

## **AGREEMENT REGARDING EASEMENTS**

### **Harriet McDonald Property, County of La Salle, State of Illinois**

THIS AGREEMENT REGARDING EASEMENTS (this "Agreement") is made, dated and effective as of 8 - /, 2007 (the "Effective Date"), between **Harriet McDonald** (together with its successors, assigns and heirs, "Owner"), and **Grand Ridge Energy LLC** (together with its transferees, successors and assigns, "Grantee"), and in connection herewith, Owner and Grantee agree, covenant and contract as set forth in this Agreement. Owner and Grantee are sometimes referred to in this Agreement as a "Party" or collectively as the "Parties".

### **WITNESSETH:**

**WHEREAS**, Owner and Grantee are parties to that certain Grant of Easements dated concurrently herewith (the "Grant of Easements"), whereby Owner has granted the Easement (as hereinafter defined) to Grantee;

**WHEREAS**, as a supplement and in addition to the terms and conditions stated in the Grant of Easements, the Parties desire to clarify and expand on the terms and conditions of the Easement as provided below.

### **AGREEMENT:**

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Grant of Easement and Profits.** Pursuant to the Grant of Easements, Owner has granted, bargained, sold, conveyed and warranted to Grantee an easement for the purposes described below upon, over, across and under the real property of Owner located in the County of La Salle, State of Illinois and legally described on **Exhibit A** attached hereto and incorporated herein (the "Property"), together with the right to all rents, royalties, credits and profits derived from wind energy purposes upon, over and across the Property. The Property and the Owner approved approximate location(s) for wind turbines are outlined on the map attached as **Exhibit B** and incorporated herein.

2. **Easement.**

2.1 **Purpose of Easement.** The easement and grant of rents, royalties, credits and profits created by the Grant of Easements (collectively, the "Easement") is solely and exclusively for wind energy purposes, and not for any other purpose, and Grantee shall have the exclusive right to use the Property for wind energy purposes and to derive all profits therefrom. For purposes of this Agreement, wind energy purposes means converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto ("Development Activities"), including, without limitation, (a) determining the feasibility of wind energy conversion and other power generation on the Property, including studies of wind speed, wind direction and other meteorological data,



and extracting soil samples; (b) constructing, laying down, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, wind turbines, underground electrical and communications lines ("Collection Facilities"), electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with large wind turbine installations, roads, meteorological towers and wind measurement equipment, and related facilities and equipment (collectively "Windpower Facilities") on the Property; and (c) undertaking any other activities, whether accomplished by Grantee or a third party authorized by Grantee, that Grantee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing, including without limitation, exercising the right of ingress to and egress from Windpower Facilities (whether located on the Property, on adjacent property or elsewhere) over and across the Property by means of roads and lanes thereon if existing, or otherwise by such route or routes as Grantee may construct from time to time ("Access Rights").

2.2 Surrender of Unused Property. Grantee agrees that it shall, on or after the third (3<sup>rd</sup>) anniversary of the Operations Date (as defined in Section 4.2), terminate this Agreement as to any part of the Property which at that time is not utilized by Windpower Facilities (whether such Windpower Facilities are fully installed or under construction), including suitable setbacks and upwind windshed protection, as determined by Grantee. That portion of the Property actually used for Windpower Facilities, Access Rights and/or the Collection Facilities Easement (as defined in Section 10.1) shall be mapped and surveyed by a qualified surveyor or engineer, and Grantee shall execute and deliver to Owner an amendment to the Agreement or other instrument evidencing Grantee's surrender of the Property not used for such purposes.

3. Term. The Easement shall be for a term ("Original Term") commencing on the Effective Date and continuing until the twenty-fifth (25<sup>th</sup>) anniversary of the Operations Date. Grantee shall also have the preferential right, upon written notice to Owner prior to the expiration of the Original Term to extend the term for an additional period of ten (10) years ("Extended Term"). With respect to the Extended Term, Owner and Grantee shall execute in recordable form, and Grantee shall then record, a grant or extension of easement evidencing the Extended Term, satisfactory in form and substance to Owner and Grantee.

4. Payments. In consideration of the rights granted hereunder, Grantee will pay Owner the following amounts:

4.1 Annual Rental Payments. Invenergy agrees to pay Landowner an initial payment of Three Thousand One Hundred Thirty-One and 20/100 Dollars (\$3,131.20) within forty-five (45) calendar days after the Effective Date of this Agreement, and annual payments of Three Hundred Ninety-One and 40/100 Dollars (\$391.40) ("Annual Payments") within thirty (30) calendar days after each annual anniversary of the Effective Date for a period of four (4) years. Payments for Annual Rent shall be prorated for any partial year in which the Operations Date begins based on the number of days in such year prior to the Operations Date.

4.2 Construction Payments. Within forty-five (45) days after the commencement of construction of a wind turbine on the Property, Grantee shall pay to Owner a



one time installation fee ("Installation Fee") of Two Thousand and no/100 Dollars (\$2,000) per wind turbine under construction on the Property.

