

Chapter 26

Wind Turbine Generator

Part 1

Wind Turbine Generator

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Exhibit "26-A"

Development Agreement and Permit

Part 1**Wind Turbine Generator****§26-101. Findings.**

The Clifton Township Supervisors make the following findings with respect to the construction, operation and maintenance of wind turbine generators:

A. The construction, maintenance and operation of wind turbine generators which fail to comply with all criteria and regulations set forth in the attached Exhibit "26-A," a copy of which is attached hereto and incorporated herein by reference, present tangible and immediate dangers to the public and neighboring landowners in the nature of ejection of projectiles (ice or injured birds), continuous generation of noise during night time hours and glare from sunlight continually flashing off of rotating blades.

B. The construction, maintenance and operation of wind turbine generators presents a danger following the useful life of the wind turbine generators from deteriorating structures if provisions for decommissioning are not made as required by Exhibit "26-A."

C. The construction, maintenance and operation of wind turbine generators, which fail to comply with all criteria and regulations set forth in the attached Exhibit "26-A," unreasonably interferes with the reasonable use, comfort and enjoyment of property in the vicinity and/or endangers the health, safety and/or welfare of the occupants of the property in the vicinity and prohibits or denies the property owners and taxpayers the legitimate enjoyment of their reasonable rights and use of their property and rights.

D. The construction, maintenance and operation of wind turbine generators, which fail to comply with all criteria and regulations set forth in the attached Exhibit "26-A" including, but not limited to, the repetitive noise and glare, visual impacts, flickering reflections, and/or shadows, constitute an unreasonable use of property which causes injury, damage, harm, inconvenience, annoyance, and discomfort to the property owners, and taxpayers in the legitimate enjoyment of their reasonable rights and use of their property and rights, and constitute a danger to migratory birds and the watershed.

(Ord. 4-2007, 9/13/2007)

§26-102. Establishment.

The Clifton Township Supervisors hereby declare the construction and maintenance of wind turbine generators to constitute a nuisance and offensive business, if not constructed and maintained in accordance with the criteria and regulations set forth in Exhibit "26-A," a copy of which is attached hereto and incorporated herein by reference, subject to prohibition under §1529 of the Pennsylvania Second Class Township Code, 53 P.S. §66529, and provide for their regulation and permitting under the conditions set forth below in order to avoid the maintenance of nuisance or offensive businesses within the geographic limits of Clifton Township.

(Ord. 4-2007, 9/13/2007)

§26-103. Definitions.

Applicant - the person or entity filing an application under this Part.

Facility owner - the entity or entities having an equity interest in the wind energy facility, including their respective successors and assigns.

Operator - the entity responsible for the day-to-day operation and maintenance of the wind energy facility.

Participating landowner - any landowner on whose property all or a portion of a wind energy facility is located pursuant to an agreement with the facility owner or operator.

Property line - the boundary of the property or lot upon which the wind turbine generator is to be located.

Wind energy facility - a facility where one or more wind turbine generators and/or other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities are located and are used for the generation of electricity which is used on-site for commercial purposes or which is sold on the open market. A wind turbine accessory to a principal structure which is sized and intended to be used to generate electricity primarily for the principal structure to which it is accessory shall not be considered a wind energy facility but said accessory structure shall meet all other requirements of the Township Zoning Ordinance [Chapter 27].

Wind turbine generator - a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any.

(Ord. 4-2007, 9/13/2007)

§26-104. Permits Required.

1. No wind turbine generators shall be constructed, operated or maintained within Clifton Township without a permit for the same and only in accord with the Township Zoning Ordinance [Chapter 27]. Application for permit shall be made on forms provided by the Township. A separate application shall be filed for each structure.

2. This Part shall not apply to a wind turbine accessory to a principal structure which is used to generate electricity primarily for the principal structure to which it is an accessory.

(Ord. 4-2007, 9/13/2007)

§26-105. Permit Application Fee and Annual Inspection Fees.

