

STATE OF SOUTH DAKOTA)
County of Hughes)

Filed for record this 8th day of Feb, 2021
12:10 o'clock P.M. and recorded in
Book 21 Page 317.

Patty Williams
Register of Deeds / Deputy



Fee \$30.00 pd.

(Space Above this Line for Recorder's Use Only)

PREPARED BY AND WHEN
RECORDED, RETURN TO:

North Bend Wind Project, LLC
3760 State Street, Ste. 200
Santa Barbara, CA 93105
Attn: Land Acquisition Dept.
(805) 569-6180

FIRST AMENDMENT TO EASEMENT FOR WIND ENERGY DEVELOPMENT

This **FIRST AMENDMENT TO EASEMENT FOR WIND ENERGY DEVELOPMENT** (this "Amendment") is made, dated, and effective as of December 1, 2020 (the "Effective Date"), by and between Dusty Acres Land Limited Partnership, a South Dakota limited partnership (whether one or more, "Owner"), whose address is c/o Donald Neuharth, 20823 324th Ave, Harrold, SD 57536, and North Bend Wind Project, LLC, a Delaware limited liability company ("Developer"), in light of the following facts and circumstances. Each of Owner and Developer is sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. Owner and Developer are parties to that certain Easement for Wind Energy Development dated as of 6/21/2019, a memorandum of which was recorded on 10/21/2019 in Book 19 at Page 1978 in the official public records of Hughes County, South Dakota, as amended by that certain Assignment and Assumption of Agreements dated 7/9/2019 by and between Developer and Triple H Wind Project, LLC, recorded on 7/22/2019 in Book 19 at Page 1286 in the official public records of Hughes County, South Dakota (including any amendments, modifications or extensions thereof, the "Easement"), whereby Owner granted an exclusive Easement, *in gross*, to Developer, and Developer took an interest through the Easement from Owner on, over and across that certain real property located in Hughes County, South Dakota, as more particularly described in Exhibit A attached to the Easement ("Owner's Property").

B. Developer intends to develop and operate a wind energy generation project known as the North Bend Wind Project ("Project") on certain real property located in Hughes County,

South Dakota which Project will include Owner's Property, as well as real property located adjacent to and/or in the vicinity of the Owner's Property.

C. South Dakota Codified Laws, Section 43-13-24 sets forth certain setback requirements for the placement of wind turbine towers of large wind energy systems and provides:

“Large wind energy system set back requirement--Exception. Each wind turbine tower of a large wind energy system shall be set back at least five hundred feet or 1.1 times the height of the tower, whichever distance is greater, from any surrounding property line. However, if the owner of the wind turbine tower has a written agreement with an adjacent land owner allowing the placement of the tower closer to the property line, the tower may be placed closer to the property line shared with that adjacent land owner.”

D. Hughes County, South Dakota, Zoning Ordinance Section 2-117.F.2 (the “**Zoning Ordinance**”) sets forth certain setback requirements for the placement of Large Wind Energy Conversion Systems (“**LWECS**”) near and around established dwellings and provides in relevant part:

“LWECS shall meet the following minimum spacing requirements:

a. Distance from currently occupied residences, business and public buildings shall be not less than two thousand six hundred forty feet (2640) or 4.9 times the tower height, whichever is greater, unless written permission is granted by the affected property owner. The written permission shall be in a form that is acceptable for recording with the Register of Deeds. The written permission may result in a setback of no less than one thousand four hundred feet (1400) and must be filed with the Hughes County Register of Deeds. For the purposes of this section only, the term “business” does not include agricultural uses. . .

c. Distance from any property line shall be not less than one point one (1.1) times the system height, unless appropriate easement has been obtained from adjoining property owner and recorded with the Register of Deeds.”

E. Developer expects that some of the Project improvements, including but not limited to wind turbine towers (“**Improvements**”), will be installed on land adjoining, adjacent to, or near Owner's Property and currently occupied residences, business and public buildings thereon.

F. Developer wishes, in accordance with South Dakota Codified Laws, Section 43-13-24 and the Zoning Ordinance to obtain an agreement and waiver from Owner, as well as from other owners who are participants in, or neighbors of, the Project, to allow for the placement of the Improvements closer to Owner's Property line and currently occupied residences, business and public buildings.

G. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings assigned to them in the Easement.

NOW, THEREFORE, in consideration of the mutual promises set forth in the Easement and this Amendment, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Developer agree as follows:

1. Setback Waiver.

1.1 Owner hereby (i) grants Developer written permission to place Improvements at a distance less than otherwise required by the Zoning Ordinance from currently occupied residences, business and public buildings, (ii) opts out of said setback requirements as provided under the Zoning Ordinance, and (iii) consents to a setback of no less than 1400 feet minimum from any currently occupied residences, business and public buildings on Owner's Property as provided by the Zoning Ordinance.

1.2 To the fullest extent allowed by law, Owner hereby forever waives and/or opts out of any and all setbacks and setback requirements set forth in South Dakota Codified Laws, Section 43-13-24. Owner hereby consents to the placement of wind turbine towers on property adjacent to Owner's Property, within five hundred feet and 1.1 times the height of the tower of Owner's Property line as provided under South Dakota Codified Laws, Section 43-13-24 and the Zoning Ordinance.

2. Parties Bound; Covenants Running With The Land. The Parties agree that all of the waivers and agreements contained in this Agreement touch and concern the real estate described in this Agreement and are expressly intended to, and shall, be covenants running with the land and shall be binding and a burden upon Owner's Property and a benefit to the Project. The Parties agree the waivers and agreements in this Agreement shall be assignable and alienable by the Parties. This Agreement and the waivers herein shall remain in effect for so long as wind turbines or other wind facilities exist on the Project.

3. Miscellaneous.

3.1 Incorporation of Recitals. The Recitals set forth above are hereby adopted and incorporated into this Amendment as though fully set forth herein.

3.2 Governing Law. This Amendment and all matters arising hereunder or in connection herewith shall be governed by and construed and enforced in accordance with the laws of the State of South Dakota.

3.3 Full Force and Effect. This Amendment and the Easement are valid and binding on Owner and Owner's Property and are in full force and effect, and nothing contained in this Amendment shall be construed as modifying such documents, except as specifically provided pursuant to this Amendment.

3.4 Further Instruments. Each Party agrees to execute such further instruments as may be reasonably required to consummate the transactions contemplated by this Amendment, as long as the terms thereof are fully consistent with the terms of this Amendment.

3.5 Partial Invalidity. Should any provision of this Amendment be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding.

3.6 Successors and Assigns. This Amendment shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

3.7 Effect of Headings. Headings appearing in this Amendment are inserted for convenience of reference only and shall in no way be construed to be interpretations of the provisions hereof.

3.8 Ratification. The Easement, as amended by this Amendment, is hereby ratified and confirmed, and shall continue in full force and effect.

3.9 Counterparts. This Amendment 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.

[Signatures continued from preceding page.]

DEVELOPER:

NORTH BEND WIND PROJECT, LLC,
a Delaware limited liability company

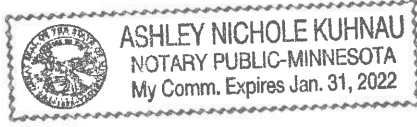
By: [Signature] DS
W
Name: Brian Wixon
Title: Director of Land Acquisition

STATE OF MINNESOTA)
) ss
COUNTY OF LYON)

On December 1, 2020, before me, Ashley Kuhnau, (Notary Public), personally appeared Brian Wixon, Director of Land Acquisition of North Bend Wind Project, LLC, a Delaware limited liability company, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Notary Public
Printed Name: Ashley Kuhnau
My commission expires: January 31, 2022



Prepared by North Bend Wind Project, LLC

EXHIBIT A

DESCRIPTION OF OWNER'S PROPERTY

Real property situated in Hughes County, South Dakota, described as follows:

The East Half (E $\frac{1}{2}$) of Section 11, Township 111 North, Range 74 West of the 5th P.M.

The North Half (N $\frac{1}{2}$) of Section 13, Township 111 North, Range 74 West of the 5th P.M.

Subject to all conveyances, restrictions or reservations of record, if any.