



TORRANCE COUNTY
COMMISSION MEETING
October 15, 2019
1:30 P.M.

For Public View
Do Not Remove



Torrance County

BOARD OF COUNTY COMMISSIONERS (BCC)

Ryan Schwebach, Chair – District 2

Javier Sanchez, Vice Chair – District 3

Kevin McCall, Member – District 1

Wayne Johnson, County Manager

TORRANCE COUNTY COMMISSION SPECIAL MEETING

TUESDAY, October 15th, 2019 @ 1:30 PM

- 1. Call to Order**
- 2. ADOPTION OF ORDINANCE/AMENDMENT TO COUNTY CODE**
 - A. COMMISSION: FIRST READING & PUBLICATION.** Motion to approve publication of a Supplemental Ordinance Authorizing the Issuance and Sale of Torrance County Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project II).
- 3. Signing of Official Documents**

_____, (PURCHASER)

TORRANCE COUNTY, NEW MEXICO

and

LA JOYA WIND, LLC

BOND PURCHASE AGREEMENT

Dated _____, 2019

\$385,000,000
Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(La Joya Wind, LLC Project II)
Series 2019B

BOND PURCHASE AGREEMENT

_____ (the "Purchaser"), TORRANCE COUNTY, NEW MEXICO (the "Issuer"), and LA JOYA WIND, LLC (the "Company"), agree:

Section 1. Recitals. The Issuer, the Purchaser, the Company and BOKF, NA, as depository (the "Depository") have entered into an Indenture dated as of _____, 2019 (the "Indenture"). Pursuant to the Indenture, the Issuer will issue its Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project II), Series 2019B, in the maximum principal amount of \$385,000,000 (the "Series 2019B Bonds" or the "Bonds"). Capitalized terms used in this Bond Purchase Agreement (this "Agreement") but not defined herein shall have the meanings assigned to such terms in the Indenture.

Section 2. Purchase and Delivery. On the basis of the representations and covenants contained in this Agreement and subject to the terms and conditions contained in this Agreement, the Purchaser will purchase the Bonds from the Issuer and the Issuer will sell the Bonds to the Purchaser. As consideration for the sale of the Bonds, the Purchaser will make advances on the Bonds at the times and under the conditions specified in Section 702 of the Indenture. The Issuer will deliver the Bonds to the Purchaser as provided in Section 403 of the Indenture, or at such other time as is mutually agreeable to the Purchaser and the Issuer (the "Closing Date").

Section 3. Issuer Representations. The Issuer represents that, as of the date of this Agreement:

(a) Each of the representations of the Issuer in the Lease Agreement, dated as of _____, 2019 (the "Lease" and, together with the Indenture and this Agreement, the "Bond Documents"), between the Issuer and the Company, and the Indenture is true and correct as if made on and as of the date of this Agreement, which is _____, 2019.

(b) Pursuant to Ordinance No. 2019-02 duly adopted by the Board of County Commissioners of Torrance County on April 24, 2019 (the "Master Ordinance") and Ordinance No. 2019 __ (the "Supplemental Ordinance") duly adopted on September 25, 2019 (collectively, the "Bond Ordinance"), the Issuer duly authorized and approved (i) the execution and delivery by the Issuer of the Bond Documents and the performance by the Issuer of its obligations under the Bond Documents, and (ii) the issuance, execution and delivery of the Bonds. The Bond Ordinance has not been amended, modified or repealed.

Section 4. Company Representations. The Company represents that as of the date hereof:

(a) Each of the representations of the Company in the Lease is true and correct as if made on and as of the date of this Agreement.

(b) This Agreement, the Indenture and the Lease constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization,

moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

(c) The Company is a Delaware limited liability company, duly organized, validly existing and in good standing under the law of the State of Delaware and is a duly registered foreign limited liability company authorized to do business in the State of New Mexico and has full legal capacity, right, power and authority to own the Company's properties and conduct the Company's business. The Company has full legal capacity, right, power and authority to execute and deliver this Agreement, the Indenture and the Lease, to provide for the operation and management of the Project Property, and to take any and all such action as may be required on its part to carry out, give effect to and consummate the transactions contemplated by this Agreement, the Indenture and the Lease.

(d) Neither the execution and delivery of this Agreement, the Indenture and the Lease, nor the consummation of the transactions contemplated therein or the compliance with the provisions thereof, will conflict with, or constitute on the part of the Company a material violation of, or a material breach of or material default under any indenture, mortgage, commitment, note or other agreement or instrument to which the Company is a party or by which the Company is bound, or any material order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its activities or properties. All consents, approvals, authorizations and orders of governmental or regulatory authorities (except as required under state securities laws) which are required for the Company's execution and delivery of, consummation of the transactions contemplated by, and compliance with the provisions of this Agreement, the Indenture and the Lease have been obtained.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of the knowledge of the Company, threatened, against or affecting the Company, or the actions taken or contemplated to be taken by the Company, nor, to the best of the knowledge of the Company, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the business or financial condition of the Company, or the transactions contemplated by, or the validity or enforceability of, this Agreement, the Indenture or the Lease.

(f) No event has occurred and no condition exists which, upon issuance of the Bonds, would constitute (or with the giving of notice or lapse of time, or both, would constitute) an Event of Default under the Lease.

(g) The Company is not in violation of any provisions of, or in default under any statute, indenture, mortgage, commitment, note or other agreement or instrument to which it is a party or by which it is bound, or any order, rule, regulation or decision of any court or governmental agency or body having jurisdiction over it or any of its activities or properties, which violation would materially and adversely affect its business or financial condition.

Section 5. Purchaser Representations. The Purchaser represents and acknowledges that, as of the date of this Agreement:

(a) The Purchaser is purchasing the Bonds for its own account for investment and with no present intention of distributing or reselling the Bonds or any interest in the Bonds but without prejudice, however, to its right at all times to sell or otherwise dispose of all but not part of the Bond in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder, applicable state securities laws and regulations and the terms of the Bonds, upon receipt of appropriate investor representations, an opinion of counsel experienced in securities law matters and satisfactory to the Issuer and in accordance with the applicable terms of the Indenture.

(b) The Purchaser understands that the Bonds are a special limited, and not general, obligation of the Issuer, are payable solely from the Basic Rent received under the Lease and from the security therefor as described in the Indenture but from no other sources. The Purchaser understands that the Bonds are not secured by any obligation or pledge of any monies received or to be received from taxation or from the State or any political subdivision, taxing district, or municipality thereof (including, without limitation, the Issuer), and that the Bonds will never represent or constitute a general obligation, debt or bonded indebtedness of the Issuer, the State, any political subdivision or municipality thereof, and that no right will exist to have taxes levied by the Issuer, the State, any political subdivision or municipality thereof, for the payment of principal of, premium, if any, and interest on the Bonds. The Purchaser understands that payment of the Bonds depends upon the general credit of the Company, and upon the security granted in the Indenture for the Company's obligations under the Lease.

(c) The Purchaser is an affiliate of the Company and has been afforded the opportunity to discuss the business, assets and financial position of the Company with the officers, employees and auditors of the Company; and has received such information concerning the Company and its business, assets and financial position, and the Project (as defined in the Lease) as it deems necessary in making its decision to purchase the Bonds.

(d) The Purchaser is duly and legally authorized to purchase the Bonds, has such knowledge and experience in financial and business matters (including the ownership of municipal conduit obligations) as are required for, and is capable of, evaluating the merits and risks of its purchase of the Bonds, is aware of the intended use of proceeds of the Bonds, and understands that interest on the Bonds is not excludable from gross income for federal income tax purposes.

(e) The Purchaser understands that neither the Issuer nor any of its officials, counsel, consultants or agents has undertaken to furnish any information with respect to the Company or to ascertain the accuracy of any information furnished to the Purchaser with respect to the Company, and the Purchaser has not requested or received any representations from the Issuer with respect to any such information, its accuracy or completeness. The Purchaser waives any requirement of due diligence in investigation or inquiry on the part of the Issuer, its officials, counsel, agents and consultants and all claims, actions or causes of action which the Purchaser may have from and after the date hereof against the Issuer, its officials, counsel, agents and

consultants growing out of any such action which any of the foregoing took, or could have taken, in connection with the authorization, execution, delivery, and sale of the Bonds to the Purchaser or in connection with any statement or representation by the Company which induced the Purchaser to purchase the Bonds.

(f) The Purchaser has received and reviewed copies of the Bond Documents and the Bond Ordinance.

(g) This Agreement constitutes the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

(h) The Purchaser has been informed by the Company and agrees that the Indenture has not been qualified under the Trust Indenture Act of 1939, and that the Bonds (i) are not being registered or otherwise qualified for sale under (a) the Securities Act of 1933, as amended, or (b) the "Blue Sky" laws and regulations of any state, (ii) will not be listed on any stock or other securities exchange, (iii) will not carry a rating from any rating service and (iv) will not be readily marketable. The Purchaser has been informed by the Company and agrees that a legend will be placed on the Bonds certificate or any other documents evidencing ownership of the Bonds to the effect that they have not been registered under the Securities Act of 1933, as amended, or the applicable state "Blue Sky" laws and that they may only be transferred in compliance with the Indenture and applicable securities laws.

(i) The execution, delivery and performance of this Agreement by the Purchaser will not constitute a default under any other agreement by which the Purchaser is bound.

(j) The Purchaser acknowledges that its purchase of the Bonds constitutes a transaction in a bond secured by the Indenture which is, among other things, a personal property security agreement, pursuant to which the Bonds are offered and sold as a unit.

Section 6. Indemnification.

(a) The Company and the Purchaser will, jointly and severally, indemnify, defend and hold harmless the Depository, as defined in the Indenture, each agent and employee of the Depository, the Issuer, each County Commission member, official, agent or employee of the Issuer and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the Issuer (each an "Indemnified Party" and, collectively, the "Indemnified Parties") from and against any and all losses, claims, damages, liabilities, joint or several, or expenses related thereto arising out of or in connection with or caused by any offering, sale or resale of the Bonds in violation of any federal or state securities laws or by an untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact made to any person or caused by an omission or alleged omission of any material fact in connection with the Bonds or the sale, resale or delivery thereof.

(b) In case a claim is made or any action is brought against one or more of the Indemnified Parties based upon the matters described in the preceding paragraph and in respect of which indemnity is sought against the Company or the Purchaser pursuant to the preceding paragraph, the Indemnified Party or Parties seeking indemnity shall promptly notify the Company and the Purchaser, in writing, and the Company and the Purchaser shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the Company and the Purchaser and approved in writing by the Issuer (provided, that such approval by the Issuer shall not be unreasonably withheld), the payment of all expenses (including reasonable counsel fees and expenses) and the right to negotiate and consent to settlement. If the Company and the Purchaser fail to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company or the Purchaser. If any Indemnified Party is advised in a written opinion of counsel that the defenses of such Indemnified Party should be handled by separate counsel, the Company and the Purchaser shall not have the right to assume or cause the assumption of the defense of such Indemnified Party, but the Company or the Purchaser shall be responsible for the fees and expenses of such separate counsel (the "Separate Counsel") retained by such Indemnified Party. Notwithstanding, and in addition to, any of the foregoing, any one or more of the Indemnified Parties shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Party or Indemnified Parties unless the employment of such counsel has been specifically authorized in writing by the Company and the Purchaser. Neither the Company nor the Purchaser shall be liable for any settlement of any such action effected without the written consent of the Company or the Purchaser, but if settled with the written consent of the Company and the Purchaser or if there is a final judgment for the plaintiff in any such action with or without consent, the Company and the Purchaser will indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(c) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Section 6 is for any reason held to be unavailable to the Indemnified Parties in accordance with its terms, the Purchaser and the Company shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by this Section 6 incurred by the Indemnified Parties in such proportions as determined by a court having jurisdiction of the matter.

(d) The covenants and agreements of the Purchaser and the Company under this Section 6 are joint and several.

Section 7. Conditions. The obligation of the Purchaser to purchase the Bonds and the obligation of the Issuer to sell the Bonds are subject to satisfaction of the following conditions precedent:

(a) The representations of the Issuer, the Purchaser and the Company in this Agreement will be true and correct on and as of the date the Bonds are issued as if made on and as of the Closing Date.

(b) As of the Closing Date, no Default (as defined in the Indenture) or Event of Default (as defined in the Lease) will have occurred and be continuing, and no event will have occurred and be continuing which, with the lapse of time or the giving of notice or both, would constitute a Default or Event of Default.

(c) On or before the Closing Date, all actions required to be taken as of the Closing Date in connection with the Bonds, the Bond Ordinance and the Bond Documents by the Issuer, the Purchaser and the Company will have been taken, and the Issuer, the Purchaser and the Company will each have performed and complied with all agreements, covenants and conditions required to be performed or complied with by the Bond Ordinance and the Bond Documents.

(d) The Indenture will have been duly executed and delivered by the Issuer, the Company, the Purchaser and the Depositary. The Lease will have been duly executed by the Issuer and the Company. Each of the Bond Documents, the Bond Ordinance and all other official action of the Issuer relating to the Bonds, the Project (as defined in the Lease) and the Bond Documents will be in full force and effect on the Closing Date and will not have been amended, modified or supplemented on or before the Closing Date.

(e) The Issuer, the Company and the Purchaser will have received the following, each dated the Closing Date:

(i) the approving opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A., Bond Counsel, substantially in the form of Exhibit A;

(ii) the opinion of counsel to the Company, substantially in the form of Exhibit B;

(iii) the opinion of the Attorney for the Issuer, substantially in the form set forth in Exhibit C;

(iv) the opinion of counsel to the Purchaser, substantially in the form set forth in Exhibit D;

(v) a certificate of and with reference to the Issuer and signed by a duly authorized officer of the Issuer to the effect set forth in subsections (a) and (c) of this Section 7 with respect to the Issuer;

(vi) a certificate of and with reference to the Company signed by a duly authorized officer of the Company to the effect set forth in subsections (a), (b) and (c) of this Section 7;

(vii) a certificate of and with reference to the Purchaser signed by a duly authorized officer of the Purchaser to the effect set forth in (a) and (c) of this Section 7;

(viii) a certificate of the Depositary signed by a duly authorized officer of the Depositary to the effect that (a) he or she is an authorized officer of the Depositary; (b) the

Indenture has been duly executed and delivered by the Depository; (c) the Depository has all necessary corporate powers required to execute, deliver and perform its obligations under the Indenture; and (d) to the best of his or her knowledge, the execution and delivery by the Depository of the Indenture and the performance by the Depository of its obligations under the Indenture will not conflict with or constitute a breach of or default under any law, administrative regulation, consent decree or any agreement or other instrument to which the Depository is subject or by which the Depository is bound;

(ix) such additional legal opinions, certificates, proceedings, instruments and other documents as any such party or Bond Counsel may reasonably request; and

(x) an investment intent letter from the Purchaser in the form of the Certificate of Qualified Investor attached to the Indenture.

If any conditions to the obligations of the Purchaser or the Issuer under this Agreement are not satisfied and if the satisfaction of such conditions is not waived by the Purchaser and the Issuer, then, at the option of the Purchaser or the Issuer, respectively in accordance with their interests (1) the Closing Date will be postponed for such period, not to exceed five business days, as may be necessary for such conditions to be satisfied or (2) the obligations of the Purchaser and the Issuer under this Agreement will terminate, and neither the Purchaser nor the Issuer will have any further obligations or liabilities under this Agreement.

Section 8. Survival. All agreements, covenants and representations and all other statements of the Issuer, the Purchaser and the Company and their respective officers set forth in or made pursuant to this Agreement will survive the Closing Date and the delivery of and payment for the Bonds.

Section 9. Notices. Any notice, demand, direction, request, consent, approval, report or other instrument authorized or required by any of the Bond Documents to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of the Bond Documents when delivered by hand delivery or on the third Business Day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer:

Torrance County, New Mexico
Attn: County Manager
205 S. Ninth St.
Estancia, NM 87016
Email: wjohnson@tcnm.us

with a copy to: Jill Sweeney, Esq.
Sherman & Howard, L.L.C.
500 Marquette Avenue NW, Suite 1203
Albuquerque, NM 87102
Telephone: (505) 814-6958
E-mail: jsweeney@shermanhoward.com

If to the Purchaser:

If to the Company: La Joya Wind, LLC
251 Little Falls Drive
Wilmington, DE 19808
Attn:
Tel:
E-mail:

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

Section 10. Remedies. No right or remedy conferred on any party in this Agreement is intended to be exclusive of any other right or remedy. No delay or omission of any party to exercise any such right or remedy may be exercised from time to time and as often as the relevant party may deem expedient. No waiver by any party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

Section 11. Severability. In case any one or more of the provisions of this Agreement or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of this Agreement or of the Bonds, but this Agreement and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer contained in this Agreement or the Bonds are for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer to the full extent permitted by law.

Section 12. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bond will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 13. Limitation of Issuer's Liability. No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by the Issuer contained in any

document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of the Bond proceeds or the issuance, sale and delivery of the Bond will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or will obligate the Issuer financially in any way, except with respect to the Basic Rent available under the Lease and the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds. None of the provisions of the Bond Documents will require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under the Bond Documents. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in any of the Bond Documents; provided, that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds.

Section 14. Title, Headings. The title and headings of the articles and sections of this Purchase Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions hereof.

Section 15. Execution in Counterparts. This Agreement may be executed in counterparts, all of which taken together will constitute one instrument.

Section 16. Applicable Law. The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico.

Section 17. Expenses. All costs and expenses relating to the preparation, issuance, delivery and sale of the Bonds and the preparation, execution and delivery of the Bond Ordinance, the Bond Documents and all other agreements, documents and instruments related to the transactions contemplated by the Bond Documents, including the fees and expenses of Issuer's outside review counsel, are to be paid by the Company.

Section 18. Performance of the Parties. The respective obligations of the parties hereunder are subject to the performance by each other party hereto of its own obligations hereunder.

[Signature pages follow]

DATED: _____

_____, as Purchaser

By: _____

Name: _____

Title: _____

LA JOYA WIND, LLC
as Company

By: _____

Name: _____

Title: _____

DATED AS OF _____.

BOARD OF COUNTY COMMISSIONERS
TORRANCE COUNTY, NEW MEXICO

By: _____
Ryan Schwebach, Chair

(SEAL)

ATTEST:

By: _____
Linda Jaramillo, County Clerk

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Exhibit A

Form of Opinion of Bond Counsel

_____, 20__

Torrance County, New Mexico
Estancia, New Mexico

_____ [purchaser]

La Joya Wind, LLC
Wilmington, Delaware

BOKF, NA
Albuquerque, New Mexico

Re: \$385,000,000 Torrance County, New Mexico Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project II), Series 2019B

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance and sale by Torrance County, New Mexico (the “Issuer”) of its Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project II), Series 2019B in the maximum principal amount of \$385,000,000 (the “Bonds”).

The Bonds will bear interest on the outstanding principal amount at a per annum rate equal to five and 00/100 percent (5.00%). Interest on the Bonds is payable each December 1, beginning December 1, 2020, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full at their final maturity.

The Bonds are subject to redemption prior to maturity as described in the Indenture dated as of _____, 2019 (the “Indenture”) among the Issuer, _____ (the “Purchaser”), La Joya Wind, LLC (the “Company”) and BOKF, NA (the “Depositary”).

The principal of, interest on and redemption price of the Bonds are not general obligations of the Issuer but special obligations payable solely from the revenues pledged under the Indenture. Neither the faith and credit nor the taxing power of the State of New Mexico or of any of its political subdivisions or municipalities, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness of the Issuer within the

meaning of any provision or limitation of the constitution or laws of the State of New Mexico. The Bonds will never constitute nor give rise to a pecuniary liability of the State of New Mexico, any of its political subdivisions or of the Issuer or a charge against their general credit or taxing powers.

In connection with the issuance of the Bonds, we have examined (a) a certified copy of Ordinance No. 2019-02 adopted by the Torrance County Commission on April 24, 2019 (the "Master Ordinance") and Ordinance No. 2019-__ adopted by the Torrance County Commission on September 25, 2019 (the "Supplemental Ordinance" and, together with the Master Ordinance, the "Bond Ordinance") authorizing the issuance of the Bonds, pursuant to and under the provisions of NMSA 1978, Sections 4-59-1 to-16 (1975, as amended through 2015) (the "Act"); (b) the executed Bonds; (c) executed counterparts of the Indenture, the Lease Agreement dated as of _____, 2019 (the "Agreement") between the Issuer and the Company and the Bond Purchase Agreement dated the date hereof (the "Bond Purchase Agreement" and, together with the Indenture and the Agreement, the "Bond Documents") among the Purchaser, the Issuer and the Company; and (d) such other opinions, documents, certificates and letters as we deemed relevant in rendering this opinion.