1. A permit fee in an amount as established from time to time by resolution of the Board of Supervisors shall be paid at the time the application is submitted. Fees shall not be returned where an application has been denied. [Ord. 3-2008]

2. Wind turbine generators shall also be subject to the annual inspection fees in Special Condition #12 in "Exhibit 26-A."

3. The Township Supervisors may modify such fees by resolution from time to time in keeping with the Township's experience with the cost of administering the

provisions of this Part.

(*Ord. 4-2007, 9/13/2007; as amended by Ord. 3-2008, 11/13/2008*)

§26-106. Duration of Permit.

A permit issued shall be valid for a period of 30 years. Any application for renewal shall satisfy all criteria and regulations set forth in Exhibit “26-A.”

(*Ord. 4-2007, 9/13/2007*)

§26-107. Notice of Application.

Unless the wind turbine generator is part of a wind energy facility approved under the terms of the Township Zoning Ordinance [Chapter 27], the applicant must provide written notice of the application to all property owners and tenants occupying property within 2,000 feet of the boundaries of the property upon which the wind turbine generators will be located. Proof of service of such notice by certified mail or notarized affidavit of hand delivery must be provided with the application.

(*Ord. 4-2007, 9/13/2007*)

§26-108. Review of Applications.

The Township will review the application submitted, and reject the same if it is incomplete in any respect. In such case, the application fee shall be retained as compensation for the time spent in review. If the application is determined to be complete, the Township Manager shall place the matter on the agenda for action by the Supervisors at a public meeting.

(*Ord. 4-2007, 9/13/2007*)

§26-109. Issuance of Permits.

The Township Board of Supervisors, with the assistance of such consultants as they deem appropriate, shall make a determination at a public meeting as to whether the application submitted meets the criteria and regulations set forth in this Part and attached Exhibit “26-A,” and approve or reject the application based upon that determination in a public vote.

(*Ord. 4-2007, 9/13/2007*)

§26-110. Criteria and Regulations for Granting of Permit.

No permit for the construction, operation or maintenance of a wind turbine generator(s) shall be granted unless the applicant demonstrates compliance in its application with all criteria and regulations set forth in the attached Exhibit “26-A.” The criteria and regulations, set forth in Exhibit “26-A,” are incorporated herein by reference.

(*Ord. 4-2007, 9/13/2007*)

§26-111. Continued Compliance.

An applicant granted a permit under this Part shall be under a continuing obligation to meet the performance criteria and regulations set forth above. The Clifton Township Supervisors hereby declare that a wind turbine generator(s) which ceases to

meet the criteria and regulations listed above, after construction pursuant to a permit, shall constitute a nuisance, and following 30-day notice to the applicant at the address listed on the application for permit of the need for abatement, which remains unremedied or unappealed, the Township may act to remove the structure. Such notice shall be designated as a notice of violation, and shall be appealable as set forth below.

(Ord. 4-2007, 9/13/2007)

§26-112. No Further Land Development.

No property or block of property upon which a permit has been granted for the construction, maintenance or operation of a wind turbine generator(s) shall thereafter be eligible for the issuance of a Uniform Construction Code or zoning permit within the distance of 2,000 feet from a permitted wind turbine generator(s), unless the party requesting the permit shall have executed a written waiver or nondisturbance easement, covenant or consent, any of the aforementioned which has been recorded in the Office of the Recorder of Deeds of Lackawanna County, Pennsylvania.

(Ord. 4-2007, 9/13/2007)

§26-113. No Further Subdivision.

No property or lot upon which a wind turbine generator has been located shall be further subdivided where to do so would result in the setbacks required by this Part and/or as set forth in the permit not to be met.

(Ord. 4-2007, 9/13/2007)

§26-114. Penalty.

Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense. Notwithstanding any provision of this Part respecting enforcement, the Township reserves the right to enforce this Part through an action for injunction in the Court of Common Pleas of Lackawanna County pursuant to 53 P.S. §66601 (c.1) (4).

