lender shall pay or cause to be paid the rent and all other monetary charges payable by Atlantic or any Assignee which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period and which shall be paid by Lender within thirty (30) days of taking possession. Following acquisition of Atlantic's or any Assignee's leasehold estate by the Lender or its assignee or designee as a result of foreclosure or assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Lender or other party acquiring title to the leasehold estate shall, as promptly as reasonably possible, commence the cure of all other non-monetary defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Lender or other party acquiring title to the leasehold estate shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("**Non-Curable Defaults**"). Non-Curable Defaults shall be deemed waived by Landowner upon completion of foreclosure proceedings or acquisition of Atlantic's or Assignee's interest in this Agreement by such party. For the avoidance of doubt, Non-Curable Defaults shall refer only to those obligations to provide materials under this Agreement which cannot be cured in a timely manner solely as a result of the passage of time.

(c) Upon the sale or other transfer of the leasehold interests acquired pursuant to foreclosure or assignment in lieu of foreclosure, the Lender or other acquiring party shall have no further duties or obligations hereunder, provided however, that any new party acquiring each Lender's rights under this Agreement shall attorn to Landowner.

(d) Neither the bankruptcy nor the insolvency of Atlantic or any Assignee shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by such Atlantic or Assignee are paid by the Lender in accordance with the terms of this Agreement.

(e) Nothing herein shall be construed to extend this Agreement beyond periods contemplated in Section 13 or to require a Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and the Lender discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

12.4 New Lease to Lender. If this Agreement terminates as a result of any default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, or if this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, Landowner shall give prompt written notice to the Lenders. Landowner shall, upon written request of the first priority Lender that is made within

ninety (90) days after notice to such Lender, enter into a new lease of the Property with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease (i) shall be effective as of the date of the termination or rejection of this Agreement (as applicable), (ii) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination, (iii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Atlantic or any Assignee prior to rejection or termination of this Agreement), (iv) shall include that portion of the Permitted Area in which Atlantic or such Assignee had an interest on the date of rejection or termination, and (v) shall be subject to all existing subleases entered into pursuant to this Agreement, provided that the subtenants are not then in default. Upon the execution of any such new lease, the Lender shall (a) pay Landowner any amounts which are due Landowner from Atlantic or any Assignee, (b) pay Landowner any and all amounts which would have been due under this Agreement (had this Agreement not been terminated or rejected) from the date of termination or rejection to the date of the new lease, (c) perform all other obligations of Atlantic and/or Assignee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (d) agree in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Atlantic or any Assignee that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations which constitute Non-Curable Defaults. Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landowner. The provisions of this Section 12.4 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new lease, such Lender may use and enjoy said Property without hindrance by Landowner or any person claiming by, through or under Landowner, provided that all of the conditions for a new lease as set forth in this Section are complied with.

12.5 Subleases. During any periods following termination of this Agreement in which any Lender is entitled to enter into a new lease of the Property pursuant to Section 12.4, Landowner will not terminate any sublease or the rights of any subAtlantic thereunder unless the subAtlantic is in default under such sublease. During such period, if the Landowner receives any excess rent and other payments due from subAtlantics, including any subAtlantics whose attornment Landowner has agreed to accept, Landowner will do so as agent of such Lender and shall deposit such rents and payments in a separate and segregated account in trust subject to a right of setoff against amounts due to Landowner. Upon the execution and delivery of a new lease with Lender or Lender's designee, Landowner shall account to its counter-party under such new lease for the rent and other payments made under such subleases, and the counter-party shall then assign the rent and other payments due under such subleases to any Lenders under this Agreement. The collection of rent by Landowner acting as an agent pursuant to this Section 12.5 shall not be deemed an acceptance by Landowner for its own account of the attornment of any subAtlantic unless Landowner shall have agreed in writing with such subAtlantic that its subtenancy shall be continued following the expiration of any period during which a Lender may be granted a new lease, in which case such attornment shall take place upon the expiration of such period but not before. Landowner shall not be under any obligation to enforce any subleases. 12.4

12.6 No Waiver. No payment made to Landowner by any Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or a waiver of the

Lender's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

12.6 **No Merger.** There shall be no merger of this Agreement, or of the leasehold estate or other interests created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or any such interests may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property, and all persons (including Lenders) having an interest in or under this Agreement and any portion of the fee estate shall join in a written instrument effecting such merger and shall duly record the same.

