

Chapter 13

Licenses, Permits and General Business Regulations

Part 1

Wind Turbine Generators

- §13-101. Findings
- §13-102. Establishment
- §13-103. Definitions
- §13-104. Permits Required
- §13-105. Permit Fee
- §13-106. Duration of Permit
- §13-107. Notice of Application
- §13-108. Review of Applications
- §13-109. Issuance of Permits
- §13-110. Criteria and regulations for Granting of Permit
- §13-111. Continued Compliance
- §13-112. No Further Land Development
- §13-113. No Further Subdivision
- §13-114. Penalty
- §13-115. Appeals
- §13-116. Appeal Fee
- Exhibit 13-A Regulated PUWTG Application/Appeal Form
- Exhibit 13-B Development Agreement and Permit #1
PUWTG - Development Agreement and Permit #2

Part 1**Wind Turbine Generators****§13-101. Findings.**

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

A. Premises use wind turbine generators (“PUWTG”) are a distinct class of wind turbine generators that do not inherently possess the same possible problematic characteristics as wind turbine generators utilized in a commercial context due to the fact that PUWTG generate electricity for the sole use of the premises and thus, are smaller, are not as high, are not as loud, do not carry the same risks of stray voltage or EMF to other landowners or citizens of the Township and impact neighboring parcels of land to a lesser degree. [*Ord. 3-2008*]

B. As a distinct class, PUWTG cannot be regulated in the same manner as wind turbine generators as a whole, and thus, whenever “wind turbine generators” is used in this Part, it shall expressly exclude PUWTG. [*Ord. 3-2008*]

C. The construction, maintenance and operation of wind turbine generators and PUWTGs which fail to comply with all criteria and regulations set forth in the attached Exhibits “13-A” and “13-B,” respectively, copies of which are attached hereto and incorporated herein by reference, present tangible and immediate dangers to the public and neighboring landowners in the nature of ejection of projectiles (ice or injured birds), continuous generation of noise during night time hours and glare from sunlight continually flashing off of rotating blades. [*Ord. 3-2008*]

D. The construction, maintenance and operation of wind turbine generators and PUWTGs present a danger following the useful life of the wind turbine generators or PUWTGs from deteriorating structures if provisions for decommissioning are not made as required by Exhibits “13-A” and “13-B.” [*Ord. 3-2008*]

E. The construction, maintenance and operation of wind turbine generators and PUWTGs, which fail to comply with all criteria and regulations set forth in the attached Exhibits “13-A” and “13-B,” respectively, unreasonably interfere with the reasonable use, comfort and enjoyment of property in the vicinity and/or endangers the health, safety and/or welfare of the occupants of the property in the vicinity and prohibit or deny the property owners and taxpayers the legitimate enjoyment of their reasonable rights and use of their property and rights. [*Ord. 3-2008*]

F. The construction, maintenance and operation of wind turbine generators and PUWTGs, which fail to comply with all criteria and regulations set forth in the attached Exhibits “13-A” and “13-B,” respectively, including, but not limited to, the repetitive noise and glare, visual impacts, flickering reflections, and/or shadows, constitute an unreasonable use of property which causes injury, damage, harm, inconvenience, annoyance, and discomfort to the property owners, and taxpayers in the legitimate enjoyment of their reasonable rights and use of their property and rights, and constitute a danger to migratory birds and the watershed.

(*Ord. 6-2005, 11/22/2005, §I; as amended by Ord. 3-2008, --/2008, §2*)

§13-102. Establishment.

The Washington Township Supervisors hereby declare the construction and maintenance of wind turbine generators to constitute a nuisance and offensive business, if not constructed and maintained in accordance with the criteria and regulations set forth in Exhibit “13-A,” a copy of which is attached hereto and incorporated herein by reference, subject to prohibition under §1529 of the Pennsylvania Second Class Township Code, 53 P.S. §66529, and provide for their regulation and permitting under the conditions set forth below in order to avoid the maintenance of nuisance or offensive businesses within the geographic limits of Washington Township.

(*Ord. 6-2005, 11/22/2005, §II*)

§13-103. Definitions.

Premises Use Wind Turbine Generators or *PUWTG*—a distinct class of wind turbine generators in which all of the electricity generated is utilized on the premises only and no other premises, nor is such electricity generated transmitted to any electrical grid for use by others (“premises” being the same tax parcel identification number upon which the PUWTG is constructed, or any tax parcel having an identification number that shares a common boundary with the tax parcel identification number upon which the PUWTG is constructed and the owner or owners of all tax identified parcels are the same). [*Ord. 3-2008*]

Property line—as referred to in the boundary of the property or lot upon which the wind turbine generator is to be located.

Wind turbine generators—as prohibited or regulated by this Part shall mean real and personal property, which are composed of generators; blades; tower; base; components of the aforementioned; and appurtenances of the aforementioned (“wind turbine generator,” with the term referring to both the singular and the plural of such structure).

(*Ord. 6-2005, 11/22/2005, §III; as amended by Ord. 3-2008, -/-/2008, §3*)

§13-104. Permits Required.

1. *Wind Turbine Generators*. No wind turbine generators shall be constructed, operated or maintained within Washington Township without a permit for the same. Permit application shall be made on forms provided by the Township. A separate application shall be filed for each structure.

