



BOARD OF COMMISSIONERS

T. Walter Jaramillo
Chairman

Robert Armijo
1st Vice Chairman

Jack Moleres
2nd Vice Chairman

Patrick Simpson
Commissioner

Lloyd F. Felipe
Commissioner

Special Meeting
Wednesday, November 1, 2016
5:00 p.m.
Cibola County Convention Room

1. **Call to Order**
2. **Roll Call**
3. **Pledge of Allegiance**
4. **Prayer**
5. **Approval of Agenda**
6. **Action Items – Action May Be Taken**
 - a. Consideration of Red Mesa Wind Subordination Agreement
 - b. Acceptance of Opinion that the transfer of Cibola County, New Mexico Taxable Industrial Revenue Bond (Red Mesa Wind Project) Series 2010 (“Bond”) is Exempt from Securities Laws or Waiver of the Transfer provisions of the Bond for the pledge of the Bond.
7. **Announcements**

The next Regular Commission Meeting will be held on Wednesday, November 30, 2016 at 5:00 p.m. immediately following the Board of Finance Meeting in the County Convention Room.
8. **Adjournment**

CONSENT AND ACKNOWLEDGMENT OF SUBORDINATION

This CONSENT AND ACKNOWLEDGMENT OF SUBORDINATION (“**Agreement**”) is made as of the ____ day of _____, 2016, by and between CIBOLA COUNTY, NEW MEXICO, a political subdivision of the State of New Mexico (the “**Subordinate Issuer**”), RED MESA WIND, LLC, a Delaware limited liability company (the “**Company**”), and KEYBANK NATIONAL ASSOCIATION, as collateral agent (the “**Collateral Agent**”) on behalf of the secured parties pursuant to a Credit Agreement dated _____, 2016, among such secured parties, the Company, certain affiliates of the Company, and certain other parties thereto.

RECITALS

A. The Company is the original tenant under a certain Wind Ranch Lease Agreement (“**Project Site Lease**”) evidenced by a Memorandum of Wind Ranch Lease Agreement fully executed as of March 15, 2010, and recorded May 11, 2010, in the Office of the County Clerk of Cibola County, New Mexico, as Document No. 201001056.

B. As part of an industrial revenue bond transaction, the Company transferred its interest in the Project Site Lease to Subordinate Issuer pursuant to a Bill of Sale and Assignment Regarding Equipment and Lease recorded October 1, 2010, in the Office of the Clerk and Recorder of Cibola County, New Mexico, as Document No. 201002447, with an effective date of October 2, 2010.

C. As part of the same industrial revenue bond transaction, the Subordinate Issuer and the Company entered into that certain Lease Agreement (the “**Bond Lease**”) effective October 2, 2010, and recorded October 1, 2010, in the Office of the County Clerk of Cibola County, New Mexico, as Document No. 201002449, pursuant to which Issuer sublet the Project Property (as such term is defined in the Bond Lease) back to the Company.

D. As part of the same industrial revenue bond transaction, Subordinate Issuer pledged its interest in and to the Collateral (as defined herein) pursuant to an Indenture, effective as of October 2, 2010 (the “**Indenture**”) securing \$215,000,000.00 Cibola County, New Mexico Taxable Industrial Revenue Bonds (Red Mesa Wind Project) Series 2010 (the “**Bonds**”) in favor of Red Mesa Wind Investments, LLC (the “**Bond Purchaser**”). Pursuant to Sections 301 and 302 of the Indenture, such pledge was expressly made subject and subordinate to any First Lender Mortgage (as defined in the Indenture).

E. The parties hereto now wish to further evidence the subordination of the Subordinate Issuer’s interest in the Collateral to that of the Collateral Agent by entering into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Subordinate Issuer, the Company and Collateral Agent do hereby state, declare and establish as follows:

AGREEMENT

1. The Subordinate Issuer hereby expressly consents to and acknowledges Collateral Agent's security interest or other interests or rights in the following property (collectively and individually, the "**Collateral**"):

- (i) all the Subordinate Issuer's right, title and interest in and to the Project Property, the Bond Lease and any other easement, lease, sublease, license, concession or other grant of a possessory or use interest in the Project Property to the extent the Subordinate Issuer has any interest therein, but reserving under the Bond Lease its rights under Section 4.14 of the Indenture (to receive payments in lieu of taxes), Section 6.02 of the Indenture (to receive indemnification), Section 5.03(b) of the Indenture (to receive Additional Payments, as defined in the Bond Lease), and to give any consents which the Subordinate Issuer is entitled to give;
- (ii) the moneys and investments in the Bond Fund (as defined in the Indenture) and all proceeds or reserves payable to the Subordinate Issuer pursuant to the Bond Lease or the Indenture (including, without limitation, insurance and eminent domain proceeds) with respect to the Project Property; and
- (iii) all lease rentals, revenues, profits, and receipts receivable by or on behalf of the Subordinate Issuer from the Project Property.

2. The Subordinate Issuer hereby consents, agrees, and acknowledges that the agreements, documents, and instruments by which the Company grants to the Collateral Agent a security interest in and to the Collateral and its proceeds shall, collectively, be a "First Lender Mortgage" (as defined in the Indenture), and the Collateral Agent and the secured parties under the Credit Agreement shall be "Lenders" (as defined in the Indenture).

3. The Subordinate Issuer hereby agrees to subordinate, and it hereby does subordinate, to Collateral Agent's interests in the Collateral, any rights, interests, liens, or claims the Subordinate Issuer has or may hereafter have in the Collateral and its proceeds, whether arising pursuant to the Indenture, Bonds, Project Site Lease, Bond Lease, statute, common law, or otherwise.

4. This Agreement shall be binding upon, and inure to the benefit of, the Collateral Agent and the Bond Purchaser, as well as their respective successors, assigns and permitted transferees.

5. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of New Mexico, without reference to its principles of conflicts of laws.

6. This Agreement shall terminate upon the date on which all Obligations (as defined in the Credit Agreement) under the Credit Agreement, other than contingent liabilities and obligations that are unasserted at such date, have been indefeasibly paid and satisfied in full and all Commitments (as defined in the Credit Agreement) have been terminated.

7. This Agreement may be executed in counterparts, each of which, when so executed, shall be deemed an original, but all of which counterparts shall constitute one and the same instrument.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SUBORDINATE ISSUER:

CIBOLA COUNTY, NEW MEXICO

By: _____

Name: Tony Boyd

Title: County Manager

STATE OF NEW MEXICO
COUNTY OF CIBOLA

This instrument was acknowledged before me on _____, 2016, by Tony Boyd, as County Manager of Cibola County, a political subdivision of the State of New Mexico.

(Seal, if any)

Notary Public

Print Name: _____

My Commission expires: _____

COMPANY:

RED MESA WIND, LLC

Name:

Title:

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me on _____, 2016 by
_____, as _____ of Red Mesa Wind, LLC, a Delaware limited liability
company.

(Seal, if any)

Notary Public

Print Name: _____

My Commission expires: _____

COLLATERAL AGENT:

KEYBANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me on _____, 2016, by
_____, as _____ of KeyBank National Association, a
national banking association.

(Seal, if any)

Notary Public
Print Name: _____
My Commission expires: _____

Cibola County Commission

T. Walter Jaramillo, Chairman
Robert Armijo, 1st Vice-Chair
Jack Moleres, 2nd Vice-Chair
Patrick Simpson, Commissioner
Lloyd F. Felipe, Commissioner

Cibola County

515 West High Street
Grants, New Mexico 87020
Phone: (505) 287-9431
Fax: (505) 285-5434



Tony M. Boyd, County Manager

November 1, 2016

Modrall Sperling Roehl Harris & Sisk P.A.

Attn: Ruth M. Schifani

PO Box 2168

Albuquerque, NM 87125

VIA EMAIL to ruth.schifani@modrall.com

Re: \$215,000,000 Cibola County, New Mexico Taxable Industrial Revenue Bonds (Red Mesa Wind Project) Series 2010

Dear Ms. Schifani,

You have requested that Cibola County (the "County" or the "Issuer") approve the issuance of an opinion by Modrall Sperling Roehl Harris & Sisk, P.A. ("Modrall Sperling") in connection with the pledge of the bond issued by the County and referenced above (the "Bond") by the bond purchaser, Red Mesa Wind Investments, LLC to KeyBank National Association or its affiliates. This letter is to confirm that Cibola County approves Modrall Sperling and will accept an opinion by Modrall Sperling substantially in the form attached in connection with the pledge of the Bond in satisfaction of the requirements set forth in the Bond, including the following: that an opinion in form and substance reasonably satisfactory to Cibola County from legal counsel experienced in securities laws matters, approved by the Issuer in writing, be provided to the Issuer before a "Transfer" (as defined therein) of the Bond may be effective stating that such Transfer complies with the Securities Act and applicable state securities laws.

