

**PAYMENT IN LIEU OF TAXES AGREEMENT**  
**(Finney County)**

This Payment in Lieu of Taxes (“**PILOT**”) Agreement (the “**Agreement**”) is made effective as of the \_\_\_\_ day of \_\_\_\_\_ 2012, by and between Buffalo Dunes Wind Project, LLC, a Kansas limited liability company (“**Buffalo Dunes**”), and The Board of County Commissioners of Finney County, Kansas (“**County**”) (collectively referred to as the “**Parties**”).

**RECITALS AND PURPOSE**

**WHEREAS**, the County, pursuant to K.S.A. 19-101 *et. seq.* (the “**Home Rule Authority**”) and such other relevant statutory provisions, has the authority to promote the general and economic welfare of the County, to encourage private development in order to enhance the local tax base and the creation of employment opportunities, and to enter into contractual agreements with landowners and private parties to achieve those purposes; and

**WHEREAS**, the County is desirous of promoting the economic development of the County and the development of additional electrical power capacity and renewable energy sources within the County and State of Kansas; and

**WHEREAS**, Buffalo Dunes has been and will continue to develop and construct a wind power project on certain real property located in Haskell and Grant Counties, Kansas with a projected total size of approximately 405 megawatts (“**MWs**”) of installed capacity (“the **Project**”). The total size of the Project may be subject to change at the sole discretion of Buffalo Dunes; and

**WHEREAS**, in addition to the Project, Buffalo Dunes will construct and operate overhead electric transmission lines and related infrastructure and facilities in Finney County, Kansas to transmit electricity produced by the Project to an electric substation located in Finney County (collectively, the “**Finney County Facilities**”).

**WHEREAS**, the Project and the Finney County Facilities will be located on privately owned rural farmland within the general area set forth on the site plan attached as **Exhibit A**; and

**WHEREAS**, the Project may be constructed in multiple phases over a period of years; and

**WHEREAS**, the first phase of the Project (“**Phase I**”) will be capable of providing up to 210 MWs of nameplate electric power capacity (out of the anticipated 405 MWs of the total Project), and Phase I is contemplated to be sufficient to provide power to approximately 63,000 Kansas homes; and

**WHEREAS**, it is anticipated that the first phase of the Project and the Finney County Facilities will be constructed in 2012; and

**WHEREAS**, it is anticipated that the full Project will be completed in future phases of construction ("**Future Phases**") that may include additional Finney County Facilities, with such Future Phases potentially commencing construction as early as 2013; and

**WHEREAS**, the development and construction, over an extended period, of a phased project of this size, complexity, and level of capital investment will only be undertaken in a stable regulatory environment; and

**WHEREAS**, as of the date of this Agreement, the County has not enacted planning, zoning, or subdivision ordinances, resolutions or regulations, pursuant to K.S.A. 12-741 or any other state statute or Home Rule Authority (collectively "**County Zoning Regulations**"), that prohibit, limit, provide standards for, or burden the development, construction, or operation of the Project or the Finney County Facilities, including, without limitation, the requirement of a conditional use permit, special use permit, building permit, or other similar permit; and

→ **WHEREAS**, as of the date of this Agreement, the County has not enacted any other ordinances, resolutions, regulations, or policies, including, without limitation, the requirement of a conditional use permit, special use permit, building permit, or other similar permit (collectively "**County Laws**"), that would prohibit, limit, provide standards for, or burden the development, construction, or operation of the Project or the Finney County Facilities; and

**WHEREAS**, Buffalo Dunes will undertake the Project if the County agrees that the County Zoning Regulations and County Laws will remain unchanged with respect to the Finney County Facilities during the development, construction, and operation of the Finney County Facilities and the Project; and

**WHEREAS**, the County is willing to enter into this Agreement as an inducement to Buffalo Dunes (i) to undertake the development and construction of the Finney County Facilities and the Project, (ii) make payments in lieu of taxes ("**PILOT payments**") to the County and easement payments to private landowners, (iii) create jobs, and (iv) provide significant positive economic impacts to the local community.