2. *PUWTG*. No PUWTG shall be constructed, operated or maintained within Washington Township without a permit for the same. Permit application shall be made on forms provided by the Township. A separate application shall be filed for each structure. In the event a person desires to convert a PUWTG to a wind turbine generator, a permit in accordance with paragraph .A above shall be obtained prior to any alteration to the structure and failure to properly obtain such a permit shall constitute a violation of this Part.

(*Ord. 6-2005, 11/22/2005, §IV; as amended by Ord. 3-2008, -/-/2008, §4*)

§13-105. Permit Fee.

A permit fee of \$1,500 per proposed megawatt (or proportion thereof) for wind

turbine generators shall be paid at the time the permit application is submitted. A permit fee of \$500 per PUWTG permit sought shall be paid at the time the permit application is submitted. Fees shall not be returned where an application has been denied. The Board of Supervisors may modify the fees by resolution from time to time in keeping with the Township's experience with the cost of administering the provisions of this Part.

(*Ord. 6-2005, 11/22/2005, §V; as amended by Ord. 3-2008, --/2008, §5*)

§13-106. Duration of Permit.

A permit issued shall be valid for a period of 30 years. Any application for renewal shall satisfy all criteria and regulations set forth in Exhibit "13-A."

(*Ord. 6-2005, 11/22/2005, §VI*)

§13-107. Notice of Application.

The applicant must provide written notice of application to all property owners and tenants occupying property within 2,000 feet of the boundaries of the property upon which the wind turbine generators will be located. Proof of service of such notice by certified mail or notarized affidavit of hand delivery must be provided with the application.

(*Ord. 6-2005, 11/22/2005, §VII*)

§13-108. Review of Applications.

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

(*Ord. 6-2005, 11/22/2005, §VIII*)

§13-109. Issuance of Permits.

1. *Wind Turbine Generators.* The Supervisors of the Township, with the assistance of such consultants as they deem appropriate, shall make a determination at a public meeting as to whether the permit application submitted meets the criteria and regulations set forth in this Part and attached Exhibit "13-A," and approve or reject the application based upon that determination in a public vote.

2. *PUWTG.* The Supervisors of the Township, with the assistance of such consultants as they deem appropriate, shall make a determination at a public meeting as to whether the permit application submitted meets the criteria and regulations set forth in this Part and attached Exhibit "13-B," and approve or reject the application based upon that determination in a public vote.

(*Ord. 6-2005, 11/22/2005, §IX; as amended by Ord. 3-2008, --/2008, §7*)

§13-110. Criteria and regulations for Granting of Permit.

1. *Wind Turbine Generators.* No permit for the construction, operation or maintenance of a wind turbine generator(s) shall be granted unless the applicant

demonstrates compliance in its permit application with all criteria and regulations set forth in the attached Exhibit “13-A.” The criteria and regulations, set forth in Exhibit “13-A,” are incorporated herein by reference.

2. *PUWTG*. No permit for the construction, operation or maintenance of a PUWTG shall be granted unless the applicant demonstrates compliance in its permit application with all criteria and regulations set forth in the attached Exhibit “13-B.” The criteria and regulations, set forth in Exhibit “13-B,” are incorporated herein by reference.

(*Ord. 6-2005*, 11/22/2005, §X; as amended by *Ord. 3-2008*, --/2008, §8)

§13-111. Continued Compliance.

An applicant granted a permit under this Part shall be under a continuing obligation to meet the performance criteria and regulations set forth above. The Washington Township Supervisors hereby declare that a wind turbine generator(s) which ceases to meet the criteria and regulations listed above, after construction pursuant to a permit, shall constitute a nuisance, and following 30-day notice to the applicant at the address listed on the application for permit of the need for abatement, which remains unremedied or unappealed, the Township may act to remove the structure. Such notice shall be designated as a notice of violation, and shall be appealable as set forth below.

(*Ord. 6-2005*, 11/22/2005, §XI)

§13-112. No Further Land Development.

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

(*Ord. 6-2005*, 11/22/2005, §XII)

§13-113. No Further Subdivision.

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

(*Ord. 6-2005*, 11/22/2005, §XIII)

§13-114. Penalty.

Any person who violates any portion of this Part shall in a civil enforcement proceeding pay a fine as set by the Board of Supervisors, as provided for in the Second Class Township Code, 53 P.S. §66601. This Part is deemed to be an ordinance related to public health and safety, enacted under authority of the statutes referred to in the preamble hereto and the Township’s general authority to protect public health and safety and welfare. As such, a penalty of \$1,000 shall be assessed as a civil penalty for any violation hereof. Each day a violation continues shall be considered a separate and

distinct violation and subject to a separate assessment, until proof of compliance is provided. Notwithstanding any provision of this Part respecting enforcement, the Township reserves the right to enforce this Part through an action for injunction in the Court of Common Pleas of Cambria County pursuant to 53 P.S. §66601(c.1) (4).

(*Ord. 6-2005, 11/22/2005, §XIV*)

§13-115. Appeals.