Sincerely yours.

Tony Boyd
Cibola County Manager



RESOLUTION NO. 16-53

A RESOLUTION RELATING TO THE INDUSTRIAL REVENUE BONDS ENTITLED CIBOLA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (RED MESA WIND PROJECT), SERIES 2010.

WHEREAS, Cibola County, New Mexico (the “County”) issued its Taxable Industrial Revenue Bonds (Red Mesa Wind Project), Series 2010 (the “Bonds”) pursuant to an ordinance (“Bond Ordinance”) adopted by the Board of County Commissioners (“Commission”), which also authorized the acquisition and leasing of a wind facility for the generation of electricity (the “Project”) to be constructed with bond proceeds pursuant to a lease (“IRB Lease”) which was approved by the Commission; and

WHEREAS the Bonds were purchased by Red Mesa Wind Investments, LLC (“Bond Holder”); and

WHEREAS, Red Mesa Wind, LLC, a Delaware limited liability company (the “Company”), constructed the Project using the proceeds of the Bonds; and

WHEREAS, the Company has agreed to grant a first mortgage lien on the Project as part of a financing (“Financing”) of a group of projects, of which the Project is a part, and has requested the County to execute a consent and acknowledgement of subordination to the first mortgage lien (“Subordination”); and

WHEREAS, the Bond Purchaser has agreed to grant a security interest in the Bond as part of the Financing and has requested the County to accept an opinion (“Opinion”) relating to its granting of a security interest in the Bonds; and

WHEREAS, the Subordination and the Opinion have been presented to the Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF THE COUNTY OF CIBOLA, NEW MEXICO:

Section 1. All actions (not inconsistent with the provisions hereof) heretofore taken by the Commission and the officers and employees of the County, related to the Subordination and Opinion, be and the same hereby are ratified, approved and confirmed.

Section 2. The Commission understands that:

(A) The IRB Lease permits the Project to be mortgaged without the consent of the County provided the Company remains liable for the payment of rent and for the performance of the other obligations under the IRB Lease.

(B) The Company will remain liable for the payment of rent and for the performance of the other obligations under the IRB Lease.

(C) The first mortgage to be granted by the Company in connection with the Financing is a “Permitted Lien” as defined by the IRB Lease.

(D) The Bond requires that the Bond Purchaser provide the County an opinion in form and substance reasonably satisfactory to the Issuer from legal counsel experienced in securities matters in connection with any transfer of the Bond.

(E) Modrall, Sperling, Roehl, Harris & Sisk, P.A. has experience in securities matters.

Section 3. The form of Consent and Acknowledgment of Subordination submitted to the Commission and reviewed by counsel is approved.

Section 4. Modrall, Sperling, Roehl, Harris and Sisk, P.A. is approved to give the Opinion in connection with the granting of a security interest in the Bond.

Section 5. The form of opinion provided by Modrall, Sperling, Roehl, Harris & Sisk, P.A. to the Commission and reviewed by its counsel is approved.

Section 6. The Presiding Officer of the Board of County Commissioners of the County, the County Manager and the County Clerk are authorized to execute, authenticate and deliver the Subordination and to accept the Opinion and to take such other action and execute such other documents as is necessary to implement this Resolution.

Section 7. This Resolution shall not give rise to a pecuniary liability of the County and shall not give rise to a charge against its general credit or taxing powers.

Section 8. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 9. All orders and resolutions, or parts thereof, in conflict with this Resolution are hereby repealed; this repealer shall not be construed to revive any order, resolution or part thereof, heretofore repealed.

Section 10. This Resolution shall take effect immediately upon its adoption and approval by the Commission.

PASSED, ADOPTED, SIGNED AND APPROVED this 1st day of November, 2016.

BOARD OF COUNTY COMMISSIONERS, CIBOLA
COUNTY, NEW MEXICO

T. Walter Jaramillo, Chair

Robert Armijo, First Vice Chair

Jack Moleres, Second Vice Chair

Patrick Simpson, Commissioner

Lloyd F. Felipe, Commissioner

[SEAL]
ATTEST:

County Clerk



**DRAFT; SUBJECT TO MODRALL SPERLING OPINION COMMITTEE
REVIEW**

Debora E. Ramirez
505.848.1873
Fax: 505.848.9710
der@modrall.com

_____, 2016

CIT BANK, N.A., as agent (in such capacity, the “**Agent**”)
11 West 42nd Street
New York, NY 10036
Attn: Michael Coiley

and

the Lenders (as defined below)
from time to time parties to the
Loan Agreement (as defined below)

Re: \$[36,500,000.00] Term Loan to Rio Cabezon Property, LLC, a
Texas limited liability company (“**Cabezon Propco**”), Fiesta
Park Property, LLC, a Texas limited liability company (“**Fiesta
Park Propco**”), and WG Holdings, LLC, a Texas limited
liability company (“**Mainland Propco**”; together with the
Cabezon Propco and the Fiesta Park Propco, the “**Borrowers**”)

Dear Ladies and Gentlemen:

We have acted as special New Mexico counsel to The Rio at Rust
Centre, L.L.C., a New Mexico limited liability company (“**Cabezon Opco**”),
Fiesta Park Healthcare, L.L.C., a New Mexico limited liability company
(“**Fiesta Park OpCo**” and together with Cabezon Opco, the “**Guarantors**”),
Cabezon Propco and Fiesta Park Opco in connection with a \$[36,500,000.00]
term loan (the “**Loan**”) evidenced by that certain Term Loan Agreement, dated
the date hereof (the “**Loan Agreement**”), by and among the Borrowers, the
Guarantors, Villa Del Mar at Mainland Center, LLC, a Texas limited liability
company (“**Mainland Opco**”, together with the Guarantors, the “**Operators**”),
W Squared Enterprises LP, a Texas limited partnership, CIT Bank, N.A., in its
capacity as Agent for the Lenders (as defined below) (in such capacity,
“**Agent**”), and the financial institutions from time to time party thereto as

Modrall Sperling
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lenders (the “**Lenders**”), and the other Loan Documents (as defined in the Loan Agreement). We are rendering the opinions set forth in this opinion letter at the request of the Guarantors in connection with the Loan. We are not general counsel to the Guarantors and we have made no investigation of the legal affairs of the Guarantors except as expressly set forth in this opinion letter.

The law (the “**Law**”) covered by the opinions expressed in this opinion letter is limited to the statutes, the judicial and administrative decisions and the rules and regulations of the courts and governmental agencies, but not including the Local Law, of the State of New Mexico (the “**State**”). “**Local Law**” is the ordinances, administrative decisions, and rules and regulations of counties, towns, and municipalities and special political subdivisions, and judicial decisions to the extent that they deal with any of the foregoing. Statutory references are to New Mexico Statutes Annotated (1978) as amended, unless otherwise indicated.

Documents Reviewed: In rendering the opinions expressed below, we have examined the following documents, each dated as of the date of this opinion letter, except as otherwise set forth below:

- (a) Loan Agreement;
- (b) Guaranty and Security Agreement executed by the Guarantors, Mainland Opco and Agent (the “**Operator Guaranty**”);
- (c) Deed of Trust, Security Agreement and Fixture Filing from Cabezon Propco to _____, as Trustee, for the benefit of Agent (the “**Cabezon Propco Security Instrument**”);
- (d) Deed of Trust, Security Agreement and Fixture Filing from Fiesta Park Propco to _____, as Trustee, for the benefit of Agent (together with the Cabezon Propco Security Instrument, the “**Security Instruments**”);
- (e) Subordination and Attornment Agreement executed by Cabezon Opco, Cabezon Propco and Agent;
- (f) Subordination and Attornment Agreement executed by Fiesta Park Opco, Fiesta Park Propco and Agent;
- (g) Environmental Indemnity Agreement by Borrowers and Guarantors to Agent for the benefit of Lenders;
- (h) Trademark Security Agreement executed and delivered by Fiesta Park Opco to Agent for the benefit of Lenders;

(i) Management Fees Subordination Agreement by and among Operators, Agent, Enchanted Health Development, LLC, WW Management, LLC, and RCA Management, LLC;

(j) Solvency Certificate executed and delivered by Borrowers, Operators, and Parent to Agent for the benefit of Lenders;

(k) certain Deposit Account Control Agreements executed and delivered by Guarantors, Origin Bank, as depository bank, and Agent for the benefit of Lenders;