Based on such examination, in our opinion:

1. The Issuer is a political subdivision of the State of New Mexico and has the power and authority, under the constitution and laws of the State of New Mexico, including the Act, to execute and deliver the Bond Documents, and to authorize, execute, issue and deliver the Bonds.
2. The terms and provisions of the Bonds and the Bond Documents comply in all respects with the requirements of the Act.
3. The Bonds have been validly authorized, executed and issued in accordance with the law of New Mexico and represent the valid and binding special obligation of the Issuer.
4. The Bond Documents have been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties to the Bond Documents, constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.
5. Neither the offer nor sale of the Bonds to the Purchaser pursuant to the Bond Documents is required to be registered under any federal or New Mexico securities law. The Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.
6. The issuance and sale of the Bonds to the Purchaser is not subject to Rule 15c-12 of the Securities and Exchange Commission.

Our opinion in paragraph 4 above, insofar as it relates to the enforceability of the Indenture, is subject to the following qualifications:

- (i) New Mexico law may require that notice of acceleration be given to the Company before foreclosure of the Indenture. *Comer v. Hargrave*, 1979-NMSC-059, 93 N.M. 170, 598 P.2d 213.
- (ii) We express no opinion as to title to or the priority of any lien on or security interest in any real or personal property.
- (iii) NMSA 1978, Section 42A-1-24(C) (2001) provides that a court which has heard and adjudicated a condemnation proceeding has the power over the condemnee's compensation to "make orders as the court deems necessary with respect to encumbrances, liens, rents, insurance and other just and equitable charges."

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of a result.

Very truly yours,

Exhibit B

Form of Opinion of Counsel to the Company

[_____] , 2019

Torrance County, New Mexico
Estancia, New Mexico

_____ [purchaser]

BOKF, NA
Albuquerque, New Mexico

Ladies and Gentlemen:

We have represented La Joya Wind, LLC (the “Company”) in connection with (i) the Lease Agreement dated as of _____, 2019 (the “Agreement”) between Torrance County, New Mexico (the “Issuer”) and the Company, (ii) the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated the date hereof, among _____ (the Purchaser”), the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project II), Series 2019B in the maximum principal amount of \$385,000,000 to be issued under the Indenture dated as of _____, 2019 (the “Indenture”) among the Issuer, the Purchaser, the Company and the Depositary, and (iii) the Indenture. We have reviewed executed copies of the Bond Documents (as defined below), and certificates of officers of the Company and public officials and we have made such other investigations of law and fact as we have deemed necessary. The Agreement, the Indenture and the Bond Purchase Agreement are referred to herein as the Bond Documents.

Based upon the foregoing, in our opinion:

1. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, is duly registered as a foreign limited liability company under the laws of New Mexico and has duly authorized the execution, delivery and performance of the Agreement, the Indenture and the Bond Purchase Agreement.

2. The execution, delivery and performance by the Company of the Agreement, the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Company, any order, consent, decree, agreement or instrument to which the Company is a party or by which it or its properties, including the Project Property as defined in the Lease, is bound.

3. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of the Agreement, the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

4. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bond or the execution and delivery of any of the Bond Documents, (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents, or (iii) questions the authority of the Company to lease or operate any of the Project Property, as defined in the Lease.

5. The Agreement, the Indenture and the Bond Purchase Agreement have been duly authorized, executed and delivered and constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

The opinions expressed in this opinion letter are limited to the federal laws of the United States, the laws of the State of New Mexico, and the Limited Liability Company Act of the State of Delaware.

Very truly yours,

Exhibit C

Form of Opinion of Counsel to the Issuer

[_____], 2019

Torrance County, New Mexico
PO Box 767
205 S. Ninth St.
Estancia, NM 87016

La Joya Wind, LLC
251 Little Falls Drive
Wilmington, DE 19808

\$385,000,000
Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(La Joya Wind, LLC Project II)
Series 2019B

Ladies and Gentlemen:

We have acted as special counsel to Torrance County, New Mexico (the “Issuer”) in connection with the issuance by the Issuer of its Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project II), Series 2019B in the maximum principal amount of \$385,000,000 (the “Bonds”).

For the purposes of the opinions expressed in this letter, we have examined the following documents:

A. An executed copy of the Issuer’s Resolution No. _____, establishing the Issuer’s notice standards.

B. A copy of the letters from the Issuer to the Torrance County Assessor and to Estancia Municipal School District and Vaughn Municipal Schools each dated _____, notifying such parties of the Issuer’s intent to consider the Bond Ordinance (defined below).

C. The *Affidavit of Publication of Notice of the Intent to Consider the Bond Ordinance* dated as of [INSERT DATE], attesting to the publication of the notice of intent to consider the Bond Ordinance in *The Independent* on _____.

D. The *Affidavit of Publication of Notice of the Intent to Consider the Bond Ordinance* dated as of [INSERT DATE], 2019, attesting to the publication of the notice of intent to consider the Bond Ordinance in *The Independent* on _____.

E. An executed copy of Ordinance 2019-02 adopted by the Issuer on April 24, 2019 and Ordinance No. 2019-__ adopted by the Issuer on September 25, 2019 (collectively, the “Bond Ordinance”).

F. The *Affidavit of Publication of Notice of Adoption of Bond Ordinance* dated as of April __, 2019, attesting to the publication of the notice of adoption of the Bond Ordinance in *The Independent* on _____.

G. The Indenture dated as of _____ 1, 2019 (the “Indenture”), among the Issuer, _____ (the “Purchaser”), La Joya Wind, LLC (the “Company”) and BOKF, NA (the “Depository”).

H. The Lease Agreement dated as of _____ (the “Lease”), between the Issuer and the Company.

I. The Bond Purchase Agreement dated as of _____ (the “Bond Purchase Agreement”), among the Issuer, the Purchaser and the Company. The Bond Purchase Agreement, together with the Indenture and the Lease are collectively referred to herein as the “Bond Documents”).

J. Minutes from the Torrance County Board of County Commissioners meetings held on April 24, 2019 and September 25, 2019.

K. The Issuer Certificate dated as of the date hereof and delivered by the Issuer in connection with the issuance of the Bonds.

L. The report of the records of the State of New Mexico [Tenth] Judicial District Court and the United States District Court for the District of New Mexico prepared by UCC Search, Inc., on [____], (the “Court Records Report”).

In addition, we have examined such other records, documents, certificates, opinions and other matters as are in our judgment necessary or appropriate to enable us to render the opinions expressed herein.

Capitalized terms used herein and not otherwise defined in this opinion shall have the meanings ascribed to them in the Bond Documents. As used herein, the term “**knowledge**” means the current actual personal conscious awareness of facts and other information by the lawyers in the undersigned law firm actively involved in preparing this opinion letter, but does not include constructive knowledge or inquiry knowledge. The qualification of any statement in this opinion with respect to the existence or absence of facts “to our knowledge” means that, during the course of our representation, no information has come to the attention of any lawyer in the undersigned law firm actively involved in preparing this opinion letter which would give us actual knowledge

of the existence or absence of such facts. However, we have not undertaken any investigation to determine the existence or absence of such facts, and no inference as to our knowledge thereof shall be drawn from the fact of our representation of any party or otherwise.

Based on our review of the foregoing and the assumptions, qualifications and limitations contained in this opinion, in our opinion:

1. The Issuer is a duly organized and validly existing political subdivision of the State of New Mexico under the Constitution and laws of the State of New Mexico.
2. To our knowledge, Ordinance Nos. 2019-02 and 2019-__ duly adopted by the Torrance County Board of County Commissioners (the "Commission") on April 24, 2019 and September 25, 2019, respectively, (collectively, the "Bond Ordinance") in accordance with all applicable laws and has not been repealed or rescinded.
3. Without opining as to the legality, validity or enforceability of the Bonds, the Indenture, the Lease Agreement and the Bond Purchase Agreement (all as defined in the Bond Ordinance), the adoption of the Bond Ordinance by the Board will not violate any provision of the Constitution or laws of the State of New Mexico.
4. To our knowledge, and based solely upon our examination of the Court Records Report, there is no action, suit, or proceeding before or in the State of New Mexico _____ Judicial District Court and the United States District Court for the District of New Mexico pending against the Issuer which seeks to or does restrain or enjoin the issuance or delivery of the Bonds, or in any manner questions the authority or proceedings for the issuance of the Bonds.

In giving the opinions contained in this letter, we have assumed without investigation:

- A. the authenticity of all documents submitted to us as originals, the genuineness of all signatures and the conformity to authentic originals of all documents submitted to us as copies;
- B. the truthfulness and accuracy of all factual (in no event legal) matters contained in the representations and warranties in the Bond Documents, the Issuer Certification Instrument, the Court Records Report and in the certificates executed and delivered at closing by officials of the Issuer on the Closing Date;
- C. that all statutes, judicial and administrative decisions, and rules and regulations of governmental agencies, constituting the law of New Mexico are generally available (*i.e.*, in terms of access and distribution following publication or other release) to lawyers practicing in New Mexico, and are in a format that makes legal research reasonably feasible; and

D. that the constitutionality or validity of a relevant statute, rule, regulation or agency action is not in issue unless a reported decision binding upon New Mexico courts has specifically addressed but not resolved, or has established, its unconstitutionality or invalidity.

This opinion is limited to the matters expressly stated herein and is based on the assumptions and qualifications set forth herein and no further opinion may be inferred. This opinion is delivered to the addressees hereof in connection with the issuance of the Bonds, and the opinion and all conclusions stated herein may not be quoted or relied upon by any person other than the addressees hereof or for any purpose other than as stated herein without our prior written consent. We make no undertaking to supplement this opinion if facts or circumstances come to our attention or changes in the law occur after the date of this letter.

The foregoing opinions are limited to matters involving the law of the State of New Mexico and the Issuer, and we do not express any opinion as to the laws of any other jurisdiction.

Very truly yours,

,

Exhibit D

Form of Opinion of Counsel to the Purchaser

[_____], 2019

Torrance County, New Mexico
Estancia, New Mexico

La Joya Wind, LLC
Wilmington, Delaware

BOKF, NA
Albuquerque, New Mexico

Ladies and Gentlemen:

We have acted as counsel to _____, LLC (the “Purchaser”) in connection with the Indenture dated as of _____, 2019 (the “Indenture”) among BOKF, NA, as depository (the “Depository”), Torrance County, New Mexico (the “Issuer”), La Joya Wind, LLC (the “Company”) and the Purchaser, and the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated the date hereof among the Purchaser, the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project II), Series 2019B in the maximum principal amount of \$385,000,000 to be issued under the Indenture. The Indenture, the Bond Purchase Agreement, and the Lease Agreement dated as of _____ between the Company and the Issuer are referred to herein as the “Bond Documents.” In connection with this transaction, we have examined executed copies of the Bond Documents, certificates of officers of the Purchaser and certificates of public officials and have made such other investigations of law and fact as we have deemed necessary.

Based upon the foregoing, in our opinion:

1. The Purchaser is a limited liability company duly organized and validly existing and in good standing under the laws of Delaware.
2. The execution, delivery and performance by the Purchaser of the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the Articles of Organization or the operating agreement of the Purchaser or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Purchaser, any order, consent, decree, agreement or instrument to which the Purchaser is a party or by which it or its property is bound.
3. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Purchaser of the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

4. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Purchaser, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, or (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

5. The Indenture and the Bond Purchase Agreement constitute legal, valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

This opinion has been delivered at your request for the purposes in connection with the Bond Documents. Without our prior written consent, this opinion is not to be utilized or quoted for any other purpose and no one other than you is entitled to rely thereon. The opinions expressed in this opinion letter are limited to the federal laws of the United States, the laws of the State of New Mexico, and the Limited Liability Company Act of the State of Delaware.

Very truly yours,

TORRANCE COUNTY, NEW MEXICO,
as Issuer

_____, LLC,
as Purchaser

LA JOYA WIND, LLC
as Company

and

BOKF, NA,
as Depositary

INDENTURE

Dated as of _____ 1, 2019

Securing

\$385,000,000
Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(La Joya Wind, LLC Project II)
Series 2019B

This instrument constitutes a security agreement with respect to certain personal property, including certain after-acquired property as set forth herein, under the laws of the State of New Mexico.

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TORRANCE COUNTY, NEW MEXICO, a political subdivision existing under the laws of the State of New Mexico (together with its successors and assigns, the “Issuer”), _____, a Delaware limited liability company (together with its successors and assigns, and transferees of the Bonds, the “Purchaser”), LA JOYA WIND, LLC, a Delaware limited liability company (the “Company”) and BOKF, NA (together with its successors and assigns, the “Depository”), agree:

ARTICLE I - RECITALS

Section 101. The Act. Pursuant to NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2015) (the “Act”), the Issuer is authorized to acquire, construct and equip certain industrial or commercial projects and to issue industrial revenue bonds to finance such projects and certain related costs. Such bonds are payable by the Issuer solely out of revenue of the leasing of such projects. Such bonds may be further secured by, among other things, a mortgage and lien upon the properties acquired, constructed and equipped as part of the Project (as defined in Section 102). Under the Act, a project may include land, buildings, machinery, equipment and other property deemed necessary in connection with such project.

Section 102. Government Proceeding. The Company has presented to the Board of County Commissioners of Torrance County, New Mexico (the “Issuer”) a proposal relating to the issuance of taxable industrial revenue bonds to finance the acquisition, construction and installation of wind energy generation facilities and associated electrical generating equipment and real property used to generate electricity from wind energy (the “Project Property”), which is located at a site in the County outside the corporate limits of any municipality (the “Project Site”). The Issuer, by County Ordinance No. 2019-02 adopted on April 24, 2019 (the “Master Ordinance”) as supplemented by County Ordinance No. 2019-___ adopted on September 25, 2019 (the “Supplemental Ordinance”, and together with the Master Ordinance, the “Ordinance”) authorized, among other matters, (i) the issuance of its Torrance County, New Mexico, Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project II), Series 2019B (the “Series 2019B Bonds” or the “Bonds”), in the principal amount not to exceed \$385,000,000 with the Bonds being substantially in the form of Exhibit A, and (ii) the execution and delivery of this Indenture.

Section 103. Indenture; Lien; Collateral Pledge. The Bonds are to be issued under this Indenture (together with any and all amendments and supplements, this “Indenture”), which constitutes a collateral pledge of the Agreement (defined below).

Section 104. The Agreement. The Issuer has entered into a Lease Agreement (together with any and all amendments and supplements, the “Agreement”), dated as of the date of this Indenture, with the Company under which the Issuer has leased the Project Property to the Company, and the Company has agreed to make rental payments in amounts sufficient to pay the principal of, interest on and redemption price of the Bonds. For the purpose of providing security for the payment of the principal of, interest on and redemption price of the Bonds, the Issuer wishes to assign to the Purchaser certain of its interests in the Agreement but reserving its rights under the Agreement to certain payments, reimbursement for certain costs and expenses, and to give consents and to be indemnified.

Section 105. Conditions Precedent Performed. The Issuer is not aware of any act, condition or thing required on the part of the Issuer by the Constitution and laws of the State of New Mexico to happen, exist or be performed precedent to and in the execution and delivery of this Indenture, the Agreement and the issuance of the Bonds, except such as do exist and have happened and been performed.

ARTICLE II - DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 201. Meanings of Words and Terms. All capitalized words and terms defined in the Agreement have the same meanings when used in this Indenture if not also defined in this Indenture. Defined terms in all Bond Documents have consistent meanings unless otherwise expressed. In addition:

“Acquisition Fund” has the meaning assigned in Section 701.

“Act” has the meaning assigned in Section 101.

“Advance” has the meaning assigned in Section 702.

“Agreement” has the meaning assigned in Section 104.

“Authorized Company Representative” means any one of the persons at the time designated to act on behalf of the Company in a certificate furnished to the Issuer and the Depository containing the specimen signatures of such persons and signed on behalf of the Company by an officer of the Company.

“Bond Documents” means this Indenture, the Agreement and the Bond Purchase Agreement.

“Bond Fund” has the meaning assigned in Section 602.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated the date of the execution and delivery of this Indenture among the Purchaser, the Issuer and the Company.

“Bonds” have the meaning assigned in Section 102.

“Business Day” means any day that is not a Saturday or Sunday or a day on which banking institutions in the State or in the City in which payment is to be made are authorized or required to close.

“Certificate of Qualified Investor” means the certificate attached hereto as Exhibit D.

“Company” has the meaning assigned in the first paragraph of this Indenture.

“Completion Certificate” means a certificate by the Company certifying that the Project is complete and all costs have been paid for or provisions have been made for their payment, in the form attached hereto as Exhibit C.

“Depository” has the meaning assigned in the first paragraph of this Indenture.

“Event of Default” has the meaning assigned in Section 901.

“Final Maturity Date” means the thirtieth anniversary of the date of this Indenture.

“Indenture” has the meaning assigned in Section 103.

“Issue Date” means the date of issuance and delivery of the Bond to the Purchaser.

“Issuer” has the meaning assigned in the first paragraph of this Indenture.

“Lender” or “Lenders” means any and all persons or successors in interest thereof lending money or extending credit related to the Project (including any financing lease, monetization of tax benefits, back-leverage financing or credit derivative arrangement) to the Company or to an Affiliate of the Company including: (i) for the construction, permanent or interim financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project Property and related right from the Company, and/or (b) participating (directly or indirectly) as an equity investor in the Project primarily in connection with the utilization of applicable federal tax credits or tax depreciation benefits associated with holding an ownership interest in the Project, or (c) participating as a lessor under a lease finance arrangement relating to the Project (which arrangement shall not be deemed to include the Lease Agreement, and which person or persons shall not include Company or any of its Affiliates).

“Ordinance” or “Bond Ordinance” has the meaning assigned in Section 102.

“Parties” means the Company, the Issuer, the Purchaser and the Depository.

“Party” means any one of the Parties.

“Payment Date” means the each date for payment of principal and interest due on the Bonds.

“Payment of the Bonds” means payment in full of the principal of, interest on and redemption price of the Bonds in accordance with their terms and the provisions of this Indenture and payment of all fees and expenses of the Issuer, the Purchaser and the Depository payable by the Company under this Indenture, the Agreement or the Bond Purchase Agreement.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision.

“Project” means the acquisition, construction and installation of the Project Property.

“Project Property” means (i) wind energy generation equipment, towers, transformers and associated electrical generating equipment used to generate electricity from wind energy and other personal property of any kind whether now owned or hereafter acquired with the proceeds of the Bonds prior to the Completion Date as further described in Exhibit A of the Agreement and (ii) any rights of the Company in, or related to, the Project Property now owned or hereafter acquired under easements, agreements or leases assigned to the Issuer.

“Project Site” means the real property in Torrance County, New Mexico described in Exhibit A to the Agreement.

“Record Date” means each December 1 while the Bonds are outstanding.

“Related Costs” means expenditures incurred or to be incurred by the Company with respect to the Project, including, without limitation, the acquisition, installation, construction and commissioning of the Project Property.

“State” means the State of New Mexico.

Section 202. Rules of Construction.

(a) The captions and headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

(b) All references in this Indenture to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Indenture unless some other reference is established.

(c) Any inconsistency between the provisions of the Agreement and the provisions of this Indenture will be resolved in favor of the provisions of the Agreement.

Section 203. Bonds Not General Obligations of Issuer. Neither the faith and credit nor the taxing power of the State or of any of its political subdivisions, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The Bonds will be payable by the Issuer solely out of the Basic Rent, proceeds and receipts and other security pledged hereby. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness or general obligation of the Issuer within the meaning of any State constitutional provision or statutory limitation. The Bonds will never constitute or give rise to a pecuniary liability of the Issuer or be a charge against its general credit or a charge against the general credit or the taxing powers of the State or any political subdivision thereof.

ARTICLE III - GRANT

Section 301. Assignment and Pledge. In consideration of the purchase of the Bonds by the Purchaser, and in order to secure the payment of the principal of (including, without limitation, all sums advanced by the Purchaser, with interest thereon, in accordance with the terms of this Indenture and the other Bond Documents (all references in this Indenture to the payment of principal of the Bonds shall include such sums)), interest on and redemption price of the Bonds, and in order to secure the performance by the Issuer of its obligations under this Indenture and the Bonds, the Issuer assigns and pledges to the Purchaser and grants a mortgage and a security interest to the Purchaser in: (i) all the Issuer's right, title and interest in and to the Agreement and any other easement, lease, sublease, license, concession or other grant of a possessory or use interest in the Project Property to the extent the Issuer has any interest therein but reserving its rights under the Agreement to payments under Sections 5.3(b), 6.2, 6.3 and 6.4 of the Agreement, to reimbursement for certain costs and expenses, to receive notices, to give consents and to be indemnified; (ii) the moneys and investments in the Acquisition Fund and the Bond Fund and all reserves payable to the Issuer pursuant to the Agreement or this Indenture (including, without limitation, insurance and eminent domain proceeds) with respect to the Project Property; (iii) all lease rentals, revenues, profits, and receipts receivable by or on behalf of the Issuer from the Project Property; and (iv) the Project Property.