4.3 Operating Fees. If and when a wind turbine is installed on the Property and begins delivering electricity to a third party power purchaser ("Operations Date"), and for so long as each wind turbine so installed remains on the Property until its physical removal therefrom ("Removal Date"), Grantee shall pay to Owner operating fees ("Operating Fees") of Eight Thousand Two Hundred Fifty and no/100 Dollars (\$8,250.00) per calendar year for each wind turbine so installed, or Five Thousand Five Hundred and no/100 Dollars (\$5,500) per megawatt of nameplate capacity, whichever is greater. Grantee shall also pay to Owner a turbine access road payment ("Access Road Payment") of One and no/100 Dollars (\$1.00) per calendar year for each lineal foot of turbine access road that is installed on the Property until its physical removal therefrom ("Removal Date"). In the event no wind turbine is installed on the Property but other Windpower Facilities are located on the Property, Grantee shall pay compensation to Owner as separately agreed with Owner. Commencing on the first year after the Operations Date, such Operating Fees shall be adjusted upwards by the greater of two percent (2%) per year on a compounded basis or by the percentage change, if any, in the GDPIPD for the preceding available four quarters. GDPIPD means the gross domestic product implicit price deflator, as computed and published quarterly by the U.S. Department of Commerce (Index 2000=100), as presented and revised from time to time in the "Gross Domestic Product: [applicable quarter] Quarter 'Final' Press Release" released periodically by the Bureau of Economic Analysis. In the event that the rate of the Operating Fees are increased for any other owner involved with the project in the immediate vicinity of the Property (the "Project") at any time, Owner shall also receive such increase. The amounts payable hereunder for a calendar year shall be prorated for each wind turbine for which the Operations Date or Removal Date occurs during such year, based on the number of days in such year following the Operations Date or prior to the Removal Date. Payments of Operating Fees each year shall be made in two equal semi-annual installments and shall be due within thirty (30) days of the end of each semi-annual period. The annual period shall begin at the Operations Date.

4.4 Crop Compensation. Grantee shall reimburse Owner for all damage to Owner's cultivated crops, pasture or hay on the Property directly caused by Grantee's activities on the Property ("Crop Compensation"). Crop Compensation shall be equal to the Fair Market Value of the crops but a minimum of the following amounts determined by multiplying the total acreage of damaged cultivated crops, pasture or hay on the Property for which Grantee is responsible pursuant to this Agreement by the following amounts: (i) hay at Two Hundred Sixty and no/100 Dollars (\$260.00) per acre, (ii) corn at Six Hundred and no/100 Dollars (\$600.00) per acre, (iii) oats at One Hundred Seventy Five and no/100 Dollars (\$175.00) per acre, (iv) pasture at Fifty Five and no/100 Dollars (\$55.00) per acre, and (v) soybeans at Six Hundred and no/100 Dollars (\$600.00) per acre. The above minimum amounts shall be adjusted by the GDPIPD on an annual basis after the Operations Date. If less than one acre of Owner's cultivated crops, pasture or hay on the Property is damaged by Grantee's activities on the Property, the applicable dollar amount per acre shall be reduced proportionally.

4.5 Compaction Fee. On each additional occasion Grantee exercises its rights under this Agreement after completion of project construction of the Windpower Facilities on the Property and in addition to the payments owed pursuant to Section 4.4, Grantee shall pay to



Owner the following: in areas determined to have significant soil compaction from Grantee's activities on the Property, total compaction fees ("Compaction Fee") will be quadruple the sum owed under Section 4.4 for the area compacted. In consideration of this payment, no additional damages shall be paid in future years for that incident of soil compaction. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, the Parties shall have the area measured and the extent of damage assessed by an impartial party chosen by mutual agreement of the Parties, such as a crop insurance adjuster.

4.6 Conservation Reserve Program. If Owner is a party to a Conservation Reserve Program contract ("CRP Contract") with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410, Owner shall provide Grantee with a true and complete copy of such CRP Contract, together with all amendments and modifications, and if applicable, Grantee shall reimburse Owner for (a) any rental payments, or portion thereof, Owner would have received from the U.S. Department of Agriculture but for the construction or occupation of the Windpower Facilities on the Property and (b) the penalties and interest, if any (including for any past payments received by Owner that must be repaid by Owner), assessed by, the U.S. Department of Agriculture as a result of the construction or occupation of the Windpower Facilities on the Property. Owner shall cooperate with Grantee in completing and submitting documents to obtain any exemptions allowed under the Conservation Reserve Program for the use of Windpower Facilities on Property covered by a CRP Contract.

4.7 Late Payment Penalty. If Grantee fails to make any payment to Owner required of it hereunder when due, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to the sum of two percent (2%) per annum and the prime lending rate as from time to time may be published by The Wall Street Journal under the "Money Rates" section; provided, that in no event shall such interest exceed the maximum rate permitted by law.

5. Ownership of Windpower Facilities. Owner shall have no ownership, lien, security or other interest in any Windpower Facilities installed on the Property and expressly waives, relinquishes and quitclaims any lien or security interest in and to the Windpower Facilities or any other real or personal property of the Grantee in law or equity (including, without limitation, any rights of Owner pursuant to 735 ILCS 5/9-301 et seq., and any similar statute), or any profits derived therefrom, and Grantee may remove any or all Windpower Facilities at any time. Except for the payments described in Section 4 above, Owner shall not be entitled to any other payments or benefits accrued by or from the Project, including renewable energy credits, environmental credits or tax credits.

6. Taxes. Owner shall pay all taxes, assessments, or other governmental charges that shall or may during the Easement term be imposed on, or arise in connection with the Property itself; provided that during the Easement term Grantee shall promptly reimburse Owner or, as is the preference of Grantee, pay directly for any incremental increase in such taxes, assessments, or other governmental charges directly resulting from the presence of the Windpower Facilities on the Property.



