

Tama County, Iowa
Deborah Kupka RECORDER
Instr. Number: 2020-3405
Recorded: 12/31/2020 at 10:25:49.0 AM
County Recording Fee: \$52.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$55.00
Revenue Tax:

Prepared By and Return To:

Salt Creek Wind LLC, 1058 West Avenue M-14, Suite A, Palmdale, CA 93551
Attn: Kirk S. Tracey Telephone: 661-267-2005

**MEMORANDUM OF OPTION AND LEASE AND EASEMENT
FOR A WIND ENERGY PROJECT**

THIS MEMORANDUM OF OPTION AND LEASE AND EASEMENT FOR A WIND ENERGY PROJECT (the "Memorandum") is made and entered into as of the 1 day of August, 2020, by and between **Julie A. Upah, as Trustee of the Vivian G. Cutler Trust** (hereinafter called "Owner"), and **Salt Creek Wind LLC**, a Delaware limited liability company, and its assigns (hereinafter called "Company").

RECITALS

WHEREAS, reference is made to that certain Option and Lease and Easement for a Wind Energy Project dated as of June 29, 2020 by and between Owner and Company, (the "Agreement"), whereby Owner has granted to Company the right and option to lease and obtain easements over certain real property owned by Owner in Tama County, Iowa, and as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the parties wish to give notice of the existence of the Agreement and the right and option granted to Company to lease the Property, to obtain certain easements and the other rights and interest of Company.

NOW THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants, agreements and conditions contained herein and contained in the Agreement, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not otherwise defined in this Memorandum shall have the same meaning ascribed to such terms in the Agreement.

2. Option to Lease. During the Development Period, Owner hereby grants to Company an exclusive option to lease for wind energy purposes (as described in the Agreement) and obtain certain easements over the Property (the “**Lease**”). The “Development Period” shall be for a term commencing on the Effective Date and continuing for the remainder of the calendar month in which the Effective Date occurs, and the next succeeding twelve (12) consecutive calendar months, subject to extension for up to four (4) additional one-year terms. Company may exercise its option to lease and obtain certain easements over the Property by giving written notice of such election to Owner at any time prior to the termination of the Development Period, and the term of the Lease will commence on the date such notice is given, or such other date within the term of Development Period as Company may specify in such notice (the “**Lease Effective Date**”).

3. Lease. In the event Company exercises its option to lease the Property, the term of Lease shall be twenty-five (25) years from the Lease Effective Date. Company has the right to extend the term of the Lease for an additional fifteen (15) year period and an additional ten (10) year period.

4. Notice of Commencement of Lease. In the event Company exercises its option for the Lease, Owner hereby irrevocably and unconditionally authorizes Company to execute the Notice of Commencement of Lease (the “**Notice of Commencement**”) attached to this Memorandum as Exhibit B, and to record the same in the real property records for the county in which the Property is located, all without further authorization or action on the part of Owner. The Notice of Commencement, when so executed and recorded, shall confirm and provide record notice of the exercise of the option for the Lease by Company, the commencement of the Lease, and of the Lease Effective Date.

5. Covenants Running with the Land. Owner and Company agree that all of the covenants and agreements contained in the Agreement touch and concern the Property and are expressly intended to, and shall, be covenants running with the land and shall be binding upon the Property and each party’s present and future estate or interest therein and upon each of the parties, their respective heirs, administrators, executors, legal representatives, successors and assigns.

6. Notice and Binding Effect. It is understood that the purpose of this Memorandum is to give notice of the Agreement. The Agreement contains other terms and conditions set forth more fully therein. All such terms and conditions of the Lease are incorporated herein by this reference. The parties hereby ratify and confirm the Agreement as if the Agreement were being re-executed by them and recorded. This Memorandum shall bind and inure to the benefit of Owner and Company and their respective successors and assigns, and shall encumber the Property and shall be binding on Owner’s successors-in-interest thereto and all persons claiming by, through or under Owner, subject to the express provisions of the Agreement. In the event of any inconsistency between the provisions of this Memorandum and the Agreement, the provisions of the Agreement shall control.

7. Counterpart Execution. This Memorandum may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same instrument.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Option and Lease and Easement for a Wind Energy Project as of the day and year first above written.