Section 302. Release. If (i) the principal of and interest on the Bonds are paid by the Issuer in full to the Bond Fund, as provided for herein, (ii) the Purchaser has received all sums due it under the Bond Documents, and (iii) the Issuer keeps, performs and observes all agreements, covenants and provisions under this Indenture, then all obligations of the Issuer as to the Bonds under this Indenture will terminate, and the Purchaser will cancel and discharge the lien of this Indenture and execute and deliver to the Issuer and the Company such instruments in writing as may be required to evidence such discharge. The Clerk of the Issuer is authorized to accept a certificate of the Purchaser stating that all principal and interest due on the Bonds has been paid as evidence of the satisfaction of this Indenture.

ARTICLE IV - AUTHORIZATION, FORM, EXECUTION AND DELIVERY OF BONDS

Section 401. Authorization; Authorized Amount of the Bond. The Bonds are hereby authorized to be issued under this Indenture and secured by this Indenture. The Bonds will be issued as one series of fully registered bonds without coupons, in the maximum principal amount not to exceed \$385,000,000. The Bonds will be numbered consecutively beginning with R-1. The Bonds may not be issued under this Indenture except in accordance with this Article.

Section 402. Form of Bond. The Bonds will be in substantially the form of Exhibit A. The Bonds will be dated the date of the execution and delivery of this Indenture and will bear interest on Advances made pursuant to Section 702 at the rate of Five and No/100 percent (5.000%). All interest on the Bonds will be calculated from the date of advance for all periods on the basis of a 360-day year of twelve thirty-day months. Accrued interest shall be payable annually on each December 1, beginning December 1, ____ [to be confirmed], with the outstanding principal amount of the Bonds plus all unpaid interest thereon due and payable in full on the Final Maturity

Date. Principal and interest, as applicable, will be payable by the Issuer from the Basic Rent received from the Company to the owner of the Bonds on the immediately preceding Record Date upon presentation of the Bonds for cancellation at the offices of the Issuer. All payments will be made in lawful money of the United States.

Section 403. Execution and Delivery; Payment. The Bonds will be signed by the Chairperson of the Board of County Commissioners of the Issuer or other officer designated by the Board to sign the Bonds, and delivered to the Purchaser on the date of the execution and delivery of this Indenture. Subject to the terms and conditions of the Bond Purchase Agreement, the Purchaser will purchase the Bonds and will pay the purchase price of the Bonds to the Issuer as set forth in Section 701.

Section 404. Registration and Transfer of the Bonds. The Company, on behalf of the Issuer, will cause to be kept at its office a book for the registration and transfer of the Bonds. The registration book will be open to inspection by the Issuer upon advance notice during the Company's normal business hours.

The Bonds, together with the obligation to fund advances thereunder, may be transferred by the Purchaser in whole, but not in part, in person or by duly authorized attorney, in the registration book upon (i) surrender of the Bonds, (ii) delivery of a written transfer instrument, and (iii) compliance with Securities Act of 1933, as amended (the "Federal Securities Act"), and applicable state securities laws as established to the satisfaction of the Issuer, and delivery to the Issuer and the Company of (A) an opinion, in form and substance satisfactory to the Issuer, from legal counsel experienced in securities laws matters, which counsel must be satisfactory to the Issuer, to the effect the transfer complies with the Federal Securities Act and applicable state securities laws and (B) written representations from the transferee, in form and substance satisfactory to the Issuer (including, but not limited to the form of Certificate of Qualified Investor), necessary to establish such compliance all as further set forth in the Bond form attached as Exhibit A. Such Issuer approval shall be in writing. The Issuer agrees that it will cooperate in delivering a new Bond, registered in the name of the transferee. The person requesting the transfer will pay any tax or fee or other charge imposed on the transfer and will pay the Issuer's expenses in connection therewith. The Issuer may deem and treat the person in whose name the Bond is registered as the absolute owner thereof for the purpose of receiving payment and for all other purposes, and all such payments made to any such registered owner or upon its written order will be valid and effectual to satisfy and discharge the liability upon the Bond, to the extent of the sum or sums paid; and the Issuer will not be affected by any notice to the contrary.

The Issuer acknowledges that the Purchaser may assign its rights to receive payments of principal, interest and any amounts due under the Bonds to any party without the consent of the Issuer.

Section 405. Lost, Stolen, Destroyed and Mutilated Bond. If the Issuer receives satisfactory evidence that any Bonds have been lost, stolen, destroyed or mutilated and receives satisfactory indemnity, and the mutilated Bonds are surrendered and cancelled, then the Issuer will execute and deliver new Bonds. The applicant for new Bonds will pay any charges and expenses in connection with the issuance of the new Bonds. New Bonds issued under this Section 405 will

be an original contractual obligation of the Issuer and will be entitled to all of the benefits of this Indenture. The provisions of this Section 405 with respect to the replacement of the lost, stolen, destroyed or mutilated bonds are exclusive.

Section 406. Cancellation and Destruction of the Bonds by Issuer. If the Bonds are delivered to the Issuer for cancellation, the Bonds will be cancelled immediately and destroyed by the Issuer.

Section 407. Application of Payments for Bonds. All payments received by or on behalf of the Issuer under the Agreement with respect to the Bonds will be applied first to accrued interest on the Bonds on the next date for the payment of such interest and, second, to the unpaid principal of the Bonds. If such payments exceed accrued interest on and the unpaid principal of the Bonds, and any other amounts owed, the excess will be paid to the Company. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making Bond advances under this Indenture.

ARTICLE V - REDEMPTION

Section 501. Redemption. If the Company gives notice to the Issuer, the Depositary and the Purchaser pursuant to Article IX of the Agreement that the Company has elected to cause redemption of the Bonds in full or in part and the Company pays the redemption price, all or such portion of the Bonds will be deemed redeemed by the Issuer on the date indicated in such notice at a redemption price equal to the principal amount to be redeemed plus accrued interest on such principal amount to the redemption date. If the Company redeems the Bonds in full before the Completion Date, any monies held in the Acquisition Fund shall be returned to the Company.

ARTICLE VI - BOND REVENUES AND FUNDS

Section 601. Source of Payment of the Bonds. The Bonds and all payments by the Issuer under this Indenture are not general obligations of the Issuer, and shall never constitute indebtedness of the Issuer, but are the limited, special obligations of the Issuer payable solely from revenues and receipts derived from the leasing of the Project Property under the Agreement and other security pledged to payment of the Bonds under this Indenture. The Project Property has been leased under the Agreement and the Basic Rent is to be remitted by the Company directly to the Purchaser on or before each Payment Date, subject to the rights of offset set forth in Section 5.4(b) of the Agreement. The portion of the Basic Rent necessary to pay amounts owing on the Bonds is to be deposited in the Bond Fund (except for any payments which are satisfied pursuant to the exercise of the right of offset as set forth in Section 5.4(b) of the Agreement). The Basic Rent is sufficient in amount to insure the prompt payment of the principal and accrued interest on the Bonds and the entire amount of the Basic Rent is pledged to the payment of principal and accrued interest on the Bonds.

Section 602. Creation of the Bond Fund, Payments. A fund shall be created for the benefit of Issuer by the Company and designated "La Joya Wind, LLC Project II Series 2019B

Bond Fund” (the “Bond Fund”). There will be deposited into the Bond Fund, as and when received (i) the Basic Rent (except to the extent offset pursuant to Section 5.4(b) of the Agreement), and (ii) all other moneys required to be deposited into the Bond Fund pursuant to this Indenture and the Agreement. The interest and other income received on investments of the Bond Fund moneys as provided in Section 708 will be retained in the Bond Fund. The Company covenants that so long as the Bonds are outstanding, it will deposit or cause to be deposited solely from the sources stated in Section 601, into the Bond Fund for Issuer’s account, sufficient sums from revenues and receipts from the Project Property promptly to meet and pay the installments of interest, or of principal and interest, as applicable, on the Bonds (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement). The Parties acknowledge that NMSA 1978, Section 4-59-3 (2002) provides that it is not intended that any county itself be authorized to operate any manufacturing, industrial or commercial enterprise under the Act and, accordingly, the Issuer has no intention of taking possession of or operating the Project Property.

Section 603. Use and Custody of the Bond Fund. The moneys in the Bond Fund will be used solely for payment of principal of and interest on the Bonds, except as provided in Sections 604 and 905. The Bond Fund will be in the custody of the Company, and the Company will withdraw sufficient funds from the Bond Fund to pay the installments of principal and interest on the Bonds as due (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement).

Section 604. Repayment to the Company from the Bond Fund. Any amounts remaining in the Bond Fund after actual payment in full of the Bonds, the fees, charges and expenses of the Issuer and the Purchaser, administrative expenses and other amounts required to be paid by the Company under the Agreement will be paid to the Company upon expiration of the Agreement.

Section 605. Investments. Moneys on deposit in the Bond Fund may be invested and reinvested by the Company. Such investments will be deemed at all times to be a part of the Bond Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Bond Fund. Any loss resulting from any such investment will be charged to the Bond Fund. The Company will use all reasonable efforts to sell at the best price obtainable or present for redemption any such investment when necessary in order to provide cash to meet any payment or transfer from the Bond Fund.

Section 606. Non-presentment of the Bonds. If the Bonds are not presented for payment when the final payment of principal and interest is due, and if there are funds sufficient to make such final payment deposited with the Company, all liability of the Issuer for payment of the Bonds will cease. Interest shall not accrue after the Final Maturity Date. The Purchaser will be restricted to such funds for any claim against the Issuer relating to the Bonds.

Section 607. No Liability. The Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Bond Fund and Company shall indemnify and hold the Issuer harmless from and against all claims,

liabilities or whatsoever nature arising from or relating to the Bond Fund or Company's management of the Bond Fund.

ARTICLE VII - ACQUISITION FUND

Section 701. Creation of the Acquisition Fund; Deposits. A fund is hereby created with the Depositary and designated "La Joya Wind, LLC Project II Series 2019B Acquisition Fund" (the "Acquisition Fund"). Subject to the terms of the Bond Purchase Agreement, the Purchaser will purchase the Bonds on the date of execution and delivery of the Indenture and will pay the purchase price of the Bonds through the Advances described in Section 702. The proceeds of the sale of the Bonds, the interest and other income received on investments of the Acquisition Fund moneys as provided in Section 708 will be retained in the Acquisition Fund. The moneys in the Acquisition Fund will be held by the Depositary and will be applied to the payment of Related Costs and, pending such application, will be subject to a lien in favor of the Purchaser or its assignee to secure payment of principal and accrued interest on the Bonds. The Acquisition Fund will be in the custody of the Depositary, and the Depositary is authorized and directed to wire from or issue checks on the Acquisition Fund for the payment of Related Costs pursuant to Section 702.

Section 702. Disbursements. The Company may request Advances from time to time to finance the Project (each, an "Advance") by delivery of a Requisition Notice to the Purchaser and the Depositary in the form attached hereto as Exhibit B (the "Requisition Notice"). On or before the fifth business day following receipt of the Requisition Notice from the Company requesting an Advance, so long as no Event of Default has occurred and is continuing, the Purchaser will pay or cause to be paid the amount of the Advance requested in such Requisition Notice to the Depositary for deposit in the Acquisition Fund, provided, however, that the aggregate amount of such Advances shall not exceed \$385,000,000 for the Series 2019B Bonds. The Depositary will make payments of Related Costs from the Acquisition Fund not later than the business day following the date of receipt of payment of the amount of the Advance from Purchaser, provided that immediately available funds are on deposit therein. The records of the Depositary will be conclusive as to the aggregate amount of Advances requested and made, absent manifest error. The Purchaser is authorized to endorse on the schedule attached to the Bonds the date and amount of each such Advance. Failure to make any such endorsement or any error in such endorsement will not affect the rights or obligations of any of the Parties on or with respect to the Bonds. The Requisition Notice signed by an Authorized Company Representative shall state to whom the payment is to be made, the general purpose for which the obligation to be paid was incurred, and that:

(a) obligations in the stated amounts were incurred for Related Costs and are due and payable (or, if the Company is indicated as the payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund; and

(b) to the best knowledge of such Authorized Company Representative there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim, other than such lien, right, attachment or claim as are filed or made in the ordinary course of constructing and operating the Project, affecting the right of any such payees

to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(c) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of the requisition.

Section 703. Records. The Depositary will keep and maintain all Requisition Notices and adequate records pertaining to the Acquisition Fund, and payments made therefrom, which will be open to inspection by the Issuer, the Purchaser, the Company, or their agents, upon advance notice, during normal business hours.

Section 704. Depositary May Rely on Requisitions. All writings, requisitions and certificates received by the Depositary as conditions of payment from the Acquisition Fund, and which are proper and complete on their face, may be conclusively relied upon by the Depositary and will be retained by the Depositary, subject at all reasonable times, upon advance notice, to examination by the other Parties and their respective agents and representatives.

Section 705. Status Reports. At least annually, the Depositary will make a written report covering all receipts and moneys then on deposit in the Acquisition Fund, and will report any investments of such moneys and all transfers and disbursements of such moneys as of and for the preceding year. The reports will be prepared in conformity with the provisions of this Indenture, and copies of each report will be filed with the Purchaser, the Company, and, if requested by the Issuer, with the Issuer, not later than the fifteenth day of the month following the year covered by the report.

Section 706. Completion Date. Upon receipt of a certificate substantially in the form of Exhibit C signed by an Authorized Company Representative establishing the Construction Completion Date, as established in Section 4.4 of the Agreement, the Depositary will set aside in the Acquisition Fund the moneys necessary for the payment of the Related Costs incurred by the Company but not then due or payable as set forth in such certificate, and then will transfer any other moneys remaining in the Acquisition Fund to the Company or its assignee.

Section 707. Payment on Acceleration. If the Purchaser declares the unpaid principal of and accrued interest on the Bonds to be immediately due and payable pursuant to Section 902(a), the Depositary will promptly, upon receipt of notice of such declaration from the Purchaser or its assignee, return all moneys then held for the credit of the Acquisition Fund in accordance with Section 905 to the Purchaser or its assignee for application to the unpaid principal of and accrued interest on the Bonds.

Section 708. Investments. Moneys on deposit in the Acquisition Fund may be invested and reinvested by the Depositary, at the written direction of an Authorized Company Representative. Any portion of the proceeds from the sale of the Bonds or any accrued interest, in the event the money will not be needed for the Project may be applied to the payment of principal

and interest on the Bonds or invested as provided in Section 4-59-9 NMSA 1978. Such investments will be deemed at all times to be a part of the Acquisition Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Acquisition Fund. Any loss resulting from any such investment will be charged to the Acquisition Fund. The Depository will use all reasonable efforts to sell at the best price obtainable or present for redemption any such investment when necessary in order to provide cash to meet any payment or transfer from the Acquisition Fund. Neither the Depository nor the Issuer will be responsible for any loss, liability or expense (or failure to realize profits) resulting from any such investment. The Depository may make any such investment through its own or its affiliated bond or investment department, unless otherwise directed in writing by an Authorized Company Representative.

Section 709. No Liability. Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Acquisition Fund and the Company shall indemnify and hold Issuer harmless from and against all claims, liabilities or whatsoever nature arising from or relating to the Acquisition Fund or the Company's management of the Acquisition Fund.

ARTICLE VIII - PARTICULAR COVENANTS AND PROVISIONS

Section 801. Extent of Covenants; Disclaimer of Liability. It is expressly made a condition of this Indenture that any covenants, stipulations, obligations, representations or agreements herein contained or contained in the Bonds or this Indenture do not and will never give rise to a personal or pecuniary liability of any present or future officer, employee or agent of the Issuer, or be a charge against the general credit or taxing powers of the Issuer, and in the event of a breach of such covenant; stipulation, obligation, representation or agreement, no personal or pecuniary liability of any present or future officer, employee or agent of the Issuer, or charge payable by the Issuer directly or indirectly from the revenues of the Issuer, other than the Basic Rent, will arise therefrom. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THE BONDS. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THE BONDS WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OR GENERAL OBLIGATION OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE. THE BONDS OR THIS INDENTURE WILL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS. NONE OF THE PROVISIONS OF THIS INDENTURE SHALL REQUIRE THE ISSUER TO EXPEND OR RISK ITS OWN FUNDS OR TO OTHERWISE INCUR FINANCIAL LIABILITY IN THE PERFORMANCE OF ANY OF ITS DUTIES OR IN THE EXERCISE OF ANY OF ITS RIGHTS OR POWERS HEREUNDER.

Section 802. Performance; Authority. The Issuer covenants that it will faithfully perform all covenants and provisions contained in this Indenture and in the Bonds. The Issuer represents that it is duly authorized under the Constitution and laws of the State of New Mexico, including the Act, to issue the Bonds, to execute and deliver this Indenture, to grant a security

interest in the property described in this Indenture, to pledge the rentals and other revenues described in this Indenture and that it has, to its knowledge, taken all actions required on its part for the issuance of the Bonds, and for the execution and delivery of this Indenture and the Agreement.

Section 803. Office or Agency. The Issuer will maintain an office or agency in Torrance County, New Mexico, while the Bonds are outstanding and where demands with respect to this Indenture or the Bonds may be made. The office of the County Clerk of the Issuer will be such agency until further notice.

Section 804. Obligations Under the Agreement. The Issuer: (i) will perform all of its obligations under the Agreement; (ii) will not execute or agree to any change, amendment or modification of or supplement to the Agreement except in accordance with the provisions thereof and Section 1101 of this Indenture; and (iii) will not agree to any abatement, reduction or diminution of the Basic Rent without the written approval of the Purchaser. The parties acknowledge that the Issuer has no obligation to enforce the Agreement but any actions taken by the Issuer to enforce the Agreement shall be at the expense of the Company.

Section 805. Use and Possession by the Company. So long as not otherwise provided in this Indenture or the Agreement, the Company will be permitted to possess, use and enjoy the Project Property so as to carry out its obligations under the Agreement.

Section 806. Instruments of Further Assurance. The Issuer will, at the expense of the Company or the Purchaser, execute, acknowledge, deliver and perform such supplemental indentures or such further acts, instruments, documents and transfers as the Depository or the Purchaser may reasonably require for better assuring, transferring, mortgaging and pledging unto the Depository or the Purchaser all the property and revenues and receipts pledged to the payment of the Bonds under this Indenture.

Section 807. Recording of Indenture, Supplemental Indentures and Other Documents. The Company will cause this Indenture, the Agreement, and all supplements to this Indenture and the Agreement, as well as all security instruments, financing statements, continuation statements and any other instruments as may be required, to be recorded or filed in such manner and places as required to fully preserve and protect the security of the Purchaser and the rights of the Depository, including recording in the real estate records of Torrance County, New Mexico. The Depository will have no responsibility to make any such filings except for filings as the Company may from time to time request, and the Issuer will have no responsibility to make any such filings.

ARTICLE IX - EVENTS OF DEFAULT AND REMEDIES

Section 901. Events of Default. Each of the following events is an “Event of Default:”

(a) Failure to pay any installment of principal or interest due under the Bonds when due and such failure continues unremedied for a period of 30 days after the provision by the Issuer or the Purchaser of written notice of non-payment;

(b) An Event of Default under the Agreement or any other Bond Document (other than this Indenture) occurs and is continuing;

(c) The Issuer, the Company or the Depository fails to perform any covenant contained in this Indenture or the Bond Documents, other than as specified in subsections (a) and (b) above, and such failure is not cured within 30 days after receipt by the Company of the written notice of such failure unless the Purchaser shall agree in writing to the extension of such time prior to its expiration.

(d) Any bankruptcy, insolvency, reorganization, etc. of the Issuer, the Company or the Depository.