(l) certain **[Deposit Account Restriction Agreements]** executed and delivered by Guarantors, Origin Bank, as depository bank, and Agent for the benefit of Lenders;

(m) Intercreditor Agreement by and between MidCap Funding IV Trust and Agent, as agent for Lenders, and acknowledged and agreed to by Operators;

(n) **[Intercreditor Agreement/Subordination Agreement]** by and between Origin Bank (fka Community Trust Bank) and Agent, as agent for Lenders, and acknowledged and agreed to by Operators;

(o) UCC-1 Financing Statement to be filed with the Secretary of State of the State identifying Cabezon Opco, as debtor, and Agent, as secured party ("**Cabezon Opco Financing Statement**");

(p) UCC-1 Financing Statement to be filed with the Secretary of State of the State identifying Fiesta Park Opco, as debtor, and Agent, as secured party (together with the Cabezon Opco Financing Statement, the "**Financing Statements**");

(q) Certificate and Articles of Organization of Cabezon Opco, as certified by the Secretary of State of the State (the "**Secretary of State**") on September 14, 2016;

(r) Certificate and Articles of Organization of Fiesta Park Opco, as certified by the Secretary of State on September 14, 2016;

(s) Operating Agreement of Cabezon Opco, dated [_____] ;

(t) Operating Agreement of Fiesta Park Opco, dated [_____] ;

(u) Certificate of Good Standing and Compliance with respect to Cabezon Opco, dated September 14, 2016, issued by the Secretary of State (“**Cabezon Opco Good Standing Certificate**”); and

(v) Certificate of Good Standing and Compliance with respect to Fiesta Park Opco, dated September 14, 2016, issued by the New Mexico Secretary of State (together with the Cabezon Opco Good Standing Certificate, the “**Certificates**”).

The documents described in paragraphs (a) through (n) above are referred to herein, collectively, as the “**Transaction Documents**.” The documents described in paragraphs (o) through (x) above are referred to herein, collectively, as the “**Governing Documents**.” In connection with the opinions set forth below we have limited our review to the Transaction Documents, the Financing Statements, the Governing Documents, the Certificates and resolutions of the governing bodies of the Guarantors, and we have relied, without investigation or analysis, upon the information contained and representations made by the parties in such documents.

In basing the opinions set forth below on “our knowledge”, the words “our knowledge” signify that, in the course of our limited representation of the Guarantors, no facts have come to our attention that would give us actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion letter, we have undertaken no investigation or verification of such matters. Further, the words “our knowledge” and similar language as used in this opinion letter are intended to be limited to the actual knowledge of any attorneys who have been directly involved in representing the Guarantors in connection with the Loan.

Assumptions: In reaching the opinions set forth below, we have assumed, and to our knowledge there are no facts inconsistent with, the following:

(a) The Transaction Documents have been duly authorized by all necessary corporate or other action on the part of all parties thereto other than the Guarantors and each of the parties to the Transaction Documents has duly and validly executed and delivered each such instrument, document, and agreement.

(b) Each of the parties to the Transaction Documents other than the Guarantors (i) has legal existence; (ii) has satisfied those legal requirements that are applicable to it to the extent necessary to make the Transaction Documents enforceable against it; and (iii) has complied with all legal requirements pertaining to its status as such status relates to its rights to enforce the Transaction Documents.

(c) As to each party to the Transaction Documents other than the Guarantors, the obligations set forth in the Transaction Documents are its legal, valid and binding obligations, and are enforceable in accordance with their respective terms.

(d) Natural persons acting on behalf of the parties to the Transaction Documents, including agents and fiduciaries, have sufficient legal capacity to do so and are duly authorized to act in that capacity.

(e) All signatures on the Transaction Documents are genuine.

(f) All Transaction Documents, the Certificates and the Governing Documents are accurate and complete; all Transaction Documents submitted to us as originals are authentic; all Transaction Documents, the Certificates and the Governing Documents submitted to us as certified or photostatic copies conform to the original document; and all public records reviewed are accurate and complete.

(g) The terms and conditions reflected in the Transaction Documents have not been amended, modified or supplemented by any other agreement or understanding of the parties, course of dealing, course of performance, usage of trade, or waiver of any of the material provisions of the Transaction Documents. The Transaction Documents accurately reflect all of the intended agreements of the parties thereto.

(h) Each of the Guarantors holds the requisite title and rights to the real property and the other collateral pledged by it in the Transaction Documents.

(i) Adequate consideration exists and value (as such term is used in the Uniform Commercial Code, as enacted in the State (the "UCC")) has been given for the transactions contemplated by the Transaction Documents.

(j) There has been no mutual mistake of fact or misunderstanding, fraud, duress or undue influence.

(k) The conduct of the parties to the Transaction Documents has complied with any requirement of good faith, fair dealing or conscionability.

(l) Agent has acted in good faith and without notice of any defense against the enforcement of any rights created by the Transaction Documents, or adverse claim to any property or security interest transferred or created as part of the transactions contemplated by the Transaction Documents.

(m) The constitutionality or validity of a relevant statute, rule, regulation or agency action is not in issue unless a reported decision binding

upon courts in the State has specifically addressed but not resolved, or has established, its unconstitutionality or invalidity.

(n) Except as expressly set forth in opinion paragraph “H”, all permits and governmental approvals required for the consummation of the transaction or performance of each of the Guarantors’ obligations under the Transaction Documents have been obtained or will be obtained.

(o) The description of the collateral is accurate.

(p) The real property collateral, as described in the Security Instruments, constitutes and qualifies as “trust real estate” within the meaning of Section 48-10-3(H) of the Deed of Trust Act, §§48-10-1 to -21 NMSA 1878, as in effect in the State (the “**Deed of Trust Act**”).

(q) Any legal description of “trust real estate” in the Security Instruments complies with the provisions of Section 48-10-5(B) of the Deed of Trust Act.

(r) The Trustee named in each of the Security Instruments is qualified under Section 48-10-6 of the Deed of Trust Act.

(s) Each of the Security Instruments correctly states the names and mailing addresses of the grantor, trustee and beneficiary named therein.

(t) Each of the Security Instruments will be duly recorded in the real property records of the Office of the County Clerk in Sandoval County, New Mexico (the “**Recording Office**”).

(u) To the extent that any license, franchise, lease or other contract constituting collateral under the Transaction Documents requires by its terms the consent of another party for its assignment or the creation of an encumbrance, such consent has been obtained.

(v) All parties to the Transaction Documents have acted and will act in accordance with, and will refrain from taking any action that is forbidden by, the terms and conditions of the Transaction Documents.

(w) All third party consents required for the transactions contemplated by the Transaction Documents have been obtained.

(x) All statutes, judicial and administrative decisions, and rules and regulations of governmental agencies constituting the Law are generally available (i.e., in terms of access and distribution following publication or other release) to lawyers practicing in the State, and are in a format that makes legal research reasonably feasible.

Opinions: Based on the foregoing and subject to the qualifications set forth below, we express the following opinions.

A. Each of the Guarantors is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New Mexico.

B. Each of the Guarantors has adequate limited liability company power and authority to execute, deliver and perform its obligations under the Transaction Documents.

C. The execution and delivery by each of the Guarantors of the Transaction Documents and the performance by it of its agreements under such documents have been duly authorized by all requisite limited liability company action on the part of such party.

D. Each of the Security Instruments is in appropriate form for recording in the Recording Office.

E. Each of the Security Instruments is sufficient to create in Agent's favor (i) a valid lien on the portion of the collateral described therein consisting of real property (the "Real Property Collateral"), and the leases and rents derived therefrom, (ii) a security interest in that portion of the collateral described therein consisting of "fixtures" (as such term is used in the UCC) (the "Fixture Collateral"), and (iii) a security interest on the portion of the collateral described therein consisting of property subject to Article 9 of the UCC (the "Personal Property Collateral"). The recording of each of the Security Instruments in the Recording Office will perfect a lien on and security interest in the Fixture Collateral described therein. Recording of each of the Security Instruments in the Recording Office constitutes the only record or filing in the State necessary to give constructive notice to all persons of the existence of the Security Instruments and of the liens of the Security Instruments upon the Real Property Collateral. Upon the filing of the Financing Statements with the Secretary of State, Agent will have a perfected security interest in the Personal Property Collateral to the extent perfection may be accomplished by the filing of a financing statement under the UCC.

F. There is no statute or case law in the State imposing any lien upon real property owned by a mortgagee or by a beneficiary under a deed of trust or any personal liability on the mortgagee or beneficiary thereof as a result of, or with respect to, trustor's placement in or on, or the existence at or removal of, hazardous or toxic waste from real property located in the State securing an indebtedness prior to such time as the mortgagee or beneficiary shall acquire title to such real property by foreclosure, deed in lieu of foreclosure or otherwise.

