

10/29/2020
From Rochella
Silva

STANDARD UTILITY EASEMENT FOR WIND ENERGY DEVELOPMENT

This **Standard Utility Easement for Wind Energy Development** (this "Easement") is made and entered into this **Click to enter text** day of **Click to enter text**, 20 **Click to enter text**, (the "**Effective Date**"), by and between **DTE Electric Company**, a Michigan corporation, a ("Grantee" or "DTE"), whose address is One Energy Plaza, Detroit, Michigan 48226, and **Click to enter text** ("Grantor" or "Landowner"), whose address is, **Click to enter text**.

WITNESSETH:

This Easement is made with reference to the following facts:

A. WHEREAS, Landowner is the owner of certain real property situated in the Township(s) of **Click to enter text**, County of **Click to enter text**, State of **Click to enter text**, as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Easement Area"), consisting of approximately **Click to enter text** acres; and

B. WHEREAS, Landowner desires to grant an easement to DTE for the purpose of (i) evaluating the suitability of the Easement Area for wind energy production, including, but not limited to, constructing, installing and operating weather monitoring facilities (including meteorological towers or mobile wind measuring devices used primarily to gather and transmit meteorological data relating to a wind power project ("MET Equipment"), conducting environmental studies and planning activities, together with any and all activities ancillary thereto, including pedestrian and vehicular traffic (the "Evaluation Phase") and (ii) wind energy development design, site plan, site preparation, construction, the generation, transmission, distribution, and sale of electricity derived from wind energy devices constructed, installed and operated by DTE on the Easement Area, including, but not limited to, towers equipped with wind turbine units ("Wind Units"), collection lines, electrical transmission lines, interconnection facilities and support buildings, together with any and all activities ancillary thereto, including pedestrian and vehicular traffic (the "Development Phase") and (iii) DTE complying with local ordinances with regard to the operation of a wind energy development, including setback and noise level requirements (the development(s) established and maintained as a result of the foregoing is hereinafter collectively referred to as the "Project").

NOW, THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Landowner grants an exclusive easement to DTE, its officers, employees, agents, contractors, subcontractors, licensees, invitees and guests, on, over, under and across the Easement Area, including the airspace over the Easement Area, for the purpose of evaluating, constructing, installing, operating, repairing, maintaining, altering, replacing, improving, restoring and removing the Project for the Term (as defined herein).

2. Term of Easement; Termination.

(a) *Term.* The term of this Easement (the "Term") shall be divided into two (2) phases, consisting of: (i) the Evaluation Phase, which shall commence on the Effective Date, and which may be extended at the election of DTE in accordance with **Exhibit B** attached hereto and incorporated herein by reference, and (ii) if DTE, by written notice from DTE to Landowner, elects at DTE's sole option and discretion to terminate the Evaluation Phase and commence the Development Phase, the Evaluation Phase shall terminate on the date of such notice with respect to that portion of the Easement Area upon which DTE has elected to proceed to the Development Phase or remove from the Easement Area altogether, and the Development Phase shall thereupon commence and automatically renew from year to year thereafter, unless terminated earlier as provided below; provided, however, that the Development Phase shall not automatically renew in the event that DTE has decommissioned the Project and recorded a termination of this Easement in accordance with Section 2(d) below. DTE may decide to proceed with the Development Phase with respect to all or any portion of the Easement Area.

(b) *Termination.* If DTE elects, in its sole discretion, DTE may terminate this Easement as to all or any part of the Easement Area at any time upon the expiration of a period of sixty (60) days after written notice from DTE to Landowner in accordance with Section 20 hereof and payment of any sums due to Landowner from DTE under the terms and conditions set forth in **Exhibit B** through and including the effective date of termination. In the event that DTE elects to reduce the size of the Easement Area, the payments to be made during the Development Phase by DTE to Landowner under Exhibit B shall be reduced as a consequence of DTE's reduction of the size of the Easement Area. Landowner agrees to execute and deliver to DTE such agreements and other documents as DTE shall reasonably request to confirm and ratify DTE's reduction of the size of the Easement Area, however, DTE may, without Landowner's signature or consent, execute and record a memorandum of easement which contains the revised legal description of the Easement Area.