Section 902. Remedies on Events of Default. Upon the occurrence of an Event of Default, the Purchaser will have the following rights and remedies:

(a) Acceleration. The Purchaser or its assignee may, by written notice given to the other Parties, declare the principal amount of the Bonds outstanding to be immediately due and payable and principal and interest thereon will become immediately due and payable; provided, however, that the Purchaser or its assignee, by written notice to the other Parties, may annul such declaration and destroy its effects and waive any such default: (i) if all covenants, conditions and agreements with respect to which such default shall have been made shall be fully performed, (ii) all arrears shall have been paid on any installment of interest and principal which has been theretofore due, plus (to the extent permitted by law) interest thereon from the due dates, and (iii) all reasonable charges and expenses of the Issuer, the Purchaser, the Depository and their agents and counsel shall have been paid or provided for. Any such declaration that the Bonds are due and payable will be deemed to be a redemption of the Bonds;

(b) Suit for Judgment on the Bonds. The Purchaser will be entitled to sue either for the specific enforcement of any covenant or agreement contained herein, or in any of the Bond Documents, or in and of the execution of any power herein granted and/or for and recover judgment, either before or after or during the pendency of any proceedings for the enforcement of the lien of this Indenture or for the enforcement of any of its rights, but any such judgment against the Issuer will be enforceable only against the funds and accounts related to and held under this Indenture for the Bonds. There will not be authorized any deficiency judgment against the Issuer. No recovery of any judgment by the Purchaser will in any manner or to any extent affect the lien of this Indenture or any rights, powers or remedies of the Purchaser hereunder, but such lien, rights, powers and remedies of the Purchaser will continue unimpaired; and

(c) Enforcement of Rights under Agreement. The Purchaser or its assignee may, as assignee of specified interests of the Issuer in the Agreement, enforce any remedy available to the Issuer under the Agreement (except the remedies of the Issuer pursuant to Section 8.3 of the Agreement) and under any other lease, sublease, license or other grant of a possessory or use interest in the Project Property.

No right or remedy confirmed on any Party hereunder is intended to be exclusive of any other right or remedy confirmed on such Party hereunder, but each and every such right or remedy will be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute; provided, that the remedy of Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902.

Section 903. Rights and Remedies of Purchaser. The Purchaser will not have the right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust related thereto or for the appointment of a receiver or any other remedy hereunder, unless an Event of Default has occurred and is continuing of which the Company has been notified, it being understood and intended that the Purchaser will not have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its actions or to enforce any right hereunder except in the manner herein provided. Nothing in this Indenture will, however, affect or impair the right of the Purchaser to enforce the payment of the principal of and interest on the Bonds, when due or at and after the maturity thereof, or the obligation of the Issuer to pay the principal and interest on the Bonds at the time and place and from the revenues provided in this Indenture or in the Bonds.

Section 904. Issuer and Depositary Not Responsible. Neither the Issuer nor the Depositary has any responsibility or right to act on behalf of the Purchaser with respect to any Event of Default. All rights and remedies arising from or related to any Event of Default are solely the rights and remedies of the Purchaser; provided that, upon request and at the expense of the Purchaser, the Issuer will cooperate with the Purchaser in the lawful enforcement of such rights and remedies upon receipt of indemnity satisfactory to the Issuer in the Issuer's sole discretion against any out-of-pocket costs and expenses incurred by the Issuer in its sole discretion (including any counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

Section 905. Application of Moneys. All moneys received by the Purchaser pursuant to any right given or action taken under the provisions of this Article will, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys, be applied (i) first to pay the fees and expenses of the Issuer and the Depositary; (ii) then to pay sums advanced by the Purchaser (other than Advances) pursuant to the Bond Documents, with interest thereon; (iii) then to the payment of charges due the Purchaser pursuant to the Bond Documents, and (iv) then to the payment of interest and principal and premium, if any, due and unpaid on the Bonds. Whenever moneys are to be applied pursuant to the provisions of this Section 905, such moneys will be applied at such times, and from time to time, as the Purchaser will determine.

Whenever the Bonds and interest thereon have been paid under the provisions of this Section 905 and all expenses and charges of the Purchaser, the Issuer and the Depositary (and their respective counsel and agents) have been paid, any balance remaining will be paid to the Company.

Section 906. Purchaser to File Proofs of Claim. In the case of any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceedings affecting the Project Property or the Company, the Purchaser and the Issuer will, to the extent

permitted by law, be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have claims of the Purchaser or the Issuer, respectively, allowed in such proceedings for the entire amount due and payable by the Issuer, or by the Company, as the case may be, under the Indenture or the Agreement, at the date of the institution of such proceedings and for any additional amounts which may become due and payable after such date.

Section 907. Delay or Omission; No Waiver. No delay or omission of the Purchaser to exercise any right or power accruing upon any Event of Default will exhaust or impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every power and remedy given by this Indenture to the Purchaser may be exercised from time to time and as often as may be deemed expedient by the Purchaser.

Section 908. No Waiver of One Default to Affect Another. No waiver of any Event of Default by the Purchaser will extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon.

Section 909. Discontinuance of Proceedings on Default; Position of Parties Restored. In case the Purchaser shall have proceeded to enforce any right under this Indenture by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Purchaser, then and in every such case the Issuer and Purchaser will be restored to their former positions and rights under this Indenture with respect to the Project Property and all rights, remedies, and powers of the Purchaser will continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Purchaser may, in its discretion, waive any Event of Default and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds. In case of any such waiver or rescission, or in case any proceeding taken by the Purchaser on account of any such Event of Default shall have been discontinued or abandoned or determined adversely to the Purchaser, then in every such case the Issuer and the Purchaser shall be restored to their former respective positions and rights hereunder, and the Event of Default which was waived will be considered to be cured, but no waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 911. Lender Right to Cure Defaults. If an Event of Default has occurred and is continuing under this Indenture of which the Company has been notified, any mortgagee or assignee of the Company that holds an interest in the Project Property as security, including but not limited to a Lender, shall at any time have the right, but not the obligation, to perform any act necessary to cure any such Event of Default and to prevent the release and discharge of this Indenture. Such right to cure must be performed no later than sixty (60) days following the applicable cure period provided in Section 901.

ARTICLE X - THE DEPOSITARY

Section 1001. Acceptance of Duties. The Depositary accepts the duties imposed on it by this Indenture, but only on the following express terms and conditions:

(a) The Depository undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into this Indenture against the Depository.

(b) In the absence of negligence or willful misconduct on its part, the Depository may conclusively rely on certificates or notices furnished to the Depository and conforming to the requirements of this Indenture or the Agreement, as the case may be; but if any such certificates or notices are specifically required to be furnished to the Depository under this Indenture or the Agreement, the Depository will examine the same to determine whether they conform to the requirements of this Indenture or the Agreement, as the case may be.

(c) The Company hereby indemnifies and holds harmless the Depository from and against any and all loss, liability, cost, damage and expense, including, without limitation, reasonable counsel fees, which the Depository may suffer or incur by reason of any action, claim or proceeding brought against the Depository arising out of or relating in any way to this Indenture or any transaction to which the Indenture relates unless such action, claim or proceeding is the result of the negligence or willful misconduct of the Depository. The indemnification shall survive the resignation, removal and termination of the Depository. No provision of this Indenture will be construed to relieve the Depository from liability for its own negligence or willful misconduct.

(d) The Depository may consult with counsel and other professionals and the advice of such counsel and other professionals shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depository hereunder in good faith and in reliance thereon.

(e) The Depository shall be under no obligation to take any action or exercise any right or power under the Indenture unless the Company shall first have provided to the Depository, its directors, officers, agents and employees, security or indemnity satisfactory to the Depository against the costs (including without limitation reasonable fees of attorneys), expenses and liabilities that might be incurred by the Depository in connection herewith.

Section 1002. Compensation. The Company will pay directly to the Depository its reasonable fees and charges and all of its reasonable expenses (including reasonable counsel fees and expenses).

Section 1003. Qualification. The Depository must be an association or a corporation organized and doing business under the laws of the United States of America or of any state and be subject to supervision or examination by federal or state banking authorities. If at any time the Depository ceases to be eligible in accordance with the provisions of this Section 1003, it will resign immediately in the manner and with the effect specified in Section 1004.

Section 1004. Resignation and Removal.

(a) No resignation or removal of the Depository and no appointment of a successor Depository will become effective until the acceptance of appointment by the successor Depository under Section 1005.

(b) The Depositary may resign at any time upon 10 business days' written notice to the other Parties. If an instrument of acceptance by a successor Depositary has not been delivered to the retiring Depositary within 30 days after the giving of such notice of resignation, the retiring Depositary may petition any court of competent jurisdiction for the appointment of a successor Depositary.

(c) The Depositary may be removed at any time by the Company upon 10 business days' written notice to the other Parties.

(d) The Depositary will be automatically removed on the occurrence of the Construction Completion Date of the Project and the application of all moneys on deposit in the Acquisition Fund as provided in Section 706. No successor Depositary will thereafter be appointed and each reference to the Depositary in this Indenture and the Agreement will thereafter be ineffective.

(e) If the Depositary resigns or is removed (except as provided in subsection (d) of this Section 1004), the Company will promptly appoint a successor Depositary and give written notice of such appointment to the Issuer, the Purchaser and the retiring or removed Depositary.

Section 1005. Successor Depositary.

(a) Every successor Depositary appointed under this Indenture will execute, acknowledge and deliver to its predecessor and the other Parties an instrument accepting such appointment, and thereupon such successor Depositary, without any further act, will become fully vested with all the rights, and be subject to all the obligations, of its predecessor; but such predecessor will, nevertheless, on the request of its successor, the Issuer, the Company or the Purchaser execute and deliver an instrument transferring to such successor Depositary all the rights of such predecessor under this Indenture. Every predecessor will deliver all property, including all records relating hereto, and moneys held by it under this Indenture to its successor. The Issuer and the Purchaser will execute, acknowledge and deliver any instrument, satisfactory to each of them, required by any successor Depositary to more fully and certainly vest in such Depositary the rights vested in the predecessor Depositary by this Indenture.

(b) Notwithstanding any of the foregoing provisions of this Article, any Person qualified to act as Depositary under this Indenture with or into which the Person acting as Depositary may be merged or consolidated, or to which the assets and business of such Person may be sold, will automatically become the successor Depositary.

ARTICLE XI - SUPPLEMENTS AND AMENDMENTS TO INDENTURE

Section 1101. Other Supplemental Indentures. This Indenture may be supplemented or amended only by one or more instruments executed by the Issuer, the Purchaser and the Depositary.

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent. Receipt by the Issuer, the Company and the Depository of a notice from a transferee of the Bonds will constitute notice of such a different address for the Purchaser.

Section 1202. Remedies. No right or remedy conferred on any Party in any of the Bond Documents is intended to be exclusive of any other right or remedy conferred on such Party in any of the Bond Documents. Each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents, or any other applicable agreement or contract; provided, that the remedy of the Issuer or the Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902 hereunder or Article VIII of the Agreement, as the case may be. No delay or omission of any Party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party may deem expedient. No waiver by any Party of any right or remedy with respect to any default or Event of Default will extend to or affect any other existing or subsequent default or Event of Default.

Section 1203. Beneficiaries. Nothing in any of the Bond Documents expressed or implied is intended or is to be construed to confer upon any Person other than the Parties any right, remedy or claim, legal or equitable.

Section 1204. Severability. In case any one or more of the provisions of any of the Bond Documents or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of the Bond Documents or of the Bonds, but the Bond Documents and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the any Party contained in any of the Bond Documents or the Bonds is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of such Party to the full extent permitted by law.

Section 1205. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 1206. Payments Due on Days That Are Not Business Days. If the date for any payment called for under any of the Bond Documents or the Bonds is not a Business Day, then such payment will be made on the next Business Day and no interest on such payment will accrue for the period after the scheduled date for such payment.

Section 1207. Limitation of Issuer's Liability. No agreements or provisions contained in any Bond Document nor any agreement, covenant or undertaking by the Issuer contained in any

document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officers, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the Basic Rent, and its application as provided under this Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in any Bond Document or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officers and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Basic Rent. Without limiting the requirement to perform its duties or exercise its rights and powers under the Bond Documents upon receipt of appropriate indemnity or payment, none of the provisions of any Bond Document will require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under any Bond Document.

Section 1208. Successors. Wherever a Party is referred to in this Indenture, it shall be deemed to include its successors, and all covenants and agreements in this Indenture will bind and inure to the benefit of the such Party's successors.

Section 1209. Title, Headings. The title and headings of the articles, sections and subdivisions of this Indenture have been used for convenience only and will not modify or restrict any of the terms or provisions of this Indenture.

Section 1210. Consents and Approvals. In any action requiring the consent or approval of a party to this Indenture, such consent or approval will not be unreasonably withheld.

Section 1211. Execution in Counterparts. Each of the Bond Documents may be executed in multiple counterparts, all of which taken together will constitute one instrument. Any Party may execute any of the Bond Documents by executing any such counterpart of such Bond Document.

Section 1212. Applicable Law. The validity, construction and effect of each of the Bond Documents will be governed by and construed in accordance with the laws of the State applicable to agreements made and to be performed in the State of New Mexico.

[Signature pages follow]

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

By: _____
Ryan Schwebach, Chair

(SEAL)

ATTEST:

By: _____
Linda Jaramillo, County Clerk

STATE OF NEW MEXICO)
)
COUNTY OF TORRANCE)

This instrument was acknowledged before me on this ____ day of _____,
2019, by Ryan Schwebach, as Chair of the Board of County Commissioners, Torrance County,
New Mexico

(NOTARY SEAL)

Notary Public

My Commission Expires: _____

LA JOYA WIND, LLC

By: _____

Name: _____

Title: Vice President

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2019, by _____, as Vice President of La Joya Wind, LLC, a Delaware limited liability company.

(NOTARY SEAL)

Notary Public

My Commission Expires: _____

BOKF, NA,
as Depository

By: _____

Name: _____

Title: _____

STATE OF NEW MEXICO)

)

COUNTY OF BERNALILLO)

)

This instrument was acknowledged before me on this ____ day of _____, 2019,
by _____, as _____ of BOKF, NA, as Depository.

(NOTARY SEAL)

Notary Public

My Commission Expires: _____

EXHIBIT A
FORM OF BOND

**THIS BOND IS TRANSFERABLE ONLY UPON COMPLIANCE
WITH THE RESTRICTIVE TERMS PROVIDED BELOW**

No. R-1

Up to \$385,000.000

United States of America
State of New Mexico

Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(La Joya Wind, LLC Project II)
Series 2019B

Registered Owner: _____

<u>FINAL MATURITY DATE</u>	<u>INTEREST RATE</u>	<u>ISSUE DATE</u>
_____, 20__	_____ 5.00 %	_____, 2019

Torrance County, a political subdivision of the State of New Mexico existing under the Constitution and laws of the State of New Mexico (the "Issuer"), for value received, promises to pay, solely from the sources described below, to _____, LLC (together with its successors and assigns, and transferees as permitted below, the "Purchaser") Three Hundred Eighty-Five Million Dollars (\$385,000,000) (subject to prior optional redemption as described below) or so much of such amount as has been advanced by the Purchaser and is outstanding and to pay, solely from such sources, to the Purchaser, interest on principal amounts advanced with respect to this Bond from the dates of such Advances at the Interest Rate specified above (computed on the basis of a 360-day year consisting of twelve 30-day months) until payment of such principal amount. Interest at the rate of Five and No/100 Percent (5.00%) of the principal amount of the Bonds outstanding shall be payable annually on each December 1, beginning December 1, 2020, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full on the Final Maturity Date.

This Bond is issued under and pursuant to the Constitution and laws of the State of New Mexico, particularly NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2015), as amended, and under and pursuant to Ordinance 2019-02 duly adopted by the Issuer on April 24, 2019 and the Supplemental Ordinance duly adopted by the Issuer on September 25, 2019.

The principal of, interest on and redemption price of this Bond are payable solely from Basic Rent derived by the Issuer from the Lease Agreement dated as of [_____] , 2019 (the "Agreement") between the Issuer and La Joya Wind, LLC (the "Company"), which has been pledged and assigned by the Issuer to the Purchaser under the Indenture, dated as of [_____] ,

2019 (together with any amendments and supplements, the “Indenture”) among the Issuer, the Purchaser, the Company and BOKF, NA (the “Depository”).

Reference is made to the Indenture and the Agreement for the provisions, among others, with respect to the custody and application of the proceeds of the sale of this Bond, the collection and disposition of income and other revenues, a description of the account charged with and pledged to the payment of the principal of, interest on and redemption price of this Bond, the nature and extent of the security, the terms and conditions under which this Bond is issued and amounts are to be advanced with respect to this Bond by the Purchaser, and the rights, duties and obligations of the Issuer, the Company, the Purchaser and the Depository.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW MEXICO OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THIS BOND. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THIS BOND WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE OF NEW MEXICO. THIS BOND WILL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE OF NEW MEXICO, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWERS.

This Bond may be called for redemption as provided in the Indenture, at the option of the Company as a whole or in part on any date selected by the Company, at a redemption price equal to the principal amount to be redeemed plus interest accrued on such principal amount to the redemption date.

If an Event of Default (as defined in the Indenture) occurs, the Purchaser may cause the then unpaid principal amount of this Bond and all accrued interest to be immediately due and payable as provided in the Indenture. Neither the Issuer nor the Depository has any right or responsibility to act on behalf of the Purchaser with respect to any Event of Default.

THIS BOND MAY BE TRANSFERRED IN WHOLE BUT NOT IN PART. SUBJECT TO THE LAST PARAGRAPH OF SECTION 404 OF THE INDENTURE AND NOTWITHSTANDING ANY PROVISION OF THIS BOND TO THE CONTRARY, NEITHER THIS BOND NOR ANY INTEREST IN THIS BOND MAY BE, DIRECTLY OR INDIRECTLY, OFFERED, SOLD, HYPOTHECATED, ENCUMBERED OR OTHERWISE TRANSFERRED OR DISPOSED OF (INDIVIDUALLY AND COLLECTIVELY, A “TRANSFER”) EXCEPT IN COMPLIANCE WITH SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND APPLICABLE STATE SECURITIES LAWS AS ESTABLISHED TO THE SATISFACTION OF THE ISSUER, AND ANY SUCH PURPORTED TRANSFER OF THIS BOND WILL NOT BE EFFECTIVE UNLESS THE TRANSFEROR PROVIDES TO THE ISSUER, THE DEPOSITARY AND THE COMPANY (A) AN OPINION, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, FROM LEGAL COUNSEL EXPERIENCED IN SECURITIES LAWS MATTERS, WHICH COUNSEL MUST BE SATISFACTORY TO THE ISSUER, TO THE EFFECT THE TRANSFER COMPLIES WITH THE ACT AND

APPLICABLE STATE SECURITIES LAWS AND (B) WRITTEN REPRESENTATIONS FROM THE TRANSFEREE, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, NECESSARY TO ESTABLISH SUCH COMPLIANCE.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this Bond and the execution of the Indenture have happened, exist and have been performed as so required.

The validity, construction and performance of this Bond are governed by the law of New Mexico applicable to agreements made and to be performed in New Mexico.

TORRANCE COUNTY, NEW MEXICO

By: _____
Ryan Schwebach, Chair
Board of County Commissioners

(SEAL)

ATTEST:

By: _____
Linda Jaramillo, County Clerk

SCHEDULE OF ADVANCES AND PAYMENTS

<u>Date</u>	<u>Amount Of Advance</u>	<u>Amount of Principal Payment or Redemption</u>	<u>Resulting Principal Amount</u>	<u>Notation Made By</u>
-------------	------------------------------	--	---	-----------------------------

EXHIBIT B

REQUISITION AND CERTIFICATE NO.

To: _____, LLC, as Purchaser
BOKF, NA, as Depository

The undersigned, pursuant to the Indenture dated as of [____], 2019 (the "Indenture"), among Torrance County, New Mexico (the "Issuer"), _____, LLC (the "Purchaser"), La Joya Wind, LLC (the "Company") and BOKF, NA (the "Depository"), requests on behalf of the Company, the disbursement of \$ _____ from the Acquisition Fund (as defined in the Indenture) to pay the following costs and expenses (or to reimburse the Company for payment of such costs and expenses) related to the Project (as defined in the Indenture) or to the issuance of the Bond (as defined in the Indenture):

Amount	General Classification Of Expenditure	Payee
\$		

Amount of this requisition: \$ _____

The undersigned certifies that:

(1) obligations in the stated amounts were incurred for Related Costs (as defined in the Indenture) and are due and payable (or, if the Company is indicated as the Payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund;

(2) to the best knowledge of the undersigned there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim affecting the right of any such payee to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(3) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of this requisition.