Any person aggrieved by any determination or action by the Township shall have an opportunity to present and explain its position before the Township Board of Supervisors. Any and all decisions and/or determinations by the Township Board of Supervisors may be appealed to the Court of Common Pleas of Cambria County, and all appeals are de novo. Any such request to be heard by the Township Board of Supervisors shall be on forms provided by the Township and shall include a complete statement of the reasons the person is aggrieved together with a written statement of all evidence to be provided to the Township Board of Supervisors. The factual basis or summary of any expert testimony that will be presented at such meeting of the Township Board of Supervisors must also be attached to the form provided by the Township. Failure to request the opportunity to present evidence to the Township Board of Supervisors under this paragraph within 30 days from the date of the determination or action by the Township will result in the waiver of any right to request an opportunity to present evidence to the Board of Supervisors and appeal to the Court of Common Pleas. The person requesting an opportunity to be heard under this Section must provide written notice of the same to all property owners and tenants occupying property within 2,000 feet of the boundaries of the property upon which the wind turbine generators will be located. Proof of service of such notice by certified mail or notarized affidavit of hand delivery must be provided with the form provided by the Township.

(*Ord. 6-2005, 11/22/2005, §XV*)

§13-116. Appeal Fee.

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

(*Ord. 6-2005, 11/22/2005, §XVI; as amended by Ord. 2010-2, 11/3/2010*)

Exhibit 13-B

DEVELOPMENT AGREEMENT and PERMIT #1

This Development Agreement and Permit ("Agreement"), dated the _____ day of _____, 20___, is executed by the Washington Township, located in Cambria County, in the Commonwealth of Pennsylvania and organized under the Second Class Township Code of the Pennsylvania Statutes ("Township") and _____ ("Developer/Permitee"). The Township and Developer/Permitee are referred individually as "Party" and collectively as the "Parties."

GENERAL CONDITIONS

1. **Default.** Any of the following occurrences shall constitute an event of default ("Event of Default") under this Agreement:

a. If Developer/Permitee ceases to operate the Project; provided, however, that Developer/Permitee shall not be deemed to have ceased operating the Project if Developer/Permitee ceases operations for all or substantially all of the Project for a period not exceeding 6 months;

b. If a petition is filed by Developer/Permitee under any bankruptcy, reorganization, arrangement, insolvency, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 90 days after such filing;

c. If Developer/Permitee fails to observe or perform any material condition or provision hereof for a period of 60 days after receiving written notice of such failure from the Township. Developer/Permitee shall commence corrective action within 30 days of notice, from any source, of any failure, and shall complete corrective action within 60 days of receipt of notice. Any period of time for which Developer/Permitee is unable to commence or complete corrective action as the result of any material third party withholding approval of such action shall not be counted against Developer/Permitee. If Developer/Permitee is unable to commence corrective action within 30 days of notice or is unable to complete corrective action within 60 days of receipt of notice for reasons other than delays caused by any material third party, Developer/Permitee shall request an extension from the Township, which shall not be unreasonably withheld and which may include reasonable conditions in order for Developer/Permitee to receive and maintain such extension;

d. If Developer/Permitee continues to be in material breach of any statute, regulation, rule or permit administered by any federal, state, county or local department, agency or commission within 60 days after receiving written notice of a violation by such federal, state or county department, agency or commission Developer/Permitee shall notify the Township in writing of any alleged violation, order or enforcement proceeding within seven days of receipt. Developer/Permitee shall commence corrective action within 30 days of notice, from any source, of any breach and/or violation, and shall complete corrective action within 60 days of receipt of notice. Any period of time for which Developer/Permitee is unable to commence or complete corrective action as the result of any material third party withholding approval of such action shall not be counted against Developer/Permitee. If Developer/Permitee is unable to commence corrective action within 30 days of notice or is unable to complete corrective action within 60 days of receipt of notice for reasons other than delays caused by any material third party, Developer/Permitee shall request an extension from the Township, which shall not be unreasonably withheld and which may include reasonable conditions in order for Developer/Permitee to receive and maintain such extension.

e. Upon an Event of Default the Township may revoke this Agreement if the following conditions are met:

- (i) The Event of Default remains uncured; and
- (ii) There is no Force Majeure Event causing the Event of Default to continue; and
- (iii) The Township has provided Developer/Permitee an opportunity to present and explain its position before the Township Board to respond to the Event of Default, and any and all decisions and/or determinations by the Township Board may be appealed to the Court of Common Pleas of Cambria County, and all appeals are *de novo*; and

- (iv) All *de novo* appeals from the decision rendered by the Township Board under (iii) have been exhausted.

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

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

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

5. **Modification.** No provision of this Agreement may be modified except in writing by Developer/Permittee and the Township after public notice and hearing. Developer/Permittee is required to obtain separate authorizations for the erection and support of any buildings or improvements, highway access permits, and any other permit, license or authorization required by any county, state or federal agency. Except as provided in Paragraph 3 hereof, the Township makes no representations regarding Developer/Permittee's right to obtain whatever additional authorizations or permits may be necessary for the operation of the Wind Farm and its wind turbine generators.

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

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

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

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

10. **Indemnification.** Developer/Permittee shall defend, indemnify and hold harmless the Township and its officials, employees and agents from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorneys' fees (such liabilities together known

as "Liability") arising out of the selection, construction, operation and removal of the wind turbine generators and affiliated equipment including, without limitation, Liability for property damage or personal injury (including death), whether said Liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the Township's other indemnification rights available under law.

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

12. **Time is of the Essence.** Time is of the essence in performance of the requirements of this Agreement.