Owner:

Julie A. Upah, as Trustee of the Vivian G. Cutler Trust

By: Julie A. Upah, Trustee
Name: Julie A. Upah, Trustee

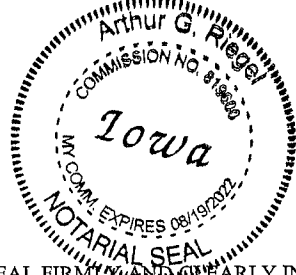
STATE OF IOWA)
)
COUNTY OF TAMA)

SS:

This instrument was acknowledged before me on June 22, 2020, by **Julie A. Upah, as Trustee of the Vivian G. Cutler Trust**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

Arthur G. Riegel
Name: ARTHUR G. RIEGEL
Notary Public

My Commission Expires:

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX.

COMPANY:

Salt Creek Wind LLC,
a Delaware limited liability company

By: *Robert Bergstrom*
Print Name: Robert Bergstrom
Title: Manager

STATE OF IOWA)
)
COUNTY OF TAMA)

SS:

On August 1, '20 before me, ARTHUR G. RIEGEL, Notary Public, personally appeared **Robert Bergstrom**, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of Iowa that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Arthur G. Riegel
Name (print): ARTHUR G. RIEGEL
Notary Public

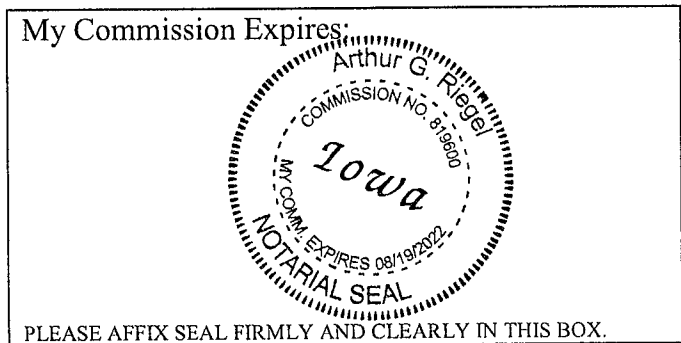


EXHIBIT A
TO MEMORANDUM OF OPTION AND LEASE AND EASEMENT
FOR A WIND ENERGY PROJECT

Vivian G. Cutler Trust Property

Legal description of property located in Tama County, Iowa:

PARCEL	SECTION	TOWNSHIP	RANGE	ACRES
10-08-400-002	8	84	15	38.62
10-08-400-004	8	84	15	40.00

The Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) and the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Eight (8), Township Eighty-four (84) North, Range Fifteen (15), West of the 5th P.M. in Tama County, Iowa

Total Acres: 78.62

WHEREAS, pursuant to a letter dated _____, 20____, from Company to Owner, Company has exercised its right and option to lease and obtain the easements over the Property, on and subject to the terms of the Lease.

NOW THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants, agreements and conditions contained herein and contained in the Lease, Company and Owner agree as follows:

1. Definitions. Capitalized terms used but not otherwise defined in this Notice of Commencement shall have the same meaning ascribed to such terms in the Lease.

2. Lease. Owner hereby leases to Company, and Company hereby leases from Owner, the Property, on and subject to the terms of the Lease. The term of Lease shall be twenty-five (25) years from the Lease Effective Date. The Lease Effective Date is _____, 20____. Company has the right to extend the term of the Lease for an additional fifteen (15) year period and an additional ten (10) year period.

3. Easements. Owner hereby grants to Company the following easements (collectively, the "Operations Easements") on, over, under and across the Property for the benefit of Company and its successors and assigns and for the benefit of the Projects and of Company, and any of its affiliates', successors' or assigns', energy generation projects, each as more particularly described in the Agreement:

a. An exclusive easement for the free and unobstructed flow of wind over and across the Property and the right to use, capture, and convert the wind for energy generation.

b. A non-exclusive easement for vehicular (including cranes and other heavy construction equipment) and pedestrian ingress, egress and access to, from and across the Property and adjacent lands by means of (i) the now existing or hereafter constructed roads, lanes, and rights of way on the Property, and (ii) such additional roads as Company or anyone else may construct from time to time on any portion of the Property. The foregoing rights shall include rights to construct, maintain, improve, rebuild, relocate or widen new and existing roads, and to perform temporary earthmoving as reasonably necessary to build suitable access and construction routes for the Project.

