

(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 March 10, 2021 (the "**Effective Date**"), by and between Mark Klebsch and Mary Lee Klebsch, husband and wife (whether one or more, "**Owner**"), whose address is 20350 326th Street, Holabird, SD, 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 8/13/2019, a memorandum of which was recorded on 10/21/2019 in Book 9 E at Page 274-279 in the official public records of Hyde 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 Hyde 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 Hyde 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. Hyde County, South Dakota, Zoning Ordinance (the “Zoning Ordinance”) Section 9-104 sets forth certain setback requirements for the placement of Large Wind Energy Systems near and around established dwellings and provides in relevant part:

A Large Wind Energy System shall be ... subject to the following requirements:

The setback from any established dwelling shall be 2640 feet or 4.9 times tower height, whichever is greater; an exception may be granted in the event that all adjoining property owners sign an opt out from the setback requirement. The opt out shall be in written form that is acceptable for recording with the Register of deeds or other County offices. The opt out may result in a setback of no less than 1400 feet minimum from an established dwelling or one point one (1.1) the system height; whichever is greater.”

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 established dwellings.

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 established dwellings.

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 established dwellings, (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 or one point one (1.1) times the system height, whichever is greater, from any established dwelling on Owner’s Property as provided under 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.

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 on following page]

IN WITNESS WHEREOF, the Parties have executed this Amendment, by their duly-authorized representatives, as of the Effective Date.

OWNER:

Mark Klebsch and Mary Lee Klebsch, husband and wife

By: Mark Klebsch
Name: Mark Klebsch

By: Mary Lee Klebsch
Name: Mary Klebsch

STATE OF South Dakota)
) ss
COUNTY OF Hyde)

On November 16, 2020 before me, Notary Public, personally appeared Mark Klebsch and Mary Lee Klebsch, husband and wife, personally known to me or proved to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.



[Signatures continued on following page]

[Signatures continued from preceding page.]

DEVELOPER:

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

By: 

Name: Brian Wixon

Title: Director of Land Acquisition

DS


STATE OF MINNESOTA

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) ss

COUNTY OF LYON

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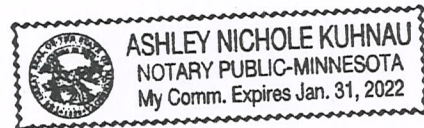
On March 10, 2021, before me, Ashley Kuhnau, (Notary Public), personally appeared Brian Wixon, Director of Land Acquisition of North Bend Wind Project, LLC, a Delaware limited liability company, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name 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.


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 Hyde County, South Dakota, described as follows:

The Southwest Quarter (SW $\frac{1}{4}$) of Section 5, Township 111 North, Range 73 West of the 5th P.M.

The South Half (S $\frac{1}{2}$) and the Northeast Quarter (NE $\frac{1}{4}$) of Section 7, Township 111 North, Range 73 West of the 5th P.M.

The West Half (W $\frac{1}{2}$) of Section 8, Township 111 North, Range 73 West of the 5th P.M.

The Northeast Quarter (NE $\frac{1}{4}$) of Section 18, Township 111 North, Range 73 West of the 5th P.M.

The Northwest Quarter (NW $\frac{1}{4}$) of Section 17, Township 111 North, Range 73 West of the 5th P.M.

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