SPECIAL CONDITIONS

1. **Term and Renewal.** This Agreement shall continue for 30 years (the "Term") from the date of approval of this Agreement, unless earlier terminated as provided herein. The Term shall automatically extend for one additional ten year period ("Additional Term"), at the request of Developer/Permitee if no Event of Default permitting the Township to revoke this Agreement under 1(e) above exists at the time of such request.

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

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

3. **State and Federal Requirements.** The wind turbine generators shall meet current standards and regulations, if any, of any other agency of the state or federal government with the authority to regulate wind turbine generators. If such standards and regulations are changed, then Developer/Permitee shall bring the wind turbine generators into compliance with such applicable revised standards and regulations within 6 months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency or approved by the Township. Failure to bring the wind turbine generators into compliance with such applicable revised standards and regulations shall constitute an Event of Default. The wind turbine generators shall be marked as required by the Federal Aviation Administration (FAA). A Determination of No Hazard for each wind turbine generator must be obtained from the FAA as a condition precedent for the installation of each turbine. Developer/Permitee shall comply with any and all future state and/or federal regulations which are applicable to wind turbine generators or the Wind Farm, unless grandfathered.

4. **Design.** Each wind turbine generator shall consist of a tubular support, generator, nacelle, and three blades. Each wind turbine generators site will have access roads, underground transmission cabling to connect the

generators to an electric substation, and underground fiber optic lines. All wind turbine generator sites shall be designed and constructed in such a fashion as to avoid any disruption and or interference with private wells, springs and/or other water sources. In the event any problems occur with any private water source, which problems are proximately caused by Developer/Permittee, Developer/Permittee shall immediately supply potable water in such quality and quantity as supplied by the original private water source.

Developer/Permittee shall install wind turbine generators of two megawatts nameplate capacity each unless otherwise agreed to by the Parties, which comply with all terms and provisions of this Agreement.

5. **Maintenance, Repair & Replacement.** Developer/Permittee shall repair, maintain and replace the wind turbine generators and associated equipment during the Term of this Agreement in a manner consistent with Good Utility Practice as needed to keep the Project in good repair and operating condition.

6. **Signs.** No advertising material or signage other than warning, equipment information or indicia of ownership shall be allowed on the wind turbine generators. This prohibition shall include the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners or waiving, fluttering or revolving devices, but not including weather devices.

7. **Lighting.** The wind turbine generators shall not be artificially illuminated except as required by the FAA or any other applicable authority. If lighting is required, the lighting alternatives and design chosen will seek to minimize the disturbance to the surrounding views.

8. **Aesthetics.** The towers and generators of the wind turbine generators shall have a non-reflective, painted steel finish in a neutral color, subject to any applicable standards of the FAA or other regulatory requirements. The blades of the wind turbine generators are not covered by this section.

9. **Stray Voltage/Electromagnetic Fields (EMF).** Developer/Permittee will utilize Good Utility Practice to minimize, to the extent practicable, the impact, if any, of stray voltage and/or EMF on Non-Participating property. Developer/Permittee expects there will be no stray voltage impacts from the Project because such impacts occur only on distribution facilities which are not included in the Project.

10. **Wind Turbine Generator Removal.** Each wind turbine generator and all related improvements shall be removed within 12 months of the date when the use of the particular wind turbine generator has been discontinued or abandoned by Developer/Permittee, or upon expiration of this Agreement, whichever is earlier. At the time of its removal, a wind turbine generator will be decommissioned and removed except for any concrete structure four feet below grade. Upon removal, the land used for the removed wind turbine generator and associated equipment will be restored to its original condition. Roads, at the property owner's request, may be left intact.

Developer/Permittee shall assure funding of these removal obligations by providing a security instrument to the Township in a form, amount and containing such terms and provisions mutually agreed to by the Township and Developer/Permittee. The security shall be maintained in effect upon the commencement of construction and for the entire life of the Project and adjusted annually for inflation in an amount equal to the preceding year's annual increase in the Consumer Price Index.

Developer/Permittee shall also furnish satisfactory evidence to the Township that the Developer/Permittee has included in a lease agreement or other agreement with property owner a provision for the decommissioning and removal of the wind turbine generators and restoration of the site at the time when a wind turbine generator no longer has a useful life, has been discontinued, abandoned, and/or upon expiration of this Agreement, whichever occurs first. Developer/Permittee shall demonstrate sufficient security by meeting the following requirement:

Developer/Permittee shall immediately following the first year of operation and every tenth year thereafter, at its own expense, retain an independent engineer acceptable to the Township to estimate the cost of decommissioning and removal of the wind turbine generators and restoration of the site. Developer/Permittee shall submit such report to the Township upon receipt. Developer/Permittee shall maintain the security in an amount using the greater of either fifty percent (50%) of the cost of decommissioning the wind turbine generators without regard to salvage value of the wind

turbine generators, or the actual cost of decommissioning the wind turbine generators taking into account the salvage value of the wind turbine generators.

The Parties agree that the Township shall have the right to enter the property to remove the wind turbine generators in the event that the same is not removed in twelve months with the Township keeping any salvage value obtained from such removal.