7. Grantee's Representations, Warranties, and Covenants (shall be binding upon Grantee, Heirs, Successors and Assigns). Grantee hereby represents, warrants, and covenants to Owner that:

7.1 Minimal Impacts. Grantee agrees to conduct its Development Activities and to locate and operate its Windpower Facilities in such a way as to reasonably minimize impacts to the Property and to Owner's activities on the Property, to the extent practical, without negatively impacting the Windpower Facilities. Prior to the construction of the Windpower Facilities on the Property, Grantee shall give Owner a site plan indicating the approximate proposed location of such Windpower Facilities. Grantee shall consider in good faith any suggestions or concerns Owner may have with the siting of such Windpower Facilities. Grantee shall operate and maintain the Windpower Facilities in good order and repair throughout the term of this Agreement. If Owner's Property is fenced, all newly constructed access roads located on the Property shall be gated by Grantee at Grantee's expense, and Owner shall be furnished with keys or other ability to open and close such gates. Grantee shall maintain such gates as part of the Windpower Facilities.

7.2 Agricultural Activities. Subject to Section 8.2 below, Grantee's operation of Windpower Facilities shall not unreasonably disturb Owner's current agricultural use of the Property. Upon completion of construction, all Property disturbed by Grantee and not required for continuing operations of the Windpower Facilities, shall be restored to a condition reasonably similar to its original condition, consistent with the continued use of the Property pursuant to this Agreement. Reclamation shall include, as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion. Included in the scope of reclamation activities shall be the repair, and when reasonably determined to be necessary, the replacement of underground drainage tile that was disturbed during the construction process.

7.3 Insurance. Grantee shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring Grantee and Owner against loss or liability caused by Grantee's occupation and use of the Property under the Easement, 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 may be procured on a commercial general liability policy with a single occurrence limit or in combination with an umbrella liability policy. Certificates of such insurance shall be provided to Owner upon written request. Such insurance policy shall have a provision prohibiting cancellation without endeavoring to provide at least 30 days' notice to Owner.

7.4 Indemnity. Grantee will indemnify Owner against liability for physical damage to property and for physical injuries to Owner or the public, to the extent directly caused by Grantee's construction, operation, or removal of Windpower Facilities on the Property provided that such physical damage or injuries were not caused by the gross negligence or willful misconduct of Owner. The reference to property damage in the preceding sentence does not include losses of rent, business opportunities, profits and the like that may result from Owner's loss of use of the portion of the Property occupied by Windpower Facilities pursuant to the Easement, which will be compensated solely through the provisions of Section 4. The foregoing indemnity shall not extend to Grantee's lawful enforcement of its rights under this



Agreement. Owner authorizes Grantee to take reasonable safety measures to reduce the risk that the Windpower Facilities will cause physical damage or injuries.

7.5 Requirements of Governmental Agencies. Grantee, 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. Grantee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, 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. Any such contest or proceeding shall be controlled and directed by Grantee.

7.6 Construction Liens. Grantee 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 Grantee's use of the Property pursuant to the Easement; provided, however, that if Grantee wishes to contest any such lien, Grantee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond over such lien from the Property pursuant to applicable law or provide Owner with title insurance insuring Owner's interest in the Property against such lien claim.

7.7 Hazardous Materials. Grantee shall not violate any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, 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. Grantee shall indemnify Owner against any such violation that is caused by Grantee or Grantee's agents or contractors and occurs after the commencement of construction of the Windpower Facilities. Grantee shall promptly notify Owner of any such violation.

7.8 Grantee's Authority. Grantee has the unrestricted right and authority to execute this Agreement. Each person signing this Agreement on behalf of Grantee is authorized to do so. When signed by Grantee, this Agreement constitutes a valid and binding agreement enforceable against Grantee in accordance with its terms.

8. Owner's Representations, Warranties, and Covenants. Owner hereby represents, warrants, and covenants as follow:

8.1 Owner's Authority. Owner is the sole owner of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Grantee the rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

8.2 No Interference. Owner's activities and any grant of rights Owner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with: the construction, installation, maintenance, or operation of the Windpower Facilities, whether located on the Property or elsewhere; access over the Property to



such Windpower Facilities; any Development Activities; or the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Owner shall not disturb or interfere with the wind speed or wind direction over the Property, whether by placing wind turbines, telecommunication towers or antennas, planting trees or constructing buildings or other structures, or by engaging in any other activity on the Property or elsewhere that might cause a decrease in the output or efficiency of the Windpower Facilities.

8.3 Liens and Tenants. Owner represents that there are no recorded or unrecorded liens, encumbrances, leases, mortgages, deeds of trust (except as disclosed to Grantee in writing), or other exceptions (collectively, "Liens") to Owner's fee title ownership of the Property or to Owner's right, title or interest in the Property. Except as disclosed by Owner in writing to Grantee, Owner represents that there are no mortgages, deeds of trust, or similar liens or security interests encumbering all or any portion of the Property. Owner shall fully cooperate and assist Grantee, at no out-of-pocket expense to Owner, in obtaining a consent to the granting of the Easement, if necessary, and a non-disturbance agreement from each party that holds a lien (recorded or unrecorded) that might interfere with Grantee's rights under this Agreement. A non-disturbance agreement is an agreement between Grantee and a lienholder which provides that the lienholder shall not disturb Grantee's possession or rights under the Easement or terminate the Easement so long as Owner is not entitled to terminate this Agreement under the provisions hereof.