(c) *DTE's Removal of Equipment and other Improvements.* After termination of this Easement, DTE shall reenter the Easement Area for such period of time as shall be reasonably necessary, not to exceed three (3) years, for DTE to remove any equipment, structures or other improvements or personal property of any kind whatsoever which DTE placed on the Easement Area, provided, however, that DTE shall not be required to remove any equipment, foundations, structures or other improvements of DTE lying more than four (4) feet beneath the surface of the Easement Area. DTE shall restore the Easement Area to the condition required by applicable law.

(d) *Discharge upon Termination.* After termination of this Easement under this Section 2, DTE shall record a discharge of record in regard to this Easement.

3. Ingress and Egress. Landowner also grants to DTE, its officers, employees, agents, contractors, subcontractors, licensees, invitees and guests, a non-exclusive Easement on, over and across the Easement Area, for vehicular and pedestrian ingress from the public right of way to all portions of the Easement Area and egress to the public right of way from all portions of the Easement Area by DTE, its officers, employees, agents, contractors, subcontractors, licensees, invitees and guests, for the Term. DTE agrees not to unreasonably interfere with Landowner's activities on the Easement Area and to use commercially reasonable efforts to construct any roads for ingress and egress parallel and perpendicular to existing property lines, ditches and outlets.

4. Construction of Equipment and Facilities for Evaluation Phase and/or Development Phase.

(a) *Construction of Equipment during Evaluation Phase.* DTE may construct and install equipment on the Easement Area in connection with the Evaluation Phase, including, but not limited to, temporary anemometers, MET Equipment, wind and weather monitoring facilities, as well as temporary roads on, over and across the Easement Area for ingress and egress to and from the Easement Area by DTE and its officers, employees, agents, contractors, subcontractors, licensees, invitees and guests. As soon as reasonably practicable after completion of the Evaluation Phase, DTE will remove any wind and weather monitoring equipment installed for the Evaluation Phase.

(b) *Construction of Equipment during Development Phase.* If DTE elects to proceed to the Development Phase on all or any portion of the Easement Area, DTE may, upon a date or dates to be determined by DTE in its sole discretion, in a location or locations within the Easement Area to be determined by DTE in its sole discretion, construct and install on the Easement Area Wind Units and related improvements, including, but not limited to: foundations, concrete pads and/or footings; temporary and permanent MET Equipment; support fixtures, anchors and fences; monuments and markers; buildings for maintenance of Wind Units and storage of related equipment; electrical transformers and energy storage facilities; electric distribution and transmission towers; overhead and underground electric transmission, collection, distribution and communication lines and other communications facilities; signage; and temporary and permanent roads on, over and across the Easement Area to public rights of way for ingress and egress to and from the Project. Landowner will have the right to advise DTE of Landowner's preferences with regard to the location of such facilities and equipment, which DTE will take into consideration during DTE's planning process; provided, however, that the location of all of such facilities and equipment shall be determined in DTE's sole discretion. No Wind Unit will be placed closer to any residence than is allowed by applicable law. Underground cables will be buried to a depth required by applicable law.

(c) *Tile Maps.* Within sixty (60) days of request, Landowner shall provide DTE tile maps with respect to the Easement Area.

5. Government Permits. Landowner shall cooperate with DTE in obtaining any permits, approvals, consents and easements from any governmental agencies or other third parties having jurisdiction over and/or rights with respect to the Easement Area, the design, construction, location or operation of any equipment related to the Project or any activities associated therewith. Landowner shall promptly execute permit and crossing agreement documentation requested by DTE.

6. Ownership. DTE shall own any improvements or equipment associated with the Project. Landowner shall have no ownership interest in, or other rights of any nature with respect to, the equipment or facilities constructed and installed by DTE in connection with the Project. Any and all wind energy tax credits or other tax credits accruing to the owner of wind energy devices such as those described herein shall belong solely to DTE, and Landowner shall have no claim or rights in connection with any such tax credits.