The estimated cost of decommissioning will be updated every tenth year, to take into account inflation or other factors deemed relevant by the independent engineer, and approved by the township engineer, including, but not limited to, any increase or decrease of the market value of the structure and its related components being decommissioned and the cost of labor to perform the decommissioning. Any costs of decommissioning, removal and restoration in excess of the decommissioning shall be promptly paid by the Developer/Permittee to the contractor retained for the removal and restoration.

11. Setbacks. The wind turbine generators shall comply with the following setbacks:

(a) Structures.

(i) Civil Structures. Each wind turbine generators shall be set back from the nearest existing (at the time of the building permit issuance) school, hospital, church or public library, a distance of no less than 2,000 feet.

(ii) Participating Residences. For existing (at the time of the building permit issuance or notice from the building code enforcement officer that no building permit is required) Participating primary occupied residences the setback distance from a wind turbine generator shall be at least 600 feet unless the property owner provides written permission allowing for a lesser distance. In no event shall the setback distance be less than 1.1 times the total height of the wind turbine generator (measured at the highest point of the blade tip).

(iii) Non-Participating Residences. For existing (at the time of the building permit issuance or notice from the building code enforcement officer that no building permit is required) Non-Participating primary occupied residences the setback distance from a wind turbine generator shall be at least 2000 feet unless the property owner provides written permission allowing for a lesser distance. In the event the property owner provides written permission, the setback distance shall not be less than 1.1 times the total height of the wind turbine generator (measured at the highest point of the blade tip).

(iv) Definition of Participating and Non-Participating. For purposes of this Agreement "Participating" shall mean a property owner or property (including a residence) that is subject to an agreement or lease with Developer/Permittee. "Non-Participating" shall mean all property owners or property (including a residence) which are not Participating property owners or property.

(b) Property Lines. Each wind turbine generator shall be set back from the nearest property line a distance of no less than 1.1 times its total height. This distance may be waived among both participating and non participating property owners with written permission by adjacent property owners.

(c) Public Roads. Each wind turbine generator shall be set back from the nearest public road a distance of no less than 1.1 times its total height, determined at the nearest boundary of the right-of-way for such public road. Unless conclusive evidence exists to the contrary, the public road right-of-way is presumed to be 66 feet.

(d) Communication and Electric Lines. Each wind turbine generator shall be set back from the nearest above-ground public electric power line or public telephone line a distance of no less than 1.1 times its total height, determined from the existing power line or telephone line, unless otherwise agreed to or waived by the easement holder.

12. **Noise.** Developer/Permittee shall comply with the following noise standards:

(a) Developer/Permittee shall make a good faith effort to maintain a noise level attributable to the wind turbine generators of not more than 45dbA within a reasonable margin of error as measured at existing Non-Participating residences;

(b) The Parties acknowledge that the Project's construction will be the source of intermittent noise. Developer/Permittee shall require all contractors to incorporate reasonable noise reduction measures in order to mitigate the amount of noise generated during the construction phase.

13. **Safety.** Developer/Permittee shall comply with the following safety standards:

(a) All wiring between the wind turbine generators and the substation shall be underground to the extent practicable;

(b) The outside of the wind turbine generator towers shall not be climbable;

(c) All access doors to the towers and electrical equipment shall be locked;

(d) Appropriate warning signage shall be placed on each tower, all electrical equipment, and all entrances;

(e) Developer/Permittee shall abide by all applicable local, state and federal fire code and emergency services guidelines;

(f) All wind turbine generators shall be equipped with portable fire extinguishers, unless the local fire department or municipal engineer provides written documentation establishing that the same is not necessary;

(g) No wind turbine generator shall be located within a distance of 2000 feet from any Non-Participating occupied residence or occupied commercial structure existing at the time of the erection of the wind turbine generators, unless the owner of such existing residential or commercial structure shall have executed a written waiver or non-disturbance easement, covenant or consent, any of the aforementioned which has been recorded in the Office of the Recorder of Deeds of Cambria County, Pennsylvania. Such easement or covenant shall run with the land and, at a minimum, provide that the said property owner waives and releases any and all claims, damages and/or losses resulting from higher noise levels, visual impacts or flickering reflections and/or shadows which may arise as a result of the location of a wind turbine generator within the established setback distance of an existing residential or commercial structure on the property of the owner executing same. Such easement, covenant or consent shall meet such requirements as to form and content consistent with this Agreement as may be required by the Township; and

(h) Inspection and O&M Provider: Developer/Permittee shall cause its Operations and Maintenance provider ("O&M Personnel") to comply with the following schedule:

1. At least once every thirty-six (36) months the individual wind turbine generators shall be inspected by O&M Personnel, or its agent, who is regularly involved in the maintenance, inspection and/or erection of wind turbine generators, towers and antennas. At a minimum, this inspection shall be conducted in accordance with the provisions of this Agreement and in accordance with the wind turbine generator inspection check list provided by the Parties respective Engineers, as applicable. This is considered a major inspection.

2. At least once every twelve (12) months a visual inspection from ground shall be conducted by O&M Personnel. This inspection shall include, but not be limited to, visual inspection of wind turbine generator foundations, structures, guys, and connections for evidence of settlement or lateral movement; soil erosion; condition of paint or galvanizing; rust or corrosion, loose or missing bolts, loose or corroded lightning protection connectors; wind turbine generator tower plumbness; significant variation in guy sags (i.e. guy tensions), and other material areas or matters relating to the structural

Township, or (ii) Developer/Permitee shall obtain the prior written consent of the Township (which consent shall not unreasonably withheld). If Developer/Permitee elects to assume the defense of any claim, the Township shall fully cooperate with Developer/Permitee and its counsel in such defense.