8.4 Requirements of Governmental Agencies. Owner shall assist and fully cooperate with Grantee, at no out-of-pocket expense to Owner, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other approvals (collectively the "Approvals") required for the financing, construction, installation, monitoring, replacement, relocation, maintenance, operation or removal of Windpower Facilities, including execution, if necessary, of applications for such Approvals, and including participating in any appeals or regulatory proceedings respecting the Windpower Facilities. Owner hereby appoints Grantee as its agent for the purpose of preparing, executing, applying for, submitting and prosecuting, in Owner's name, any and all such Approvals on behalf of Owner, provided, however, that all costs incurred in connection with such Approvals shall be borne solely by Grantee. To the extent permitted by law, Owner hereby waives enforcement of any applicable setback requirements respecting the Windpower Facilities to be placed on the Property or any such facilities to be placed upon property adjacent to Owner's Property.

8.5 Access. Upon the request of Grantee during the term of the Easement, Owner shall grant, for the term of the Easement, for no additional consideration, an easement for Access Rights over and across designated portions of Owner's property that is not part of the Property ("Access Easement"). Any Access Easement shall include the right to improve existing roads and lanes, shall be appurtenant to the Property, and shall inure to the benefit of Grantee and be binding upon Owner and their respective transferees, successors, and assigns, and all persons claiming under them. In the event Grantee wishes to designate any such Access Easement after the construction of the Windpower Facilities, Grantee shall do so only if reasonably required for the operation of the Windpower Facilities, there is no other reasonable access on the Property and only in locations and to the extent it does not materially interfere with Owner's use of such property.



8.6 Hazardous Materials. Owner shall not violate any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, 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. Owner shall indemnify Grantee against any such violation that is caused by: (i) any person and exists as of the Effective Date or occurs on or before the commencement of construction of the Windpower Facilities; or (ii) Owner or Owner's agents and occurs after the commencement of construction of the Windpower Facilities. The Owner shall promptly notify the Grantee of any such violation.

8.7 Title Insurance. Owner agrees that within ten (10) business days of receipt, Owner shall execute and deliver to Grantee any documents reasonably required by the title insurance company selected by Grantee to allow Grantee and an Easement Mortgagee to insure the Easement and the Easement Mortgage.

9. Assignment.

9.1 Assignments. Grantee shall have the right, without obtaining the consent of Owner, to do any of the following with respect to all or any portion of the Property: finance Windpower Facilities; grant co-easements, separate easements, subeasements, licenses or similar rights (however denominated) to one or more persons (an "Assignee"); or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees the Easement, or any or all right or interest in the Easement or in this Agreement, or any or all right or interest of Grantee in the Property or in any or all of the Windpower Facilities that Grantee or any Assignee party may now or hereafter install on the Property. Grantee shall notify Owner in writing of any such assignment, and any such Assignee shall assume in writing the obligations of Grantee under this Agreement with respect to the Property assigned. To the extent provided for in each conveyance document, an Assignee shall have all of the rights and benefits of Grantee under and pursuant to this Agreement. Grantee shall be relieved of all of its obligations under this Agreement upon the sale, conveyance, lease, assignment or transfer ("Transfer") of its entire interest hereunder or, if only a partial interest is Transferred and such Transfer is to an affiliate of Grantee, Grantee shall be relieved of only those obligations under this Agreement relating to the partial interest Transferred to its affiliate.

9.2 Acquisition of Interest. The acquisition of all or any portion of Grantee's interest in the Property or the Windpower Facilities or the Easement by another person shall not require the advance consent of Owner or constitute a breach of any provision or a default under this Agreement, and Owner shall recognize the person as Grantee's proper successor.

9.3 Assignment by Owner. This Agreement shall not be construed to limit Owner's right to sell, transfer or convey, lease, mortgage, grant easements, licenses or similar rights or otherwise encumber the Property (each, a "Owner Transfer"); provided, however, in each case, any such Owner Transfer shall be subject and subordinate to the rights of Grantee hereunder and under the Easement.



10. **Collection Facilities.**

10.1 **Grant of Collection Facilities Easement.** Upon the request of Grantee during the term of the Easement, the Easement shall include one or more easements for the construction, laying down, installation, use, replacement, relocation, removal, operation and maintenance of underground electric collection facilities including electric transmission and distribution lines, communication lines, interconnections and switching stations on, under, over and across designated portions of the Property ("Collection Facilities Easement"). Any such Collection Facilities Easement shall contain all of the rights and privileges for Windpower Facilities as are set forth in this Agreement.

10.2 **Access.** Any Collection Facilities Easement shall also include the right of ingress to and egress from the Collection Facilities (whether located on the Property, on adjacent property or elsewhere) over and along the Property by means of roads and lanes thereon if existing, or otherwise by such route or routes as Grantee may construct from time to time.

10.3 **Assignment in Connection with Collection Facilities Lines.** In connection with the exercise of the rights of Grantee hereunder and to facilitate Development Activities, Grantee shall have the right to grant to any utility or other duly authorized entity the right to construct, operate and maintain underground electric transmission and distribution, interconnection and switching facilities on the Property.