7. Maintenance. DTE shall maintain any equipment and facilities owned or operated by DTE in connection with the Project, including, but not limited to, all Wind Units, related facilities and roads, in accordance with any applicable regulatory requirements required for operation thereof; provided, however, DTE shall have no obligation to plow any roads, but may do so in its sole discretion.

8. Continued Use of Easement Area; Crop and Tile Damage.

(a) *Landowner's Limited Use and Enjoyment.* DTE shall have the sole and exclusive right to conduct wind energy development activities on the Easement Area. However, Landowner may enjoy the limited use of the Easement Area, including hunting and recreational activities, provided that any activity of Landowner, its employees, agents, contractors, subcontractors, licensees, invitees and guests, does not obstruct the wind, in any way impede or decrease the output or efficiency of DTE's Wind Units, or otherwise interfere with the speed and direction of the wind, DTE's Wind Unit facilities or related structures or the rights granted to DTE under this Easement. Landowner shall not place any fixtures or equipment or build any other structures on the Easement Area, without the prior written consent of DTE, which consent shall not be unreasonably withheld or delayed. It shall be deemed reasonable for DTE to withhold consent for the placement of fixtures, equipment or structures which would inhibit DTE's maintenance and operation of its equipment, improvements, and facilities, including, but not limited to the location of fixtures, equipment or structures (i) at a distance less than 1,500 feet from any Wind Unit, (ii) in excess of 35 feet tall, or (iii) above buried collection line or the planned location of collection lines.

(b) *Restricted Areas.* Notwithstanding the foregoing, by written notice from DTE to Landowner, at any time during the Term, DTE may identify certain specific areas within the Easement Area (individually, a "Restricted Area") in which DTE's use shall be exclusive and Landowner's use in any manner shall be prohibited, due to DTE's activities in connection with Project, including, but not limited to, the construction and use of permanent roads, structures, staging areas or buildings within the Restricted Area. Landowner agrees not to plant crops in Restricted Areas. In the event that DTE identifies any portion of the Easement Area as a Restricted Area during the Evaluation Phase and/or the Development Phase, DTE shall pay Landowner in accordance with **Exhibit B**. Landowner may intermittently drive over roads

constructed by DTE in Restricted Areas, provided that Landowner does not damage such roads or impede DTE's use of the road or obstruct DTE's access to a Wind Unit; Landowner shall not cause the accumulation of debris or any obstructions on the road (e.g., Landowner shall not park any vehicles or use the access road for storage). Use by Landowner, its agents, invitees, and licensees of any road constructed by DTE shall be at such person's risk, and DTE shall not be liable for injuries to persons or damages to property arising out of such use.

(c) *Crop Damage.* DTE will reimburse Landowner for reasonable damage to growing crops in the Easement Area to the extent directly caused by DTE's operations including any surface ponding directly related to an access road installed by DTE, in accordance with **Exhibit B**.

(d) *Tile Damage and Decompaction.* DTE further agrees to restore any drainage tile on the Easement Area damaged by DTE's operations and decompact soil compacted by DTE construction activities.

9. Taxes; Monetary Obligations. DTE shall be responsible for any personal property taxes levied against any equipment installed by DTE on the Easement Area. Landowner shall pay the real property taxes for the Easement Area before such taxes become delinquent. If Landowner fails to pay the real property taxes or any other monetary obligations related to the Easement Area, or otherwise defaults under this Easement, then, in addition to its other rights and remedies, DTE shall have the right to pay such taxes and other obligations, and/or cure any such default by any appropriate means; and the cost thereof shall be reimbursed to DTE by Landowner within thirty (30) days of DTE's demand. DTE may offset such cost against any amounts owed by it to Landowner.

10. Payment. During the Evaluation Phase, and, if applicable, the Development Phase, DTE will pay Landowner the amounts set forth on **Exhibit B** attached hereto and incorporated herein by reference.

11. Indemnification.

(a) *Indemnification by DTE.* DTE will indemnify Landowner for any claims for injuries to persons or damages to property, or both, arising directly or indirectly out of any negligent act or omission or willful misconduct of DTE, its officers, employees, agents, contractors, subcontractors, licensees, invitees and guests, on the Easement Area. DTE shall not indemnify Landowner for claims arising out of Landowner's negligence or willful misconduct.