(Ord. 4-2007, 9/13/2007; as amended by Ord. 3-2008, 11/13/2008)

§26-115. Appeals.

Any person aggrieved by any determination or action by the Township shall have an opportunity to present and explain its position before the Township Board of Supervisors. Any and all decisions and/or determinations by the Township Board of Supervisors may be appealed to the Court of Common Pleas of Lackawanna County, and all appeals are de novo. Any such request to be heard by the Township Board of Supervisors shall be on forms provided by the Township and shall include a complete statement of the reasons the person is aggrieved together with a written statement of all evidence to be provided to the Township Board of Supervisors. The factual basis or summary of any expert testimony that will be presented at such meeting of the

Township Board of Supervisors must also be attached to the form provided by the Township. Failure to request the opportunity to present evidence to the Township Board of Supervisors under this Section within 30 days from the date of the determination or action by the Township will result in the waiver of any right to request an opportunity to present evidence to the Board of Supervisors and appeal to the Court of Common Pleas. The person requesting an opportunity to be heard under this Section must provide written notice of the same to all property owners and tenants occupying property within 2,000 feet of the boundaries of the property upon which the wind turbine generators will be located. Proof of service of such notice by certified mail or notarized affidavit of hand delivery must be provided with the form provided by the Township.

(Ord. 4-2007, 9/13/2007)

§26-116. Appeal Fee.

The appeal shall be accompanied by a fee in an amount as established from time to time by resolution of the Board of Supervisors. Appellant shall be responsible for all costs of the appeal in excess of the fee deposit. Failure to file a complete appeal together with all statements may result in dismissal of the appeal.

(Ord. 4-2007, 9/13/2007; as amended by Ord. 3-2008, 11/13/2008)

§26-117. Public Benefit.

It is declared that the adoption of this Part and the execution, acknowledgment and delivery of the documents are necessary for the protection, benefit and preservation of the health, safety and welfare of the general public of the Township.

(Ord. 4-2007, 9/13/2007)

EXHIBIT “26-A”

DEVELOPMENT AGREEMENT and PERMIT

This Development Agreement and Permit (“Agreement”), dated the _____ day of _____, 20__, is executed by Clifton Township, located in Lackawanna County, Commonwealth of Pennsylvania, and organized under the Second Class Township Code of the Pennsylvania Statutes (“Township”) and _____ (“Developer/Permittee”). The Township and Developer/Permittee are referred individually as “Party” and collectively as the “Parties.”

GENERAL CONDITIONS

1. Default

Any of the following occurrences shall constitute an event of default (“event of default”) under this agreement:

- A. If Developer/Permittee ceases to operate the project; provided, however, that Developer/Permittee shall not be deemed to have ceased operating the project if Developer/Permittee ceases operations for all or substantially all of the project for a period not exceeding 6 months;
- B. If a petition is filed by Developer/Permittee under any bankruptcy, reorganization, arrangement, insolvency, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 90 days after such filing;
- C. If Developer/Permittee fails to observe or perform any material condition or provision hereof for a period of 60 days after receiving written notice of such failure from the Township. Developer/Permittee shall commence corrective action within 30 days of notice, from any source, of any failure, and shall complete corrective action within 60 days of receipt of notice. Any period of time for which Developer/Permittee is unable to commence or complete corrective action as the result of any material third party withholding approval of such action shall not be counted against Developer/Permittee. If Developer/Permittee is unable to commence corrective action within 30 days of notice or is unable to complete corrective action within 60 days of receipt of notice for reasons other than delays caused by any material third party, Developer/Permittee shall request an extension from the Township, which shall not be unreasonably withheld and which may include reasonable conditions in order for Developer/Permittee to receive and maintain such extension;
- D. If Developer/Permittee continues to be in material breach of any statute, regulation, rule or permit administered by any Federal, State, County or local department, agency or commission within 60 days after receiving written notice of a violation by such Federal, State or County department, agency or commission Developer/Permittee shall notify the Township in writing of any alleged violation, order or enforcement proceeding within seven days of receipt. Developer/Permittee shall commence corrective action within 30 days of notice, from any source, of any breach and/or violation, and shall complete corrective action within 60 days of receipt of notice. Any period of time for which