10.4 **Term; Assignment.** The term of any Collection Facilities Easement shall be the same as the term of the Easement unless termination by Grantee of the Collection Facilities Easement by written notice to Owner as set forth herein, and shall not expire or be terminable by Owner under any circumstances, notwithstanding Section 12.2. During the term of the Easement, Grantee shall have the right to assign or convey all or any portion of any Collection Facilities Easement to any person on an exclusive or nonexclusive basis. Any Collection Facilities Easement shall run with the Property and inure to the benefit of and be binding upon Owner and Grantee and their respective transferees, successors and assigns, and all persons claiming under them. At Grantee's option, any Collection Facilities Easement shall survive the termination of the Easement pursuant to Section 12.2 of this Agreement.

11. **Mortgagee Protection.** In the event that any mortgage, deed of trust or other security interest in the Easement or in any Windpower Facilities is entered into by Grantee or any Assignee (an "Easement Mortgage"), then any person who is the mortgagee of an Easement Mortgage (an "Easement Mortgagee") shall, for so long as its Easement Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 11. Grantee shall send written notice to Owner of the name and address of any such Easement Mortgagee.

11.1 **Easement Mortgagee's Right to Possession, Right to Acquire and Right to Assign.** An Easement Mortgagee shall have the absolute right: (a) to assign its security interest and mortgage lien; (b) to enforce its lien and acquire title to the easement estate by any lawful means; (c) to take possession of and operate the Windpower Facilities or any portion thereof and to perform all obligations to be performed by Grantee hereunder, or to cause a receiver to be appointed to do so; and (d) to acquire the easement estate by foreclosure or by an assignment in



lieu of foreclosure and thereafter to assign or transfer the easement estate to a third party. Owner's consent shall not be required for the acquisition of the encumbered easement or subeasement estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure.

11.2 Notice of Default: Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Grantee, Owner shall give written notice of the default to each Easement Mortgagee concurrently with delivery of such notice to Grantee, specifying in detail the alleged event of default and the required remedy. In the event Owner gives such a written notice of default, the following provisions shall apply:

(a) A "monetary default" means failure to pay when due any fee, payment, real property taxes, insurance premiums or other monetary obligation of Grantee under the Easement. Any other event of default is a "non-monetary default."

(b) The Easement Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Grantee after Grantee's receipt of notice of default, plus, in each instance, the following additional time periods: (i) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any monetary default; and (ii) sixty (60), for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any non-monetary default, provided that such 120-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Easement Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Easement Mortgagee acts with reasonable and continuous diligence. The Easement Mortgagee shall have the absolute right to substitute itself for the Grantee and perform the duties of Grantee hereunder for purposes of curing such defaults. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Easement Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Grantee hereunder. Owner shall not terminate the Easement prior to expiration of the cure periods available to an Easement Mortgagee as set forth above.

(c) During any period of possession of the Property by an Easement Mortgagee (or a receiver requested by such Easement Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by an Easement Mortgagee, the Easement Mortgagee shall pay or cause to be paid the Operating Fees and all other monetary charges payable by Grantee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Grantee's easement estate by the Easement Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, the Easement shall continue in full force and effect and the Easement Mortgagee or party acquiring title to Grantee's easement estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Owner's right to terminate the Easement based upon such defaults shall be deemed waived.



(d) Any Easement Mortgagee or other party who acquires Grantee's easement interest pursuant to foreclosure or assignment in lieu of foreclosure shall be liable to perform the obligations imposed on Grantee by the Easement so long as such Easement Mortgagee or other party has ownership of the easement estate or possession of the Property.

(e) Neither the bankruptcy nor the insolvency of Grantee shall be grounds for terminating the Easement as long as all material obligations of Grantee under the terms of the Easement and this Agreement are performed by the Easement Mortgagee in accordance with the terms of the Easement and this Agreement.

(f) Nothing herein shall be construed to extend the Easement beyond the Easement term or to require an Easement Mortgagee to continue foreclosure proceedings after the default has been cured. If the default is cured and the Easement Mortgagee discontinues foreclosure proceedings, the Easement shall continue in full force and effect.

11.3 New Easement to Mortgagee. If the Easement or this Agreement terminates because of Grantee's default or if the Easement is foreclosed, or if the Easement or this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, the Owner shall, upon written request from any Easement Mortgagee within ninety (90) days after such event, enter into a new easement for the Property, on the following terms and conditions:

(a) The terms of the new easement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the terms of the Easement, at the same rent and subject to the same terms and conditions set forth in this Agreement.

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

(c) At the option of the Easement Mortgagee, the new easement may be executed by a designee of such Easement Mortgagee without the Easement Mortgagee assuming the burdens and obligations of Grantee thereunder.



(d) If more than one Easement Mortgagee makes a written request for a new easement pursuant hereto, the new easement shall be delivered to the Easement Mortgagee requesting such new easement whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(e) The provisions of this Section 11 shall survive the termination, rejection or disaffirmance of the Easement or this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Owner, Grantee and such Easement Mortgagee, and, from the effective date of such termination, rejection or disaffirmance of the Easement to the date of execution and delivery of such new easement, such Easement Mortgagee may use and enjoy said Property without hindrance by Owner or any person claiming by, through or under Owner, provided that all of the conditions for a new easement as set forth herein are complied with.

11.4 Easement Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the parties agree that so long as there exists an unpaid Easement Mortgage, the Easement and this Agreement shall not be modified or amended and Owner shall not accept a surrender of the Property or any part thereof or a cancellation, termination or release of the Easement or this Agreement from Grantee prior to expiration of the term without the prior written consent of the Easement Mortgagee. This provision is for the express benefit of and shall be enforceable by such Easement Mortgagee.