DATED: _____

LA JOYA WIND, LLC

Authorized Company Representative

Acknowledged:
BOKF, NA

By: _____

Its: _____

EXHIBIT C

COMPLETION CERTIFICATE

The undersigned Authorized Company Representative, pursuant to Section 706 of the Indenture, dated as of [_____], 2019 (the "Indenture"), among Torrance County, New Mexico, _____, LLC, as Purchaser, La Joya Wind, LLC (the "Company") and BOKF, NA, as Depositary, states that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs as described in Appendix A hereto incurred by the Company, but not now due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project Property have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Cost in excess of the amount specified to be retained in the Acquisition Fund.

Moneys set aside for payment of pending expenses equal \$ _____ and total disbursements equal \$ _____.

DATED: _____

LA JOYA WIND, LLC

Authorized Company Representative

EXHIBIT D

CERTIFICATE OF QUALIFIED INVESTOR

Torrance County, New Mexico

BOKF, NA, as Depository

La Joya Wind, LLC

Re: Torrance County, New Mexico Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project II), Series 2019B

Please be advised that the undersigned is purchasing the captioned Series 2019B Bonds (hereinafter referred to as the “Bonds”). Such purchase is for the account of the undersigned, for the purpose of investment and not with a present intent for distribution or resale. In the event that the undersigned transfers such Bonds, the undersigned shall comply with all provisions of the Indenture dated as of [_____], 2019 (as amended from time to time, the “Indenture”), among Torrance County, New Mexico (the “Issuer”), _____, LLC, as Purchaser, La Joya Wind, LLC (the “Company”) and BOKF, NA, as Depository (the “Depository”), as described in the Bonds. The undersigned assumes all responsibility for complying with any applicable federal and state securities laws in such regard and must present to the Depository, the Issuer and the Company a Certificate of Qualified Investor executed by the proposed transferee, among other things as may be required by the agreements authorizing the Bonds, before such transfer will be effective.

The undersigned acknowledges that it is one of the following:

1. a bank as defined in Section 3(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), or savings and loan association or other institution as defined in Section 3(a)(S)(A) of the Securities Act, whether acting in its individual or fiduciary capacity; broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”); insurance company as defined in Section 2(13) of the Securities Act; insurance company as registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; plan established and maintained by a state, its political subdivision, or any agency or instrumentality of a state or its political subdivision, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

2. a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;

3. an organization described in Section 501(c)(3) of the Internal Revenue Code with total assets in excess of \$5,000,000;

4. a natural person whose individual net worth, or joint net worth with that person's spouse, at the time of this purchase exceeds \$1,000,000, excluding the value of the primary residence of such person;

5. a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with the person's spouse in excess of \$300,000 in each of those years and who reasonably expects reaching the same income level the current year; or

6. one or more of the following, as indicated, that it is acting for its own account or the accounts of other Qualified Institutional Buyers and that it in the aggregate owns and/or invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the Company:

(a) an insurance company, as defined in Section 2(13) of the Securities Act;

(b) an investment company registered under the Investment Company Act of 1940, as amended, or any business development company as defined in Section 2(a)(48) of that Act;

(c) a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;

(d) a plan established and maintained by a state, its political subdivision or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;

(e) an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;

(f) a trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in Paragraph (d) or (e) above, and not a trust fund that includes as participants individual retirement accounts or H.R. 10 plans;

(g) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (the "Investment Advisers Act");

(h) an organization described in Section 501(c)(3) of the Internal Revenue Code, a corporation (other than a bank as defined in Section 3(a)(2) of the Securities Act or a savings and loan association or other institution referenced in Section 3(a)(5)(A) of the Securities Act or a foreign bank or savings and loan association or equivalent institution), partnership or similar business trust; or

(i) an investment adviser registered under the Investment Advisers Act;

7. a dealer registered pursuant to Section 15 of the Exchange Act, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$10 million of securities of issuers that are not affiliated with the dealer, provided that securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer; or

8. a dealer registered pursuant to Section 15 of the Exchange Act acting in a riskless principal transaction on behalf of a qualified institutional buyer; or

9. an investment company registered under the Investment Company Act, acting for its own account or for the accounts of other qualified institutional buyers, that is part of a family of investment companies which own in the aggregate at least \$100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. "Family of investment companies" means any two or more investment companies registered under the Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor), provided that, for purposes of this section:

(a) each series of a series company (as defined in Rule 18f-2 under the Investment Company Act) shall be deemed to be a separate investment company; and

(b) investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent, or if one investment company's adviser (or depositor) is a majority-owned subsidiary of the other investment company's adviser (or depositor);

10. an entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the accounts of other qualified institutional buyers; or

11. a bank as defined in Section 3(a)(2) of the Securities Act, any savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the Securities Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution; or

12. any entity that is acquiring the Bond for the purpose of facilitating investment therein by “qualified institutional buyers” as defined under Rule 144A promulgated under the Securities Act; or

13. The parent, affiliate or subsidiary of La Joya Wind, LLC.

The undersigned further acknowledges that (i) interest on the Bonds is not exempt from gross income for federal income tax purposes, and (ii) an opportunity was available to obtain and that the undersigned has obtained all materials which were regarded as necessary to evaluate the merits and risks of investment in the Bonds and after such evaluation, the undersigned understands and knows that investment in the Bonds involves certain risks, including, but not limited to, those related to limited security and source for payment of the Bonds and the probable lack of any secondary market for the Bonds.

The undersigned acknowledges, warrants and represents that the undersigned is experienced in transactions such as those relating to the Bonds and that the undersigned is knowledgeable and fully capable of independently evaluating the risks involved in investing in the Bonds. The undersigned further acknowledges that neither the Issuer nor any of its officials, counsel, agents or consultants is responsible for any information contained in or omitted from the materials furnished, whether directly or by any other means, relating to the Bonds and acknowledges that the undersigned will not look and has not looked to any of them to obtain such information on its behalf.

_____,
a Delaware limited liability company

By: LA JOYA WIND, LLC,
a Delaware limited liability company
its sole member

By: _____
Name: _____
Title: _____

Address for Notices and
Payment of principal and interest:

Attn: _____

TORRANCE COUNTY, NEW MEXICO

and

LA JOYA WIND, LLC

LEASE AGREEMENT

Dated as of ____1, 2019

\$290,000,000
Torrance County, New Mexico
Taxable Industrial Revenue Bonds
(La Joya Wind, LLC Project)
Series 2019A

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TORRANCE COUNTY, NEW MEXICO, a political subdivision of the State of New Mexico (together with its successors and assigns, the “Issuer”), as lessor, and LA JOYA WIND, LLC, a Delaware limited liability company (together with its successors and assigns, the “Company”), as lessee, agree:

ARTICLE I RECITALS

Capitalized terms not otherwise defined herein shall have the meanings defined in Section 2.1 hereof, unless the context clearly requires otherwise.

A. The Company has requested that the Issuer issue its Taxable Industrial Revenue Bonds (La Joya Wind, LLC Project), Series 2019A in the maximum principal amount of \$290,000,000 (the “Series 2019A Bonds”, the “2019A Bonds” or the “Bonds”). The proceeds of the Bonds will be used to finance the acquisition, construction and installation of wind energy generation facilities and associated electrical generating equipment and real property (the “Project Property”) used to generate electricity from wind energy (the “Project”), which Project shall be located at a site (the “Project Site”) within the County and outside the corporate limits of any municipality.

B. The Issuer is authorized under NMSA 1978, Sections 4-59-1 to -16 (1975, as amended through 2015) (the “Act”) to acquire certain projects and issue its industrial revenue bonds in payment therefor and has determined that it is desirable to acquire the Project Property for purposes of the Project pursuant to Ordinance No. 2019-__ adopted by the Board of County Commissioners of Torrance County on April 24, 2019 (the “Bond Ordinance”) and has in the Bond Ordinance authorized the issuance of the Bonds.

C. The Bonds are to be issued under an Indenture dated as of ____1, 2019 (together with any and all amendments and supplements, the “Indenture”) among the Issuer, the Company, _____ as purchaser (the “Purchaser”), and BOKF, NA as Depository (the “Depository”). The Bonds will be a special limited obligation of the Issuer payable as therein provided and the Bonds will not constitute a debt or indebtedness or pledge of the credit of the Issuer, and the Purchaser or owners of the Bonds will have no right to have taxes levied by the Issuer or to require the Issuer to use any revenues for the payment of the Bonds, except for Basic Rent (as defined in Section 2.1 hereof).

D. The proceeds of the Bonds will be used to finance the acquisition of the Project Property leased to the Company under this Lease Agreement (together with all amendments and supplements, this “Agreement”).

E. The Company will make a payment in lieu of taxes “PILOT” equal to \$3,250 per megawatt of generating capacity of the Project each year in which the Series 2019A Bonds are outstanding.

F. As of the Effective Date, the Company has conveyed the Project Site described in Exhibit A to the Issuer pursuant to a special warranty deed. The Project Property, which shall be located on the Project Site, is to be leased to the Company pursuant to this Agreement.

G. The Series 2019A Bonds are to be purchased under a Bond Purchase Agreement dated as of _____, 2019 (together with any and all amendments and supplements, the “Bond Purchase Agreement”) among the Issuer, the Purchaser and the Company.

H. The Series 2019A Bonds will be secured by the Indenture which constitutes, among other things, a collateral pledge of this Agreement.

In consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer and the Company agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement will never constitute an indebtedness of the Issuer or give rise to any pecuniary liability of the Issuer or a charge against its general credit or taxing powers, but will be payable solely out of Basic Rent).

ARTICLE II DEFINITIONS AND RULES OF CONSTRUCTION

Section 2.1. Definitions. All words and terms defined in the Indenture have the same meanings when used in this Agreement. In addition:

“Additional Payments” has the meaning assigned in Section 5.3(b).

“Affiliate” means an entity the control or ownership of which is held in common with the control or ownership of another entity.

“Affiliated Entities” means Affiliates that are under common control or ownership.

“Applicable Environmental Law” means any applicable law, statute, ordinance, regulation, order or rule relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials or pertaining to health or the environment, including, without limitation, CERCLA and RCRA, as each is amended and in effect from time to time.

“Basic Rent” has the meaning assigned in Section 5.3(a).

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“Closing Date” means the date of execution and delivery of the Bonds.

“Construction Completion Date” has the meaning assigned in Section 4.4.

“County PILOT” means % _____ of the PILOT to be made by the Company to the County, in an annual amount outlined in the Recitals hereto. ~~the payment in lieu of taxes to be made by the Company to the County, in an annual amount equal to \$ _____.~~

“Eminent Domain” means the taking of title to, or the temporary use of; all or any part of the Project Property pursuant to eminent domain or condemnation proceedings, or by any settlement or compromise of such proceedings, or any voluntary conveyance of all or any part of the Project Property during the pendency of, or as a result of a threat of, such proceedings.

“Event of Default” has the meaning assigned in Section 8.1.

“Facility” means the wind energy generating facility located in Torrance County, New Mexico, and its related supporting equipment and all improvements thereon for the generation and transmission of electricity.

“Indemnitee” has the meaning assigned in Article VI.

“Lender” or “Lenders” means any and all persons or successors in interest thereof (a) lending money or extending credit related to the Project (including any financing lease, monetization of tax benefits, backleverage financing or credit derivative arrangement) to the Company or to an Affiliate of the Company including: (i) for the construction, permanent or interim financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and related rights from the Company, and/or (b) participating (directly or indirectly) as an equity investor in the Project primarily in connection with the utilization of applicable federal tax credits or tax depreciation benefits associated with holding an ownership interest in the Project, or (c) participating as a lessor under a lease finance arrangement relating to the Project (which such arrangement shall not be deemed to include this Agreement, and which person or persons shall not include Company or any of its Affiliates).

“PILOT” means, collectively, the County PILOT and the School PILOT in an annual amount equal to \$3,250 per megawatt of generating capacity of the 2019A Project, which PILOT shall be split between the County and the School Districts.

“Proceeds,” when used with respect to any insurance proceeds or any award resulting from, or other amount received in connection with, Eminent Domain, means the gross proceeds from the insurance or such award or other amount.

“Project” means the acquisition, construction and installation of the Project Property.

“Project Property” means (i) wind energy generation equipment, towers, transformers and associated electrical generating equipment used to generate electricity from wind energy and other personal property of any kind as further described in Exhibit A, whether now owned or

hereafter acquired, but only to the extent that such property is acquired with the proceeds of the Bonds, or the acquisition is reimbursed with the proceeds of the Bonds, prior to the Completion Date, and (ii) any rights of the Company in, or related to, the Project Property now owned or hereafter acquired under easements, agreements or leases assigned, subleased or otherwise transferred to the Issuer.

“Project Site” means the real property in Torrance County, New Mexico described in Exhibit A.

“RCRA” means the Resource Conservation and Recovery Act of 1976.

“Related Costs” means expenditures incurred or to be incurred with respect to the Project, including, without limitation, the acquisition, assembly and installation of the Project Property.

“Rent” means Basic Rent and any Additional Payments under this Agreement.

“School Districts” means, collectively, the Estancia Municipal School District and Vaughn Public School District.

“School PILOT” means the payment in lieu of taxes to be made by the Company to the County on behalf of the School Districts, ~~of which~~ The Estancia Municipal School District shall receive ___% of the PILOT, and the Vaughn Public School District shall receive ___% of the PILOT.

“State” means the state of New Mexico.

“Term” means the duration of the leasehold estate created by this Agreement pursuant to Section 5.1 hereof.

“TRD” means the New Mexico Taxation and Revenue Department.

Section 2.2. Rules of Construction.

(a) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(b) All references in this Agreement to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Agreement unless some other reference is established.

(c) Any inconsistency between the provisions of this Agreement and the provisions of the Indenture will be resolved in favor of the provisions of this Agreement.

ARTICLE III REPRESENTATIONS

Section 3.1. Issuer Representations. The Issuer represents that, as of the date of delivery of this Agreement:

(a) The Issuer is a political subdivision, organized and existing under the laws of the State.

(b) The Issuer has duly authorized by an ordinance of the governing body of the Issuer adopted at a meeting duly called and held by the affirmative vote of not less than a majority of its members, the execution, delivery and performance of the Bond Documents, the Bonds and the issuance of the Bonds, all for the purpose of financing the Project including the acquisition, construction and installation of the Project Property and paying certain costs related to the issuance of the Bonds.

(c) To the knowledge of the Issuer, (i) the execution, delivery and performance by the Issuer of the Bond Documents will not conflict with or create a material breach of or material default under the Act or any other law, rule, regulation or ordinance applicable to the Issuer or any agreement or instrument to which the Issuer is a party or by which it is bound, and (ii) there is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body, pending or threatened against the Issuer, which seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents or in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

(d) This Issuer is not aware of any fact or circumstance that would cause this Agreement and the Indenture to be unenforceable against the Issuer, invalid, or nonbinding on the Issuer, in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity and other applicable laws.

Section 3.2. Company Representations. The Company represents that, as of the date of delivery of this Agreement:

(a) The Company is a limited liability company duly organized and validly existing under the laws of Delaware, is in good standing under the laws of Delaware, is authorized to do business in New Mexico, and has duly authorized the execution, delivery and performance of this Agreement and the Bond Purchase Agreement.

(b) The Company has full legal right, power and authority to carry out and consummate the transactions contemplated by this Agreement and the Bond Purchase Agreement.

(c) The execution, delivery and performance by the Company of this Agreement and the Bond Purchase Agreement and the application by the Company of the proceeds of the

issuance and sale of the Bonds as provided in the Bond Documents do not and will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any material agreement to which the Company is a party or by which the Company or its properties or the Project Property is bound or any law, rule, regulation, ordinance, order, consent, or decree, applicable to the Company, its properties or the Project Property if such conflict, contravention, violation, breach or default could materially affect the ability of the Company to perform its obligations under the Bond Documents.

(d) This Agreement and the Bond Purchase Agreement constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity.

(e) No Event of Default, or event or condition which, with notice or lapse of time or both, would constitute an Event of Default, with respect to the Company has occurred and is continuing. The Company has not received any written notice of any currently existing material violation of any zoning, land use, environmental or other similar law or regulation applicable to the Project Property, the Project Site or the Project.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to the knowledge of the Company, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, (ii) questions the validity or enforceability of the Bonds or any of the Bond Documents, (iii) questions the authority of the Company to lease or operate any of the Project Property, or (iv) if adversely determined, would have a material adverse effect on the Project Property or the Company's ability to perform its obligations under the Bond Documents.

(g) All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of this Agreement and the Bond Purchase Agreement have been obtained and are in full force and effect.

(h) The Company acknowledges that the Issuer has made no warranty or representation, express or implied, that the amount in the Acquisition Fund, as defined in Section 701 of the Indenture, will be sufficient to pay the Related Costs or that the Project Property will be suitable for the Company's needs.

(i) The Company will not use or operate the Project, or permit the Project to be used or operated, in any way which would adversely affect the qualification of the Project as a "project" under the Act. None of the proceeds of the Bonds will be used to provide working capital.

(j) The acquisition, construction and installation of the Project Property by the Company and the operation thereof will comply in all material respects with applicable zoning, planning, building, environmental and other regulations of the governmental authorities having jurisdiction over the Facility, and all permits, licenses, consents and permissions necessary for the Facility have been or will be obtained in due course.

(k) The Project Property is located in Torrance County and is or will be an electric generation facility which does not require location approval and a certificate of convenience and necessity prior to construction or operation of the facility pursuant to the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 to -5 (1967, as amended through 2009).

(l) No representation made by the Company in this Agreement and no statement made by the Company in any written information, material or report furnished to the Issuer or the Purchaser in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the representation or statement, in light of the circumstances under which it is made, not misleading.

(m) The representations of the Company in this Section 3.2 and in any other instrument delivered by the Company in connection with the transactions contemplated by the Bond Documents will survive the execution and delivery of this Agreement, and the issuance, sale and delivery of the Bonds as representations of facts existing as of the date of execution and delivery of the Bond Documents or other instrument containing such representation.

(n) The Company has arranged for all of the Company's right, title and interest in and to the Project Property to be transferred to the Issuer.

ARTICLE IV THE PROJECT AND THE COMPANY

Section 4.1. Acquisition, Equipping and Completion. The Company will use reasonable commercial efforts to acquire, construct and install the Project Property as agent for the Issuer under the Act and applicable TRD regulations. To the extent necessary, after all proceeds of the issuance of the Bonds have been exhausted, the Company will finance the completion of the Project with other funds. The Project Property will at all times during the Term be located within Torrance County, New Mexico. The Issuer makes no warranty that the proceeds of the issuance and sale of the Bonds will be sufficient to pay all the Related Costs. The Company will obtain at the necessary time all licenses and permits required for the occupancy and operation of the Project Property and the Project.

Section 4.2. Plans and Specifications; Changes. The Company may make changes, supplements, amendments and additions, omissions or substitutions for components of the Project Property without the approval of the Issuer or the Purchaser. If the Company elects to make any such change, supplement, amendment, addition, omission or substitution which would make the description of the Project Property contained in Exhibit A materially inaccurate, the Company will revise the description of the Project Property set forth in Exhibit A accordingly and will deliver a copy of such revised Exhibit A, certified by an Authorized Company

Representative, to the Issuer and the Purchaser, and may record an addendum or amendment to this Agreement executed solely by an Authorized Officer of the Company. The Issuer and Company will take such further actions as necessary to effect such change including executing, delivering, and recording a bill of sale, assignment and any amendments to the Bond Documents. Notwithstanding the foregoing, the Company will not make any changes, supplements, amendments, additions, omissions, or substitutions or otherwise change or operate the Project Property or permit the Project Property, the Project or the Facility to be operated so as to cause the Project Property and the Project not to be a “project” within the meaning of the Act as in effect on the date of issuance of the Bonds, and the Company will not take or omit to take any action which will result in the Bond proceeds being applied in violation of the Bond Documents.

Section 4.3. No Warranty of Condition or Suitability by Issuer. THE COMPONENTS OF THE PROJECT PROPERTY HAVE BEEN DESIGNATED AND SELECTED BY THE COMPANY. THE ISSUER HAS NOT MADE AN INSPECTION OF ANY PORTION OF THE PROJECT PROPERTY. THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY OF THE SAME, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN THE SAME. ALL RISKS INCIDENT TO THE PROJECT PROPERTY ARE TO BE BORNE BY THE COMPANY. THE ISSUER WILL HAVE NO LIABILITY WITH REGARD TO OR ARISING OUT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN ANY PORTION OF THE PROJECT PROPERTY, WHETHER PATENT OR LATENT. THE PROVISIONS OF THIS SECTION 4.3 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY, WHETHER ARISING UNDER THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

Section 4.4. Completion Date. The Company will complete the Project as promptly as practicable and, in any event, within four (4) years of the date of this Agreement. On the date the Project is complete and a certificate of occupancy has been obtained for the Facility (if such certificate is required to be obtained) (the “Completion Date”), the Company will deliver to the Issuer and the Depositary a certificate signed by an Authorized Company Representative stating that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs incurred by the Company but not then due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Costs in excess of the amount specified to be retained in the Acquisition Fund. Upon completion, the Project Property will comply in all material respects with all building codes, and other laws, ordinances, rules and regulations applicable to the Project Property or the Facility.