(b) *Indemnification by Landowner.* Landowner will indemnify DTE for any claims for injuries to persons or damages to property, or both, arising directly or indirectly out of any negligent act or omission or willful misconduct of Landowner, its officers, employees, agents, contractors, subcontractors, licensees, invitees and guests, on the Easement Area. Landowner shall not indemnify DTE for claims arising out of DTE's negligence or willful misconduct.

12. Environmental Matters Landowner shall be responsible for and shall indemnify, defend and hold DTE harmless from and against any and all costs, claims, losses,

expenses, liabilities, damages, penalties and causes of action arising under any federal, state or local environmental laws, regulations, ordinances, rules and directives, common law or equity, or any other laws pertaining to the condition of the Easement Area during the term of this Easement, including the physical nature or condition of the Easement Area or the environmental condition thereof ("Environmental Laws"); provided, however, that Landowner shall have no obligation to indemnify, defend or hold DTE harmless with respect to the violation of any Environmental Laws by DTE.

13. Title to Property. Landowner represents and warrants to DTE that: (i) Landowner is the sole owner of the Easement Area and holds marketable fee simple title to the Easement Area according to Michigan law; (ii) Landowner has not leased, transferred or otherwise encumbered in any way title to the Easement Area, except as may be disclosed on **Exhibit A** hereto; (iii) Landowner has not received any notice (orally or in writing) from any third party of any claim with respect to the Easement Area; (iv) Landowner and each person signing this Easement on behalf of Landowner has the full and unrestricted power and authority to execute and deliver this Easement and grant this Easement and the rights herein granted; and (v) Landowner is not the subject of any bankruptcy, insolvency or probate proceeding. **Exhibit A** shall contain the name and address of any party to whom an interest in the Easement Area was leased or otherwise transferred, the date such lease or interest shall expire, and whether there are any renewal options with respect to the leased or transferred interest.

14. Mortgages, Liens, Leases, and Other Title Matters.

(a) Landowner represents and warrants that there are presently no liens, encumbrances, leases, fractional interests, mineral or oil and gas rights or other exceptions to Landowner's fee simple title or otherwise burdening the estate of Landowner in the Easement Area, except as may be set forth on **Exhibit A** hereto. Landowner warrants and agrees to defend the title to the Easement Area and agrees that DTE may, if Landowner is in default, pay all or part of any land contract, mortgage, taxes, or other liens or charges with respect to the Easement Area, either before or after maturity and be subrogated to the rights of the holder thereof, and that DTE shall be entitled to reimbursement out of any royalty or other monies payable to Landowner under the Easement.

(b) Landowner may grant a mortgage on the Easement Area. DTE will subordinate to any such mortgage lien now or hereafter placed on the Easement Area, if required, pursuant to a Subordination, Non-Disturbance and Attornment Agreement substantially in the form attached as **Exhibit C** within ten (10) business days of receipt of such request.

(c) Landowner may lease any subsurface portion of the Easement Area for mineral, oil and/or gas rights ("Subsurface Lease"), upon written notice to DTE, provided that (1) the Subsurface Lease shall require that the subsurface lessee not interfere with DTE's use and possession of the Easement Area; (2) Landowner and the subsurface lessee shall be responsible for any damages to DTE's Wind Units or other improvements and infrastructure; and (3) Landowner and the subsurface lessee shall indemnify DTE for any claims relating to or arising out of the Subsurface Lease, including any claims of the subsurface lessee's employees, subcontractors or agents.

15. No Interference. DTE shall have the quiet use and enjoyment of the Easement Area in accordance with the terms of this Easement without any suit, trouble or interference of any kind by Landowner or any other person or entity, and Landowner shall protect and defend the right, title and interest of DTE hereunder from any other rights, interests, title and claims.

16. Disbursement of Proceeds. Landowner agrees that upon written notice from Landowner's mortgagee to DTE, DTE will disburse any payments due in accordance with **Exhibit B** to Landowner's mortgagee until further notice from Landowner's mortgagee.