11.5 No Waiver. No payment made to Owner by an Easement Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of the Easement; and an Easement Mortgagee, having made any payment to Owner pursuant to Owner's wrongful, improper or mistaken notice or demand, shall be entitled to the return of any such payment.

11.6 No Merger. There shall be no merger of the Easement, or of the easement estate created by the Easement, with the fee estate in the Property by reason of the fact that the Easement or the easement estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property and all persons (including Easement Mortgagee) having an interest in the Easement or in the estate of Owner and Grantee shall join in a written instrument effecting such merger and shall duly record the same.

11.7 Estoppel Certificates, Etc. Owner shall execute such estoppel certificates (certifying as to such matters as Grantee may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Grantee, any Assignee or Easement Mortgagee may reasonably request from time to time.

## 12. Default and Termination.

12.1 Grantee's Right to Terminate. Grantee shall have the right to terminate the Easement and this Agreement as to all or any part of the Property at any time and without cause, effective upon 30 days' written notice to Owner from Grantee. In the event any such



notice is delivered to Owner by Grantee after wind turbines have been installed on the Property, such notice shall be accompanied by a statement by Grantee setting forth how Grantee shall comply with the provisions of Section 12.3.

12.2 Owner's Right to Terminate. Except as qualified by any subsequent actions and approvals of Owner pursuant to Section 11, Owner shall have the right to terminate the Easement if (a) a material default in the performance of Grantee's obligations under this Agreement shall have occurred and remains uncured following the applicable notice and cure periods provided herein and in any other related agreement, (b) Owner notifies Grantee in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default, and (c) the default shall not have been remedied within 60 days after Grantee receives the written notice, or, if cure will take longer than 60 days, Grantee has not begun diligently to undertake the cure within the relevant time period and thereafter prosecutes the cure to completion. Owner shall also have the right to terminate the Easement if Grantee has not commenced construction of Windpower Facilities on the Property within five (5) years of the Effective Date.

12.3 Effect of Termination. Upon termination of the Easement, Grantee shall, as soon as practicable thereafter, remove above-ground and below-ground (to a depth of four (4) feet below grade) Windpower Facilities from the Property. Additionally, all wind turbine foundations shall be removed to a depth of seven (7) feet below grade. All Property disturbed by Grantee shall be restored to a condition reasonably similar to its original condition. Reclamation shall include, as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion. If Grantee fails to remove such Windpower Facilities within twelve (12) months of termination of the Easement, or such longer period as Owner may provide by extension, Owner may do so, in which case Grantee shall reimburse Owner for reasonable and documented costs of removal and restoration incurred by Owner.

12.4 Bond for Removal of Windpower Facilities. On or by the fifteenth (15<sup>th</sup>) anniversary of the Operation Date, Grantee shall obtain and deliver to Owner a letter of credit, or similar financial assurance, in form and substance reasonably satisfactory to Owner securing performance of Grantee'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, (the "Net Removal Costs") by which the cost of removing the Windpower Facilities exceeds the salvage value of such Windpower Facilities. To the extent that the Net Removal Costs are zero (or negative), a Removal Bond shall not be required on the part of the Grantee, provided, however that Grantee shall re-evaluate the need for a Removal Bond at least annually after the fifteenth (15<sup>th</sup>) anniversary of the Operations Date. Grantee shall not be required to deliver such Removal Bond to Owner if Grantee (i) is in the process of repowering or otherwise redeveloping the power generating units on the Property with new power generating units (or commits in writing with notice to Owner to do so within two (2) years after the fifteenth (15<sup>th</sup>) anniversary of the Operations Date, or (ii) has delivered such financial assurance in connection with the permitting of the Property or any other portion of the Windpower Facilities for Grantee's Wind Turbines. Once in place, Grantee shall keep such Removal Bond, or similar financial assurance, in force throughout the remainder of the Term. The Net Removal Costs shall be determined by the Grantee acting in good faith. If any requirement or right provided in this Section 12.4



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. **Miscellaneous.**

13.1 **Force Majeure.** If performance of the Easement 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, or other casualty or accident; strikes or labor disputes; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; or any other act or condition beyond the reasonable control of a Party hereto.

13.2 **Confidentiality.** To the full extent allowed by law, Owner shall maintain in the strictest confidence, for the sole benefit of Grantee, all information pertaining to the financial terms of or payments under this Agreement, Grantee'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 Grantee or discovered by Owner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Owner or its employees or agents, or (ii) was already known to Owner, at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any person or entity. To the full extent permitted by law, Owner 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 Grantee.

13.3 **Successors and Assigns.** The Easement shall inure to the benefit of and be binding upon Owner and Grantee and, to the extent provided in any assignment or other transfer under Section 9 hereof, any Assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to Grantee in this Agreement shall be deemed to include Assignees that hold a direct ownership interest in the Easement or this Agreement and actually are exercising rights under the Easement or this Agreement to the extent consistent with such interest.

13.4 **Grant of Easements.** Owner and Grantee acknowledge that the terms and conditions of this Agreement are in addition to the terms and conditions of the Grant of Easements, which such terms and provisions are incorporated into this Agreement by reference. The Grant of Easements has been executed concurrently herewith in recordable form. Owner hereby consents to the recordation of the interest of an Assignee in the Property and no further action by Owner shall be required to affect such recordation.