G. We note that the Transaction Documents provide that they are to be governed by and construed in accordance with the substantive law of the State of New York (subject to certain exceptions in the Security Instruments). In any proceedings arising out of or relating to the Transaction Documents in any court of the State, or in any Federal court sitting in the State, that court would give effect to the governing law provisions of the Transaction Documents, except to the extent that the application of New York law is contrary to a fundamental public policy of the State.

H. If a court were to hold, notwithstanding the express terms of the Transaction Documents, that such Transaction Documents are to be governed by and construed in accordance with the Laws of the State, each of the Transaction Documents would constitute the valid and binding obligation of each of the Guarantors, enforceable against the applicable Guarantor in accordance with their respective terms.

I. The execution, delivery and performance by each of the Guarantors of the Transaction Documents (i) do not violate the Governing Documents of the respective Guarantors; (ii) do not violate any applicable Law; and (iii) do not require any license, permit, authorization, consent or other approval of, any exemption by, or any registration, recording or filing with, any court, administrative agency or other governmental authority of the State, other than recording in the Recording Office.

J. If a court of the State, or any Federal court sitting in the State, were to hold, notwithstanding the governing law provision of the Operator Guaranty, that the Operator Guaranty is to be governed by and construed in accordance with the Law, the Operator Guaranty is in proper form under the UCC to create a valid security interest in favor of the Agent, for the benefit of the Lenders, to secure the Obligations (as defined in the Operator Guaranty) in the right, title and interest of the Guarantors in and to that portion of the Collateral (as defined in the Operator Guaranty) which is subject to Article 9 of the UCC.

K. Upon the filing of the Financing Statements with the Secretary of State, Agent will have a perfected security interest in the portion of the Collateral (as defined in the Operator Guaranty) which is subject to Article 9 of the UCC to the extent perfection may be accomplished by the filing of a financing statement under the UCC.

L. No stamp tax or other similar duty or levy is payable in the State in connection with the execution or delivery of any of the Transaction Documents, or, in each case, the exercise by Agent and/or the Lenders of their rights or the performance by Borrowers of their obligations thereunder.

Qualifications. Notwithstanding any provision in this opinion letter to the contrary, the foregoing opinions are subject to the following qualifications:

1. Entity Existence. Our opinions expressed in opinion paragraph A is based solely on the Certificates and the Governing Documents.

2. Exclusions. None of the foregoing opinions include any implied opinion. Moreover, unless explicitly addressed in this opinion letter, the foregoing opinions do not address any of the following legal issues, and we specifically express no opinion with respect thereto:

2.1 Federal securities laws and regulations administered by the Securities and Exchange Commission, state "Blue Sky" laws and regulations, and laws and regulations relating to commodity (and other) futures and indices and other similar instruments.

2.2 Federal Reserve Board margin regulations.

2.3 Pension and employee benefit laws and regulations.

2.4 Antitrust and unfair competition laws and regulations.

2.5 Compliance with fiduciary duty requirements.

2.6 Local Law.

2.7 The creation, attachment, perfection, or priority of a lien on water, water rights, air rights, solar rights, minerals (including sand and gravel) and/or mineral rights.

2.8 Fraudulent transfer and fraudulent conveyance laws.

2.9 Environmental laws and regulations (except as expressly set forth in opinion paragraph "F").

2.10 Land use and subdivision laws and regulations.

2.11 Tax laws and regulations.

2.12 Patent, copyright and trademark, state trademark, and other Federal and state intellectual property laws and regulations.

2.13 Racketeering laws and regulations.

2.14 Health and safety laws and regulations.

2.15 Labor laws and regulations.

2.16 Laws, regulations and policies concerning: (i) national and local emergency; (ii) possible judicial deference to acts of sovereign states; and (iii) criminal and civil forfeiture laws.

2.17 Other statutes of general application to the extent they provide for criminal prosecution.

2.18 Law related to real property within the boundaries of any Spanish land grant or any Indian reservation, pueblo or trust land.

3. Bankruptcy and Insolvency Exception. The opinion expressed in opinion paragraph H is referred to herein as the “Remedies Opinion.” The Remedies Opinion is subject to the effect of bankruptcy, insolvency, reorganization, receivership, moratorium and other similar laws affecting the rights of creditors generally. This exception includes:

3.1 The Federal Bankruptcy Code, and thus comprehends, among others, matters of turn-over, automatic stay, avoiding powers, fraudulent transfer, preference, discharge, conversion of a non-recourse obligation into a recourse claim, limitations on ipso facto and anti-assignment clauses, and the coverage of pre-petition security agreements applicable to property acquired after a petition is filed.

3.2 All other Federal and state bankruptcy, insolvency, reorganization, receivership, moratorium, arrangement, and assignment for the benefit of creditors’ laws that affect the rights and remedies of creditors generally (not just creditors of specific types of debtors).

3.3 All other Federal bankruptcy, insolvency, reorganization, receivership, moratorium arrangement, and assignment for the benefit of creditors laws that have reference to or affect generally only creditors of specific types of debtors and state laws of like character affecting generally only creditors of financial institutions and insurance companies.

3.4 State fraudulent transfer and conveyance laws.

3.5 Judicially developed doctrines relevant to any of the foregoing laws, such as substantive consolidation of entities.

4. Equitable Principles Limitation. The Remedies Opinion is further subject to general principles of equity. This limitation includes principles:

4.1 Governing the availability of specific performance, injunctive relief, or other equitable remedies which generally place the award

of such remedies, subject to certain guidelines, in the discretion of the court to which application for such relief is made.

4.2 Affording equitable defenses (e.g., waiver, laches and estoppel) against a party seeking enforcement.

4.3 Requiring good faith and fair dealing in the performance and enforcement of a contract by the party seeking its enforcement.

4.4 Requiring reasonableness in the performance and enforcement of an agreement by the party seeking enforcement of the contract.

4.5 Requiring consideration of the materiality of: (i) a breach by either of the Guarantors; and (ii) the consequences of the breach to the party seeking enforcement.

4.6 Requiring consideration of the impracticability or impossibility of performance at the time of attempted enforcement.

4.7 Affording defenses based on the unconscionability of the enforcing party's conduct after the parties have entered into the contract.

5. Other Qualifications. The Remedies Opinion is further subject to the effect of generally applicable rules of law that:

5.1 Limit or affect the enforcement of provisions of a contract that purport to require waiver of the obligations of good faith, fair dealing, diligence and reasonableness.

5.2 Provide that forum selection clauses in contracts are not necessarily binding on the court(s) in the forum selected.

5.3 Limit the availability of a remedy under certain circumstances where another remedy has been elected.

5.4 Limit the right of a creditor to use force or cause a breach of the peace in enforcing right.

5.5 Relate to the sale or disposition of property or the requirements of a commercially reasonable sale.

5.6 Limit the enforceability of provisions releasing, exculpating or exempting a party from, or requiring indemnification of a party for, liability for its own action or inaction, to the extent the action or inaction involves negligence, recklessness, willful misconduct or unlawful conduct.

5.7 May, where less than all of a contract may be unenforceable, limit the enforceability of the balance of the contract to circumstances in which the unenforceable portion is not an essential part of the agreed exchange.

5.8 Govern and afford judicial discretion regarding the determination of damages and entitlement to attorneys' fees and other costs.

5.9 May, in the absence of a waiver or consent, discharge a guarantor to the extent that: (i) action by a creditor impairs the value of property securing guaranteed debt to the detriment of the guarantor; or (ii) guaranteed debt is materially modified.

5.10 May permit a party who has materially failed to render or offer performance required by the contract to cure that failure unless: (i) permitting a cure would unreasonably hinder the aggrieved party from making substitute arrangements for performance; or (ii) it was important in the circumstances to the aggrieved party that performance occur by the date stated in the contract.

5.11 Impose limitations on attorneys' or trustees' fees.

5.12 Limit or affect the enforceability of any provision that purports to prevent any party from becoming a mortgagee in possession notwithstanding any enforcement actions taken under the Transaction Documents.

5.13 Limit or affect the enforceability of provisions for late charges, prepayment charges, or yield maintenance charges, and acceleration of future amounts due (other than principal) without appropriate discount to present value, liquidated damages and penalties.

