

M05-67820

Klamath County, Oregon

10/31/2005 08:45:57 AM

Pages 7 Fee: \$51.00

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

RES North America Leasing, LLC
X 1 SW Columbia St., Suite 460
Portland, OR 97258
Attn: Scott Piscitello

**LEASE AND EASEMENT
TERMINATION AGREEMENT**

THIS LEASE AND EASEMENT TERMINATION AGREEMENT (the "Agreement")
is made this 4th day of October, 2005, by and between A.L. Bruner and Marilyn Bruner
("Landlord"), and RES North America Leasing, LLC, ("Tenant").

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LEASE AND EASEMENT TERMINATION AGREEMENT

THIS LEASE AND EASEMENT TERMINATION AGREEMENT (the "Agreement") is made this 4 day of October, 2005, by and between A.L. Bruner and Marilyn Bruner ("Landlord"), and RES North America Leasing, LLC, ("Tenant").

RECITALS

A. Landlord and Tenant entered into that certain Wind Energy Ground Lease and Transmission and Access Easements dated October 16, 2002 (the "Lease"), a memorandum of which was recorded in Klamath County, Oregon on November 8, 2002, in Vol. M02 at Page 64572-79, pursuant to which Landlord is leasing to Tenant certain real property located in Klamath County, Oregon consisting of approximately six thousand thirty five (6035) acres (the "Premises"). In addition, Landlord and Tenant entered into that certain Transmission and Access Easement and Agreement (the "Easement"), which was recorded in Klamath County, Oregon on November 9, 2002, in Volume M02 at Page 64580-94, pursuant to which Landlord has granted to Tenant transmission and access easements.

B. Landlord and Tenant now desire to terminate the Lease and the Easement prior to the expiration of the terms stated in the Lease and the Easement respectively, all on the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Termination of Lease:** Landlord and Tenant hereby terminate the Lease, effective as of 10/4/05, 2005 (the "Termination Date"), as if that date were the day definitely fixed in the Lease for the expiration of the term thereof. Landlord hereby waives any requirement to receive any notice of the termination of the Lease. Landlord hereby waives the right to receive any fees, rents, or termination payments that may be required upon termination of the Lease by Tenant under the Lease. Tenant shall pay Landlord all rent due under the Lease through the Termination Date. Such amount shall not include the annual fee for year four (4) due on October 16, 2005.

2. **Termination of Easement:** Pursuant to Section 4 of the Easement, Tenant hereby terminates the Easement, effective as of the Termination Date. Landlord hereby waives any requirement to receive any notice of the termination of the Easement. Landlord hereby waives the right to receive any fees, rents, or termination payments that may be required upon termination of the Easement by Tenant under the Lease or the Easement. Tenant shall pay Landlord all consideration due under the Easement through the Termination Date.

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3. **Surrender of Premises:** Tenant shall vacate and surrender the Premises to Landlord on or before the Termination Date in the manner anticipated upon termination under the Lease.

4. **Taxes and Assessments:** All taxes and other assessments for which Tenant is responsible under the Lease or the Easement shall be prorated, if necessary, as of the Termination Date. All such prorations shall be deemed to be a final settlement, and no further adjustments between Landlord and Tenant shall be made.

5. **Release:** Except for Tenant's agreement to pay to Landlord the rent or consideration referenced in Paragraphs 1 and 2 hercof, Landlord, for itself and its successors and permitted assigns, hereby releases and forever discharges Tenant from any and all payments, obligations, liabilities, actions, causes of actions, suits, claims and demands of every kind and nature whatsoever, whether now known or hereafter to become known, contingent or otherwise, arising out of, related to or in any way connected with the Lease, the Easement or the Premises. Landlord declares that the terms of this release are fully understood and voluntarily made for the purposes of making a full and final release and discharge of any and all claims that Landlord may have against Tenant related to the matters described in this Agreement.

6. **Removal of Improvements:** Tenant shall remove all of the Improvements or Fixtures, including the meteorological tower erected by Tenant, located on the Premises (the "Improvements") as contemplated and in the manner specified in Section 13 of the Lease. Beginning on the Termination Date and continuing for ~~ninety (90)~~ ^{thirty (30)} days, Landlord shall provide to Tenant sufficient access to the Premises for the purposes of such removal. If Tenant leaves any of the Improvements or other personal property on the Premises, Landlord may retain or dispose of such property at Landlord's sole discretion and cost. Tenant shall have no further liability with respect to such property.

7. **Landlord Representations:** Landlord hereby represents and warrants to Tenant that: (a) as of the date of this Agreement, there are no outstanding defaults by Tenant under the Lease or the Easement, nor are there any uncured past defaults by Tenant under the Lease or the Easement, (b) Landlord is fully authorized to execute this Agreement, and (c) there are no other consents or other documents (including but not limited to consents of any lenders required under any subordination agreements) required to terminate the Lease or the Easement under the terms set forth in this Agreement and that any consent required by any lender of Landlord has been obtained.

8. **Tenant Representations:** Tenant hereby represents and warrants to Landlord that: (a) as of the date of this Agreement, there are no outstanding defaults by Landlord under the Lease or the Easement, nor are there any uncured past defaults by Landlord under the Lease or the Easement, and (b) Tenant is fully authorized to execute this Agreement.

9. **Attorney's Fees:** In the event of any litigation brought by either party to enforce the terms and provisions of this Agreement, the prevailing party shall be

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awarded all of its costs and expenses incurred in such litigation, including but not limited to, reasonable attorneys' fees.

10. **Controlling Agreement:** If there are any inconsistencies between the terms and conditions of this Agreement and the terms and conditions of the Lease or the Easement, the terms and conditions of this Agreement shall control.

11. **Defined Terms:** All capitalized terms not otherwise defined in this Agreement shall have the meanings that said capitalized terms have in the Lease.

12. **Governing Law:** This Agreement and all matters arising hereunder or in connection herewith shall be governed by and construed and enforced in accordance with the laws of the state of Oregon.

13. **Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

14. **Counterparts:** This Agreement may be executed in several counterparts, each of which will be considered an original, and all of which taken together shall constitute one agreement

15. **Recording:** Concurrently with the execution hereof, the parties shall execute and record this Agreement in Klamath County, Oregon.

[SIGNATURES TO FOLLOW]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

LANDLORD:

A.L. BRUNER AND MARILYN BRUNER

By: *A.L. Bruner*

By: *Marilyn Bruner*

TENANT:

RES NORTH AMERICA LEASING, LLC

By: *RES North America, LLC, its Member*
Name: BRIAN EVANS
Title: PRESIDENT

Brian Evans

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STATE OF OREGON)
) ss.

COUNTY OF KLAMATH)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____.

Witness my hand and official seal.

My commission expires _____

Notary Public

Title (and Rank)

STATE OF OREGON)
) ss.

COUNTY OF KLAMATH)

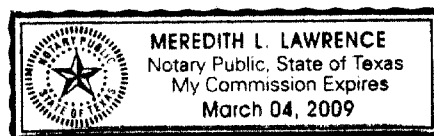
The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____.

Witness my hand and official seal.

My commission expires _____

Notary Public

Title (and Rank)



STATE OF TEXAS)
) ss.

COUNTY OF TRAVIS)

The foregoing instrument was acknowledged before me this 20 day of October, 2005, by Brian Evans, as President of PES North America, a LLC.

Witness my hand and official seal.

My commission expires March 04, 2009

Meredith L. Lawrence
Notary Public

Title (and Rank)

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