13.5 **Notices.** All notices or other communications required or permitted by this Agreement, including payments to Owner, shall be in writing and shall be deemed given when personally delivered to Owner or Grantee, or in lieu of such personal delivery services,



five (5) days after deposit in the United States mail, first class, postage prepaid, certified, addressed as follows:

If to Owner:

Attn: Harriet McDonald  
24609 S MCKINLEY WOODS  
RD  
CHANNAHON, IL 60410

If to Grantee:

Attn: Joel Link  
c/o Grand Ridge Energy LLC  
One South Wacker Drive, Suite 2020  
Chicago, Illinois 60606

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.

13.6 Entire Agreement; Amendments. Except as provided in Section 13.4 hereof, this Agreement constitutes the entire agreement between Owner and Grantee respecting its subject matter. Any agreement, understanding or representation respecting the Property, the Easement, 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. Provided that no material default in the performance of Grantee's obligations under this Agreement shall have occurred and remain uncured, Owner shall cooperate with Grantee in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee for the purpose of implementing the provisions contained in this Agreement or for the purpose of preserving the security interest of any Assignee or Easement Mortgagee.

13.7 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois. 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 state courts located in the county in which the Property is situated. The parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Agreement and is hereby waived.

13.8 Partial Invalidity. 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, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of this Agreement, the Easement, any Collection Facilities Easement or any Access Easement be longer than, respectively, the longest period permitted by applicable law.

13.9 Tax and Renewable Energy Credits. If under applicable law, the holder of an easement becomes ineligible for any tax credit, renewable energy credit, environmental credit or any other benefit or incentive for renewable energy established by any local, state or federal



government, then, at Grantee's option, Owner and Grantee shall exercise good faith and negotiate an amendment to this Agreement or replace it with a different instrument so as to convert Grantee's interest in the Property to a substantially similar interest that makes Grantee eligible for such credit, benefit or incentive

13.10 Right to Record. Owner and Grantee agree that Grantee has the ongoing and continuous right to record this Agreement, at Grantee's sole discretion, in the public records of La Salle County, Illinois. No further action by Owner shall be required to affect such recordation.

13.11 Exceptions and Special Conditions. Any exceptions or special conditions to this Agreement are set forth in Exhibit C attached hereto and incorporated herein.

13.12 Succession. This Agreement supercedes and replaces any prior agreement related to the Easement between Owner and Grantee.

[EXECUTION PAGE FOLLOWS]



IN WITNESS WHEREOF, Owner and Grantee, acting through their duly authorized representatives, have executed this Agreement with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Agreement.

"Owner"

**Harriet McDonald**

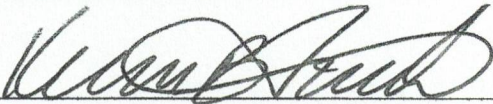
By: Harriett McDonald

Name: HARRIETT McDONALD

Title: Owner

"Grantee"

**Grand Ridge Energy LLC**

By: 

Name: Kevin B. Smith

Title: VICE-President



ACKNOWLEDGMENT

STATE OF ILLINOIS       )  
                                      ) SS.  
COUNTY OF COOK        )

Personally came before me this 20<sup>th</sup> day of September, 2007, Kevin  
B. Smith, who executed the foregoing instrument, and acknowledged the same, on  
behalf of **Grand Ridge Energy LLC**.

(S E A L)

Name: Sabrina Shenault  
Notary Public, State of Illinois  
My Commission: 3/02/2010



ACKNOWLEDGMENT

STATE OF ILLINOIS       )  
                                      ) SS.  
COUNTY OF \_\_\_\_\_ )

Personally came before me this 1<sup>st</sup> day of August, 2007,  
Harriet McDonald, who executed the foregoing instrument, and  
acknowledged the same.

(S E A L)

Name: Carol M. Eneix  
Notary Public, State of Illinois  
My Commission: 8-12-09





## **EXHIBIT A**

### **The Property**

#### Schedule of Locations:

| <u>Parcel Number</u> | <u>County</u> | <u>Township/ Range</u> | <u>Section</u> | <u>Acreage</u> |
|----------------------|---------------|------------------------|----------------|----------------|
| 35-06-101-000        | LaSalle       | T 31 N R 5 E           | 6              | 78.28          |

|              |             |
|--------------|-------------|
| <b>Total</b> | <hr/> 78.28 |
|--------------|-------------|