5.14 Govern the actions of lenders, including the New Mexico Unfair Practices Act, § 57-12-1 to -22 NMSA 1978.

6. Generic Qualification. Certain remedies, waivers and other provisions of the Transaction Documents may not be enforceable; nevertheless, subject to the assumptions and qualifications expressed elsewhere in this opinion letter, such unenforceability will not render the Transaction Documents invalid as a whole or preclude: (a) the judicial enforcement of any payment obligation of either of the Guarantors, together with interest thereon (to the extent not deemed a penalty) as provided in the Transaction Documents; (b) the acceleration of any payment obligation of either of the Guarantors, together with such interest, upon a material default in payment or upon a material default in any other material provision of the Transaction Documents; and (c) the foreclosure, in accordance with applicable Law, of the lien on and security

interest in the collateral created by the Transaction Documents upon maturity or upon acceleration.

7. Governing Law. The Remedies Opinion is given as if the Law governs each Transaction Document, without regard to whether each of the Transaction Documents so provides, and without regard to any choice of law rules except as provided below in this paragraph and in the immediately succeeding paragraph. While the preceding sentence excludes any opinion on the effectiveness of any choice of law provision in the Transaction Documents choosing the law of a jurisdiction other than the State, if a Transaction Document contains a governing law provision choosing the Law to govern a provision in a Transaction Document, the Remedies Opinion includes an opinion (subject to the other qualifications in this opinion letter) that such governing law provision choosing the Law will be given effect under the choice of law rules of the State; however, the Remedies Opinion does not include an opinion as to what law governs: (a) if a Transaction Document contains a choice of law provision choosing the law of another jurisdiction or does not contain a governing law provision; (b) to the extent the opinion as to what law governs requires a determination that the Law is not contrary to a fundamental policy of the law of another jurisdiction; or (c) to the extent the opinion as to what law governs requires a determination that the law of any other jurisdiction does not offend public policy of the State.

8. Choice of Law. Our opinion regarding the choice of law provisions in the Transaction Documents contained within the Remedies Opinion is qualified by the following:

8.1 Courts in the State have strongly endorsed the view that the rights of the parties to a contract are primarily determined by the terms of the contract. *Reagan v. McGee Drilling Corp.*, 1997-NMCA-014, ¶ 7, 123 N.M. 68, 933 P.2d 867; *see also Fiser v. Dell Computer Corp.*, 2008-NMSC-046, ¶ 7, 144 N.M. 464, 188 P.3d 1215, and *United Wholesale Liquor Co. v. Brown-Forman Distillers Corp.*, 1989-NMSC-030, ¶¶ 11 and 14, 108 N.M. 467, 775 P.2d 233. Although courts in the State have not expressly adopted the Restatement (Second) of Conflict of Laws (the “Restatement (Second)”) approach as the sole approach to deciding which forum’s law governs a contract, this strong endorsement may counsel that, if the issue were squarely presented, the State would likely adopt the Restatement (Second) approach to choice of law under circumstances in which the parties had expressly chosen the law. *Reagan*, 1997-NMCA-014, ¶ 7. However, when application of the law chosen by the parties offends the public policy of the State, courts in the State may decline to enforce the choice of law provision and apply the law of the State instead. *Fiser*, 2008-NMSC-046, ¶ 7; *Regan*, 1997-NMCA-014, ¶ 8.

8.2 The enforceability of choice of law provisions in the Transaction Documents may be limited by §§ 55-1-301 and 55-9-301 NMSA 1978.

8.3 A choice of law provision will only extend to substantive law, and the court is free to apply its own procedural law unless specifically stated otherwise in the parties' contract. *Burge v. Mid-Continent Casualty Company*, 1997-NMSC-009, ¶ 11, 123 N.M. 1, 933 P.2d 210.

9. After Acquired Property. We have assumed that each of the Guarantors will have rights in the collateral added pursuant to the after-acquired property clauses of the Transaction Documents and the power to transfer rights in the collateral within the meaning of § 55-9-203(b)(2) of the UCC, and we express no opinion as to the nature or extent of either Guarantors' rights in any of the collateral. We note that, with respect to any after-acquired property, the security interest will not attach until the applicable Guarantor acquires rights or the power to transfer rights in the collateral.

10. Title. We have made no examination of title to the Real Property Collateral and we express no opinion with respect thereto nor with respect to the priority of the lien and security interest created by the Security Instruments. We understand you are relying upon title insurance and UCC searches for assurances of this nature.

11. Release of Deed of Trust. Upon payment in full of the indebtedness, a mortgagee or beneficiary under a deed of trust is required to record in the real property records of the county clerk of the county where the mortgage or deed of trust is recorded a document indicating that the mortgage or deed of trust has been fully satisfied. § 48-7-4(A) NMSA 1978. However, even if all sums due have been paid in full, if the mortgage or deed of trust provides that it secures a series of loans or a line of credit and the notation "Line of Credit Mortgage" is prominently placed on the mortgage or deed of trust, at any time the obligation secured by such mortgage or deed of trust is fully satisfied, the mortgage or deed of trust may remain of record unless the mortgagor or trustee requests in writing that it be released. § 48-7-4(B) & (C) NMSA 1978.

12. Future Advances: Maximum Amount Secured. The rights of Lender under the Security Instruments will be limited by § 48-7-9 NMSA 1978, providing that the lien of any instrument constituting a lien on real estate shall not exceed at any one time the maximum amount stated therein.

13. Notice of Intent to Accelerate. Exercise of any rights under the Transaction Documents to accelerate all sums due upon a default may be ineffective, absent notice by Agent or a Lender of an intent to accelerate, even where a Guarantor has waived notice of acceleration, *Comer v. Hargrave*, 93 N.M. 170, 598 P.2d 213 (1979).

14. Due on Sale. In a contract involving a real property loan, enforceability of any due-on-sale clause authorizing a lender, at its option, to accelerate an indebtedness secured by the lender's security instrument if all or any part of the property, or an interest therein, is sold or transferred, or to demand an increase in the interest rate as a condition of approving an assumption of the loan, may be limited by: (a) § 48-7-21 NMSA 1978, requiring a lender to prove that its security interest in the property would be substantially impaired by such transfer, as a condition of its foreclosing; and (b) § 48-7-20 NMSA 1978, prohibiting a lender from exercising any option in a due-on-sale clause, upon occurrence of any of the events there set forth. A State court would likely find that Section 341 of the Garn - St. Germain Depository Institutions Act of 1982, as amended (the "Act"), 12 U.S.C. § 1701j-3, preempts application of §§ 48-7-20 and 48-7-21 NMSA 1978 to those due-on-sale clauses, or portions thereof, in the Transaction Documents authorizing acceleration, at the option of Agent or a Lender, if all or any part of the collateral, or an interest therein, is sold or transferred. Because the State due-on-sale statute applies to increased interest on assumption or transfer clauses, as well as to acceleration on transfer clauses, § 48-7-16(A), and the Act preempts state law only with respect to due-on-sale clauses conferring an acceleration option on transfer, 12 U.S.C. § 1701j-3(a)(1), we express no opinion about the enforceability of provisions in the Transaction Documents authorizing Agent or any Lender to demand an increase in the interest rate as a condition of approving an assumption of the Loan or a transfer of all or any part of the collateral, or any interest therein.

15. Waivers; Cognovit Notes. We render no opinion as to the enforceability of provisions in the Transaction Documents purporting to authorize an attorney-in-fact on behalf of either of the Guarantors to waive issuance of personal service of process, confess judgment, release errors or the right of appeal from a judgment, or consent to the issuance of execution on a judgment. § 39-1-18 NMSA 1978 makes it a misdemeanor to accept or enforce any note or agreement containing such a provision. § 39-1-17 NMSA 1978 voids enforcement of any foreign judgment obtained by virtue of any such provision.

16. Limitation of Indemnification. The enforceability of an indemnification provision to which § 56-7-1 NMSA 1978 applies may be subject to, and dependent upon, the compliance of each such indemnification provision with § 56-7-1 NMSA 1978, which provides that "[a] provision in a construction contract that requires one party to the contract to indemnify, hold harmless, insure or defend the other party to the contract, including the other party's employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents,

is void, unenforceable and against the public policy of the state.” The term “construction contract” is defined broadly to include an agreement “relating to construction, alteration, repair or maintenance of any real property in New Mexico.”

17. Condemnation. A State court in a condemnation proceeding has the power over a condemnee’s compensation to “make orders as the court deems necessary with respect to encumbrances, liens, rents, insurance, and other just and equitable charges.” § 42A-1-24(C) NMSA 1978.

