

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER’S USE)

Prepared by and When Recorded Return to: Apex Clean Energy, Inc.; 120 Garrett Street, Suite 700, Charlottesville, VA 22902; Attn. Land Manager

## GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR UNDERGROUND FACILITIES

THIS GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR UNDERGROUND FACILITIES (this “Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), between «Current\_Legal\_Name» (“Owner”), and LOTUS WIND, LLC, a Delaware limited liability company (“Grantee”). Owner is the sole owner of certain property located in «Parcel\_County\_1» County, Illinois, as more particularly described in Exhibit A attached hereto and made part hereof (the “Property”).

1. Grant of Underground Easement. For good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged by Owner, Owner grants, conveys and warrants to Grantee and its successors and assigns, an exclusive easement (“Underground Easement”) on, along, over, under and across the portion of the Property shown on Exhibit A-1 attached hereto (the “Easement Area”) for the right to construct, reconstruct, replace, repair, remove, maintain, operate and use underground wires and cables for the transmission of electrical energy and/or for communication purposes, above-ground junction boxes, and all necessary and proper appliances, fixtures and facilities for use in connection with said wires and cables along, under and across the Easement Area; together with a right-of way in, on, along, over and across the Easement Area. Said wires, cables, appliances, fixtures and facilities are herein collectively called the “Underground Facilities”. Owner grants to Grantee the right to utilize the Easement Area for a temporary crane path; provided, however, that such crane path shall be within one hundred fifty feet (150') total, on either or both sides of planned or existing Underground Facilities unless otherwise approved in writing by Owner.

2. Access. Accompanying the Underground Easement Grantee shall have the right of ingress and egress to and from the Easement Area by and for all personnel, labor, goods, services, materials, vehicles, equipment, and other items reasonably required by Grantee in order to effect the purposes described in this Agreement. Grantee may use any existing roads and lanes on the Property, and shall have the right to maintain and improve such roads and lanes. Grantee shall have

the further right to use any fences and gates on the Property; provided Grantee coordinates such use with Owner.

3. Term and Termination. The parties recognize that Grantee is developing Wind Facilities (as defined in Section 10(a) herein) on the Wind Farm Property (as defined in Section 10(a) herein), and the easements granted pursuant to this Agreement are shall be beneficial easements for Grantee's development of the Wind Facilities. Subject to the terms and conditions of this Agreement, the term of this Agreement shall commence on the Effective Date and continue for forty-two (42) years (the "Term"), unless earlier terminated by Grantee by written notice to Owner or as otherwise provided in this Section. If the Construction Commencement Date (defined below) has not occurred prior to the seventh (7<sup>th</sup>) anniversary of the Effective Date, this Agreement shall automatically terminate. The "Construction Commencement Date" shall be the date when excavation work for the installation of a foundation for a Wind Turbine (as defined in Section 10(a) herein) constructed by Grantee on any portion of the Wind Farm Property begins or when excavation work for roads by Grantee on the Wind Farm Property related to its commencement of construction of any Wind Facilities. The Grantee shall have the option to record a notice of the Construction Commencement Date, with reference to this Agreement, provided that Grantee shall deliver a copy of such notice to Owner within thirty (30) days after recordation of such notice.

4. Assignment. Grantee may assign this Agreement or its rights with respect to the Underground Easement, in whole or in part, without the need for Owner's consent. This Agreement shall run with the land. This Agreement shall inure to the benefit of, and be binding upon, Owner and Grantee and their respective transferees, legal representatives, heirs, successors and assigns and all persons claiming under them.

5. Payment. As consideration for the Underground Easement, Grantee shall make the payments to Owner as set forth in the Fee Schedule attached hereto as Exhibit B (the "Fee Schedule"). The Fee Schedule shall be omitted from the recorded version of the Agreement as provided in Section 11 below.

6. No Interference. Owner shall not conduct any activity, nor grant any rights to any third party that would interfere with Grantee's use of the Easement Area or the rights granted under this Agreement and Owner shall not disturb, uncover or damage any Underground Facilities.