17. No Obligation to Develop. Nothing in this Easement shall be construed as requiring DTE to undertake, construct or develop any portion of the Project.

18. Default.

(a) Default of Landowner. Each of the following events shall constitute an event of default by Landowner and shall permit DTE to seek specific performance, damages, or to pursue all other appropriate remedies available at law or equity: (i) the failure to pay amounts required to be paid hereunder when due, and such failure has continued for thirty (30) days after written notice to Landowner from DTE; or (ii) the failure by Landowner to perform any other material term set forth in this Easement, and such failure has continued for thirty (30) days (or such longer period of time as may reasonably be required to cure such failure, if such failure cannot reasonably be cured within a thirty (30) day period) after written notice to Landowner from DTE.

(b) Default of DTE. Each of the following events shall constitute an event of default by DTE and shall permit Landowner to seek monetary damages or all other appropriate remedies available at law or equity, provided that Landowner shall not have the right to terminate this Easement: (i) the failure to pay amounts required to be paid hereunder when due, and such failure has continued for thirty (30) days after written notice to DTE from Landowner; or (ii) the failure by DTE to perform any other material term set forth in this Easement, and such failure has continued for thirty (30) days (or such longer period of time as may reasonably be required to cure such failure, if such failure cannot reasonably be cured within a thirty (30) day period) after written notice to DTE from Landowner.

19. Successors and Assigns. This Easement runs with the land and binds and benefits Landowner's and DTE's successors and assigns. DTE may assign all or any portion of its interest under this Easement to a third party without Landowner's consent.

20. Notices. All notices shall be provided to the parties at their respective addresses listed above by certified United States mail. Either party may change the address to which it desires notices to be sent by giving written notice to the other party specifying the new address.

21. Sale of Property. In the event of any transfer of Landowner's interest in the Easement Area, the transferee, as successor Landowner, shall provide notice to DTE of such transfer which such notice shall include (i) the successor Landowner's name and address for the purposes of receiving notices and payments from DTE, and (ii) copies of the recorded instrument by which the Easement Area, or portion thereof, was conveyed to successor Landowner (e.g., a

deed). In the event such successor Landowner fails to provide DTE notice of said transfer, DTE is released from any liability for non-payment of any amounts otherwise payable to Landowner under the Easement where DTE makes such payments to the prior landowner.

22. No Severance. The rights of Landowner under this Easement shall be forever considered to be the rights of the fee owner of the Easement Area. Landowner agrees that it shall make no attempt to sever the wind rights from the fee and surface interest in the Easement Area and agrees that any attempt to do so shall be null and void. DTE shall have the immediate right to terminate the Easement, at its option, in the event any Landowner under the Easement attempts to sever the wind rights.

23. Miscellaneous. If any term or provision of this Easement shall to any extent be held invalid or unenforceable, the remaining terms and provisions shall not be affected thereby, but each term and provision of this Easement shall be valid and enforceable to the fullest extent permitted by law. The captions of this Easement are for convenience only and are not to be construed as part of this Easement and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

24. Entire Easement; Modification. This Easement contains the entire agreement between the parties hereto with respect to the subject matter hereof and all previous negotiations regarding the subject matter hereof are merged herein and held for naught. Except as expressly set forth herein, this Easement may be modified only by an agreement in writing signed by the party to be charged with the obligation. Any modification of this Easement made in the limited instances expressly permitted herein by written notice from DTE to Landowner and without Landowner's signature or further consent (e.g., as provided in Sections 2(b) and 8(b)) shall be valid and binding upon both parties to this Easement. Landowner agrees to execute and deliver to DTE such agreements and other documents as DTE shall reasonably request to confirm and ratify DTE's modification of this Easement in the manner and in the limited instances expressly permitted herein, and DTE may, without Landowner's signature or further consent, execute and record a memorandum of Easement which reflects any such modifications to this Easement.

25. Nonwaiver. No waiver of performance of any covenant or agreement contained in this Easement shall be valid, binding or enforceable against the party alleged to have waived such performance unless the same shall be in writing and executed by such party. No such waiver shall be extended by implication, custom or practice to any situation or circumstance not expressly described therein.