18. Tax and Insurance Escrow. Enforceability of certain provisions of the Security Instruments may be limited by § 48-7-8 NMSA 1978, under which any balance in an escrow fund held by a mortgagee or beneficiary for payment of taxes, insurance premiums and other charges, which exceeds two months’ total escrow charges for such items plus the pro rata accrual for the taxes, insurance premiums and other charges, must, upon demand of the mortgagor but not more than once each year, be credited to the principal amount of the mortgage, or as provided by contractual agreement, within sixty (60) days of the demand. Failure of a mortgagee or beneficiary to credit upon demand any excess accumulation of escrow funds causes a penalty payable to the mortgagor to run on the amount of such excess accumulation of escrow funds, at the rate of six percent per year.

19. Redemption. We express no opinion as to the enforceability of any provisions in the Security Instrument purporting to waive redemption rights. Any purported waiver by the grantor in the Security Instruments, prior to default, of a right to redeem any of the collateral that is subject to the terms of Article 9 of the UCC is not effective. §§ 55-9-602, 55-9-623 and 55-9-624 NMSA 1978. Under the Law, the redemption period can be shortened to one (1) month, but it cannot be waived altogether. Further, even upon a shortening of the redemption period, a court may, upon a sufficient showing before judgment that redemption will be effected, increase the period of redemption to not to exceed nine months, notwithstanding the terms of the Security Instrument.

20. Powers of Attorney. We render no opinion as to the enforceability of provisions in the Transaction Documents purporting to authorize Agent or any Lender, as attorney-in-fact, to take actions either of the Guarantors otherwise would be required to take or to dispose of an interest in the Real Property Collateral or other collateral. Insofar as a power of attorney would purport to permit a disposition of an interest in property, the State does not recognize the grant of a power of sale outside the scope of the Deed of Trust Act. §§ 48-7-7 and 48-10-10 NMSA 1978.

21. Deficiency Actions. In the case of a trustee’s sale pursuant to either of the Security Instruments, the determination of any deficiency and Agent’s or any Lender’s remedies may be delayed or limited by the pendency of other actions or proceedings to liquidate other collateral securing the obligations secured

by the Security Instrument. Section 48-10-17(B) of the Deed of Trust Act provides that if no action is commenced for deficiency judgment within six years after the trustee's sale, the proceeds of the sale, regardless of amount, shall be deemed to be in full satisfaction of the debt and no right to recover a deficiency in any separate civil action may exist.

22. Substitute Trustee. The enforceability of the provisions of the Security Instruments relating to resignation and substitution of the trustee named therein, is subject to Section 48-10-7 of the Deed of Trust Act, requiring that a written notice of substitution or resignation, as the case may be, in the form provided in the statute, signed and acknowledged by all parties specified in the statute, be recorded in the office of the county clerk of each county in which any trust real estate is situated at the time of the substitution or resignation, and that written notice of such substitution or resignation be given in accordance with the statute.

23. Trustee's Sale. The enforceability of provisions in the Security Instruments may be limited by Section 48-10-13 of the Deed of Trust Act, requiring the trustee at the Trustee's sale to sell the trust real estate at public auction for cash to the highest bidder and to take, and to have taken, a number of prescribed steps to determine the highest bidder.

24. Assignment of Rents. The rights and remedies of the parties with respect to the assignment of leases and rents included in the Assignments of Rents are governed by the Uniform Assignment of Rents Act, §§ 56-15-1, et seq. NMSA 1978, as in effect in the State, including the requirement that rents collected by an assignor continue to be subject to a security interest granted to the assignee in such proceeds so long as they are identifiable; proceeds are identifiable if they are maintained in a segregated account or, if commingled with other funds, can be identified by the assignee by a method of tracing.

25. Hazardous Waste Liens. With regard to our opinion in opinion paragraph "F", we call to your attention Section 3-48-7 NMSA 1978, which provides that a municipality may impose a lien upon property for unpaid assessments for refuse and waste collection, which lien is superior to all other liens except liens for general property taxes. We also call to your attention Section 69-25B-8, which authorizes the director of the mining and minerals division of the energy, minerals and natural resources department to file a lien upon real property in connection with restoration, reclamation, abatement, control or prevention of adverse effects of past mining practices upon privately owned land; such lien shall have priority as a lien second only to the lien of ad valorem taxes imposed upon the property.

Our opinions are set forth as of the date of this letter upon the assumptions and subject to the qualifications set forth herein, and we disclaim any obligation or responsibility to update or supplement the opinions contained

in this letter. Our opinions are limited to the matters expressly stated; no opinion is implied or may be inferred beyond such matters.

The foregoing opinions may be relied on by Agent and the Lenders in connection with transactions contemplated by the Loan Documents. The opinions expressed in this letter may not be relied upon by Agent or any of the Lenders for any other purpose, or relied upon by any other person, firm or corporation for any purpose, without our prior written consent.

Very truly yours,

Modrall, Sperling, Roehl, Harris
& Sisk, P.A.

CERTIFICATE OF RULE 144A QUALIFIED INSTITUTIONAL BUYER

Red Mesa Wind Investments, LLC, a Delaware limited liability company (“Holder”), intends to pledge to the undersigned all of its right, title and interest in that certain Taxable Industrial Revenue Bond (Red Mesa Wind Project), Series 2010, issued by Cibola County, New Mexico (the “Issuer”), in the original principal amount of up to \$215,000,000.00 (the “Bond”). As a condition to such pledge, Holder requires that the undersigned execute and deliver this Certificate to Holder. Accordingly, the undersigned hereby certifies to Holder that it is familiar with Rule 144A (“Rule 144A”) under the Securities Act of 1933, as amended (the “Act”); and represents, warrants and acknowledges that:

1. It is a Qualified Institutional Buyer (“QIB”), as defined in Rule 144A, of the following type:

(PLEASE CHECK THE APPLICABLE BOX(ES))

- a. an entity referred to in sub-paragraphs (i) through (ix), acting for its own account or the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity:
 - i. ☐ an insurance company as defined in Section 2(a) (13) of the Act. A purchase by an insurance company for one or more of its separate accounts, as defined by Section 2(a)(37) of the Investment Company Act of 1940 (the “Investment Company Act”), which are neither registered under Section 8 of the Investment Company Act nor required to be so registered, shall be deemed to be a purchase for the account of such insurance company.
 - ii. ☐ an investment company registered under the Investment Company Act or any business development company as defined in Section 2(a)(48) of that Act.
 - iii. ☐ a small business investment company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.
 - iv. ☐ a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees.
 - v. ☐ an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”).
 - vi. ☐ a trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in paragraph (iv) or (v) above, except trust funds that include as participants individual retirement accounts or H.R.10 plans.
 - vii. ☐ a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (the “Investment Advisers Act”).
 - viii. ☐ an organization described in Section 501(c)(3) of the Internal Revenue Code, corporation (other than a bank as defined in Section 3(a)(2) of the Act or a savings and loan association or other institution referenced in Section 3(a)(5)(A) of the Act or a foreign bank or savings and loan association or equivalent institution), partnership, or Massachusetts or similar business trust.

- ix. ☐ an investment adviser registered under the Investment Advisers Act.
- b. ☐ a dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934 (the “Exchange Act”), acting for its own account or the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$10 million of securities of issuers that are not affiliated with the dealer; provided, that securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer.
- c. ☐ a dealer registered pursuant to Section 15 of the Exchange Act acting in a “riskless principal transaction” on behalf of a QIB.
- d. ☐ an investment company registered under the Investment Company Act, acting for its own account or for the accounts of other QIBs, that is part of a “family of investment companies” (as defined in Rule 144A) which own in the aggregate at least \$100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies.
- e. ☐ an entity, all of the equity owners of which are QIBs, acting for its own account or the accounts of other QIBs.
- f. ☐ a bank as defined in Section 3(a)(2) of the Act, any savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale under Rule 144A in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution.

In determining the aggregate amount of securities owned and invested on a discretionary basis by an entity, the following instruments and interests shall be excluded: bank deposit notes and certificates of deposit; loan participations; repurchase agreements; securities owned but subject to a repurchase agreement; and currency, interest rate and commodity swaps.

The aggregate value of securities owned and invested on a discretionary basis by an entity shall be the cost of such securities, except where the entity reports its securities holdings in its financial statements on the basis of their market value, and no current information with respect to the cost of those securities has been published. In the latter event, the securities may be valued at market.

In determining the aggregate amount of securities owned by an entity and invested on a discretionary basis, securities owned by subsidiaries of the entity that are consolidated with the entity in its financial statements prepared in accordance with generally accepted accounting principles may be included if the investments of such subsidiaries are managed under the direction of the entity, except that, unless the entity is a reporting company under Section 13 or 15(d) of the Exchange Act, securities owned by such subsidiaries may not be included if the entity itself is a majority-owned subsidiary that would be included in the consolidated financial statements of another enterprise.