12.7 **Further Amendments; Estoppel Certificates.** Upon request, Landowner shall execute such estoppel certificates (certifying as to such matters as Atlantic or any Lender may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case) and other additional instruments reasonably requested by Atlantic or any Lender to evidence the status of this Agreement and the rights of Atlantic and/or Lender (as applicable) under this Agreement.

13. **Default and Termination**

13.1 **Atlantic's Right to Terminate.** Atlantic, in its sole and absolute discretion, shall have the right to terminate this Agreement, and Assignees shall have the right to terminate their respective interests in or under this Agreement, as to all or any part of the Permitted Area at any time, effective upon thirty (30) days' written notice to Landowner. If such termination is as to only part of the Permitted Area, this Agreement shall remain in effect as to the remainder of the Permitted Area, and Atlantic will be obligated to satisfy the obligations set forth in Section 13.3 for that portion of the Permitted Area with respect to which Atlantic has exercised such termination right.

13.2 **Landowner's Right to Terminate.** Landowner shall have the right to terminate this Agreement only if (i) a material default in the performance of Atlantic's obligations under this Agreement shall have occurred and remains uncured, (ii) Landowner simultaneously notifies Atlantic and all Lenders and Assignees in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (iii) the default shall not have been remedied within sixty (60) days after Atlantic (or within one hundred twenty (120) days in the case of all Lenders and Assignees) receives the written notice, or, if such remedy will take longer than sixty (60) days for Atlantic (or one hundred twenty (120) days for any Lender or any Assignee), Atlantic (or Lender or Assignee on Atlantic's behalf) has not begun diligently to undertake to cure within the relevant time period and thereafter diligently prosecutes the cure to completion. For the avoidance of doubt, the foregoing notice requirements shall be deemed to run parallel with, and not in addition to the times periods set forth in Sections 11.3 and 12.3 regarding termination of this Agreement Subject to the foregoing, Landowner shall have the right to terminate this Agreement if Atlantic fails to meet any of the development milestones set forth on Exhibit D hereto, except to the extent such failure is the result of an act or omission by Landowner or a third party not operating under Atlantic's direction or control.

13.3 **Effect of Termination.** Within thirty (30) days of the termination of this Agreement, whether as to the entire Permitted Area or only as to part, Atlantic shall execute and record a release to Landowner of all of Atlantic's right, title and interest in and to the Permitted Area, or

to that part thereof as to which this Agreement has been terminated, and (ii) as soon as practicable thereafter, remove all above-ground Windpower Facilities and any Atlantic installed below grade improvements to a level three (3) feet below grade from the Permitted Area or portion as to which this Agreement was terminated, exclusive of any continuing right established pursuant to this Agreement to survive the term of this Agreement, and restore the soil surface to a condition reasonably similar to its original condition. If Atlantic fails to execute and record a release within thirty (30) days of termination, Atlantic hereby irrevocably appoints Landowner as attorney-in-fact to execute on Atlantic's behalf such termination and record same. If Atlantic fails to remove such Windpower Facilities within eighteen (18) months after termination of this Agreement, Landowner may do so, in which case Atlantic shall reimburse Landowner for reasonable and actual costs of removal incurred by Landowner, less any salvage value received by Landowner, within thirty (30) days after receipt of an invoice from Landowner.

13.4 Removal Bond. Within five (5) years of the Commercial Operations Date, Atlantic shall obtain and deliver to Landowner a letter of credit, or similar financial assurance securing performance of Atlantic's obligation to remove the Windpower Facilities located on the Property (the "Removal Bond"). The Removal Bond shall be equal to the estimated amount, if any, by which the cost of removing the Windpower Facilities exceeds the salvage value of such Windpower Facilities (the "Net Removal Costs"). To the extent that the Net Removal Costs are zero (or negative), a Removal Bond shall not be required on the part of the Atlantic, provided, however that Atlantic shall re-evaluate the need for a Removal Bond at least every five (5) years after the fifth (5th) anniversary of the Commercial Operations Date; subject to the qualified independent appraiser requirement set forth below. Notwithstanding the foregoing, Atlantic shall not be required to deliver such Removal Bond to Landowner if Atlantic has delivered such financial assurance in connection with Atlantic's Wind Turbines to a governmental authority for the purpose of removing the Windpower Facilities from Landowner's Property. The Net Removal Costs for the Property (if the Removal Bond or similar financial assurance is posted solely with Landowner) shall be determined by an independent qualified appraiser, paid for by Atlantic and approved by Landowner, such approval to not be unreasonably withheld. If any requirement or right provided in this Section contradicts or opposes any state or local laws, such state or local laws shall take precedence over this provision and such requirement or right shall be invalidated.

13.5 Cumulative Remedies; Notice of Default. Subject to the other terms and conditions of this Agreement, each party shall have all rights and remedies available at law and in equity for any breach of this Agreement by the other party. For the avoidance of doubt, any period of notice as required by Sections 11 or 12 of this Agreement shall be deemed to run concurrently with the period provided in this Section 13.

14. Miscellaneous.

14.1 Force Majeure. If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood, violent storms, fires, damage or destruction by lightning and other natural causes; or other casualty or accident; strikes or labor

disputes; war, terrorism, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, boycotts, strikes (other than strikes of employees of a party hereto) or any other act or condition beyond the reasonable control of a party hereto.

14.2 Confidentiality. Atlantic acknowledges that Landowner is a Municipal Authority created and operating under the Pennsylvania Municipal Authorities Act (53 Pa. C.S.A. 301 et seq.) and as a result, Landowner is required to make its records available for public inspection as required by the Pennsylvania Right-to-Know-Law except to the extent those records are exempt from public inspection as allowed by that law. For the avoidance of doubt, Atlantic and Landowner acknowledge that the payments to be made under this Agreement by Atlantic constitute a trade secret of Atlantic as defined by Section 102 of the Pennsylvania Right-to-Know-Law.

(a) In the event Landowner (whether by modification of Landowner's status of as a result of an assignment or transfer of Landowner's interest in the Property and/or this Agreement) is no longer a Municipal Authority, then as of that date and for the remainder of the Term of this Agreement and thereafter, Landowner shall maintain in the strictest confidence, for the benefit of Atlantic and any Assignee, all information pertaining to the financial terms of or payments under this Agreement, Atlantic's site or product design, methods of operation, methods of construction, power production or availability of the Windpower Facilities, and the like, whether disclosed by Atlantic or any Assignee, or discovered by Landowner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landowner or its employees or agents; or (ii) was already known to Landowner at the time of disclosure and which Landowner is free to use or disclose without breach of any obligation to any person or entity. Landowner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Atlantic or any Assignee. Notwithstanding the foregoing, Landowner may disclose such information to (a) Landowner's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Landowner regarding this Agreement or in connection with the proposed sale or refinance of the Property; (b) any prospective purchaser of the Property who has made a written offer to purchase or otherwise acquire the Property that Landowner desires to accept; or (c) pursuant to lawful process, subpoena or court order requiring such disclosure, provided that Landowner (1), at a reasonable time prior to such disclosure, notifies Atlantic of such anticipated disclosure, and (2) in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Atlantic.

(b) Landowner shall get Atlantic's written consent before issuing a press release or having any contact with or responding to the news media with any operational, sensitive or confidential information with respect to this Agreement, the wind power project to be constructed on the Permitted Area by Atlantic, or any other existing wind power project owned or operated by Atlantic.

(c) The provisions of this Section 14.2 shall survive the termination or expiration of this Agreement.

14.3 **Successors and Assigns.** The Agreement shall burden the Property and shall run with the land. This Agreement shall inure to the benefit of and be binding upon Landowner and Atlantic and, to the extent provided in Section 11 hereof, any Assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to "Atlantic" in this Agreement shall be deemed to include Assignees which hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest.

14.4 **Memorandum of Lease.** Landowner and Atlantic shall execute in recordable form (and Atlantic shall then record) a memorandum of the rights granted to Atlantic pursuant to this Agreement reasonably satisfactory in form and substance to Atlantic and Landowner. Landowner hereby consents to the recordation of the interest of an Assignee in the Property. Landowner and Atlantic shall enter into an escrow agreement for a memorandum of termination of the rights granted pursuant to this Agreement, to be held by a third party escrow provider pending the termination of this Agreement. The escrow agreement shall be executed within thirty (30) days of the Effective Date of this Agreement.

14.5 **Notices.** All notices or other communications required or permitted by this Agreement, including payments to Landowner, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Any notice shall be addressed as follows:

If to Landowner:

Bethlehem Authority
City Hall
10 East Church Street
Bethlehem, PA 18018
Attn: Executive Director

Telephone: (610) 865-0709

If to Atlantic:

Atlantic Wind, LLC
201 King of Prussia Road, Suite 500
Radnor PA 19087

Telephone: 610-254-9800

Facsimile: 484-654-1069

With a copy to:

Iberdrola Renewables, Inc.
Attn: Contracts Administration
1125 NW Couch, Suite 700

Portland, Oregon 97209

If to any Assignee

At the address indicated in the notice to Landowner provided under Section 11 hereof

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph.

14.6 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between Landowner and Atlantic respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, or any other matter referenced herein not expressly set forth in this Agreement, or a subsequent writing signed by both parties, is null and void. This Agreement shall not be modified or amended except in a writing signed by both parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either party.

14.7 Legal Matters.

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the United States District Court for the Eastern District of Pennsylvania

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER LANDOWNER NOR ATLANTIC SHALL BE ENTITLED TO, AND EACH OF LANDOWNER AND ATLANTIC HEREBY WAIVE, ANY AND ALL RIGHTS TO RECOVER (FOR THEMSELVES AND FOR ANY PERSON CLAIMING BY OR THROUGH LANDOWNER OR ATLANTIC) ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, INCLUDING LOST PROFITS OR LOSS OF BUSINESS, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT, OR THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, EVEN IF THE PARTIES HAVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGE(S). EACH OF LANDOWNER AND ATLANTIC KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF LANDOWNER AND ATLANTIC WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

14.8 **Municipal Authorities Act; Partial Invalidity.** The parties acknowledge that as of the Effective Date, Landlord is a Municipal Authority under the provisions of the Pennsylvania Municipal Authorities Act (53 Pa. C.S.A.. 301 et seq.) and that Landlord is required to operate in conformity with the requirements of that Act. Should any provision of this Agreement be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable whether as a result of the Municipal Authorities Act or otherwise, this Agreement shall be modified to the minimum extent required to conform with such decision and the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement be longer than the longest period permitted by applicable law.

14.9 **Condemnation.** As used herein, the term "Taking" means the taking or damaging of the Property, the Windpower Facilities, the rights granted to Atlantic pursuant to this Agreement, the Easements or any part thereof (including severance damage) by eminent domain, by condemnation or for any public or quasi-public use. A party who receives any notice of a Taking shall promptly give the other party a copy of the notice, and each party shall provide to the other party copies of all subsequent notices or information received with respect to such Taking. If a Taking occurs, then the compensation payable therefor, whether pursuant to a judgment, by agreement or otherwise, including any damages and interest, shall be distributed proportionally to Atlantic and Landowner based on the values of their respective interests and rights in this Agreement, the Permitted Area and the use thereof, taking into account (a) with respect to Atlantic (i) the Taking of or injury to the rights granted to Atlantic pursuant to this Agreement, to the Easements or to the Windpower Facilities, (ii) any cost or loss that Atlantic may sustain in the removal and/or relocation of the Windpower Facilities, or Atlantic's chattels and fixtures and (iii) Atlantic's anticipated or lost profits, damages because of deterrent to Atlantic's business and any special damages of Atlantic; and (b) with respect to Landowner, the Taking of the fee title and cost to remove chattels and fixtures.

14.10 **Tax Credits.** If under applicable law the holder of a leasehold interest in the nature of that held by Atlantic or any Assignee under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Atlantic's option, Landowner and Atlantic agrees to act reasonably and in good faith to amend this Agreement or replace it with a different instrument so as to convert Atlantic's interest in the Permitted Area to a substantially similar interest that makes Atlantic eligible for such tax credit, benefit or incentive.

14.11 **No Partnership.** Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Agreement.

14.12 **Sanitary Facilities.** Atlantic shall provide sanitary facilities for all its workers and employees at the Property. All permits required by the Law which regulate these facilities will be procured by Atlantic. Atlantic shall be responsible for removal from the Property all waste generated by Atlantic's conduct and development on the Property at regular intervals through the Term.

14.13 **Utilities.** Atlantic agrees to pay all utility costs incurred on the Property by reason of the Atlantic's operations.

14.14 **Third-Party Access.** Both parties shall have the power and authority to control and prevent access by third parties to the Property or Permitted Areas, as applicable, if such third parties have not been authorized by either Landowner or Atlantic. Either party may invite third parties upon the Property or Permitted Areas, as applicable, without permission from the other, so long as such third party's use of the Property is fully monitored by Landowner or Atlantic, as the case may be, and does not create any risk of interference with the Windpower Facilities or Landowner's Primary Uses or the Term Conservation Easement. Atlantic shall invite third parties only for purposes relevant to this Agreement. Except the extent required (i) as a result of any emergency; or (ii) as required by any regulatory or governmental official, Atlantic shall communicate with Landowner not less than forty-eight (48) hours prior to entering onto the Property.

14.15 **Overhangs and Adjacent Property.** Landowner understands that, as the boundary between the Permitted Area and adjacent property might extend at or near to the topographic crest of the geologic feature upon which the Permitted Area is located, and that optimal siting of wind turbines requires their placement at or near to such topographic crest such that the blades of a turbine located on the Permitted Area might overhang such adjacent property; similarly, the blades of a turbine located on an adjacent property might overhang the Permitted Area. Landowner hereby agrees to such overhang, if any, with respect to the Permitted Area by blades of wind turbine or turbines located on adjacent property. Except to the extent it is inconsistent with Landowner's obligations pursuant to the Pennsylvania Municipal Authorities Act (53 Pa. C.S.A. 301 et seq.), Landowner further agrees, should zoning regulations be proposed that might prevent such overhangs or institute property-line set-back requirements more restrictive in nature than those indicated on the Windpower Facilities Layout Plan, to cooperate with Atlantic in obtaining exemption from such regulations for any wind turbines associated with the Project and sited according to the Windpower Facilities Layout Plan.

14.16 **Counterparts.** This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

14.17 **Time of the Essence.** Time is of the essence with respect to Landowner's and Atlantic's rights and obligations under this Agreement.

14.18 **Construction.** The words "include" and "including" shall be construed for purposes of this Agreement as being followed by the phrase "without limitation."