26. Governing Law. This Easement shall be governed by, and construed and enforced in accordance with, the laws of the State of Michigan. All present and future laws, rules or regulations of any governmental agency pertaining to the generation of electricity from wind power shall be binding on the parties hereto as though incorporated herein.

[signature pages follow]

IN WITNESS WHEREOF, Landowner and DTE have entered into this Easement as of the Effective Date as defined and recited on page 1 of this Easement.

LANDOWNER

LANDOWNER

[Click here to enter text](#)

[Click here to enter text](#)

Landowner Address:

Landowner Phone Number:

STATE OF _____)
) SS
COUNTY OF _____)

Acknowledged before me in _____ County, _____, this _____ day
of _____, 20____, by _____,
as _____,
to me known to be the person(s) described and who executed the foregoing instrument as
[his][her][their] free act and deed.

Notary's
Seal

_____, Notary Public

County, _____
My Commission Expires: _____
Acting in _____ County

DTE

DTE Electric Company, a Michigan
corporation

By: _____

Name: [Click to enter text](#)

Its: [Click to enter text](#)

STATE OF _____)
) SS
COUNTY OF _____)

Acknowledged before me in _____ County, _____, this _____ day
of _____, 20____, by _____,
as _____,
to me known to be the person(s) described and who executed the foregoing instrument as
[his][her][their] free act and deed.

Notary's
Seal

_____, Notary Public

County, _____
My Commission Expires: _____
Acting in _____ County

Prepared by and when recorded return to: [Click to enter text](#)

EXHIBIT A
Legal Description

Legal Description: [Click to enter text](#)

Tax Identification Number: [Click to enter text](#)

Street Address: [Click to enter text](#)

Easements and Rights of Way: [Click to enter text](#)

Mortgages: [Click to enter text](#)

Lease: [Click to enter text](#)

EXHIBIT B

Payment

(a) Payments During the Evaluation Phase. During the Evaluation Phase, DTE agrees to pay Landowner as follows:

(1) Base Fee. During the Evaluation Phase only, DTE will make a series of payments to Landowner as follows:

(i) Within forty-five (45) days after the Effective Date, DTE shall pay Landowner Ten Dollars (\$10.00) per acre within the Easement Area for the one (1) year period commencing with the Effective Date and ending upon the first anniversary of the Effective Date ("Initial Payment Period").

(ii) Following the expiration of the Initial Payment Period, DTE may extend the Evaluation Phase for not more than nine (9) additional periods of one (1) year each (for a total extension period not to exceed nine (9) years) by making an annual payment to Landowner at the rate of Ten (\$10.00) Dollars per acre within the Easement Area which shall be made by DTE within sixty (60) days after anniversary of the Effective Date.

(2) Termination of Evaluation Phase and Commencement of Development Phase. If at any time during the Evaluation Phase, DTE notifies Landowner in writing of its election to terminate the Evaluation Phase and commence the Development Phase on all or any portion of the Easement Area, no further payments shall be made under the Evaluation Phase with respect to that portion of the Easement Area identified by DTE as part of the Development Phase.

(b) Payments During the Development Phase. During the Development Phase, DTE agrees to pay Landowner as follows:

(1) From and after DTE's written notice to Landowner of the Termination of the Evaluation Phase and the commencement of the Development Phase, and the expiration of the Initial Payment Period, up to but not including the Production Start Date (as defined below), DTE shall make an annual payment to Landowner of Ten (\$10.00) Dollars per acre within the Easement Area no later than thirty (30) days from the last day of the Initial Payment Period or extended Evaluation Period, whichever is later.

(2) Wind Unit and MET Equipment Payments

- a. *Wind Unit Payment.* A payment of \$5,000 per Wind Unit in the Easement Area, payable within (i) thirty (30) days after the date on which the Wind Units in the Wind Unit Pool (as that term is defined hereinafter) commence producing energy ("Production Start Date") and (ii) thereafter annually within sixty (60) days after the end of the calendar year; provided that if a Wind Unit is located partially within the Easement Area and partially on the property of a third party, Landowner will be paid a pro-rata share of the \$5,000 based on the percentage of the Wind Unit's foundation located within the Easement Area.