2. The undersigned owned and invested on a discretionary basis \$_____ in securities (that are eligible under Section 1 above and Rule 144A) as of _____, which is on or since the last day of the purchaser's most recent fiscal year.
3. The undersigned's current fiscal year ends on _____ (must be future date).
4. The signatory for the undersigned is the chief financial officer, a person fulfilling an equivalent function, or other executive officer of the undersigned.
5. The undersigned has received and acknowledges that it has the right to obtain at any time a statement regarding the business of the Issuer and the Issuer's financial statements for the most recent fiscal year and the two preceding fiscal years of the Issuer.
6. The undersigned will promptly notify Holder if any of the representations of the undersigned in this Certificate ceases to be true.
7. **The undersigned is aware and agrees that Holder, the Issuer and Modrall, Sperling, Roehl, Harris & Sisk, P.A. are relying on the information contained in this certificate in making a determination that a transfer of the Bond to the undersigned would be exempt from the registration requirements of the Act.**

Name of Qualified Institutional Buyer:_____

Officer Signature:_____

Officer's Printed Name:_____

Date Signed:_____, 2016

CERTIFICATION OF OWNERSHIP OF BOND

Red Mesa Wind Investments, LLC, a Delaware limited liability company (“Holder”), certifies to Modrall, Sperling, Roehl, Harris & Sisk, P.A., as follows in connection with the pledge by Holder of all of its right, title and interest in and to that certain Taxable Industrial Revenue Bond (Red Mesa Wind Project), Series 2010, issued by Cibola County, New Mexico (the “Issuer”), in the original principal amount of up to \$215,000,000.00 (the “Bond”), to KeyBank National Association, as collateral agent (the “Collateral Agent”) for the lenders party to that certain Credit Agreement, dated as of the date hereof, among Holder, Tsuga Pine Wind, LLC, a Delaware limited liability company organized, Lee North, LLC, a Delaware limited liability company, Crystal Lake Wind II, LLC, a Delaware limited liability company, FPL Energy Illinois Wind, LLC, a Delaware limited liability, and Red Mesa Wind, LLC, a Delaware limited liability company, various financial institutions named therein from time to time as lenders, the Collateral Agent, KeyBank National Association, as Administrative Agent and Depositary Agent and the other parties thereto from time to time:

1. Holder acquired the Bond from the Issuer on October 2, 2010 (the “Issue Date”).
2. Since the Issue Date Holder has not sold, pledged or otherwise transferred to any other person any right or interest in the Bond or any portion thereof.
3. The individual executing this Certificate on behalf of Holder is duly authorized to do so.

Dated: _____, 2016

RED MESA WIND INVESTMENTS, LLC, a
Delaware limited liability company

By: _____

Name: _____

Title: _____

CIBOLA COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 10-01

AUTHORIZING THE ISSUANCE AND SALE OF CIBOLA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BOND (RED MESA WIND PROJECT) SERIES 2010 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$215,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A WIND FARM FOR THE PURPOSE OF GENERATING ELECTRICITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BOND AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Cibola County (the "County") is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the "State") created pursuant to Sections 4-3A-1 through 4-3A-14, NMSA 1978, as amended; and

WHEREAS, pursuant to New Mexico Statutes Annotated, Sections 4-59-1 through 4-59-16, 1978 Compilation, as amended (the "Act"), the County is authorized to acquire industrial revenue projects to be located within the County, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting the use of the natural resources of the State

and promoting industry and developing trade or other economic activity to secure and maintain a balanced and stable economy in the county to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Red Mesa Wind, LLC (the "Company"), is a limited liability company organized under the laws of Delaware; and

WHEREAS, the Company has requested that the County issue industrial revenue bonds for the purpose of providing funds to finance the acquisition, construction, installation, and equipping, of a wind farm for the purpose of generating electricity (the "Project"). The County has been advised by the Company that, neither location approval nor a certificate of convenience and necessity are required prior to commencing construction or operation of the facility pursuant to the laws of the State; and

WHEREAS, the Company has presented to the Cibola County Board of County Commissioners (the "Commission") a proposal whereby the County would (a) issue its Taxable Industrial Revenue Bond (Red Mesa Wind Project), Series 2010 (the "Bond"), and (b) acquire certain nacelles, rotors, supporting structures and related equipment and property, and land leases related to the Project (collectively, the "Project Property"), located within a part of the County which is outside the corporate limits of any municipality in the County, to be used by the Company for the generation, transportation and delivery of electricity; and

WHEREAS, under the Company's proposal, the County would enter into an Indenture of Trust to be dated as of August 1, 2010 (the "Indenture"), with the Purchaser and a Depositary acceptable to the County and the Purchaser pursuant to which, together with this ordinance (the "Bond Ordinance"), the County would issue the Bond; and

WHEREAS, under the Company's proposal, the County and the Company would enter into a Lease, pursuant to which the Company will lease the Project Property from the County and the Company will make payments sufficient to pay the principal of and interest on the Bond and to pay all other obligations incurred pursuant to the provisions of the Lease and the Bond Ordinance; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the Bond Documents and to issue, execute and deliver the Bond pursuant to the Act and the Bond Ordinance; and

WHEREAS, the Bond in a principal amount not to exceed \$215,000,000 will be issued, sold and delivered by the County, in a private sale to Red Mesa Wind Investments, LLC (the "Purchaser"), pursuant to a bond purchase agreement to be dated as of the initial date of delivery of the Bond, among the County, the Purchaser and the Company (the "Bond Purchase Agreement"); and

WHEREAS, the proceeds of the Bond shall be applied to pay the costs of the Project and to pay certain costs associated with the transaction; and

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

WHEREAS, the County will enter into the following documents in connection with the issuance of the Bond:

1. Lease
2. Indenture
3. Bond Purchase Agreement

4. Bond

The Lease, Indenture, Bond Purchase Agreement and Bond are collectively referred to in the Bond Ordinance as the "Bond Documents"; and

WHEREAS, the County is authorized to issue the Bond under the Act and after having considered the Company's proposal, has concluded that it is desirable at this time to authorize the issuance of the Bond to finance the Project and that the County's issuance of the Bond will constitute and be a valid public purpose; and

WHEREAS, this Commission has been advised by Bond Counsel that the disclosure provisions of Rule 15-2-12 of the Securities and Exchange Commission are not applicable to this transaction inasmuch as the Bond is being sold in a private sale without participation of an underwriter; and

WHEREAS, there has been published in the *Cibola Beacon*, a newspaper of general circulation in the County, public notice of the Commission's intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the Project and the amount of the Bond to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance; and

WHEREAS, the acquisition of the Project Property must be approved by the Grants Cibola County School Board (the "School Board"); and

WHEREAS, the Commission, the School Board and the Company need to finalize negotiations and determination of the amount of an annual in-lieu tax payment to be made to the Grants Cibola County School District (the "School District").

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

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

Section 2. FINDINGS.

A. General. The Commission hereby declares that it has considered as relevant information presented to it relating to the Bond and the Project and hereby finds and determines that the issuance of the Bond pursuant to the Bond Ordinance to provide funds for the Project is necessary and advisable and in the interest of and will promote the use of the natural resources of the State, industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

- (1) The Bond will be issued for the purpose of financing the Project.
- (2) The aggregate face amount of obligations to be issued with respect to financing the Project is not to exceed \$215,000,000.
- (3) The developer of the Project Property is the Company.
- (4) The Project Property is located approximately 10 miles east of Bibo in the County which is outside the corporate limits of any municipality located in the County.

Section 3. BOND - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bond in a principal amount not to exceed \$215,000,000 and the use of the proceeds of the Bond to finance the cost of the Project including payment of transaction expenses related thereto are hereby approved and confirmed, subject to approval, prior to the sale of the Bond, (i) by the School Board of the acquisition of the Project Property by the County and (ii) by the Commission, the School Board and the Company of the amount of the annual in-lieu tax payment to be made to the School District.

The sale of the Bond at par at a purchase price not to exceed \$215,000,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Bond shall (i) be in the form and denomination and shall be numbered and dated as set forth in the Indenture; (ii) be payable as to principal and interest and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) be issued in a principal amount not to exceed \$215,000,000, bearing interest at the rate and maturing on the date set forth in the Indenture.

C. Execution. The Bond shall be signed by the presiding officer of the Board of County Commissioners of the County.

D. Interest Rate. The interest rate on the Bond shall not exceed 6% per annum.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The Lease shall be revised to provided that the annual in lieu tax payments shall be made on the last day of June, beginning June 30, 2011. After such revision,

the form, terms and provisions of the Bond Documents in the form on deposit in the office of the County Clerk are in all respects approved, authorized and confirmed.