**NOW, THEREFORE**, in consideration of the foregoing recitals which are incorporated by reference herein, and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt of and sufficiency of which are hereby acknowledged by Buffalo Dunes and the County, Buffalo Dunes and the County agree as follows:

## 1. **Payments in Lieu of Taxes**

Notwithstanding that K.S.A. 79-259 provides for an exemption of certain electrical transmission facilities from *ad valorem* taxation, Buffalo Dunes agrees to voluntarily make PILOT payments to County. Such PILOT payments shall be paid by Buffalo Dunes to the County, and the County may direct such payments to any general County fund or such specific fund or funds as may be established by the County from time to time, and the County shall be under no obligation to distribute such payments in the same manner as taxes are distributed; provided, however, that the County hereby acknowledges and agrees that (i) it is intended that this Agreement and the PILOT payments contemplated hereunder to be made by Buffalo Dunes constitute the only agreement relating to PILOT payments or similar payments that Buffalo Dunes will enter into and for the benefit of Finney County or any government and quasi-government entities within Finney County, including such entities as school districts and hospitals, that would otherwise be entitled to tax revenues received by the County (“**County Entities**”), and (ii) it is the County’s intent to distribute the PILOT payments hereunder to such County Entities as the County determines may be in the best interests of the County.

Such PILOT payments shall be made by Buffalo Dunes to the County for each phase of the Project as follows:

- a. The first PILOT payment (the “**Initial Payment**”) shall be made during the year in which the applicable phase of the Project is completed and has commenced commercial operation (projected to be 2012), due and payable on or before December 31 of such calendar year, and shall be in the amount of \$500.00 multiplied by the gross nameplate capacity as measured in megawatts actually installed as of the close of that particular calendar year in the applicable phase of the Project.
- b. For each of the succeeding nine (9) full calendar years in which the applicable phase of the Project is operational, PILOT payments in the corresponding amount set forth in the payment schedule attached hereto as **Exhibit B** shall be multiplied by the applicable phase of the Project’s gross nameplate capacity as measured in megawatts actually installed as of the close of that particular calendar year.

It is also agreed between the Parties, that Buffalo Dunes, or its successors and assigns, will also make PILOT payments to the County for Future Phases of the Project that include separate Finney County Facilities, and such PILOT payments will be in the amounts described above in subsections (a), (b) and (c), based on installed MWs completed for each additional phase, commencing, for each additional phase, when such additional phase is completed and has commenced commercial operation.

## 2. **County Zoning Regulations and County Laws**

The County shall not enact County Zoning Regulations or County Laws, including, without limitation, the requirement of a conditional use permit, special use permit, building permit, or other similar permit, that prohibit, limit, provide standards for, or burden the development, construction, or operation of the Project or the Finney County Facilities in any way, including all phases of the Project and related Finney County Facilities, and including, without limitation, any such County Zoning Regulations or County Laws applicable to or requiring building permits for construction of electric transmission facilities, and other infrastructures relating to the Finney County Facilities. To the extent the County enacts any such County Zoning Regulations or County Laws, any and all such County Zoning Regulations or County Laws shall specifically exempt the Finney County Facilities from compliance therewith in the project area as referenced in **Exhibit A** attached hereto and incorporated by reference.

**3. Separate Right-of-Way Permit**

County acknowledges that Buffalo Dunes will likely need to cross Parallel Road with overhead transmission lines at an angle that is other than perpendicular to Parallel Road. If requested by Buffalo Dunes, County agrees to execute and deliver a separate right-of-way permit authorizing the placement of such facilities across Parallel Road.

**4. Mutual Communication and Cooperation**

Buffalo Dunes and the County agree to communicate and cooperate in good faith concerning the Project construction and operation. To the extent any appropriate state or federal authority issues rules or regulations applicable to the Finney County Facilities that have the effect of requiring specific measures to safeguard the Finney County Facilities from domestic sabotage or terrorist attack, such as increased security patrols, Buffalo Dunes agrees to assume responsibility for responding and implementing any required measures. Costs of the County to provide extraordinary law enforcement patrol, if required and personnel is available for said service, will be promptly reimbursed by Buffalo Dunes, not to exceed thirty (30) days.

**5. Event of Default**

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An "Event of Default" shall occur upon failure by either party to observe and perform any material covenant, condition or agreement required of such party under this Agreement for a period of sixty (60) days after written notice of such default has been given to the defaulting party by the non-defaulting party during which time such default is neither cured by the defaulting party nor waived in writing by the non-defaulting party, provided that, the defaulting party shall not have been in default if the failure stated in the notice cannot be corrected within said sixty (60) day period and the corrective action is instituted within the sixty (60) day period and diligently pursued to completion.