16. Payment to Township. Developer/Permitee will pay to the Township an ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00) per proposed megawatt for wind turbine generators installed in the Township upon issuance of the Building Permit by the Township or notice from the building code enforcement officer that no building permit is required (the "Issuance or Notice Date"). Thereafter, Developer/Permitee will pay the Township ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00) per megawatt for wind turbine generators actually installed in the Township (the "Per Megawatt Payment"). Such payments shall be on an annual basis payable on the anniversary of the Issuance or Notice Date. Under no circumstances shall the Township receive less than ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS per megawatt from Developer/Permitee. However, Developer/Permitee may receive a Credit, which shall be set off against the Per Megawatt Payment. "Credit" is defined as the amount of any payments related to the Wind Farm or wind turbine generators located in the Township paid by Developer/Permitee to any other governmental entity, for which such funds are actually (or are traceable to an amount) received by the Township. If the Credit is less than the Per Megawatt Payment, then the Per Megawatt Payment will be reduced by the Credit. If the Credit is equal to or greater than the Per Megawatt Payment, no Per Megawatt Payment is payable to the Township. Pursuant to the above terms, Developer/Permitee specifically agrees that the Commonwealth may not impair the right to this payment by the passage of legislation, executive order or otherwise.

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

In addition, Developer/Permitee will make contact information available for the entity providing operation (monitoring) and maintenance services.

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

19. Project Permit. Upon execution by both Parties to this Agreement, this document shall also constitute a permit for Developer/Permitee to proceed with the Project, subject to the requirements of this Agreement and the requirement of Developer/Permitee to obtain all other necessary permits as required by federal, state, and local law, including, but not limited to, FAA permits, Pennsylvania Department of Environmental Protection permits, and building permits.

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

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

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

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

24. **Immunity:** Neither Party hereto waives any rights or immunities arising out of and/or pursuant to any applicable governmental immunity, laws and/or statutes.

25. **Compliance with Laws:** Nothing contained in this Agreement shall provide, apply/infer that either party is authorized to engage in any conduct which is not in compliance with all federal, state, and local laws, rules and regulations that presently exist and/or are adopted/amended in the future.

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

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

TOWNSHIP OF WASHINGTON

By: _____
_____, Township Chairperson

Attest:

Approved as to Form:

By: _____
_____, Township Solicitor

NAME OF DEVELOPER/PERMITEE

By: _____

Attest:

Authorized Representative

Approved as to Form:

NAME OF DEVELOPER/PERMITEE

By: _____
_____, Attorney

PUWTG - DEVELOPMENT AGREEMENT and PERMIT #2

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

GENERAL CONDITIONS

1. Default. Any of the following occurrences shall constitute an event of default (“Event of Default”) under this Agreement:

a. If Developer/Permittee ceases to operate the Premises Use Wind Turbine Generators (“PUWTG”); provided, however, that Developer/Permittee shall not be deemed to have ceased operating the PUWTG if Developer/Permittee ceases operations of the PUWTG for a period not exceeding 6 months;

b. If Developer/Permittee fails to observe or perform any material condition or provision hereof for a period of 60 days after receiving written notice of such failure from the Township. Developer/Permittee shall commence corrective action within 30 days of notice, from any source, of any failure, and shall complete corrective action within 60 days of receipt of notice. Any period of time for which Developer/Permittee is unable to commence or complete corrective action as the result of any material third party withholding approval of such action shall not be counted against Developer/Permittee. If Developer/Permittee is unable to commence corrective action within 30 days of notice or is unable to complete corrective action within 60 days of receipt of notice for reasons other than delays caused by any material third party, Developer/Permittee shall request an extension from the Township, which shall not be unreasonably withheld and which may include reasonable conditions in order for Developer/Permittee to receive and maintain such extension;

c. If Developer/Permittee continues to be in material breach of any statute, regulation, rule or permit administered by any federal, state, county or local department, agency or commission within 60 days after receiving written notice of a violation by such federal, state or county department, agency or commission Developer/Permittee shall notify the Township in writing of any alleged violation, order or enforcement proceeding within seven days of receipt. Developer/Permittee shall commence corrective action within 30 days of notice, from any source, of any breach and/or violation, and shall complete corrective action within 60 days of receipt of notice. Any period of time for which Developer/Permittee is unable to commence or complete corrective action as the result of any material third party withholding approval of such action shall not be counted against Developer/Permittee. If Developer/Permittee is unable to commence corrective action within 30 days of notice or is unable to complete corrective action within 60 days of receipt of notice for reasons other than delays caused by any material third party, Developer/Permittee shall request an extension from the Township, which shall not be unreasonably withheld and which may include reasonable conditions in order for Developer/Permittee to receive and maintain such extension.

d. Upon an Event of Default the Township may revoke this Agreement if the following conditions are met:

- (i) The Event of Default remains uncured; and
- (ii) There is no Force Majeure Event causing the Event of Default to continue; and
- (iii) The Township has provided Developer/Permittee an opportunity to present and explain its position before the Township Board to respond to the Event of Default, and any and all decisions and/or determinations by the Township Board may be appealed to the Court of Common Pleas of Cambria County, and all appeals are *de novo*; and
- (iv) All *de novo* appeals from the decision rendered by the Township Board under (iii) have been exhausted.