The Presiding Officer of the Board of County Commissioners of the County is authorized to approve the amount of the annual in-lieu tax payment to be made to the School District and the form, terms and provisions of the Bond Documents on behalf of the Commission, provided that such form, terms and provisions are consistent with this Bond Ordinance and to execute and deliver in the name and on behalf of the County, and the County Clerk or Deputy County Clerk is hereby authorized to attest, as necessary, the Bond Documents.

The County Clerk is further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements, and to do such other acts and things, either prior to or after the date of delivery of the Bond, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents.

The Presiding Officer of the Commission and County Manager shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and for carrying out other transactions as contemplated by this Ordinance, and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bond.

Section 5. DELIVERY OF BOND. Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Bond, the Bond shall be executed, authenticated and delivered to the Purchaser.

The Bond shall not be valid for any purpose until the Bond has been properly authenticated as set forth in the Indenture.

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

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest on the Bond, assuming issuance of the Bond as of July 27, 2010, in the maximum aggregate principal amount of \$215,000,000 and bearing a maximum interest rate of 6%, is as follows:

Year	Balance	Principal	Interest	Total Debt Service
2010	\$215,000,000.00	0.00	0.00	0.00
2011	207,833,333.33	\$7,166,666.67	\$12,900,000.00	\$20,066,666.67
2012	200,666,666.66	7,166,666.67	12,470,000.00	19,636,666.67
2013	193,499,999.99	7,166,666.67	12,040,000.00	19,206,666.67
2014	186,333,333.32	7,166,666.67	11,610,000.00	18,776,666.67
2015	179,166,666.65	7,166,666.67	11,180,000.00	18,346,666.67
2016	171,999,999.98	7,166,666.67	10,750,000.00	17,916,666.67
2017	164,833,333.31	7,166,666.67	10,320,000.00	17,486,666.67
2018	157,666,666.64	7,166,666.67	9,890,000.00	17,056,666.67
2019	150,499,999.97	7,166,666.67	9,460,000.00	16,626,666.67
2020	143,333,333.30	7,166,666.67	9,030,000.00	16,196,666.67
2021	136,166,666.63	7,166,666.67	8,600,000.00	15,766,666.67
2022	128,999,999.96	7,166,666.67	8,170,000.00	15,336,666.67
2023	121,833,333.29	7,166,666.67	7,740,000.00	14,906,666.67
2024	114,666,666.62	7,166,666.67	7,310,000.00	14,476,666.67
2025	107,499,999.95	7,166,666.67	6,880,000.00	14,046,666.67
2026	100,333,333.28	7,166,666.67	6,450,000.00	13,616,666.67
2027	93,166,666.61	7,166,666.67	6,020,000.00	13,186,666.67
2028	85,999,999.94	7,166,666.67	5,590,000.00	12,756,666.67
2029	78,833,333.27	7,166,666.67	5,160,000.00	12,326,666.67

2030	71,666,666.60	7,166,666.67	4,730,000.00	11,896,666.67
2031	64,499,999.93	7,166,666.67	4,300,000.00	11,466,666.67
2032	57,333,333.26	7,166,666.67	3,870,000.00	11,036,666.67
2033	50,166,666.59	7,166,666.67	3,440,000.00	10,606,666.67
2034	42,999,999.92	7,166,666.67	3,010,000.00	10,176,666.67
2035	35,833,333.25	7,166,666.67	2,580,000.00	9,746,666.67
2036	28,666,666.58	7,166,666.67	2,150,000.00	9,316,666.67
2037	21,499,999.91	7,166,666.67	1,719,999.99	8,886,666.66
2038	14,333,333.24	7,166,666.67	1,289,999.99	8,456,666.66
2039	7,166,666.57	7,166,666.67	859,999.99	8,026,666.66
2040	-0.10	7,166,666.67	429,999.99	7,596,666.66

B. The Bond will bear interest at six percent (6%).

C. The Bond may be redeemed at any time without premium.

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

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

F. The Lease requires the Company to make lease payments in an amount sufficient to pay the principal of and interest on the Bond as principal and interest become due and to pay all related costs.

Section 8. LIMITED OBLIGATIONS. The Bond shall be a special limited obligation of the County, payable solely from the Base Rent (as defined in the Lease) paid by the Company to the County as described in the Indenture and any other property or interest of the County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power.

Nothing contained in the Bond Ordinance or in the Bond Documents or any other instrument shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bond, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in the Bond Ordinance, the Bond Documents, the Bond or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bond, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor of the Project Property.

Section 9. APPROVAL OF INDEMNIFICATION. The Commission specifically requires that the Lease contain provisions relating to indemnification which provide that the Company shall indemnify and hold harmless the County and its Board of County Commissioners, officials, employees and agents against liability to the Company, or to any third parties that may be asserted against the County or its Board of County Commissioners, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bond and arising from the condition of the Project Property or the acquisition, construction and operation of the Project Property by the Company, except to the extent New Mexico Statutes Annotated Section 56-7-1, 1978 Compilation, applies, and except claims for any loss or damage arising out of or resulting from the negligence or misconduct of

the County or its Board of County Commissioners, or any official, employee or agent of the County.

Section 10. BOND ORDINANCE IRREPEALABLE. After the Bond is issued, the Bond Ordinance shall be and remain irrepealable until the Bond, including interest, is fully paid, canceled and discharged or there has been defeasance of the Bond in accordance with the Indenture.

Section 11. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance is repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 12. SEVERABILITY. If any section, paragraph, clause or provision of the Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Bond Ordinance.

Section 13. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the presiding officer of the Board of Commissioners, and by the signature of the County Clerk or any Deputy County Clerk, and shall be recorded in the Ordinance book of the County, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the County.

Done this 21st day of June, 2010.

ATTEST:

Elisa Bro
County Clerk

CIBOLA COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

By [Signature]
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

RM [Signature]



this Indenture and the Bond, the Issuer hereby mortgages, bargains, assigns and pledges to the Purchaser, subject to any First Lender Mortgage (as defined below): (i) all the Issuer's right, title and interest in and to the Project Property, the Lease Agreement and any other easement, lease, sublease, license, concession or other grant of a possessory or use interest in the Project Property to the extent the Issuer has any interest therein, but reserving under the Lease Agreement its rights under Section 4.14 (to receive payments in lieu of taxes) Section 6.02 (to receive indemnification), Section 5.03(b) (to receive Additional Payments), and to give any consents which the Issuer is entitled to give; (ii) the moneys and investments in the Acquisition Fund and the Bond Fund and all proceeds or reserves payable to the Issuer pursuant to the Lease Agreement or this Indenture (including, without limitation, insurance and eminent domain proceeds) with respect to the Project Property; and (iii) all lease rentals, revenues, profits, and receipts receivable by or on behalf of the Issuer from the Project Property.

Section 302. Subordination in favor of First Lender Mortgage. Notwithstanding anything in this Indenture to the contrary, the interest of the Issuer in the Project Property shall be subordinate to any first mortgage lien in favor of a Lender that provides financing or refinancing for the construction of the Project (or group of assets including the Project or any interest therein) (the "**First Lender Mortgage**"). Upon request, Issuer shall execute such documents as may be reasonably requested by the Company or the Lender to evidence such subordination.

Section 303. Release and Discharge of Indenture. If the principal of, interest on and redemption price, if any, of the Bond are paid by the Issuer in full, then all obligations of the Issuer and the Company as to the Bond under this Indenture will terminate, and the Purchaser will cancel and discharge the Indenture and execute and deliver to the Issuer, the Depository, and the Company such instruments in writing as may be required to evidence such discharge. The Clerk of the Issuer is authorized to accept a certificate from the Purchaser stating that all principal and interest due on the Bond has been paid as evidence of the satisfaction of this Indenture.

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

Section 401. Authorization; Authorized Amount of the Bond. The Bond is hereby authorized to be issued under this Indenture and secured by this Indenture. The Bond will be issued as a single fully registered bond without coupons, in the maximum principal amount not to exceed Two Hundred Fifteen Million and 00/100 Dollars (\$215,000,000.00). The Bond will be numbered R-1.

Section 402. Form of Bond; Principal and Interest Payments. The Bond will be in substantially the form of Exhibit A. The Bond will be dated no later than December 31, 2010, and will bear interest at six percent (6%) from the date of payment of each Advance made pursuant to *Section 702* through the Final Maturity Date or prior redemption of the Bond.