**6. Remedies on Default**

- a. Whenever any Event of Default by Buffalo Dunes shall have occurred and be continuing, the County may terminate this Agreement and retain all past PILOT payments made to the County.
- b. Whenever any Event of Default by County shall have occurred, Buffalo Dunes may take any one or more of the following remedial steps: (i) be relieved of all obligations hereunder to make future PILOT payments; and (ii) have available to it all remedies at law and in equity.

## **7. Assignment**

Buffalo Dunes may assign or partially assign its rights, obligations and interests pursuant to this Agreement without the County's consent upon written notice to the County. To the extent Buffalo Dunes assigns or partially assigns the rights, obligations and interests of this Agreement as they relate to one or more Future Phases, the County agrees to look solely to (i) the owner of Phase I with respect to the payment of Phase I PILOT payments, and shall release the owner of any Future Phases from any and all liability with respect to the Phase I PILOT payments, and (ii) any owner of any of the Future Phases with respect to the PILOT payments for the applicable Future Phases, and shall release the owner of Phase I from any and all liability with respect to the PILOT payments for the Future Phases. To the extent of an occurrence and continuance of a default caused by the owner of any one phase under the PILOT Agreement, the County acknowledges and agrees that the County shall have the right to partially exercise its remedies under the PILOT Agreement with respect only to that phase of the Project under which a default has occurred and is continuing, and the non-defaulting phase or phases and the respective developer or developers thereof shall not be subject to any such remedies and the PILOT Agreement with respect to such non-defaulting phases shall remain in full force and effect.

## **8. Notices**

All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or upon facsimile transmission to the fax numbers set forth herein, or after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party as follows:

### **To Buffalo Dunes:**

Buffalo Dunes Wind Project, LLC  
c/o TradeWind Energy, LLC  
Attn: Rob H. Freeman  
16105 West 113<sup>th</sup> Street  
Suite 105  
Lenexa, Kansas 66219

(913) 888-9463      telephone  
(913) 888-0390      facsimile

**To Finney County:**

Finney County Commission  
Attn: Finney County Clerk

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**9. Severability of Provisions**

Except as set forth below, if any of the terms or conditions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement shall not be affected and shall remain in full force and effect and shall be valid and enforceable to the full extent permitted by law, except that as to any such provisions or conditions declared invalid and unenforceable the Parties agree to negotiate in good faith a comparable substitute provision.

**10. Captions**

The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define or limit the scope or intent of the various provisions, terms or conditions of this Agreement.

**11. Binding Effect**

The provisions of this Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

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**12. Modification**

This Agreement may be modified or amended only by written instrument signed by both Parties.

**13. Governing Law**

This Agreement shall be governed in accordance with the laws of the State of Kansas.

**14. No Commitment to Construct Project**

Nothing contained in this Agreement shall be construed to obligate Buffalo Dunes to commence or complete construction of the Finney County Facilities or all or any part of the Project. The determination to commence, complete or abandon all or part of the Project shall be in the sole and absolute discretion of Buffalo Dunes.

If Buffalo Dunes should decide to not pursue the Finney County Facilities, Buffalo Dunes will be obligated to provide written notice to the County and the Parties agree that the contract herein shall terminate by agreement.

**15. Repeal or Amendment of K.S.A. 79-259; Reduction of PILOT Payments**

In the event K.S.A. 79-259 is repealed or amended, or Buffalo Dunes application for exemption pursuant to K.S.A. 79-259 is rejected, in a manner that results in an obligation of Buffalo Dunes or any owner of any of the Future Phases to make ad valorem property tax payments to the County in a particular calendar year, the PILOT payments hereunder in such calendar year shall be reduced by an amount equal to the amount of ad valorem property tax payments so made or to be made by Buffalo Dunes or any owner of any of the Future Phases to the County with respect to such calendar year.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first written above.