Developer/Permittee is unable to commence or complete corrective action as the result of any material third party withholding approval of such action shall not be counted against Developer/Permittee. If Developer/Permittee is unable to commence corrective action within 30 days of notice or is unable to complete corrective action within 60 days of receipt of notice for reasons other than delays caused by any material third party, Developer/Permittee shall request an extension from the Township, which shall not be unreasonably withheld and which may include reasonable conditions in order for Developer/Permittee to receive and maintain such extension.

- E. Upon an event of default the Township may revoke this agreement if the following conditions are met:
- (1) The event of default remains uncured; and
 - (2) There is no force majeure event causing the event of default to continue; and
 - (3) The Township has provided Developer/Permittee an opportunity to present and explain its position before the Township Board to respond to the event of default, and any and all decisions and/or determinations by the Township Board may be appealed to the Court of Common Pleas of Lackawanna County, and all appeals are de novo; and
 - (4) All de novo appeals from the decision rendered by the Township Board under paragraph .3 above have been exhausted.

2. Nonassignability

The rights granted by this agreement are not assignable or transferable to any other person, firm or corporation, whether by operation of law or otherwise, without the express prior written consent of the Township, such consent not to be unreasonably withheld.

3. Township Support

The Township and/or its agent, commits to support Developer/Permittee in the issuance of all zoning, siting, and building permits required by local ordinance to build, construct, maintain, and operate the wind energy facility provided that Developer/Permittee files with the Township compliant applications for all necessary permits and pays all applicable fees, and is compliant with applicable law or the terms of this agreement. The Township and/or its agent will support Developer/Permittee in the issuance of any State, County or other governmental unit or agency permits and approvals to build, construct, maintain and operate the wind energy facility as long as it complies with the applicable law or the terms of this agreement.

4. Interpretation

In their interpretation and application, the provisions of this agreement shall be considered minimum requirements. This agreement shall not be deemed to have been drafted by any particular party so as to be interpreted strictly against such party.

5. Modification

No provision of this agreement may be modified except in writing by Developer/Permittee and the Township after public notice and hearing. Developer/Permittee is required to obtain separate authorizations for the erection and support of any buildings or improvements, highway access permits, and any other permit, license or authorization required by any County, State or Federal agency. Except as provided in paragraph .3 hereof, the Township makes no representations

regarding Developer/Permittee's right to obtain whatever additional authorizations or permits may be necessary for the operation of the wind energy facility and its wind turbine generators.

6. Force Majeure

Notwithstanding any other provision of this agreement, no party hereto shall be responsible in damages to the other for any failure to comply with this agreement, resulting from an act of God or riot, sabotage, public calamity, flood, strike, or other event beyond its reasonable control. The party having the responsibility for the facilities affected, however, shall proceed promptly to remedy the consequences of such event.

7. Severability

Each provision of this agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this agreement shall be prohibited or invalid under applicable law as determined by a court of competent jurisdiction, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of the agreement.

8. Waiver

No waiver by the parties or their officials shall be deemed to be made unless the same shall be in writing and be signed by a duly authorized Township or Developer/Permittee official. Each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Township or Developer/Permittee in any other respect at any other time.

9. Performance

Developer/Permittee agrees that the project shall be operated and maintained consistent with good utility practice for comparable facilities. For purposes of this agreement, "good utility practice" shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region. Under no circumstances shall the definition of "good utility practices" include any violation, regardless of degree, of any local, State, and/or Federal law, ordinance, rule, and/or regulation.

10. Indemnification

Developer/Permittee shall defend, indemnify and hold harmless the Township and its officials, employees and agents from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees (such liabilities together known as "liability") arising out of the selection, construction, operation and removal of the wind turbine generators and affiliated equipment including, without limitation, liability for property damage or personal injury (including death), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the Township's other indemnification rights available under law.