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

3. **Interpretation.** In their interpretation and application, the provisions of this Agreement shall be considered minimum requirements.

4. **Modification.** No provision of this Agreement may be modified except in writing by Developer/Permitee and the Township after public notice and hearing. Developer/Permitee is required to obtain separate authorizations for the erection and support of any buildings or improvements, highway access permits, and any other permit, license or authorization required by any county, state or federal agency. The Township makes no representations regarding Developer/Permitee's right to obtain whatever additional authorizations or permits may be necessary for the operation of a PUWTG.

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

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

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

8. **Performance Standards.** Developer/Permitee agrees that the PUWTG shall be operated and maintained consistent with Good Utility Practice for comparable facilities. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region. Under no circumstances shall the definition of "Good Utility Practices" include any violation, regardless of degree, of any local, state, and/or federal law, ordinance, rule, and/or regulation.

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

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

11. **Time is of the Essence.** Time is of the essence in performance of the requirements of this Agreement.

SPECIAL CONDITIONS

1. **Term and Renewal.** This Agreement shall continue for 30 years (the "Term") from the date of approval of this Agreement, unless earlier terminated as provided herein. The Term shall automatically extend for one additional ten year period ("Additional Term"), at the request of Developer/Permitee if no Event of Default permitting the Township to revoke this Agreement under 1(e) above exists at the time of such request.

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

2. **Building Codes; Safety Standards.** To ensure the integrity of the PUWTG, Developer/Permitee shall maintain the PUWTG in compliance with Good Utility Practice for PUWTG. If, upon inspection by the Township and/or any other regulatory entity with lawful jurisdiction over the PUWTG, the Township or such entity provides written notice that any of the PUWTG fail to comply with Good Utility Practice or constitutes a danger to persons or property, then Developer/Permitee shall immediately commence corrective action for any failure and/or danger, and shall complete corrective action to bring the non-compliant PUWTG into compliance with such standards within 60 days of receipt of notice. If Developer/Permitee is unable to bring the non-compliant PUWTG into compliance with such standards within 60 days of receipt of notice, Developer/Permitee shall request an extension from the Township, which shall not be unreasonably withheld and which may include reasonable conditions in order for Developer/Permitee to receive and maintain such extension. Failure to bring such non-compliant PUWTG into compliance shall constitute grounds for the Township to request removal of said PUWTG at Developer/Permitee's expense. The Township is authorized to file an action for injunctive relief in the Court of Common Pleas of Cambria County, Pennsylvania, to require Developer/Permitee to remove the non-compliant PUWTG.

3. **State and Federal Requirements.** The PUWTG shall meet current standards and regulations, if any, of any other agency of the state or federal government with the authority to regulate PUWTG. If such standards and regulations are changed, then Developer/Permitee shall bring the PUWTG into compliance with such applicable revised standards and regulations within 6 months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency or approved by the Township. Failure to bring the PUWTG into compliance with such applicable revised standards and regulations shall constitute an Event of Default. The PUWTG shall be marked as required by the Federal Aviation Administration (FAA). Developer/Permitee shall comply with any and all future state and/or federal regulations which are applicable to PUWTG, unless grandfathered.

4. **Maintenance, Repair & Replacement.** Developer/Permitee shall repair, maintain and replace the PUWTG and associated equipment during the Term of this Agreement in a manner consistent with Good Utility Practice as needed to keep the PUWTG in good repair and operating condition. In the event a complete or substantial replacement of the PUWTG is undertaken, written notice shall be given to the Township at least thirty (30) days prior to replacement to enable the Township to inspect during the replacement. The Notice shall contain a simple diagram of the property with the proposed location of the PUWTG and the proposed dates of replacement.

5. **Signs.** No advertising material or signage other than warning, equipment information or indicia of ownership shall be allowed on the PUWTG. This prohibition shall include the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners or waiving, fluttering or revolving devices, but not including weather devices.

6. **Lighting.** The PUWTG shall not be artificially illuminated except as required by the FAA or any other applicable authority. If lighting is required, the lighting alternatives and design chosen will seek to minimize the disturbance to the surrounding views.

7. **Aesthetics.** The towers and generators of the PUWTG shall have a non-reflective, painted steel finish in a neutral color, subject to any applicable standards of the FAA or other regulatory requirements. The blades of the PUWTG are not covered by this section.

8. Stray Voltage/Electromagnetic Fields (EMF). Developer/Permittee will utilize Good Utility Practice to minimize, to the extent practicable, the impact, if any, of stray voltage and/or EMF on other property not owned by Developer/Permittee. Developer/Permittee expects there will be no stray voltage impacts from the PUWTG because such impacts occur only on distribution facilities which are not included in the PUWTG.

9. PUWTG Removal. Each PUWTG and all related improvements shall be removed within six (6) months of the date when the use of the particular PUWTG has been discontinued or abandoned by Developer/Permittee, or upon expiration of this Agreement, whichever is earlier. At the time of its removal, a PUWTG will be decommissioned and removed except for any concrete structure four feet below grade. Upon removal, the land used for the removed PUWTG and associated equipment will be restored to its original condition.