c. An exclusive easement to install, maintain, repair, replace, repower, relocate and operate on the Property multiple (i) underground and/or above-ground transmission, distribution and collection cables (including fiber optic cables), conduits, wire and lines for the transmission of electrical energy to and from the Property, (ii) underground and/or above-ground communication cables (including fiber optic cables), conduits, wire and lines for the transmission of communications related to Company's permitted uses of the Property to and from the Property, (iii) transformers, and (iv) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the

foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing.

d. An exclusive easement, right and entitlement over, across and under the Property for any audio, visual, view, light, noise, sound, vibration, air turbulence, wake, shadow flicker, electromagnetic, television reception and any other effect of any kind whatsoever, and for ice or other weather created hazards, resulting directly or indirectly from or caused by the operation of Windpower Facilities by Company or any of its respective affiliates, successors and assigns. Owner, for itself and any Owner affiliates or any of their principals, employees, agents, licensees of any tier or invitees ("Related Persons"), does hereby waive, remise and release any first party right, claim or cause of action that it may now have or that it may have in the future against Company or its respective affiliates, successors and assigns, as a direct or indirect result of any of the effects or hazards described above; provided, however, that this waiver and release shall not apply to any claims against Owner made by third parties not described in this sentence.

e. An exclusive easement on, over, across or under the Property for any encroachment or overhang of any Windpower Facilities now or hereafter constructed by Company or any affiliate thereof or their respective successors and assigns, as part of any Project.

f. A non-exclusive easement on, over, across and under any property adjacent to the Property that is owned or controlled by Owner, to be used as necessary for ingress, egress and access in connection with the construction, operation and maintenance of the Windpower Facilities or any Project.

The Operations Easements are easements in gross and are personal to Company for the benefit of Company and its successors and assigns, as owner of the Operations Easements, in connection with its development of energy generation facilities on the Property and on real properties adjacent to or in the vicinity of the Property. The Operations Easements shall run with the Property and inure to the benefit of and be binding upon Owner and the holder of the respective Operations Easements and their respective successors and assigns, and all persons claiming under them. No act or failure to act on the part of Company, a sublessee or the holder of the Operations Easements shall be deemed to constitute an abandonment, surrender or termination thereof, except upon recordation by the holder of a quitclaim deed specifically conveying the Operations Easements back to Owner. Nonuse of the Operations Easements shall not prevent the future use of the entire scope of the Operations Easements if they are later needed. No use of or improvement to the Property or any lands benefited by the Operations Easements which is permitted under the terms of this Lease, and no transfer of the Operations Easements which is permitted under the express terms of this Lease, shall, separately or in the aggregate, constitute an overburdening of the Operations Easements

4. Covenants Running with the Land. Owner and Company agree that all of the covenants and agreements contained in the Lease touch and concern the Property and are expressly intended to, and shall, be covenants running with the land and shall be binding upon the Property and each party's present and future estate or interest therein and upon each of the parties, their respective heirs, administrators, executors, legal representatives, successors and assigns.

5. Notice and Binding Effect. It is understood that the purpose of this Notice of Commencement is to give notice of the Lease, and the exercise of the option to lease by Company and Lease Effective Date. The Lease contains other terms and conditions set forth more fully therein. All such terms and conditions of the Lease are incorporated herein by this reference. The Lease is hereby ratified and confirmed as if the Lease were being re-executed by Company and Owner and recorded. This Notice of Commencement shall bind and inure to the benefit of Owner and Company and their respective successors and assigns, and shall encumber the Property and shall be binding on Owner's successors-in-interest thereto and all persons claiming by, through or under Owner, subject to the express provisions of the Lease. In the event of any inconsistency between the provisions of this Notice of Commencement and the Lease, the provisions of the Lease shall control.

[Signature page follows]

IN WITNESS WHEREOF, Company has executed this Notice of Commencement of Lease as of the date and year first written above.

COMPANY:

Salt Creek Wind LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

STATE OF _____)

)

COUNTY OF _____)

SS:

On this _____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is the _____ of Salt Creek Wind LLC, a _____ limited liability company, and that said instrument was signed in behalf of said limited liability company, by authority of its members; and said _____ acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.

Name (print): _____

Notary Public

My Commission Expires:

PLEASE AFFIX SEAL FIRMLY AND CLEARLY IN THIS BOX.