11. Township Legal Authority

The Township represents and warrants that (i) the execution, delivery and performance of this agreement is duly authorized; and (ii) it has all requisite legal authority to execute, deliver and perform this agreement; and (iii) no further approval or authorization or other action by any governmental authority is required for the execution, delivery and performance of the agreement.

12. Time is of the Essence

Time is of the essence in performance of the requirements of this agreement.

SPECIAL CONDITIONS

1. Term and Renewal.

This agreement, shall continue for 30 years (the “term”) from the date of approval of this agreement, unless earlier terminated as provided herein. The term shall automatically extend for one additional 10-year period (“additional term”), at the request of Developer/Permittee if no event of default permitting the Township to revoke this agreement under paragraph .1.E above exists at the time of such request.

The Township makes no representations to Developer/Permittee regarding the renewal of the agreement at the expiration of the additional term, and the Township reserves all rights available under law or in equity to any such extension. Developer/Permittee is hereby informed that it has no property right in the expectation of the renewal of this agreement except for the additional term.

2. Building Codes: Safety Standards.

To ensure the integrity of the wind turbine generators, Developer/Permittee shall maintain the wind turbine generators in compliance with good utility practice for wind turbine generators. If, upon inspection by the Township and/or any other regulatory entity with lawful jurisdiction over the wind energy facility, the Township or such entity provides written notice that any of the wind turbine generators fail to comply with good utility practice or constitutes a danger to persons or property, then Developer/Permittee shall immediately commence corrective action for any failure and/or danger, and shall complete corrective action to bring the noncompliant wind turbine generator(s) into compliance with such standards within 60 days of receipt of notice. If Developer/Permittee is unable to bring the noncompliant wind turbine generator(s) into compliance with such standards within 60 days of receipt of notice, Developer/Permittee shall request an extension from the Township, which shall not be unreasonably withheld and which may include reasonable conditions in order for Developer/Permittee to receive and maintain such extension. Failure to bring such noncompliant wind turbine generator(s) into compliance shall constitute grounds for the Township to request removal of said wind turbine generator(s) at Developer/Permittee's expense. The Township is authorized to file an action for injunctive relief in the Court of Common Pleas of Lackawanna County, Pennsylvania, to require Developer/Permittee to remove the noncompliant wind turbine generator(s).

3. Township Zoning Requirements.

All wind turbine generators and wind energy facilities shall comply with the requirements of the Clifton Township Zoning Ordinance [Chapter 27].

4. State and Federal Requirements.

The wind turbine generators shall meet current standards and regulations, if any, of any other agency of the State or Federal government with the authority to regulate

wind turbine generators. If such standards and regulations are changed, then Developer/Permittee shall bring the wind turbine generators into compliance with such applicable revised standards and regulations within 6 months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling State or Federal agency or approved by the Township. Failure to bring the wind turbine generators into compliance with such applicable revised standards and regulations shall constitute an event of default. The wind turbine generators shall be marked as required by the Federal Aviation Administration (FAA). A determination of no hazard for each wind turbine generator must be obtained from the FAA as a condition precedent for the installation of each turbine. Developer/Permittee shall comply with any and all future State and/or Federal regulations which are applicable to wind turbine generators or the wind energy facility, unless grandfathered.

5. Maintenance, Repair & Replacement.

Developer/Permittee shall repair, maintain and replace the wind turbine generators and associated equipment during the term of this agreement in a manner consistent with good utility practice as needed to keep the project in good repair and operating condition.

6. Insurance-

The applicant shall submit a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence covering the proposed wind energy facility, related structures and site, and an additional umbrella policy in the amount of \$10,000,000 covering the same items, both having the Township named as an additional insured party. This shall be maintained for the duration that the wind energy facility is erected in the Township, and both policies shall have clauses that give 30 days notice to the Township before coverage under the policies cease. All policies shall be written on an occurrence and not on a claims-made basis.