Section 4.5. Gross Receipts and Compensating Tax. To the extent required by law, if at all, the Company, either on its own behalf or as agent for the Issuer pursuant to Section 4.1 and this Section, will file returns for reporting and paying compensating tax which may be become due because of the Project and promptly will pay, as a Related Cost, any gross receipts or compensating tax which may become due from the Issuer under any such returns. To the extent consistent with or required by State law, the Issuer will cooperate with the Company in the obtaining of Nontaxable Transaction Certificates from the TRD for delivery to suppliers with respect to the Project Property as may be applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company will pay any gross receipts or compensating tax plus applicable penalty and interest which is found by the TRD to be due from the Company or the Issuer because of the purchase or use of the Project Property or any component of the Project Property by the Company or the Issuer. The Company may request any rulings from the TRD which the Company determines might be necessary or desirable to clarify the New Mexico gross receipts and compensating tax results of transactions related to the Project and may dispute, in any manner authorized by the New Mexico Tax Administration Act, any gross receipts or compensating tax liability imposed on the Company or the Issuer because of the Project. The Issuer will join in any reasonable modifications to this Agreement which are necessary or desirable to obtain Nontaxable Transaction Certificates or otherwise reduce the gross receipts and compensating tax imposed on the Company or the Issuer as a result of or in connection with the acquisition, assembly and installation of the Project Property and will otherwise cooperate with the Company to address any reasonable request of the Company regarding issues raised by TRD with respect to Non-Taxable Transaction Certificates. The Company will pay such gross receipts taxes and compensating taxes as may be required by law for all purchases of property other than Project Property, for all purchases after the Completion Date and for any purchases in amounts greater than the proceeds of the Bonds.

Section 4.6. Compliance With Law.

(a) The Company will obtain or cause to be obtained all necessary permits and approvals, for the occupancy, operation and maintenance of the Project Property and will comply in all material respects with all Applicable Environmental Laws and all lawful requirements of any governmental body, agency or department regarding the use, condition or operation of the Project Property. The Company may in good faith contest the validity or the applicability of any such requirement. During the period of such contest and any related appeal, this Section 4.6 will be deemed satisfied with respect to the requirement so contested.

(b) To the extent that the use which the Company makes of the Project Property results in the manufacturing, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Project Site, such use will be in accordance with law, including any applicable regulations. For purposes of this paragraph, the terms “hazardous substance” and “release” will have the meanings specified in CERCLA, and the term “disposal” (or “disposed”) will have the meaning specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning will apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the State establish a meaning for “hazardous substance,” “release,” or “disposal” which is broader than that specified in either

CERCLA or RCRA, such broader meaning will apply; provided, further, that the term “hazardous substance” will also include those listed in the U.S. Department of Transportation Table (49 C.F.R. 172.101) and amendments thereto from time to time.

(c) The Company agrees to promptly notify the Purchaser and the Issuer of any material violation of any Applicable Environmental Laws of which the Company becomes aware.

(d) The Company shall, at the Company’s sole cost and expense, remove or take remedial action as and to the extent required by Applicable Environmental Laws with regard to any hazardous substance brought onto the Project Site or released from the Project Site by the Company or its employees, agents or contractors. If the Company fails to timely take any action required under this Section after notice from the applicable governmental entity having jurisdiction under Applicable Environmental Laws, the Issuer may, but shall have no obligation to, perform or arrange for the performance of such action and the Company shall, promptly upon demand therefore, reimburse the Issuer for all reasonable and customary costs actually incurred by the Issuer in connection with the completion of such performance. The Company shall indemnify, defend, protect and hold the Issuer and the Issuer’s commissioners, employees and agents free and harmless from any liability (including, without limitation, costs, reasonable attorneys and consulting fees, investigation and laboratory fees and litigation expenses) arising out of (a) a release of any hazardous substance in, on or under the Project Site or (b) the violation by the Company or its employees, agents or contractors of any Applicable Environmental Laws at the Project Site. The indemnity obligations stated in this Section (i) are in addition to the other indemnity obligations of Company hereunder, and shall survive the termination of this Agreement, but (ii) shall specifically exclude any liabilities or amounts arising out of or related to the gross negligence or willful misconduct of the Issuer or the Issuer’s Commissioners, employees and agents.

Section 4.7. Taxes and Utility Charges. The Company will pay or cause to be paid, as and when due, (i) all taxes, assessments, and governmental and other charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project Property, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project Property and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by any lien on the Project Property. The Company may, in good faith, contest the amount or validity of any such levy, tax, assessment or other charge by appropriate legal proceedings. During the period of such contest and any related appeal, this Section 4.7 will be deemed satisfied with respect to any such levy, tax, assessment or other charge so contested.

Section 4.8. Maintenance. The Issuer will not be under any obligation to, and will not, operate, maintain or repair the Project Property. The Company will, at its own expense, keep the Project Property in safe repair and in such operating condition as is needed for its operations. The Company will not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary equipment.

Section 4.9. Replacement and Removal of Project Property. The Company may replace or remove and/or sell, trade in exchange or otherwise dispose of any machinery, equipment or fixtures constituting a part of the Project Property, without any responsibility or accountability to the Issuer, and thereby acquire title to such machinery, equipment or fixtures, provided that such replacement or removal will not change the nature of the Project as a qualified “project” as defined in and as contemplated by the Act. Upon the request and at the expense of the Company, the Issuer will deliver to the Company appropriate instruments evidencing the acquisition by the Company of title to any machinery, equipment or fixtures permitted by this Section 4.9 to be so replaced or removed. The provisions of Article X govern the delivery and form of any such instruments. The removal from the Facility of any portion of the equipment, if any, pursuant to the provisions of this Section will not entitle the Company to any abatement or diminution in amount of the Basic Rent, Additional Payments, School PILOT or County PILOT payable under this Agreement. The Company may acquire machinery, equipment or other property (other than fixtures) which does not constitute a part of the Project Property and title to any such property will not thereby be transferred to the Issuer.

Section 4.10. Eminent Domain; Damage; Destruction. The Company will give prompt notice to the Issuer and the Purchaser of any material damage to or destruction of the Project Property. If either the Issuer or the Company receives notice of the proposed taking of all or any part of the Project Property by Eminent Domain, it will give prompt notice to the other and the Purchaser. Any such notice will describe generally the nature and extent of such damage, destruction, taking or proposed taking. The Proceeds resulting from the exercise of Eminent Domain with respect to or from any damage to or destruction of all or any portion of the Project Property shall at the option of the Purchaser, be applied to the prepayment of the Bonds or paid to the Company. All proceeds of insurance resulting from claims for losses to the Project and all proceeds of any condemnation award will be paid to the Company.

Section 4.11. Access and Inspection. The Company authorizes the Issuer and the Purchaser and their duly authorized agents during regular business hours, upon two (2) days prior written notice, (i) such rights of access to the Project Property as may be reasonably necessary to inspect the progress of the Project and (ii) the right of entry onto the Project Site for any purpose contemplated by this Agreement. Such rights of access and entry will not be terminated, curtailed or otherwise limited by any sale, assignment, lease or other transfer of the Project Property by the Company to any other Person. During any such access or entry, the Issuer and the Purchaser shall comply with all safety related rules and policies of the Company and its contractors.

Section 4.12. Assessment in the Company’s Name. If this Agreement has not been terminated on or before the thirtieth anniversary of the Closing Date, the Company will take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company on or within 30 days before the thirtieth anniversary of the Closing Date, and the Company will pay all ad valorem taxes on the Project Property from and after the thirtieth anniversary of the Closing Date. If the Project Property must be conveyed to the Company to accomplish such assessment, the Issuer will convey the Project Property to the Company, and this Agreement will thereafter be construed to be an installment sale agreement and all terms and provisions of this Agreement will remain in full force and effect. The provisions of Article X

govern the manner and form of any such conveyance. Notwithstanding the foregoing, if the Company fails to take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company thirty (30) days before or on the thirtieth anniversary of the Closing Date, the Issuer may terminate this Agreement and execute, deliver and cause to be recorded, at the expense of the Company, appropriate documents reflecting such termination. In anticipation of the conveyance of the Project Property by the Issuer to the Company, the Issuer will, upon the request of the Company, deliver to an escrow agent agreed to by the Issuer and the Company appropriate documents, including, but not limited to, a quitclaim deed, an assignment of easements and other real property rights and a bill of sale, prepared by the Company at the Company's expense, conveying to the Company the Issuer's interest in the Project Property; such documents to be delivered to the Company at the time of purchase of the Project Property.

Section 4.13. Use of Project Property.

(a) The Company will use the Project Property continuously use or cause the Project Property to be used continuously during the Term so as to constitute a "project" within the meaning of the Act as in effect on the date of issuance of the Bonds. As used in the first sentence of this Section 4.13, "continuously" means regularly and on a schedule consistent with that of similar facilities in the United States. The Company shall not be in violation of this Section 4.13 for temporary cessation of operations, or cessations of operations during holiday periods, for maintenance or retooling, for reasonable periods for the repair or replacement of facilities damaged or destroyed, resulting from labor disputes, strikes or because of short-term slack demand, riots or acts of God or the public enemy, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 4.13.

(b) If the Company fails to comply with the first sentence of subsection (a) of this Section 4.13, the Company shall pay to the Issuer within ninety (90) days of such cessation, an amount equal to (i) that percentage (shown below corresponding to the applicable date of cessation) (the "Applicable Percentage") of the ad valorem taxes on real and personal Project Property that the Company would have been required to pay if the Bonds had not been issued by the Issuer and the Project Property had been subject to ad valorem taxation, calculated using mill levies and actual property tax valuations and rates for each applicable tax year, plus (ii) the Applicable Percentage of the amount of gross receipts tax that would have been payable by vendors of the Project Property if the Bonds had not been issued and receipts from sales of the Project Property had not been deductible from gross receipts of the vendors, plus (iii) the Applicable Percentage of the amount of compensating tax that would have been payable by the Company with respect to the Project Property if the Bonds had not been issued less (iv) all amounts paid by the Company pursuant to Section 6.4.

<u>Elapsed Time from Issuance of Bonds Prior to Cessation</u>	<u>Applicable Percentage of Abated Tax to be Repaid</u>
Years 0-5	100%
Year 6	70%

Year 7	60%
Year 8	40%
Year 9	20%
Year 10 and thereafter	0%

Within thirty (30) days following such payment by the Company, the Company will take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company.

The Company will give the Issuer not less than 12 months written notice of its intent to cease using the Project Property as required by the first sentence of Section 4.13(a) if such cessation occurs in year 10 or thereafter. If the Company fails to give such notice within such time frame, it shall pay to the Issuer (i) a Final Proportional School PILOT Payment to each School District and (ii) a Final Proportional County PILOT Payment to the Issuer concurrently with the termination of this Agreement. Each Final Proportional School PILOT Payment and the Final Proportional County PILOT Payment shall be in an amount that is the same percentage of the total annual payment for such year as the number of days in the year (running from the then-most recent anniversary of the date of this Agreement to the date of termination) bears to 365. In the event that this Agreement is terminated during any calendar year and the annual PILOTs shall have been paid, then the Company shall not owe any additional amounts for PILOTs corresponding to such termination.

Section 4.14. Existence. Unless its successor or the transferee of its assets, as the case may be, assumes in writing all of the obligations of the Company under the Bond Documents, the Company will maintain its existence as a legal entity and will not dispose of all or substantially all of its assets, other than through execution of this Agreement. The Company shall have the right to change its organizational structure so long as such a change does not result in the Project failing to constitute a “project” within the meaning of the Act as in effect on the date of issuance of the Bonds, provided such restructured organization assumes in writing or is liable for, by operation of law all of the obligations of the Company under the Bond Documents. Original executed copies of such assumption will be delivered to each of the other parties on or before the effective date of such succession or transfer. To the extent necessary under State law, the Company and its successors or transferees will become and remain authorized to transact business in the State and, if applicable, in good standing in the State.

Section 4.15. Subleases; Granting and Release of Easements; Amending or Modifying Subleases and Easements. The Company may at any time or times cause to be granted subleases, easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) subject to the Indenture and this Agreement, or the Company may cause to be amended, modified or released existing subleases, easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Project Property with or without consideration, and the Issuer agrees that it will, at the expense of the Company, execute and deliver any instrument necessary or appropriate to confirm and grant, amend, modify or release any such sublease, easement, license, right-of-way or other right or privilege upon receipt of: (i) a copy of the instrument of grant, amendment, modification or release, and (ii) a written application of the Company signed by an authorized

representative of the Company requesting such instrument and stating (1) that such grant, amendment, modification or release is not detrimental to the proper conduct of the business of the Company, and (2) that such grant, amendment, modification or release will not impair the effective use or materially interfere with the operation of the Project Property; will not materially diminish or impair the security intended to be given by or under this Agreement or the Indenture and will not materially diminish or impair the obligations of the Company or the rights of the Issuer under this Agreement or the Indenture.

Section 4.16. Insurance. The Company will keep the Project Property continuously insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with the operation of facilities of the type, location and size comparable to the Facility, as reasonably determined by the Company. Each policy of such insurance will show the Company as loss payee and the Issuer as an additional insured under such policies as the respective interests of such parties may appear. Such insurance may, to the extent permitted under applicable law, be provided by blanket policies maintained by the Company, by a captive insurance company controlled by the Company or through self-insurance. Such insurance will include extended coverage insurance and general liability insurance against liability for (i) claims for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Project Property, and (ii) liability with respect to the Project Property under the workers' compensation laws of the State (unless the Company has complied with the requirements of the law of the State for self-insurance).

Section 4.17 Nuisance Not Permitted. The Company will use reasonable care to not commit a nuisance in connection with its use or occupancy of the Project Property. Operation of the Project in a manner consistent with industry standards for wind generation facilities shall not result in a finding of nuisance.

ARTICLE V LEASE; TERM; POSSESSION; RENT

Section 5.1. Lease of the Project Property; Term.

(a) The Issuer hereby agrees to lease the Project Property to the Company, and the Company hereby agrees to lease the Project Property from the Issuer pursuant to the terms of this Agreement. This Agreement shall become effective upon its execution and delivery, and the leasehold estate created hereby and the Term shall then begin, and subject to the provisions of this Agreement, the Term shall expire on the earlier of (i) the thirtieth (30th) anniversary of the date of this Agreement or (ii) on such earlier date as the payment or redemption and discharge of the whole amount of the principal and interest on the Bonds at the time outstanding shall have been made as provided in the Indenture, or on such earlier date as arrangements satisfactory to the Issuer and the Purchaser for such payment or redemption and discharge of the Bonds shall have been made. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making bond advances under the Indenture.

(b) Except as provided in Section 11.17, upon the termination of this Agreement, all right, title and interest of the Issuer and the Purchaser under this Agreement shall cease, terminate and become void, the Bonds shall cease to be entitled to any benefit under this Agreement, and all covenants, agreements and obligations of the Company to the Purchaser, the Issuer, and with respect to the School Districts, the School PILOT, shall thereupon cease, terminate and become void.

Section 5.2. Quiet Enjoyment. So long as no Event of Default has occurred and is continuing, the Issuer will not take any action, other than pursuant to Section 4.12 or Article VIII, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Property during the Term (except as necessary with respect to Eminent Domain or condemnation for public projects and purposes) and will, at the request of the Company and at the Company's expense, including all expenses incident to any legal action, to the extent that the Issuer may lawfully do so, join in any legal action in which the Company asserts its right to such possession and enjoyment.

Section 5.3. Basic Rent and Additional Payments.

(a) The Company will pay to the Purchaser for the account of the Issuer such amounts at such times as are required to make all payments of principal of, interest on and redemption price of the Bonds in accordance with the terms of the Bonds and the Indenture as and when due (the "Basic Rent"), and the Company shall take all such actions relating to the withholding and reporting of interest as are required by the Internal Revenue Code of 1986, as amended. A copy of the anticipated payment schedule for the Bonds is attached hereto as Schedule 5.3(a). The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making bond advances under the Indenture.

(b) The Company will make the following payments (the "Additional Payments") to or on behalf of the Issuer: all actual costs, expenses and taxes (including, but not limited to costs attributable to work performed by in-house staff and the fees of its outside advisors including counsel and its financial advisor) paid or incurred by the Issuer in connection with (i) the discussion, review, negotiation, preparation, approval, execution and delivery of the Bonds, the Indenture, this Agreement, and the other documents and instruments related hereto and thereto through the Closing Date, all of which amounts shall be paid in full on or before the Closing Date, (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the negotiation, preparation, approval, execution and delivery of any and all documents necessary to effect such amendments or modifications, (iii) the enforcement by the Issuer or the School Districts, during or after the Term of any of the rights or remedies of the Issuer or the School Districts under any of the foregoing documents, instruments or agreements including without limitation, costs and expenses of collection, whether or not suit is filed, (iv) the servicing and administration of the Bonds during the Term or thereafter, including the preparation of disclosures under GASB 77, and (v) any requested subordination of the Issuer's interest in the Project Property to a Lender.

Section 5.4. Obligations Unconditional; Rights of Setoff.

(a) The obligation of the Company to pay Rent and to perform its other obligations under this Agreement is absolute and unconditional and, except as otherwise provided in 5.4(b) below, will not be subject to diminution by setoff, counterclaim, abatement or otherwise, whether as a result of Eminent Domain with respect to, damage to or destruction of or removal of all or any portion of the Project Property or any other event or condition. In the event the Issuer fails to perform its obligations under this Agreement, the Company may, subject to the limitations imposed by Section 11.3, institute such action against the Issuer as the Company may deem necessary to compel performance of those obligations of the Issuer. The Company may also, at its own cost and expense and in its own name or, if necessary, in the name of the Issuer prosecute or defend any action or proceeding or take any other action involving third parties which the Company deems reasonably necessary in order to secure or protect its title to or its right of possession, occupancy and use of the Project Site and the Project Property. In such event, if no Event of Default has occurred and is continuing, the Issuer will cooperate with the Company, so long as it is not the adverse party, upon receipt of indemnity satisfactory to the Issuer against any out-of-pocket cost, expense (including reasonable counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

(b) Notwithstanding the above paragraph, it is the intention of this Agreement that the Company shall make Basic Rent payments to the Purchaser for the account of the Issuer, in such amounts and at such times as are required to make payments of principal of, interest on and redemption price of the Bonds in accordance with the terms of the Bond Documents as and when due, and the parties acknowledge that all such Basic Rent payments may be offset against any monies due and payable to the Company from the Purchaser in connection with any funds advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of any Advances to the Acquisition Account (as defined in the Indenture) as provided for under Section 702 of the Indenture. The Purchaser will look only to the Company for payment of the Bonds and upon the security granted in the Indenture for the Company's obligations under this Agreement. As described in Section 7.1, the Issuer will assign and pledge to the Purchaser certain of its rights, title and interests in and to this Agreement including the right to receive payments of Basic Rent hereunder.

**ARTICLE VI
SPECIAL COVENANTS**

Section 6.1. Recording and Filing; Further Assurances. The Company will, at the expense of the Company, take all actions that at the time are and from time to time may be reasonably necessary to perfect, preserve, protect and secure the interests of the Issuer and the Purchaser in and to the Rent and in the Project Property, including, without limitation, the recordation of this Agreement and the Indenture, the filing of financing statements and continuation statements and the execution, acknowledgment, delivery, filing and recordation of such other instruments as may reasonably be required in carrying out the intention of or facilitating the performance of this Agreement. The Issuer will cooperate with the Company in all such matters.

Section 6.2. Claims; Liens. The Company will pay and discharge and will indemnify and hold harmless the Issuer from (a) any lien or charge upon payments by the Company to, or for the account of, the Issuer under this Agreement (other than the Indenture) and (b) any taxes, assessments, impositions and other charges in respect of the Project Property. If any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer will give prompt notice to the Company of any such lien, taxes, assessments, impositions or other charges of which the Issuer has actual notice, and the Company will have the sole right and duty to assume the defense of the same and will have the power to litigate, compromise or settle the same.

Section 6.3. Release and Indemnification.