IN WITNESS WHEREOF, Landowner and Atlantic have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

Atlantic:

Atlantic Wind, LLC An Oregon Limited Liability Company

Printed Name: _____

Title: _____

Printed Name: _____

Title: _____

LANDOWNER:

Printed Name: _____

Printed Name: _____

Printed Name: _____

STATE OF

:
:
:
:

COUNTY OF

On this, the __ day of _____, _____, before me, the undersigned officer, personally appeared _____; who acknowledged himself/herself to be the _____ of _____, a Delaware corporation, and that he/she, as such Officer, being authorized to do so, executed the foregoing instrument for the purposes contained therein by signing the name of the corporation by himself/herself as _____.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

STATE OF :
 :
COUNTY OF :

On this, the __ day of _____, _____, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the Authorized Representative of Atlantic Wind, LLC An Oregon Limited Liability Company, and that he, as such Officer, being authorized to do so, executed the foregoing instrument for the purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

STATE OF :
 :
COUNTY OF :

On this, the __ day of _____, _____, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the Authorized Representative of Atlantic Wind, LLC An Oregon Limited Liability Company, and that he, as such Officer, being authorized to do so, executed the foregoing instrument for the purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

“EXHIBIT A”

Description of Property

All that certain tract of land situated in the Township of Penns Forest, Carbon County and Polk Township, Monroe County in the Commonwealth of Pennsylvania designated:

Monroe County

MAP ID	PIN	Deed	GIS
		Acreage	Acreage
1	1362190164000	0.68	0.70
2	13621901054827	0.55	0.57
3	13621901054735	0.55	0.56
4	13621900140920	22.54	22.08
5	13620900954279	118.47	108.24
6	13620900924845	120.00	141.93
7	13621900003603	19.00	20.11
8	13621800091510	35.28	34.71
9	13620800765765	1300.00	2148.58
10	13631000106064	33.00	18.13
		<u>1650.07</u>	<u>2495.61</u>

Carbon County

MAP ID	PIN	Parcel ID	GIS
			Acreage
11	5279479755	12-51-A5	648
12	5370897058	15-51-A6	536.81
		23-51-	
13	5360601371	A1INLIEU	1014.71
14	5259984701	23-51-A3	29.33
15	5269356237	24-51-A3,4	666.82
16	5269843769	24-51-A1	1061.64
		13-51-	
17	5279013304	A1INLIEU	317.74
18		WATER	265.24
19	5278302412	14-56-A1	1131.49
20	5277962504	15-56-A31	9.19
21	5267753322	26-56-A35	918.07
22	5267752233	26-56-A35	437.19
23	5267753322	26-56-A35	1.41
24	5267898650	25-56-B1	309.83
25	5267791856	25-56-B2	69.25

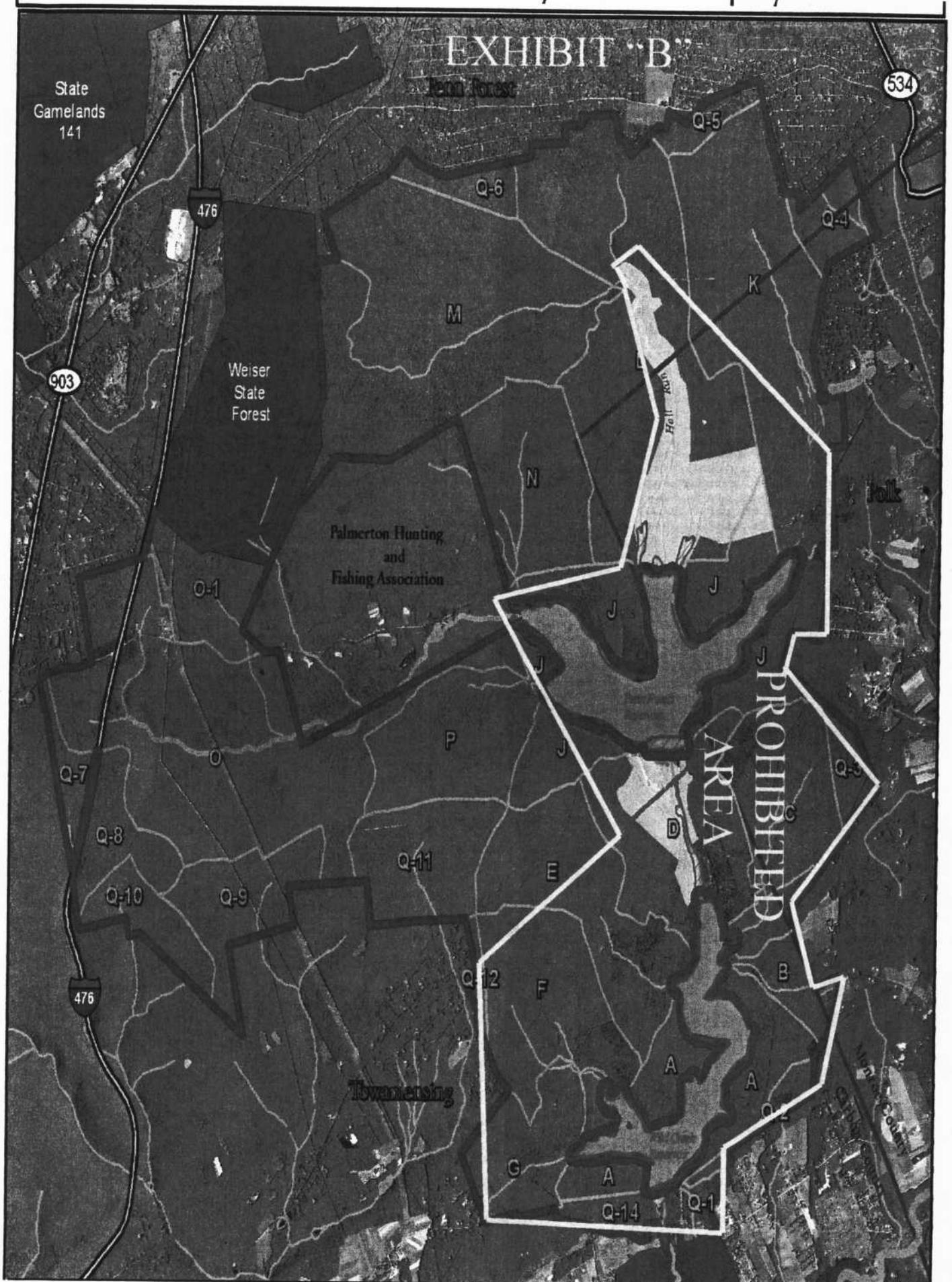
26	5268602355	25-51-A4 25-51-	30.47
27	5268418912	A3INLIEU	503.51
28	5268449125	25-51-A2	425.4
29	5268652869	25-51-A1 25-51-	146.81
30	5268251620	A5INLIEU	52.56
31		38-51-A1.01	204.71
32		38-51-A1.02 38-51-	39.76
33	5258416613	A4INLIEU	708.66
34	5258025243	52-51-A3	149.83
35	5248955806	51-51-A8.01	154.88
36	5258097691	37/51/A6INLIEU	381.5
37	5258750282	37-51-A1	376.26
38	5258475479	37-51-A7.04	14.21
39	5258578547	37/51/A4	287.6
40	5258770445	37/51/A3 37-51-	30.49
41	5258777268	A2INLIEU	25.39
42	5259402080	37-51-A7	244.11
43	5259920832	37-51-A9	54.25
44	5276772476	15-56-A11	56.62
			<u>11303.74</u>

Total Acres 13799.35

“EXHIBIT B”

Permitted Areas

EXHIBIT "B"



State
Gamelands
141

534

476

903

Weiser
State
Forest

Palmerton Hunting
and
Fishing Association

PROHIBITED
AREA

476

Towamensing

Blaine
County

“EXHIBIT C”

Windpower Facilities Layout Plan
(to be provided by Atlantic)

**Exhibit D
Development Milestones**

Task	2012	2013	2014	2015	2016	2017	2018	2019	2020
Execute Lease with Authority									
City Council Meetings and Approvals									
Install MET Towers									
File PJM Interconnection Application (F/S)									
Begin PGC wildlife studies									
Apply for Local Permits									
File FAA Determination requests									