7. Use of Public Roads

- A. The Developer/Permittee shall identify all State and local public roads to be used within the Township to transport equipment and parts for construction, operation or maintenance of the wind energy facility.
- B. The Municipal Engineer or a qualified third party engineer hired by the Township and paid for by the Developer/Permittee, shall document road conditions prior to construction. The engineer shall document road conditions again 30 days after construction is complete or as weather permits,
- C. The Township may bond the road in compliance with State regulations.
- D. Any road damage caused by the Developer/Permittee or its contractors shall be promptly repaired at the Developer/Permittee's expense.
- E. The Developer/Permittee shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads.

8. Maintenance; Identification; Notice of Problems

- A. *Monitoring - Maintenance* - The wind energy facility will be monitored by the Township. There will be affixed to the security fence in an accessible, visible place the name and mailing address of the owner(s) and a 24-hour emergency telephone number. This information shall be kept current by the owner(s). The Township shall inform the owner(s) of any safety problems, maintenance problems or any matter relative to the wind energy facility. If the problem outlined in the letter from the Township is not resolved within 30 days of

receipt of notice, or within such other period as allowed in writing by the Township, this shall constitute a violation. An unresolved violation shall constitute grounds for revoking the conditional use permit.

B. *Inspection and O&M* - The operations and maintenance of the facility shall be conducted by qualified personnel who are regularly involved in the maintenance, inspection and/or erection of wind turbine and shall comply with the following schedule:

- (1) At least once every 36 months the individual wind turbine generators shall be inspected. At a minimum, this inspection shall be conducted in accord with the provisions of the development agreement and in accord with the wind turbine generator inspection check list provided by the operator. This is considered a major inspection.
- (2) At least once every 12 months a visual inspection from ground shall be conducted. This inspection shall include, but not be limited to, visual inspection of wind turbine generator foundations, structures, guys, and connections for evidence of settlement or lateral movement; soil erosion; condition of paint or galvanizing; rust or corrosion, loose or missing bolts, loose or corroded lightning protection connectors; wind turbine generator tower plumbness; significant variation in guy sags (i.e., guy tensions), and other material areas or matters relating to the structural integrity of the wind turbine generator. This is considered a minor inspection.
- (3) In addition to the regularly scheduled major and minor inspections set forth in sections (1) and (2) above, a minor inspection, at a minimum shall be conducted if a wind turbine generator or its appurtenances are noted at any time to be visibly damaged. Additionally a major inspection should be conducted if the visible damage to a wind turbine generator is significant or when, after conducting a minor inspection, significant questions remain about the structural integrity of a wind turbine generator.
- (4) The operator shall provide an annual letter to the Township certifying compliance with the inspection requirements.

9. Public Inquiries and Complaints

The facility owner and operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project, and the facility owner and operator shall make reasonable efforts to respond to the public's inquiries and complaints.

10. Decommissioning

- A. The facility owner and operator shall, at its own expense, complete decommissioning of the wind energy facility, or individual wind turbines, within 12 months after the end of the useful life of the facility or individual wind turbines. The wind energy facility or individual wind turbines shall be presumed to be at the end of its useful life if no electricity is generated for a continuous period of 12 months.
- B. Decommissioning shall include removal of wind turbines, buildings, cabling, electrical components, roads, foundations to a depth of 36 inches, and any other associated facilities.