7. Drain Tile Repair. Grantee shall make commercially reasonable repairs (including replacement of damaged tile as necessary) of any tile damage caused by Grantee's construction or operation activities within the Easement Area. Grantee shall also pay crop damage for any crops damaged by flood due to broken tile which would not have occurred but for Grantee's activities within the Easement Area and indemnify Owner against any third-party claims for any such flood damage. In the event that any such tile damage is not repaired by Grantee, Owner shall have up to 36 months from the date of alleged tile damage to identify such damaged area and substantiate that such tile damage was caused by Grantee's activities. Underground electrical wires and cables shall be installed with a trencher to a depth not less than 42 inches below the natural surface of the ground and below any existing drain tile. All farm drainage tile which intersects the Grantee's Underground Facilities shall be identified and repaired and/or replaced if damaged by Grantee, by a contractor qualified in farm drainage. Grantee agrees to consult, in good faith, with Owner regarding the repair and/or replacement of said drainage tile. Owner shall have the right to inspect all tile repairs and

connections prior to backfill, provided Owner is immediately available to do so. If Owner is not available, Grantee's contractor shall provide Owner with digital photographs of the repair. Upon completion of the Wind Facilities and the commercial production of electricity from all of the Wind Facilities, Grantee shall provide Owner with i) a GPS coordinate reading of the location of such repaired or replaced tile and ii) an illustration depicting the location of all Underground Facilities within the Easement Area, as well as the intersection of all such Underground Facilities with the drainage tile system within the Easement Area. In the event that Owner's activities within the Easement Area subsequent to installation of the Underground Facilities and the commercial production of electricity from all of the Wind Turbines constructed by Grantee on the Wind Farm Property shall require identification of the physical location of the Underground Facilities, Grantee agrees to arrange to do so, at no expense to Owner, within ten (10) business days of receiving the locate request.

8. Financing.

(a) Grantee may collaterally assign, mortgage or otherwise encumber its interest in this Agreement to any institution (including any trustee or agent on behalf of such institution) providing debt or other financing to Grantee or its successors or assigns (each, a "Financing Party") under any mortgage, deed of trust, deed to secure debt or other security instrument by which Grantee's interest under this Agreement is mortgaged, conveyed, assigned or otherwise transferred to secure a debt or other obligation to a Financing Party (each, a "Mortgage"). Each Financing Party who provides notice to Owner of its Mortgage shall be referred to as "Mortgagee."

(b) So long as any Mortgage remains in effect, this Agreement shall not be modified, and Owner shall not accept a surrender of the Property or a termination or release of this Agreement, without the prior consent of all Mortgagees.

(c) Owner, upon providing Grantee any notice of default under, or termination of, this Agreement, shall at the same time provide a copy of such notice to each Mortgagee. Such Mortgagee shall have the same period, after the giving of such notice, for remedying any default or causing the same to be remedied (but shall have no obligation to remedy or cause the remedy of any default), as is given Grantee after the giving of such notice to Grantee to remedy the default specified in any such notice. Owner shall accept such performance by or at the instigation of such Mortgagee as if the same had been done by Grantee.

(d) Owner shall execute such estoppel certificates (certifying as to such matters as Grantee may reasonably request), acknowledgements of an assignment of this Agreement, and/or non-disturbance agreements as Grantee or any Mortgagee may reasonably request from time to time.

(e) If this Agreement is terminated as a result of any default or the bankruptcy, insolvency or appointment of a receiver in bankruptcy for Grantee, Owner shall give prompt notice to the Mortgagees. Owner shall, upon written request of the first priority Mortgagee, made within forty (40) days after notice to such Mortgagee, enter into a new easement agreement with such Mortgagee, or its designee, within twenty (20) days after the receipt of such request. Such new easement agreement shall be effective as of the date of the termination of this Agreement by reason of default by Grantee, and shall be for a term equal to the remainder of the Term of this Agreement and upon the same terms, covenants, conditions and agreements as contained in this Agreement. Upon the execution of any such new easement agreement, the Mortgagee shall agree in writing to perform or cause to be performed all of the covenants and agreements set forth in this Agreement to be performed by Grantee to the extent that Grantee failed to perform the same prior to the execution and delivery of the new easement agreement.

9. Notices. All notices, requests and communications (“Notice”) under this Agreement shall be given in writing, by first class certified mail, postage prepaid, return receipt requested, to the individuals and addresses indicated below:

(a) If to Owner:

«Current Legal\_Name»  
«Address\_1\_1»  
«Address\_2\_1»  
«City\_1», «State\_1» «Zip\_1»

(b) If to Grantee:

Lotus Wind, LLC  
c/o Apex Clean Energy, Inc.  
Attn: Land Manager  
Court Square Building  
120 Garrett Street, Suite 700  
Charlottesville, VA 22902

(c) If to Mortgagee on notice of default or termination: (Address indicated in Mortgagee’s notice sent to Owner under Section 8 hereof).