#### Legal Description:

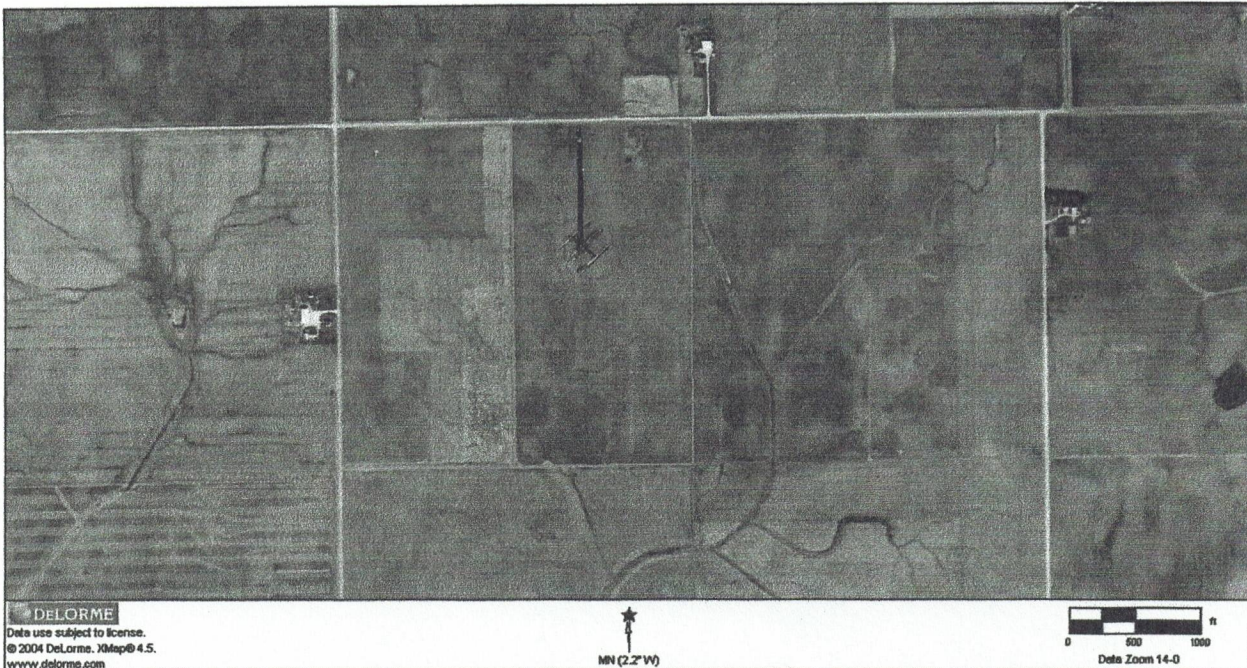
THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 31 NORTH, RANGE 5 EAST OF THE THIRD PRINCIPAL MERIDIAN, SITUATED IN ALLEN TOWNSHIP, LASALLE COUNTY, ILLINOIS.





## EXHIBIT B

### Property Map

The attached map is for ease of reference only. At all times, the Legal Description in Exhibit A shall prevail.



#### Legend:

-  --- Indicates Owner's property lines and is used for reference only. The legal description for purposes of this Agreement is described in Exhibit A.
-  --- Indicates Owner approved location of Wind Turbines.



## EXHIBIT C

### Exceptions and Special Conditions

**Special Condition #1:** Grantee agrees to provide financial assurance in the form of a Bond or Letter of Credit in an amount equal to the amount of annual real estate taxes that may be imposed on the Property as a result of the installation of the Windpower Facilities. Owner shall have the ability to draw on such Bond or Letter of Credit in the event that Grantee does not pay taxes prior to their due date. The method by which this bond or Letter of Credit can be drawn upon shall be set up prior to the commencement of construction of Windpower Facilities on the Property.

**Special Condition #2:** Prior to execution of this Agreement, Grantee shall provide to Owner a current proposed layout of Windpower Facilities on the Property.

**Special Condition #3:** Grantee shall work in good faith with Owner to site final Access Roads according to Owner's desired routing.

**Special Condition #4:** Grantee agrees to separate topsoil prior to excavation for Access Roads, Turbine Foundations and Collection System.

**Special Condition #5:** Owner shall have the option to retain any excess soil that is created as a result of Grantee's Activities.

**Special Condition #6:** Grantee agrees to install the Collection System below any existing drainage tile that is located four (4) feet or less below grade.

**Special Condition #7:** Grantee agrees that Collection Facilities shall be installed by trenching and shall not be plowed.

**Special Condition #8:** Owner retains the right to install, repair, replace and maintain drainage tile on the Property. Grantee agrees to assist Owner in the event Owner wishes to install new drainage tile or repair existing drainage tile in areas containing Collection System Facilities.

**Special Condition #9:** In the event that Grantee damages drainage tile during the installation of Collection System facilities, Grantee agrees to place support structures such as steel channels below the repaired areas.

**Special Condition #10:** Owner or Owner's agent shall have the right to inspect any drainage tile repairs done by Grantee, so long as the inspection can be performed as to not interfere with the schedule of Grantee's construction activities.

**Special Condition #11:** Owner shall retain the right to build new structures so long as the height of such structures is less than thirty five feet (35') and at least four hundred fifty feet (450') away from the nearest Wind Turbine.



**Special Condition #12:** Grantee Shall give a minimum of 30 days written notice prior to commencement of construction of Wind Energy Facilities on the Property.

**Special Condition #13:** The permanent width of Access Roads shall be no greater than sixteen feet, except as necessary for turn radiuses.

**Special Condition #14:** No buildings (other than the Collection Facilities and the Windpower Facilities) shall be constructed by Grantee on the Property without written permission from Owner.

**Special Condition #15:** All easement areas relating to the underground facilities shall be limited to the area that is reasonably necessary for the operations and maintenance of the Windpower Facilities, and shall be limited to a width not to exceed 100 feet and shall be located a minimum of 200 feet from any permanent structure on the property. If Grantee installs additional collection facilities after the Operations Date, Owner shall be compensated in the amount of \$5 per linear foot for such facilities, and Grantee shall be compensated for crop damage as stated in Section 4.4 hereof.

**Special Condition #16:** Owner reserves the right to install driveways and non-permanent structures above the underground collection system.

**Special Condition #17:** Permanent Access Roads constructed on the Property shall only be constructed to access turbines located on the Property.



# McDonald Preliminary Turbine and Access Road Location



\* Property boundary shown in red

Data use subject to license.

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www.delorme.com