(a) The right of possession of DTE to the Property and DTE's rights arising out of the Easement Agreement shall not be affected or disturbed by Mortgagee in the exercise of any of its rights under the Mortgage or the Note secured thereby.

(b) Mortgagee shall not name or join DTE as a defendant in any exercise of Mortgagee's rights or remedies arising upon a default under the Mortgage unless applicable law requires DTE to be made a party thereto as a condition to proceeding against Landowner or pursuing such rights or remedies. In the latter case, Mortgagee may join DTE as a defendant in such action only for such purpose and not to terminate the Easement Agreement or otherwise adversely affect DTE's rights under the Easement Agreement or this Agreement.

(c) In the event that Mortgagee or any other person acquires title to the Property pursuant to the exercise of any remedy provided for in the Mortgage or under applicable Law, the Easement Agreement shall not be terminated or affected by the foreclosure or sale resulting from any such proceeding; and Mortgagee hereby covenants that any sale by it of the Property pursuant to the exercise of any rights and remedies under the Mortgage or otherwise, shall be made subject to the Easement Agreement and the rights of DTE thereunder; and DTE covenants and agrees to attorn to Mortgagee or such other person as its new Landowner; and the Easement Agreement shall continue in full force and effect as a direct Easement Agreement between DTE and Mortgagee or such other person, as Landowner, upon all the terms, covenants, conditions and agreements set forth in the Easement Agreement between DTE and Landowner.

(d) Notwithstanding the foregoing, the rights and obligations of DTE and Mortgagee, respectively, upon such attornment shall, to the extent of the then-remaining term of the Easement Agreement, including any renewals or extensions thereof, be the same as now set forth in the Easement Agreement and by this reference the Easement Agreement is incorporated herein as part of this Agreement.

2. The Easement Agreement shall be subject and subordinate to the lien of the Mortgage and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof, not inconsistent with Section I of this Agreement.

3. Mortgagee may exercise its right to an assignment of the proceeds of the Easement Agreement due Landowner, as provided in the Mortgage, by notifying DTE in writing. Upon receipt of written notification that Mortgagee is exercising its right to an assignment of proceeds, DTE shall thereafter make all payments otherwise due Landowner under the Easement Agreement payable directly to Mortgagee. Mortgagee shall indemnify and hold DTE harmless for payments made to Mortgagee pursuant to the exercise of its right to such assignment.

4. Any notices or other communication required or desired to be given by one party to the other party hereto shall be given in writing by mailing the same by certified United States Mail, return receipt requested, postage prepaid, addressed as follows:

To DTE:

Heather Betts
DTE Energy
One Energy Plaza, 688 WCB
Detroit, Michigan 48226

To Mortgagee:

or to such other addresses as the respective parties may from time to time designate by notice given as provided in this Agreement.

5. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or by their respective successors in interest.

6. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

7. The foregoing provisions shall be self-operative and effective without the execution of any further instruments on the part of either party hereto.

8. Should Mortgagee cease to have a beneficial interest under the Mortgage, Mortgagee shall give prompt written notice to DTE of the reconveyance, assignment or other form of termination of said beneficial interest.

9. This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

[signature page follows]

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

MORTGAGEE

By: _____

Name: _____

Its: _____

DTE

DTE Electric Company, a Michigan corporation

By: _____

Name: _____

Its: _____

Acknowledged before me in _____ County, State of Michigan, on
_____, 20__ by _____, the
_____ of _____, a _____
_____, for the corporation.

Notary's
Stamp _____

Notary's
Signature _____

Acknowledged before me in _____ County, State of Michigan, on
_____, 20__ by _____, the
_____ of DTE Electric Company, a Michigan corporation, for the
corporation.

Notary's
Stamp _____

Notary's
Signature _____

Prepared by and after recording return to:

Heather A. Betts
DTE Energy
One Energy Plaza, 688 WCB
Detroit, Michigan 48226

EXHIBIT "A" to Form Subordination, Non-Disturbance and Attornment Agreement

Legal Description of the Property

25677852.4 022767-00539