- C. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.
- D. An independent and certified professional engineer shall be retained to estimate the total cost of decommissioning (decommissioning costs) without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment (net decommissioning costs). Said estimates shall be submitted to the Township after the first year of operation and every fifth year thereafter.
- E. The facility owner or operator shall post and maintain decommissioning funds in an amount equal to net decommissioning costs. The decommissioning funds shall be posted and maintained with a bonding company or Federal or Commonwealth chartered lending institution chosen by the facility owner or operator and participating landowner posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within the Commonwealth and is approved by the Township.
- F. Decommissioning funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the Township.
- G. If the facility owner or operator fails to complete decommissioning within the prescribed time period, then the landowner shall have 6 months to complete decommissioning.
- H. If neither the facility owner or operator, nor the landowner complete decommissioning within the prescribed periods, then the Township may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a participating landowner agreement to the Township shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Township may take such action as necessary to implement the decommissioning plan.
- I. The escrow agent shall release the decommissioning funds when the facility owner or operator has demonstrated and the Township concurs that decommissioning has been satisfactorily completed, or upon written approval of the Township in order to implement the decommissioning plan.

11. Defense of Land Use Decision.

In addition to the indemnification described above, Developer/Permittee shall reimburse the Township its reasonable attorney's fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of this agreement or any portion thereof, or the issuance of any permits to Developer/Permittee by the Township for the project. Unless it decides to refuse indemnification, the Township shall be entitled to indemnification from Developer/Permittee. The Township shall notify Developer/Permittee in writing promptly upon discovering any claim entitling it to a land use defense reimbursement. In the event Township fails to notify Developer/Permittee, within the aforementioned 30 days, Developer/Permittee shall not be obligated to indemnify and defend the Township with respect to any such liability, action or claim, only insofar as such knowing failure to notify Developer/Permittee has actually resulted in prejudice or damage to Developer/Permittee. With respect to any third party action, lawsuit, proceeding, investigation or other claim which is subject to reimbursement under this paragraph, Developer/Permittee shall be entitled to assume and control (with counsel of its choice, which counsel must be approved by the

Township, provided however such approval shall not be unreasonably withheld) the defense of such action, lawsuit, proceeding, investigation or other claim at Developer/Permittee's expense; provided, however, that the Township shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose (the fees and expenses of such separate counsel to be borne by the Township) and to assert against any third party any and all cross claims and counterclaims the Township may have. If Developer/Permittee elects to assume the defense of any such claim, it may settle such claim in its sole discretion so long as either (i) such settlement provides an unconditional release of the Township, or (ii) Developer/Permittee shall obtain the prior written consent of the Township (which consent shall not unreasonably withheld). If Developer/Permittee elects to assume the defense of any claim, the Township shall fully cooperate with Developer/Permittee and its counsel in such defense.

12. Annual Inspection Fees.

The Developer/Permittee will pay to the Township initial inspection and annual inspection fees as follows:

- A. Developer/Permittee will pay to the Township \$1,000 per proposed wind turbine generator installed in the Township upon issuance of the building permit by the Township or notice from the building code enforcement officer that no building permit is required (the "issuance or notice date").
- B. Thereafter, Developer/Permittee will pay the Township \$1,000 per wind turbine generator actually installed in the Township (the "per generator payment"). Such payments shall be on an annual basis payable on the anniversary of the issuance or notice date. Under no circumstances shall the Township receive less than \$1,000 per generator from Developer/Permittee. However, Developer/Permittee may receive a credit, which shall be set off against the per generator payment. "Credit" is defined as the amount of any payments related to the wind energy facility or wind turbine generators located in the Township paid by Developer/Permittee to any other governmental entity, for which such funds are actually (or are traceable to an amount) received by the Township. If the credit is less than the per generator payment, then the per generator payment will be reduced by the credit. If the credit is equal to or greater than the per generator payment, no per generator payment is payable to the Township. Pursuant to the above terms, Developer/Permittee specifically agrees that the Commonwealth may not impair the right to this payment by the passage of legislation, executive order or otherwise.

13. Field Representative and Site Manager.

Developer/Permittee will be responsible for overseeing compliance with the conditions of this agreement during the construction phase of the project. Upon completion of construction, Developer/Permittee shall designate a contact person for the Township who will be responsible for overseeing compliance with the conditions of this agreement for the duration of the term of this agreement. Developer/Permittee shall provide the names, addresses, daytime telephone numbers and emergency telephone numbers of any other designated field representative and site manager to the Township. The Township may make the telephone numbers available to local residents and officials. Developer/Permittee shall be entitled, upon prior written notice to the Township, to change the field representative or site manager, or make other changes in the contact information. In addition, Developer/Permittee will make contact information available

for the entity providing operation (monitoring) and maintenance services.