Any Notice provided for herein shall be deemed to be received five (5) business days after the date on which it is mailed. Any party may, by proper written notice hereunder to the other party, change the individual address to which such Notice shall thereafter be sent.

10. Setback Waiver.

(a) Grantee has acquired, or will acquire, certain leases, easements and other related rights covering real property located adjacent to and/or in the vicinity of the Property (collectively, the “Wind Farm Property”) for purposes of the construction, installation, maintenance, use and operation of wind energy conversion turbines (“Wind Turbines”), electrical distribution and transmission facilities and related roads and facilities (collectively, the “Wind Facilities”).

(b) To the extent that any applicable law, ordinance, regulation or permit establishes, or has established, minimum setbacks from the exterior boundaries of the Property for Wind Facilities constructed on Wind Farm Property, to the fullest extent permitted by applicable law, Owner hereby waives any and all such setback requirements with respect to each and every property line of the Property (the “Setback Waiver”).

(c) Grantee will abide by all laws, ordinances, regulations, and permit provisions establishing setbacks from occupied residences on the Property as of the date hereof, and in no event shall Grantee construct a Wind Turbine within One Thousand Three Hundred Twenty Feet (1,320’) of any occupied residence located on the Property (as measured from the edge of the base of the Wind Turbine to the exterior of the closest foundation of any occupied residence on the Property as of the date hereof).

(d) This Setback Waiver is for the benefit of Grantee, the owner(s) of adjacent Wind Farm Property, and their respective successors and assigns, and shall run with the land.

11. Miscellaneous. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois without reference to the choice of law principles of the State of Illinois or any other state. This Agreement, when executed, approved and delivered, together with all exhibits attached hereto, shall constitute the entire agreement with respect to the easement(s) granted herein between the parties and there are no other representations or agreements, oral or

written, except as expressly set forth herein. Owner and Grantee agree that this Agreement (without the Fee Schedule) shall be recorded in the real property records of the county in which the Property is located. If any terms or provisions of this Agreement are deemed to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one agreement.

[signature pages follow]

IN WITNESS WHEREOF, and intending to be legally bound hereby, Owner and Grantee have caused this Agreement to be executed and delivered by their duly authorized representatives on the date set forth below the respective signatures of Owner and Grantee.

**“OWNER”**

By: \_\_\_\_\_

Name: «Current\_Legal\_Name»

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by «Current\_Legal\_Name».

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Typed or Printed

\_\_\_\_\_  
Commission Expiration Date

(SEAL)

Spouse’s signature (if applicable)\*

By: \_\_\_\_\_

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

\*Spouse is joining in the execution of the Agreement for the sole purpose of waiving any rights he or she may have under or by virtue of the Homestead Exemption Laws of the State of Illinois.

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, spouse.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Typed or Printed

\_\_\_\_\_  
Commission Expiration Date

(SEAL)

**“GRANTEE”**

**LOTUS WIND, LLC,**  
a Delaware limited liability company

By: Apex Clean Energy Finance, LLC,  
a Delaware limited liability company,  
its Sole Member

By: Apex GBR, LLC,  
a Delaware limited liability company,  
its Sole Member

By: Apex Clean Energy Holdings, LLC,  
a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Jeanine G. Wolanski  
Title: Senior Vice President of Land Management

COMMONWEALTH OF VIRGINIA

CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Jeanine G. Wolanski as the Senior Vice President of Land Management for Apex Clean Energy Holdings, LLC, a Delaware limited liability company, the Manager of Apex GBR, LLC, a Delaware limited liability company, the Sole Member of Apex Clean Energy Finance, LLC, a Delaware limited liability company, the Sole Member of Lotus Wind LLC, a Delaware limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

(SEAL)

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

The Property is all of the following tracts or parcels of land, situated in «Parcel\_County\_1» County, State of Illinois, consisting of «Verified\_Acres» acres, more particularly described as follows:

Tract 1:

Tax Parcel Reference: «Parcel\_ID\_1» («Verified\_Acres\_1» acres)



**EXHIBIT A-1**  
**EASEMENT AREA**

*CONFIDENTIAL – DO NOT RECORD*

**EXHIBIT B**

**FEE SCHEDULE**

[Confidential]