(a) Except as provided in this Section 6.3, the Company releases the Issuer, its Commissioners, officials, employees and agents (each an “Indemnitee”) from, and will indemnify each Indemnitee against all liabilities, claims, costs and expenses (“Losses”) imposed upon, incurred or asserted against, any Indemnitee on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the installation, maintenance, operation and use of the Project Property; (ii) the inaccuracy of any representation by the Company (regardless of whether the Company was aware of such inaccuracy at the time the representation was made) or any breach or default on the part of the Company in the performance of any representation, covenant or agreement of the Company under this Agreement, or any related document, or arising from any acts or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (iii) the Company’s failure to comply with any requirements of this Agreement; (iv) suits, legal or administrative proceedings, demands, losses, liabilities, damages, claims, causes of action, costs and expenses resulting from or in any way connected with the presence, release or disposal in or under the Project Site of, any hazardous substances (as defined in CERCLA), hazardous wastes (as defined in RCRA), oils, radioactive materials, asbestos in any form or condition, any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any Applicable Environmental Law; (v) any action by the Company in connection with the authorization, issuance and sale of the Bonds; (vi) any liability, whether under federal or state securities laws or otherwise, that may arise as a result of inaccurate information supplied by the Company in connection with the issuance of the Bonds or any subsequent sale of the Bonds; (vii) any other loss, claim, damage, penalty, liability, disbursement, litigation expenses and attorneys’ fees or court costs arising out of or in any way relating to the execution or performance of this Agreement, actions taken under the Indenture, the issuance of the Bonds, the ownership or leasing of the Project Property or any other cause whatsoever pertaining to the Project Property; and (viii) any claim, action or proceeding brought with respect to the matters set forth in clauses (i) through (viii). The Issuer will not be liable to the Company, and the Company releases and discharges the Issuer from, any liability for any and all losses, costs, expenses (including attorneys’ fees), damages, judgments, claims and causes of action paid, incurred or sustained by the Company as a result of or relating to any action, or failure or refusal to act on the part of the Purchaser or the Depositary with respect to the Bonds, the Bond Documents or documents and the transactions contemplated thereby, including without limitation the exercise by the Purchaser of any of its rights thereunder. This Section 6.3 is not intended in any way to detract from provisions of the Bond Documents to the effect that the

Issuer is not to incur any pecuniary liability with respect to the transactions contemplated by the Bond Documents.

(b) Notwithstanding the fact that it is the intention of the parties that the Issuer will not incur pecuniary liability by reason of this Agreement or the undertakings of the Issuer under this Agreement, by reason of the issuance of the Bonds, the execution of the Bond Documents, the performance of any act required of it by the Bond Documents, the performance of any act related to the Bond Documents or the Bonds requested of it by the Company or its position as owner or lessor of the Project Property, nevertheless if the Issuer incurs any such pecuniary liability or the same is claimed or sought, then in such event the Company will indemnify and hold harmless the Issuer against all claims by or on behalf of any person arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the Company will defend the Issuer in any such action or proceeding.

(c) In case a claim is made or any action or proceeding is brought against an Indemnitee based on matters described in this Section 6.3 and for which indemnity is sought against the Company pursuant to this Section 6.3, the Indemnitee shall promptly notify the Company in writing, and the Company, upon receipt of that notice, shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the Company and approved in writing by the Issuer (provided, that such approval by the Issuer shall not be unreasonably withheld or delayed), the payment of all expenses and the right to negotiate and consent to settlement. The failure of an Indemnitee to provide timely notice will not relieve the Company from any of its obligations under this Section 6.3 unless that failure prejudices the defense of the claim or action by the Company, in which case the liability of the Company under this Section 6.3 shall be reduced only by an amount equal to the amount of the loss sustained by the Company solely as a result of such failure to notify. If Indemnitee is advised in a written opinion of counsel that there may be legal defenses available to Indemnitee which are adverse to or in conflict with those available to the Company, or that the defenses of Indemnitee should be handled by separate counsel, the Company shall not have the right to assume or cause the assumption of the defense of Indemnitee. If the Company fails to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the fees and expenses of counsel retained by Indemnitee shall be paid by the Company. Notwithstanding, and in addition to any of the foregoing, Indemnitee shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid solely by such Indemnitee unless the employment of such counsel has been specifically authorized in writing by the Company, or if representation by the counsel retained by the Company would be inappropriate due to actual or potential differing interests between such Indemnitee and any other party represented by such counsel in such proceeding. The Company shall not be liable for any such claim or in any such action (i) with respect to any settlement without the prior written consent of the Company, or (ii) with respect to the gross negligence or willful misconduct of any of the Indemnitee.

(d) The Company will have no obligation to release and/or indemnify any Indemnitee (i) with respect to any settlement entered into by such Indemnitee without the prior consent of

the Company (which consent will not be unreasonably withheld or delayed), or (ii) for Losses to the extent that such Losses are caused by the gross negligence or willful misconduct of any of the Indemnitees.

(e) The provisions of this Section 6.3 will survive the payment of the Bonds and the termination of this Agreement.

Section 6.4. Payments in lieu of Taxes to the Issuer and the School Districts. The Company shall pay the County PILOT to the Issuer, and the School PILOT to the School Districts, on the first anniversary of the date of this Agreement and, thereafter, on each succeeding anniversary, so long as the Issuer continues to be the owner of the Project Property. The School PILOT has been negotiated with the School Districts and fully satisfies the requirements of NMSA 1978, Section 4-59-4(A) (2003), as amended and supplemented. The payment provisions of this Section 6.4 may be amended only by a written agreement executed by all of the Company, the Issuer and the School Districts. The provisions of this Section 6.4 shall survive the termination of this Agreement.

In the event payment of any such PILOT is not made when due, the Issuer or the School Districts may impose a late fee equal to five percent (5%) of the amount not paid after the expiration of the cure period under Section 8.3 hereof.

Section 6.5. GASB 77 Reporting Information. The Company shall provide, promptly upon the Issuer's request, annually or more frequently if the Issuer so requests, such information concerning (i) expenditures of Bond proceeds, (ii) the estimated value of the Project Property, (iii) estimates of the amounts and types of tax avoided by virtue of the issuance of all industrial revenue bonds by the Issuer for the benefit of the Company and any Affiliates of the Company, and (iv) all other information reasonably requested by the Issuer for the purpose of the Issuer's annual disclosure of tax expenditures under GASB 77.

ARTICLE VII ASSIGNMENT, LEASING AND SELLING

Section 7.1. Assignment of Rights by the Issuer. Concurrently with issuance of the Bonds, the Issuer will assign to the Purchaser certain of the Issuer's rights, title and interests in and to this Agreement, pursuant to the Indenture, as security for payment of the principal of, interest on and redemption price of the Bonds. Thereafter, the Purchaser will be vested with, and authorized to exercise, such rights of the Issuer and the Purchaser under this Agreement. The Company consents to such assignment.

Section 7.2. No Other Transfer by Issuer. Except for the assignment described in Section 7.1 and Article X hereof or transfer to the Company in accordance with Section 4.12 or 8.3, the Issuer will not sell, assign, transfer or convey its rights, title or interests in this Agreement or the Project Property, or its obligations under this Agreement. Except for tax liens created or permitted by the Company, the Issuer will not cause or create any liens on the Project Property or the Project Site and will cooperate with the Company to defend the Project Property, the Project Site and the Company from and against any claims of lien.

Section 7.3. Assignment, Lease, Mortgage and Sale by the Company. The rights and interests of the Company in, to and under this Agreement may be assigned, and the rights and interests of the Company in and to the Project Property may be assigned, subleased, mortgaged or sold as a whole or in part by the Company, without the consent of the Issuer, provided that under any such assignment or sale the Company remains liable for making payments of Rent and for the performance of its other obligations under this Agreement except where (i) the assignee or purchaser of all of the Company's interest in the Project Property assumes in writing the obligations of the Company under this Agreement, (ii) the financial standing of the assignee or purchaser immediately following such assignment or sale is the same or better than that of the Company immediately preceding such assignment or sale and (iii) the Issuer consents; provided that the Issuer's consent shall not be required where the Company and the assignee are Affiliated Entities. For purposes of this Agreement, "financial standing" shall mean (a) the ownership or other beneficial possession of title to, all of the Project Property and all material rights and assets with respect to the Project, and (b) no material liabilities other than liabilities arising from, or in connection with, the Project. Any mortgagee or assignee that does not directly hold an interest in the Project Property or whose interest is held solely for security purposes shall have no obligation or liability under this Agreement prior to the time the mortgagee or assignee directly holds an interest in this Agreement or succeeds to absolute title to the Company's interest in the Project Property. A mortgagee or assignee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such interest or absolute title.

Section 7.4 Collateral Assignment. The Company shall be permitted to assign this Agreement to its Lenders as collateral for any financing or refinancing of the Project; provided, Company shall be responsible at Issuer's request for Issuer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, including reasonable attorneys' fees. Issuer shall, upon request by Company and, at Company's sole expense, cooperate reasonably to execute, or arrange for the delivery within thirty (30) days of such request or such longer time as is reasonable under the circumstances, those normal, reasonable and customary consents, certificates, opinions and other documents and provide such other normal and customary representations or warranties (all in a form reasonably acceptable to Issuer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof), as may be necessary to assist Company in consummating any financing or refinancing of the Project Property or any part thereof.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default Defined. Each of the following events is an "Event of Default":

(a) Failure by the Company to make any Rent payment, Additional Payments, or PILOT payments when due which continues unremedied for a period of 30 days after the provision by the Issuer, the School Districts or the Purchaser of written notice of non-payment.

(b) Any representation of the Company in any Bond Document or in any document or agreement delivered to any of the other parties in connection with the transactions contemplated by any Bond Document proves to have been incorrect in any material respect when made and remains incorrect for a period of 30 days after written notice specifying such error and requesting that it be remedied is given by the Issuer unless such error cannot be remedied within 30 days and the Company has instituted corrective action within 30 days after such notice and diligently pursues such action until such failure is remedied.

(c) A decree or order for relief by a court of competent jurisdiction is entered in an involuntary case under any federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days, or the commencement by the Company of a voluntary case under such law, or the consent by the Company either to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the taking of action by the Company to authorize or effect any of the foregoing. Provided, however, neither the bankruptcy nor the insolvency of the Company shall be grounds for default as long as all Basic Rent payments, PILOT payments and Additional Payments, and all other monetary charges payable by the Company under this Agreement are paid in accordance with this Agreement.

(d) Except as provided in Section 8.1(a), failure by the Company to perform any of its material obligations under this Agreement for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Issuer or the Purchaser, unless such failure is of a type which cannot reasonably be remedied within 30 days and the Company has instituted corrective action within 30 days after such notice and diligently pursues such action until such failure is remedied.

Section 8.2. Purchaser Remedies. The Issuer shall not be entitled to exercise any default remedies against the Company or the Project Property pursuant to this Agreement without the prior written consent of the Purchaser, except as (and then only to the extent) provided in Section 8.3 of this Agreement. If an Event of Default occurs and is continuing, the Purchaser (or its assignee), as the assignee of the Issuer under the Indenture and on behalf of the Issuer, may, but is not required to, take any one or more of the following remedial steps:

(a) By written notice to the Company declare all amounts of Basic Rent payable for the remainder of the Term as are required to provide for the Payment of the Bonds to be immediately due and payable, whereupon the same will be immediately due and payable;

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due or to enforce the performance and observance of any obligation of the Company under this Agreement or the Indenture;

(c) Exercise any remedies provided for in the Indenture; or

(d) Terminate this Agreement; provided, however, that upon any such termination, all amounts owed to the Issuer hereunder shall be paid, and the Issuer shall immediately reconvey the Project Property to the Company in accordance with Article X.

As the assignee of the Issuer, subject to Section 8.3, the Purchaser (or its assignee) has the sole right and responsibility for the exercise of any remedies if an Event of Default occurs and is continuing.

Section 8.3. Issuer Remedies. If:

(a) the Company fails to comply with its obligations set forth in Sections 4.5 (Gross Receipts Tax and Compensating Tax), 4.6 (Compliance with Law) , 4.7 (Taxes and Utility Charges), 4.11 (Access and Inspection),, 4.13 (Use of Project Property), 4.16 (Insurance), 6.2 (Claims; Liens), 6.3 (Release and Indemnification), 6.5 (GASB 77) or 8.5 (Agreement to Pay Attorneys' Fees), and such failure continues for 60 days after the Issuer gives the Company written notice of such failure; or

(b) the Company fails to comply with its obligations under Section 5.3(b) or 6.4, such failure continues for 30 days after the Issuer or Purchaser or its assignee gives the Company written notice of such failure; or

(c) any representation of the Company in any Bond Document or any document or agreement delivered to any of the other parties in connection with the transactions contemplated by the Bond Documents proves to have been incorrect in any material respect when made;

then, subject to Section 8.6 hereof, the Issuer may, in addition to exercising any other remedy available at law or in equity take whatever action at law or in equity is necessary to enforce the performance of the obligations of the Company insofar as those provisions require payments from the Company to the Issuer or establish rights of the Issuer under Sections 4.5, 4.6, 4.7, 4.11, 4.13, 4.16, 5.3(b), 6.2, 6.3, 6.4, 6.5, and 8.5, as applicable, which rights are not assigned to the Purchaser under the Indenture but are also enforceable by the Purchaser. In addition, the Issuer may also, immediately terminate this Agreement and reconvey the Project Property to the Company; provided, however, that if any conditions described in Subsections 8.3(a), (b) or (c) cannot be cured within the time allotted for cure, if the Company initiates and proceeds with due diligence to effect a cure, a default will not be deemed to have occurred as long as the Company cures the default within a reasonable period.

Section 8.4. Notice of Default. The Company will promptly give notice of the occurrence of any Event of Default to the Issuer, the Purchaser and the Depository.

Section 8.5. Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default, or an event which with the giving of notice or the passage of time, or both, would constitute an Event of Default, occurs, and the Issuer incurs expenses, including reasonable attorneys' fees, in connection with the enforcement or administration of this Agreement, the

Company will reimburse the Issuer for the reasonable expenses so incurred, upon request. Such amounts shall constitute Additional Payments.

Section 8.6. Right to Cure Defaults.

(a) To prevent termination of this Agreement, the Purchaser, any mortgagee or assignee of the Company that holds an interest in the Project Property as security shall have a right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Agreement. The Issuer will not terminate or suspend its performance under this Agreement until it first gives written notice of such default to the Purchaser, and any mortgagee or assignee of which the Issuer has been given written notice and allows the Purchaser, and such mortgagee or assignee the right to cure such default within the applicable cure period under this Agreement. In addition, if the Purchaser, or such mortgagee or assignee gives the Issuer written notice prior to the expiration of the applicable cure period of the Purchaser's or such mortgagee's or assignee's intention to cure such default (which notice shall include a reasonable description of the time during which it anticipates to cure such default) and is diligently proceeding to cure such default, notwithstanding the applicable cure period under this Agreement, the Purchaser, any mortgagee or assignee shall have a period of sixty (60) days (or if such default is for failure by the Company to pay an amount to the Issuer which is due and payable under this Agreement, thirty (30) days) from the Purchaser's or the mortgagee's or assignee's receipt of the notice of such default from the Issuer to cure such default.

(b) If any default by the Company under this Agreement cannot be cured without obtaining possession of all or part of the Project Property, then any such default shall be deemed remedied if the Purchaser, a mortgagee or assignee (i) in the applicable cure period provided in Section 8.3(a) and 8.3(b) and 8.6(a) (including the aggregate cure period provided under Section 8.6(a)) begins appropriate judicial or non-judicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Project Property diligently proceeds to cure and perform all other obligations as and when the same are due in accordance with the terms of this Agreement. If the Purchaser, a mortgagee or assignee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the period specified above for commencing proceedings shall be extended for the period of such prohibition.

(c) If the Purchaser, a mortgagee or assignee (or a receiver requested by a mortgagee) succeeds to the interest of the Company in the Project, such successor party shall pay or cause to be paid the Rent, PILOT payments, Additional Payments and all other monetary charges payable by the Company under this Agreement from the date in which the Purchaser, mortgagee or assignee (or receiver requested by a mortgagee) succeeds to such interest and those which accrue thereafter during the term of this Agreement.

**ARTICLE IX
PREPAYMENTS**

The Company may at any time without penalty (including after the occurrence and during the continuance of an Event of Default) and for any reason cause all or any portion of the Bonds

to be redeemed in accordance with the provisions of the Indenture by giving notice of such redemption to the Issuer, the Purchaser and, if there are monies on deposit in the Acquisition Account (as defined in the Indenture), to the Depository not less than forty-five (45) days before the redemption date, or such shorter period to which the Purchaser and the Company may agree. Such notice will specify the redemption date and the principal amount of the Bonds to be redeemed. On the redemption date the Company will prepay the Rent in an amount equal to such principal amount plus accrued interest on such principal amount to the redemption date by payment of such amounts to the Purchaser, will pay all Additional Payments, plus interest, if any, owed to the Issuer as of such date. The parties acknowledge that the Company may prepay, pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making Bond advances under the Indenture.

ARTICLE X PURCHASE OF PROJECT PROPERTY

The Company will purchase and the Issuer will sell the Project Property for \$1.00 at the expiration or sooner termination of the Term. The Company will give written notice to the Issuer and to the Purchaser, if the Bonds are then unpaid or provision for their payment has not been made, and will specify therein the date of termination and closing such purchase which date shall be the same date and which date will be not less than 15 nor more than 90 days from the date such notice is mailed. At the closing of such purchase, the Issuer will, upon receipt of the purchase price, deliver to the Company or its nominee appropriate documents, including, but not limited to, a quitclaim deed, assignment of easements and other real property rights and a bill of sale, as applicable, prepared by the Company at the Company's expense, conveying to the Company without representation or warranty the Issuer's interest in the Project Property, as it exists at the time of such purchase, subject only to: (i) those liens and encumbrances, if any, to which the Project Property was subject when conveyed to the Issuer; (ii) those liens and encumbrances created by the Company and or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform any of its obligations under this Agreement; and (iv) any other lien arising as a matter of law. The Company may exercise its rights under this Article X, whether or not a Default or an Event of Default has occurred and is continuing, so long as all Additional Payments and PILOT payments due to the Issuer and the School Districts are paid on or before the date of closing of such purchase. If the Company fails to take all necessary action to have the Project Property assessed for tax purposes in the name of the Company at the expiration of the Term, the Issuer may execute, deliver and cause to be recorded, at the expense of the Company, a bill of sale with respect to the Project Property and other appropriate documents reflecting the termination of this Agreement. If at the time of closing the Indenture has not been satisfied in full and released of record, a release by the Purchaser of the Indenture will also be delivered to the Company (or its designee). The right to prepay granted to the Company in this Agreement is and will remain prior and superior to the Indenture.

ARTICLE XI MISCELLANEOUS

Section 11.1. Remedies. No right or remedy conferred on any Party in this Agreement is intended to be exclusive of any other right or remedy conferred on such Party in this Agreement. Except as provided in Section 11.3, each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents or by law; provided, that the remedies of Purchaser and/or Issuer in respect of an Event of Default or other breach of any Bond Document by the Company shall be limited in all cases to those expressly provided in Article VIII hereof. No delay or omission of any Party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party may deem expedient. No waiver by any Party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

Section 11.2. Beneficiaries. Nothing in this Agreement expressed or implied is intended or is to be construed to confer upon any Person other than the parties and their successors and assigns (and, in the case of Section 6.3 of this Agreement, the Indemnitees, and, in the case of Section 6.4, the School Districts) any right, remedy or claim, legal or equitable.

Section 11.3. Limitation of Issuer's Liability. No agreements or provisions contained in the Bond Documents nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in this Agreement or in the Indenture; provided, however, that no monetary relief will be recoverable from the Issuer except as may be payable from the funds available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds.

Notwithstanding any other provisions of this Agreement, none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder unless it shall have first been adequately indemnified to its satisfaction against the cost, expense and liability which may be incurred thereby.

be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer or the Company to the full extent permitted by law.

Section 11.7. Successors. Wherever the Issuer is referred to in this Agreement, it will be deemed to include its successors and all covenants and agreements in this Agreement will bind and inure to the benefit of the Issuer's successors. Wherever the Company is referred to in this Agreement, it will be deemed to include its successors in interest to the Project Property and all covenants and agreements in this Agreement will bind and inure to the benefit of such successors.

Section 11.8. Title, Headings. The title and headings of the articles, sections and subdivisions of this Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions of this Agreement.

Section 11.9. Execution in Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument.

Section 11.10. Applicable Law. The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico applicable to agreements made and to be performed in the State of New Mexico.