The Parties agree that the Township shall have the right to enter the property to remove the PUWTG in the event that the same is not removed in six (6) months with the Township keeping any salvage value obtained from such removal. Any costs of decommissioning, removal and restoration, including attorney's fees and costs, in excess of the salvage value shall be promptly paid by the Developer/Permittee to the Township. The Township shall be entitled to enter a municipal claim, pursuant to the Municipal Lien Act.

10. Setbacks. The PUWTG shall comply with the following setbacks:

(a) **Structures.** No PUWTG shall be placed less than 1.5 times the height of the PUWTG (measured at the highest point of the blade tip), from the nearest point of intersection of any structure or building currently located on the parcel of real estate. No new structures or building shall be subsequently constructed or placed less than 1.5 times the height of the PUWTG (measured at the highest point of the blade tip), from the nearest point of intersection with the PUWTG.

(b) **Property Lines.** No PUWTG shall be placed less than 1.5 times the height of the PUWTG (measured at the highest point of the blade tip), from the nearest point of intersection of the property line of another property owner. This distance may be waived among property owners with written permission by adjacent property owners, such waiver or non-disturbance easement, covenant or consent, shall be recorded in the Office of the Recorder of Deeds of Cambria County, Pennsylvania. Such easement or covenant shall run with the land and, at a minimum, provide that the said property owner waives and releases any and all claims, damages and/or losses resulting from higher noise levels, visual impacts or flickering reflections and/or shadows which may arise as a result of the location of a wind turbine generator within the established setback distance of an existing residential or commercial structure on the property of the owner executing same. Such easement, covenant or consent shall meet such requirements as to form and content consistent with this Agreement as may be required by the Township.

(c) **Public Roads.** Each PUWTG shall be set back from the nearest public road a distance of no less than 1.5 times its total height (measured at the highest point of the blade tip), determined at the nearest boundary of the right-of-way for such public road. Unless conclusive evidence exists to the contrary, the public road right-of-way is presumed to be 66 feet.

(d) **Communication and Electric Lines.** Each PUWTG shall be set back from the nearest above-ground public electric power line or public telephone line a distance of no less than 1.5 times its total height (measured at the highest point of the blade tip), determined from the existing power line or telephone line, unless otherwise agreed to or waived by the easement holder.

(e) Only one PUWTG shall be permitted on any single parcel of real estate. No single parcel of real estate, upon which a permit has been granted for the construction, maintenance or operation of a PUWTG, shall thereafter be eligible for the issuance of a second building permit for an additional PUWTG. No single parcel of real estate shall be thereafter subdivided unless the parcel of real estate that has the PUWTG situate upon it, satisfies all requirements for a PUWTG.

11. **Nuisance.** Nothing contained herein shall authorize any installation that is a public or private nuisance, regardless of compliance herewith.

12. **Safety.** Developer/Permittee shall comply with the following safety standards:

- (a) The outside of the PUWTG towers shall not be climbable;
- (b) All access doors to the towers and electrical equipment shall be locked;
- (c) Appropriate warning signage shall be placed on each tower, all electrical equipment, and all entrances; and
- (d) Developer/Permittee shall abide by all applicable local, state and federal fire code and emergency services guidelines.

13. **Insurance.** Developer/Permittee shall maintain the following insurance coverage:

- (a) A general liability insurance policy with a financially responsible insurance company providing for (i) a limit of not less than \$500,000 for personal or bodily injury or death to any one person; (ii) for a limit of not less than \$500,000 for personal or bodily injury or death to any number of persons arising from any one occurrence; and (iii) for a limit of not less than \$500,000 for any instance of property damage;
- (b) Worker's compensation coverage in an amount required by Pennsylvania law. Developer/Permittee shall require contractors, subcontractors and others not protected under its insurance to obtain and maintain worker's compensation and employers' liability insurance; and

Certificates of insurance evidencing compliance with these requirements shall be provided to the Township. All policies other than worker's compensation shall be written on an occurrence and not on a claims made basis.

14. **Inspections.** Representatives of the Township shall be allowed to inspect the PUWTG at reasonable time, without prior notice to Developer/Permittee.

15. **PUWTG Permit.** Upon execution by both Parties to this Agreement, this document shall also constitute a permit for Developer/Permittee to proceed with the PUWTG, subject to the requirements of this Agreement and the requirement of Developer/Permittee to obtain all other necessary permits as required by federal, state, and local law, including, but not limited to, FAA permits, Pennsylvania Department of Environmental Protection permits, and building permits.

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

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

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

19. **Immunity:** Neither Party hereto waives any rights or immunities arising out of and/or pursuant to any applicable governmental immunity, laws and/or statutes.

20. **Compliance with Laws:** Nothing contained in this Agreement shall provide, apply/infer that either party is authorized to engage in any conduct which is not in compliance with all federal, state, and local laws, rules and regulations, and the Underwriter's Laboratory (UL) listing, that presently exist and/or are adopted/amended in the future.

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

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

TOWNSHIP OF WASHINGTON

By: _____

Township Chairperson

Attest:

NAME OF DEVELOPER/PERMITEE

By: _____

Authorized Representative

Attest:
