

“Boilerplate” Clauses in Wind Lease & Easement Agreements

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What is meant by “boilerplate” ?

- ▶ Example clauses presented today are customarily included in wind lease/ easement agreements
- ▶ Examples are not boilerplate in the traditional sense

Lender Protections

- ▶ Construction/ Installation of wind project often financed due to significant capital costs
- ▶ Purpose of lender provisions/ protections
 - ▶ Allow for wind lessee to finance the project
 - ▶ Preserve lender's rights in the collateral

Lender Protections: Lessee's Express Right to Mortgage

- ▶ Lessee will not want to seek permission from each landowner to mortgage lessee's interest in the wind lease as impractical to do so
- ▶ Lease will expressly permit the lessee to mortgage any and all rights under the lease and the improvements on the landowner's property
- ▶ Landowner's fee simple interest not at risk

Lender Protections: Lessee's Express Right to Mortgage

► Example:

*Lessee may at any time mortgage, grant or pledge all or any part of Lessee's rights, title or interest under this Lease, in the Easements, and/or in any Wind Facilities to one or more persons or entities (a "**Lender**") without Owner's consent.*

Lender Protections: Notice to Lender and Right to Remedy a Default

- If the developer under a wind lease defaults under the terms thereof, the lender will want a duplicate notice from the landowner so that it can determine how to proceed
- Lender will also want the right to remedy the default on behalf of the developer if it ultimately determines this is in the lender's best interest

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