Section 11.11. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 11.12. Payments Due on Days That Are Not Business Days. If the date for any payment due hereunder is not a Business Day, as defined in the Indenture, then such payment will be made on the next Business Day and no interest on such payment will accrue for such period.

Section 11.13. Federal Income Tax Treatment of Lease. The Issuer and the Company acknowledge that this Agreement constitutes a financing for federal income tax purposes and not a lease of the Project Property, to the extent permitted by law. The Issuer and the Company further acknowledge that the Company shall, to the extent permitted by law, be entitled to all federal income tax attributes attributable to ownership of the Project Property, including the right to claim depreciation or cost recovery deductions and the right to claim any federal tax credits (or federal grants in lieu thereof) arising from ownership of the Project Property. Each of the Issuer and the Company agree not to file tax returns inconsistent with this Section 11.13.

Section 11.14. Amendments. Except for Section 6.4 which may be amended only by an instrument executed by the School Districts, the Company and the Issuer, this Agreement may

be amended only by an instrument executed by the Issuer and the Company and consented to by the Purchaser.

Section 11.15. Further Assurances and Corrective Instruments. The Issuer and the Company agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments to this Agreement and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement.

Section 11.16. Recordation. The Company may cause this Agreement, or a memorandum of this Agreement, in form and substance satisfactory to the Issuer, to be kept, recorded and filed in such manner and in such places as may be required by law to fully evidence, preserve and protect the leasehold estate of the Company.

Section 11.17. Survivals. The provisions of Sections 4.6 (Compliance with Law), 4.12 (Assessment in Company Name), 5.3(b) (Additional Payments), 6.2 (Claims; Liens), 6.3 (Release and Indemnification), 6.4 (Payments in lieu of Taxes to Issuer and School Districts), 8.3 (Issuer Remedies), 8.5 (Agreement to Pay Attorneys' Fees and Expenses) and Article XI (Miscellaneous) shall survive the termination of this Agreement.

[Signature pages follow]

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

By: _____
Ryan Schweback, Chair

(SEAL)

ATTEST:

By: _____
Linda Jaramillo, County Clerk

STATE OF NEW MEXICO)
)
COUNTY OF TORRANCE)

This instrument was acknowledged before me on this ____ day of _____, 2019, by Ryan Schweback, as Chair of the Board of County Commissioners, Torrance County, New Mexico

(NOTARY SEAL)

Notary Public

My Commission Expires: _____

LA JOYA WIND, LLC

By: _____

Name: _____

Title: Vice President

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2019, by _____, as Vice President of La Joya Wind, LLC, a Delaware limited liability company.

(NOTARY SEAL)

Notary Public

My Commission Expires: _____

EXHIBIT A

Project Property and Project Site

1. **PROJECT PROPERTY:** Wind energy generation facilities and associated electrical generating equipment and real property used to generate electricity from wind energy.
2. **PROJECT SITE:**
[see attached legal descriptions]

SCHEDULE 5.3(a)

PAYMENT SCHEDULE
 TORRANCE COUNTY, NEW MEXICO
 TAXABLE INDUSTRIAL REVENUE BONDS
 (LA JOYA WIND, LLC PROJECT)
 SERIES 2019A

\$290,000,000

Year	Total Debt Service	Principal	Interest
2020	20,000,000	-0-	20,000,000
2021	20,000,000	-0-	20,000,000
2022	20,000,000	-0-	20,000,000
2023	20,000,000	-0-	20,000,000
2024	20,000,000	-0-	20,000,000
2025	20,000,000	-0-	20,000,000
2026	20,000,000	-0-	20,000,000
2027	20,000,000	-0-	20,000,000
2028	20,000,000	-0-	20,000,000
2029	20,000,000	-0-	20,000,000
2030	20,000,000	-0-	20,000,000
2031	20,000,000	-0-	20,000,000
2032	20,000,000	-0-	20,000,000
2033	20,000,000	-0-	20,000,000
2034	20,000,000	-0-	20,000,000
2035	20,000,000	-0-	20,000,000
2036	20,000,000	-0-	20,000,000
2037	20,000,000	-0-	20,000,000
2038	20,000,000	-0-	20,000,000
2039	20,000,000	-0-	20,000,000
2040	20,000,000	-0-	20,000,000
2041	20,000,000	-0-	20,000,000
2042	20,000,000	-0-	20,000,000
2043	20,000,000	-0-	20,000,000
2044	20,000,000	-0-	20,000,000
2045	20,000,000	-0-	20,000,000
2046	20,000,000	-0-	20,000,000
2047	20,000,000	-0-	20,000,000
2048	20,000,000	-0-	20,000,000
2049	310,000,000	\$290,000,000	20,000,000

Schedule 5.3(a)

TORRANCE COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. ____

A SUPPLEMENTAL ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF TORRANCE COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (LA JOYA WIND, LLC PROJECT II), SERIES 2019B TO BE ISSUED PURSUANT TO THE MASTER ORDINANCE NO. 2019-02 IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF \$385,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF WIND ENERGY GENERATION FACILITIES FOR THE PURPOSE OF GENERATING ELECTRICITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, THE BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2019B BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE 2019B BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Torrance County (the “County”) is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the “State”) created pursuant to NMSA 1978, Section 4-30-1 through -2 (1917); and

WHEREAS, pursuant to NMSA 1978, Sections 4-59-1 through -16 (1975, as amended through 2015) (the “Act”), the County is authorized to acquire industrial revenue projects to be located within the County, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting the use of the natural resources of the State and promoting industry and developing trade or other economic activity to secure and maintain a balanced and stable economy in the County to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, the Board of County Commissioners (the “Commission”) of the County adopted the Master Ordinance No. 2019-02 (the “Master Bond Ordinance”) establishing the payments in lieu of taxes and other details concerning the issuance of Torrance County, New Mexico Taxable Industrial Revenue Bonds (La Joya Projects) Series 2019A and Series 2019B (the “Bonds”) in the combined aggregate principal amount not to exceed \$675,000,000 and authorized the issuance of the Series 2019A Bonds in an aggregate principal amount not to exceed \$290,000,000; and

WHEREAS, Avangrid Renewables, LLC an Oregon limited liability company (the “Parent Company”) has presented to the Commission a proposal to issue the remaining \$385,000,000 principal amount of Bonds authorized pursuant to the Master Bond Ordinance; and

WHEREAS, La Joya Wind, LLC (the “2019B Company”) has presented to the Commission a proposal whereby the County would issue its Taxable Industrial Revenue Bonds, (La Joya Wind, LLC Project II), Series 2019B in an aggregate principal amount not to exceed \$385,000,000 (the “2019B Bonds”), and acquire, construct, and install wind energy generation facilities and associated electrical generating equipment and real property used to generate electricity from wind energy (the “2019B Project Property”), located at the 2019B Project Site as set forth in the 2019B Lease referred to below, to be used by the 2019B Company for the generation and transportation of electricity of up to 195 megawatts (the “2019B Project” or the “La Joya II Project”); and

WHEREAS, the Commission has determined that it is necessary and in the best interests of the County and the residents that the 2019B Bonds be issued under the parameters set forth in the Master Bond Ordinance; and

WHEREAS, the La Joya II Project shall be constructed within the boundaries of the Vaughn Municipal School District (the “School District”), and the Master Bond Ordinance established payments in lieu of taxes (as defined herein) for the 2019B Bonds, to be shared by and between the County and the School District; and

WHEREAS, the County and the School District are negotiating the split of the payment under the 2019B PILOT Agreement (as defined herein) between the School District and the County pursuant to NMSA 1978, Section 4-59-4(A)(2) (2003); and

WHEREAS, under the 2019B Company’s proposal, the County would enter into an Indenture (the “2019B Indenture”) with the purchaser of the 2019B Bonds (the “2019B Purchaser”), the 2019B Company and BOKF, NA (the “2019B Depository”), pursuant to which and together with the Master Bond Ordinance and this Supplemental Ordinance, the County would issue the 2019B Bonds; and

WHEREAS, under the 2019B Company’s proposal, the County and the 2019B Company would enter into a lease agreement (the “2019B Lease”), pursuant to which the 2019B Company will lease the 2019B Project Property for the La Joya II Project from the County, and the 2019B Company will make payments sufficient to pay the principal of and interest on the 2019B Bonds and to pay all of the other obligations pursuant to the provisions of the 2019B Lease, the Master Bond Ordinance, and this Supplemental Ordinance; and

WHEREAS, the 2019B Bonds in a principal amount not to exceed \$385,000,000 will be issued, sold and delivered by the County in a private sale to the 2019B Purchaser pursuant to the bond purchase agreement to be dated as of the initial date of delivery of the 2019B Bonds among the County, the 2019B Purchaser and the 2019B Company (the “2019B Bond Purchase Agreement” and together with the 2019B Indenture, and 2019B Lease, the “2019B Bond Documents”); and

WHEREAS, the proceeds of the 2019B Bonds shall be applied to pay the costs of acquiring, constructing and installing the 2019B Project Property and to pay certain costs associated with the issuance and sale of the 2019B Bonds; and

WHEREAS, the Commission has determined that it is in the best interest of the County to issue the 2019B Bonds and to execute and deliver the 2019B Bond Documents and other documents related thereto; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the 2019B Bond Documents and to issue, execute and deliver the 2019B Bonds pursuant to the Act, this Supplemental Ordinance and the Master Bond Ordinance, and after having considered the 2019B Company's proposal, has concluded that it is desirable at this time to authorize the issuance of the 2019B Bonds to finance the 2019B Project and that the County's issuance of the 2019B Bonds will constitute and be a valid public purpose; and

WHEREAS, this Commission has been advised by Bond Counsel that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this transaction inasmuch as the 2019B Bonds are being sold in a private sale to the 2019B Purchaser without participation of an underwriter; and

WHEREAS, there has been published in *The Independent* and the *Albuquerque Journal*, newspapers of general circulation in the County, public notice of the Commission's intention to adopt this Supplemental Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the La Joya II Project and the amount of the 2019B Bonds to be issued to finance the La Joya II Project, which notice was published at least fourteen (14) days prior to final action upon this Supplemental Ordinance; and

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF TORRANCE COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Supplemental Ordinance previously taken by the Commission and the officials of the County directed toward approval of the issuance and sale of the 2019B Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

A. General. The Commission hereby declares that it has considered all relevant information presented to it relating to the 2019B Bonds and the La Joya II Project and hereby finds and determines that the issuance of the 2019B Bonds pursuant to the Master Bond Ordinance and this Supplemental Ordinance to provide funds for the acquisition, construction and installation of the 2019B Project Property is necessary and advisable and in the interest of and will promote the use of the natural resources of the State, industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

(1) The 2019B Bonds will be issued for the purpose of financing the acquisition, construction and installation of the La Joya II Project.

(2) The aggregate face amount of the 2019B Bonds to be issued with respect to financing the La Joya II Project pursuant to this Supplemental Ordinance will not exceed \$385,000,000.

(3) The 2019B Project Site is located within the County and outside the corporate limits of any municipality located in the County.

(4) The developer of the 2019B Project is the 2019B Company.

(5) The aggregate principal amount of the 2019B Bonds will not exceed \$385,000,000.

Section 3. SERIES 2019B BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the 2019B Bonds pursuant to the Master Bond Ordinance and this Supplemental Ordinance in a principal amount not to exceed \$385,000,000 and the use of the proceeds of the 2019B Bonds to finance the cost of the La Joya II Project including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the 2019B Bonds at par at a purchase price not to exceed \$385,000,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in the Master Bond Ordinance and this Supplemental Ordinance, the 2019B Bonds shall be issued in a principal amount not to exceed \$385,000,000 and bearing interest at the rates and maturing on the dates set forth in the 2019B Indenture. The 2019B Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the 2019B Indenture, and (ii) be payable as to principal and interest and subject to redemption in the amounts, upon the conditions and at the times and prices set forth in the 2019B Indenture presented to the Commission.

C. Execution. The 2019B Bonds shall be signed by the Chair of the Commission.

D. Interest Rate. The interest rate on the 2019B Bonds shall be 5% per annum.

E. PILOT Payments. Pursuant to the Master Bond Ordinance, the 2019B Company shall pay annual payments in lieu of taxes (the “2019B PILOT”) to be split between the County and the School District, equal to \$2,500 per megawatt of generating capacity for the La Joya II Project authorized pursuant to the Supplemental Ordinance or such greater 2019B PILOT as provided in the table below depending upon the price per megawatt hour negotiated in the applicable power purchase agreement (the “PPA Price”) in place for the La Joya II Project (the “2019B PILOT Agreement”); provided, however, if the PPA Price is not made publicly available by the power purchaser, the 2019B PILOT agreed upon by the County and the School District and to be split with the School District shall be \$3,250 per megawatt of generating capacity for the La Joya II Project.

Price / 2019B PILOT Schedule	La Joya II PPA PRICE (\$ / megawatt hour)	La Joya II PILOT (\$/megawatt generating capacity)
Range of PPA Prices	\$ 18.00 - 18.99	\$ 2,500.00
	\$ 19.00 - 19.99	\$ 2,638.89
	\$ 20.00 - 20.99	\$ 2,777.78
	\$ 21.00 - 21.99	\$ 2,916.67
	\$ 22.00 - 22.99	\$ 3,055.56
	\$ 23.00 - 23.99	\$ 3,194.44
	\$ 24.00 or higher	\$ 3,250.00

Pursuant to NMSA 1978, Section 4-59-4(A)(2) (2003), the County may issue the 2019B Bonds only after the County and the School District have agreed upon the percentage split of the 2019B PILOT to be received by the County and the School District.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The 2019B Bond Documents in the forms presented to the Commission are hereby approved. The Chair of the Commission of the County is authorized to approve the form, terms and provisions of the 2019B Bond Documents on behalf of the Commission, provided that such form, terms and provisions are consistent with the Master Bond Ordinance and this Supplemental Ordinance, and to execute and deliver in the name and on behalf of the County, and the County Clerk or Deputy County Clerk are hereby authorized to attest, as necessary, the 2019B Bond Documents. The Chair and the County Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the 2019B Bonds, as are necessary or appropriate to consummate the transactions contemplated by the 2019B Bond Documents. The Chair, the County Manager and/or Clerk and other officers of the County shall take such action as is necessary to effectuate the provisions of the 2019B Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the La Joya II Project and to carry out related transactions as contemplated by the Master Bond Ordinance, this Supplemental Ordinance, and the 2019B Bond Documents, including, without limitation, the execution and

delivery of any closing documents to be delivered in connection with the sale and delivery of the 2019B Bonds.

Section 5. DELIVERY OF THE 2019B BONDS. Upon the execution of the 2019B Bond Documents, the satisfaction of the conditions set forth in the 2019B Bond Documents and upon receipt of the purchase price for the 2019B Bonds, the 2019B Bonds shall be executed, authenticated and delivered to the 2019B Purchaser. The 2019B Bonds shall not be valid for any purpose until the 2019B Bonds have been properly authenticated as set forth in the 2019B Indenture.

Section 6. FUNDS AND ACCOUNTS. There is established in the 2019B Indenture, and on and after the date on which the 2019B Bonds are issued there shall be maintained, the funds and accounts as set forth in the 2019B Indenture. Other funds and accounts may be established as are necessary under the 2019B Indenture.

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS RELATED TO THE 2019B BONDS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest on the 2019B Bonds, assuming issuance of the 2019B Bonds as of January 1, 2020, in the maximum aggregate principal amount of \$385,000,000 and bearing interest at the rate of 5.00%, is as follows:

Year	Total Debt Service	Principal	Interest
2020	\$ 19,250,000	-0-	\$ 19,250,000
2021	19,250,000	-0-	19,250,000
2022	19,250,000	-0-	19,250,000
2023	19,250,000	-0-	19,250,000
2024	19,250,000	-0-	19,250,000
2025	19,250,000	-0-	19,250,000
2026	19,250,000	-0-	19,250,000
2027	19,250,000	-0-	19,250,000
2028	19,250,000	-0-	19,250,000
2029	19,250,000	-0-	19,250,000
2030	19,250,000	-0-	19,250,000
2031	19,250,000	-0-	19,250,000
2032	19,250,000	-0-	19,250,000
2033	19,250,000	-0-	19,250,000
2034	19,250,000	-0-	19,250,000
2035	19,250,000	-0-	19,250,000
2036	19,250,000	-0-	19,250,000
2037	19,250,000	-0-	19,250,000
2038	19,250,000	-0-	19,250,000
2039	19,250,000	-0-	19,250,000
2040	19,250,000	-0-	19,250,000
2041	19,250,000	-0-	19,250,000
2042	19,250,000	-0-	19,250,000
2043	19,250,000	-0-	19,250,000
2044	19,250,000	-0-	19,250,000
2045	19,250,000	-0-	19,250,000
2046	19,250,000	-0-	19,250,000
2047	19,250,000	-0-	19,250,000
2048	19,250,000	-0-	19,250,000
2049	404,250,000	385,000,000	19,250,000

B. The 2019B Bonds will bear interest at the rate of five percent (5%) per annum, or such other lower rate as is set forth in the Indenture.

C. The 2019B Bonds may be redeemed at any time without premium.

D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the 2019B Project Property.

E. The 2019B Lease shall require that the 2019B Company maintain the 2019B Project Property in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the 2019B Project Property as provided in the 2019B Lease.

F. The 2019B Lease shall require the 2019B Company to make lease payments in an amount sufficient to pay the principal of and interest on the 2019B Bonds as principal and interest become due and to pay all Related Costs (as defined in the 2019B Lease).

G. The 2019B Lease shall include a provision that the 2019B Company pay the County and the School District the 2019B PILOT payments for so long as the 2019B Bonds are outstanding.

H. If the 2019B Bonds are issued after 2019, the 2019B Bonds may be redesignated with a designation corresponding to the year of issuance of the 2019B Bonds, and references in the Master Bond Ordinance and this Supplemental Ordinance to the 2019B Bonds shall be deemed applicable to such renamed series of 2019B Bonds.

I. The foregoing details related to the 2019B Bonds are within the parameters established in the Master Bond Ordinance.

Section 8. LIMITED OBLIGATIONS. The 2019B Bonds shall be special limited obligations of the County, payable solely from the Base Rent (as defined in the 2019B Lease) paid by the 2019B Company to the County as described in the 2019B Indenture and any other property or interest of the County specifically pledged under the 2019B Indenture and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in the Master Bond Ordinance, this Supplemental Ordinance or in the 2019B Bond Documents or any other instruments shall be construed as obligating the County (except with respect to the 2019B Project Property and the application of the revenues therefrom and the proceeds of the 2019B Bonds, all as provided in the 2019B Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in this Supplemental Bond Ordinance, the 2019B Bond Documents, the 2019B Bonds or any other instrument be construed as obligating the County (except with respect to the 2019B Project

Property and the application of the revenues therefrom and the proceeds of the 2019B Bonds, all as provided in the 2019B Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds.

Section 10. APPROVAL OF INDEMNIFICATION. The Commission specifically requires that the 2019B Lease contain provisions relating to indemnification which provide that the 2019B Company shall indemnify and hold harmless the County and its Commission, officials, employees and agents against liability to the 2019B Company, or to any third parties, that may be asserted against the County or its Commission, officials, members, officers, employees or agents with respect to the County's ownership of the 2019B Project Property or the issuance of the 2019B Bonds and arising from the condition of the 2019B Project Property or the acquisition, construction and operation of the 2019B Project Property by the 2019B Company, except to the extent NMSA 1978, Section 56-7-1 (2005) may preclude such indemnity, and except claims for any loss or damage to the extent caused by the gross negligence or willful misconduct of the County or its Commission, or any official, employee or agent of the County.

Section 11. BOND ORDINANCE IRREPEALABLE. After the any of the 2019B Bonds are issued, the Master Bond Ordinance and this Supplemental Ordinance shall be and remain irrevocable until the 2019B Bonds, including interest, are fully paid, canceled and discharged in accordance with the 2019B Indenture.

Section 12. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Supplemental Ordinance are repealed by this Supplemental Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 13. SEVERABILITY. If any section, paragraph, clause or provision of this Supplemental Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Supplemental Ordinance.

Section 14. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Supplemental Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Chair of the Commission, and by the signature of the County Clerk or any Deputy County Clerk, and shall be recorded in the ordinance book of the County, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the County.

Done this 13th day of November, 2019.

BOARD OF COUNTY COMMISSIONERS,
TORRANCE COUNTY, NEW MEXICO

By: _____
Ryan Schwebach, Chair

By: _____
Kevin McCall, Commissioner

By: _____
Javier Sanchez, Commissioner

(SEAL)

ATTEST:

By: _____
Linda Jaramillo, County Clerk