**THE COMPANY:**

BUFFALO DUNES WIND PROJECT,  
LLC

By: \_\_\_\_\_  
Rob H. Freeman, President

**THE COUNTY:**

The Board of County Commissioners of  
Finney County, Kansas

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

ATTEST:

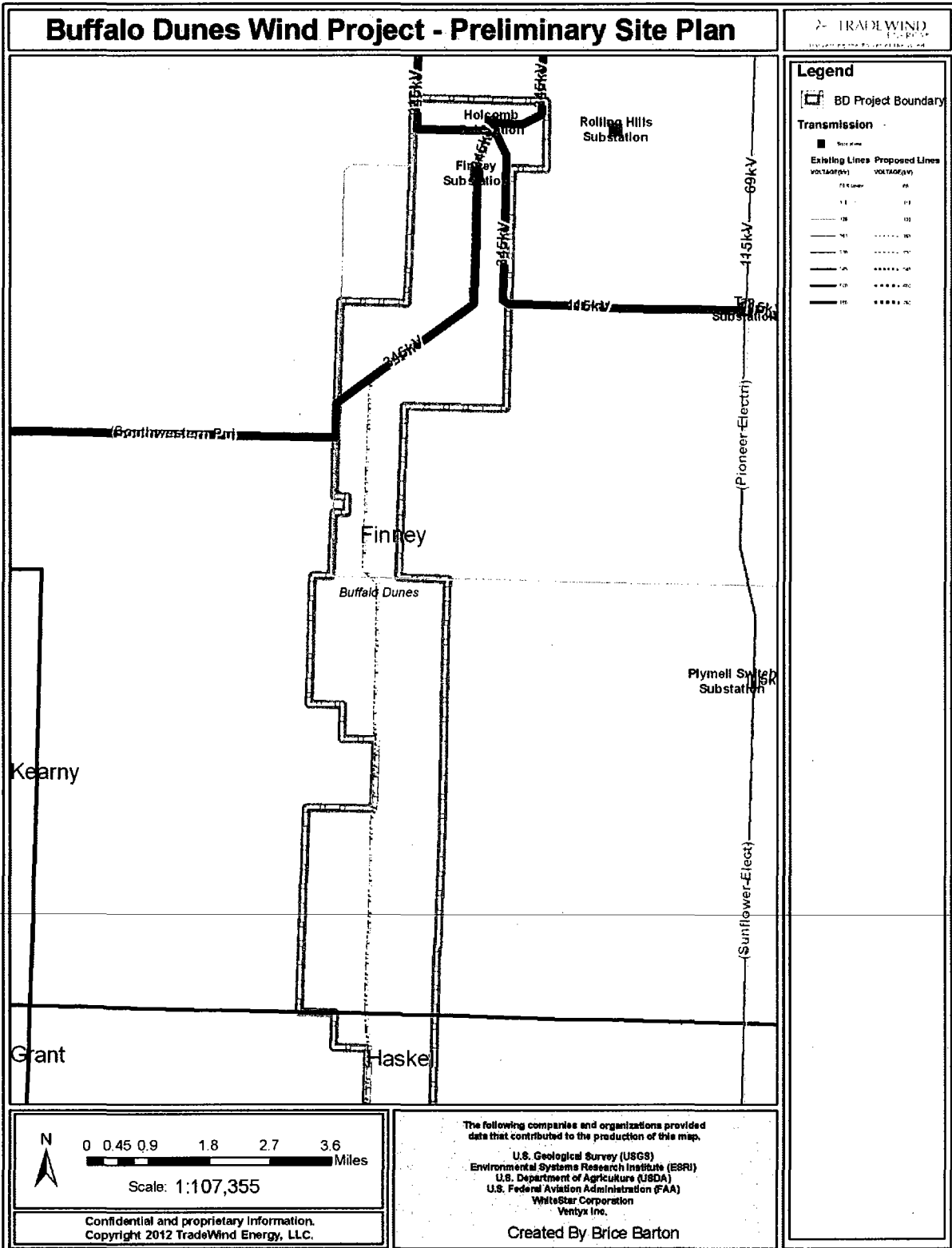
\_\_\_\_\_  
Name: \_\_\_\_\_  
County Clerk





EXHIBIT "A" Cont.

SITE PLAN



**EXHIBIT "B"**

**PAYMENT SCHEDULE**

Full Calendar Year after Commercial Operation	Payment Amount per Megawatt Installed
Initial Payment	\$500.00
1	\$510.00
2	\$520.20
3	\$530.60
4	\$541.22
5	\$552.04
6	\$574.34
7	\$585.83
8	\$597.54
9	\$609.49