14. Inspections.

Representatives of the Township shall be allowed to inspect the wind turbine generator sites after providing not less than 24 hours advance written notice to Developer/Permittee through its site management as defined in paragraph 17, and to the property owner. Provided however, during construction, Developer/Permittee, may limit the access to the project to two designated representatives of the Township, unless safety reasons mandate otherwise and/or the inspection is required by law.

15. Project Permit.

Upon execution by both parties to this agreement, this document shall also constitute a permit for Developer/Permittee to proceed with the project, subject to the requirements of this agreement and the requirement of Developer/Permittee to obtain all other necessary permits as required by Federal, State, and local law including, but not limited to, FAA permits, Pennsylvania Department of Environmental Protection permits, and building permits.

16. Governing Law and Venue.

This agreement shall be interpreted in accordance with and governed by the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law principles thereof. The Court of Common Pleas of Lackawanna County, Pennsylvania, shall have jurisdiction/venue over any and all matters or disagreement between the parties hereto arising out of interpretation of this agreement or any matters herein set forth.

17. Relationship of Parties.

The parties understand and agree that no party is an agent, employee, contractor, vendor, representative or partner of the other party, that (except as expressly set forth in writing) no party shall owe a fiduciary duty to any other party and no party shall hold itself out as such to third parties and that no party is capable of binding the other party to any obligation or liability without the prior written consent of the other party. Neither the execution nor delivery of this agreement, nor the consummation of the transactions contemplated hereby, shall create or constitute a partnership, joint venture or any other form of business organization or arrangement between the parties.

18. Equality of Treatment.

Developer/Permittee hereby covenants to provide Township equal treatment as is provided to all other municipalities within Lackawanna County having similar arrangements with Developer/Permittee and any of its parent entities and/or subsidiaries including all successors and assigns. During the term of this agreement or any extension thereof, any section, clause or provisions which are modified, added or renewed in any agreement with another municipal entity presently or hereafter included in or part of the wind energy facility may be incorporated into this agreement at the sole discretion of Township provided, however, that incorporation of any section, clause or provisions perceived to be more favorable to another entity shall also require incorporation of any section, clause or provisions which caused Developer/Permittee to provide such perceived favored status. Developer/Permittee shall forward information pertinent to the above process and Township shall review same for purposes of acceptance or rejection. Township shall give written notice of the decision to accept or reject, which acceptance/rejection shall not be effective until received by the Developer/Permittee.

19. Attorney's Fees.

If either party shall at any time be in default under this agreement and if the non-defaulting party shall institute a legal action or summary proceeding against the defaulting party based upon such default, then the losing party will reimburse the prevailing party for its reasonable attorney's fees and disbursements.

20. Immunity.

Neither party hereto waives any rights or immunities arising out of and/or pursuant to any applicable governmental immunity, laws and/or statutes.

21. Compliance with Laws.

Nothing contained in this agreement shall provide, apply/infer that either party is authorized to engage, in any conduct which is not in compliance with all Federal, State, and local laws, rules and regulations that presently exist and/or are adopted/amended in the future.

22. Nonexclusive Remedy.

No right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other right or remedy given by this agreement or now or hereafter existing at law or in equity. The failure of either party to insist upon the strict performance of any obligations shall not be deemed a waiver thereof.

IN WITNESS WHEREOF, the parties have hereto caused this agreement to be duly executed on the date set forth above.

TOWNSHIP OF CLIFTON

Name of Developer/Permittee

By:

By:

Township Chairperson

Attest:

Approved as to Form:

Approved as to Form:

By:

By:

Township Solicitor

Attorney for Developer/Permittee