

Document 2010 2279

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PAT SKUSTER, RECORDER
MITCHELL COUNTY IOWA

MEMORANDUM OF WIND ENERGY LEASE AND AGREEMENT
THE IOWA STATE BAR ASSOCIATION
Official Form No. 101
Recorder's Cover Sheet

Preparer Information: LeAnn Vaughn, Esq.
808 Travis, Suite 700
Houston, Texas 77002
713/265-0350

Taxpayer Information: Turtle Creek Wind Farm LLC
808 Travis, Suite 700
Houston, Texas 77002
713/265-0350

Return Document To: Jennifer Plessner
Stewart Title – NTS
1980 Post Oak Blvd., Suite 610
Houston, Texas 77056

Grantors: Emma R. White, Trustee of the Emma R. White Irrevocable Trust, as to
an undivided one-half interest ("***Fee Holder***"); and
Emma R. White, as to a life estate interest ("***Life Estate Holder***"), in an
undivided one-half interest, and Marcella W. Kathan, Janet W.
Vervaecke, Linda W. Slindee, James B. White, Douglas White, Rhonda
Lebrecht and Eric Perkins, as to a remainder in said undivided one-half
interest (collectively, the "***Remaindermen***")

Grantees: Turtle Creek Wind Farm LLC

Legal Description: See Page 13

**Document or instrument
number of previously
recorded documents:**

AFTER RECORDED MAIL TO:

Turtle Creek Wind Farm LLC
808 Travis Street, Suite 700
Houston, Texas 77002
Attn: General Counsel

MEMORANDUM OF WIND ENERGY LEASE AND AGREEMENT

THIS MEMORANDUM OF WIND ENERGY LEASE AND AGREEMENT (this "Memorandum"), is made and entered into as of December 14, 2010 (the "Effective Date"), between Emma R. White, Trustee of the Emma R. White Irrevocable Trust, as to an undivided one-half interest, and its successors and assigns ("Fee Holder"), and Emma R. White, a single person, as to a life estate interest ("Life Estate Holder"), in an undivided one-half interest, and Marcella W. Kathan, Janet W. Vervaecke, Linda W. Slindee, James B. White, Douglas White, Rhonda Lebrecht and Eric Perkins, as to a remainder in said undivided one-half interest (collectively, the "Remaindermen"), (Fee Holder, Life Estate Holder and Remaindermen herein collectively, "Landowner") and Turtle Creek Wind Farm LLC, a Delaware limited liability company, and its successors and assigns ("Wind Company"). Landowner and Wind Company may hereafter be referred to as, together, the "Parties" and each, a "Party".

RECITALS

WHEREAS, Landowner and Wind Company entered into that certain Wind Energy Lease and Agreement dated December 14, 2010 (the "Lease") which affects and burdens the land described in Exhibit A, attached hereto and made a part hereof for all purposes (the "Property");

WHEREAS, Wind Company desires to develop, construct and operate a commercial wind power electric generation facility that will consist of (a) wind-powered turbines, generators and associated appurtenances, equipment and facilities capable of producing and transmitting electricity and (b) other related equipment and facilities including without limitation related power lines, and other equipment and facilities used or useful in connection with the production and transmission of electrical energy and (c) roadways in, on, over and under the Property and certain other real property which is in the vicinity of the Property and in which Wind Company has acquired, or intends to acquire, certain rights (together with the Property, the "Wind Project Property");

WHEREAS, Wind Company and Landowner have executed and acknowledged this Memorandum and are recording the same for the purpose of providing constructive notice of the Lease and of Wind Company's rights thereunder;

WHEREAS, Rhonda Lebricht and Rhonda Lebrecht are one and the same person, the correct spelling of her name being Rhonda Lebrecht;

WHEREAS, Fee Holder holds an undivided one-half interest in and to the Property ("Fee Holder Interest"), subject to the White Revocable Trust Agreement dated November 5, 1999, as amended by that certain First Amendment to White Revocable Trust executed July 21, 2008, Second Amendment to White Revocable Trust executed May 11, 2009 and Third Amendment to White Revocable Trust executed

November 19, 2009 (collectively, the "*Trust*"), which Trust becomes irrevocable pursuant to its terms upon the death of Emma R. White;

WHEREAS, Life Estate Holder holds a life estate interest in and to an undivided one-half interest in the Property ("*Life Estate Interest*") and the Remaindermen hold the remainder interest in and to said Life Estate Interest pursuant to that certain Last Will and Testament of Wilfred C. White dated January 8, 1982, admitted to probate and record in the District Court in and for Mitchell County, Iowa on October 18, 1988 ("*LWT*");

WHEREAS, Rhonda Lebrecht and Eric Perkins are the children of Jean W. Perkins, deceased, and are included as "Remaindermen" in the place of Jean W. Perkins pursuant to the LWT. Rhonda Lebrecht and Eric Perkins, as tenants in common, are grantees under that certain Quit Claim Deed dated June 1, 2009 recorded with the Office of the Recorder of Mitchell County, Iowa on June 25, 2009 as Document #2009 1480; and

WHEREAS, as to the Life Estate Interest, (i) Life Estate Holder, for the duration of the Lease for so long as she is alive, and thereafter the Remaindermen, shall perform all the obligations and enjoy all of the rights and benefits of Landowner hereunder and (ii) the sums payable under Section 3 of the Lease shall be paid to Life Estate Holder for so long as she is alive, and thereafter to the Remaindermen, for the remainder of the duration of the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Wind Company and Landowner hereby agree as follows:

1. Capitalized Terms. Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Lease.

2. Lease. Landowner hereby leases to Wind Company, and Wind Company hereby leases from Landowner, the Property, including all air space thereof, which said Property is located in the County of Mitchell (the "County"), in the State of Iowa (the "State"), upon all of the terms and conditions as set forth in the Lease. As more fully provided in and subject to the terms of the Lease, Wind Company shall have the exclusive possession of the Property and Wind Company, Sublessees (as defined in the Lease) and their respective contractors and authorized licensees and invitees may use the Property for the following purposes (collectively, "Operations");

2.1 Determining the feasibility of wind energy conversion on the Property or on neighboring lands, including studies of wind speed, wind direction and other meteorological data;

2.2 Converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted;

2.3 Developing, constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and using, maintaining, repairing, operating and monitoring, the following, for the benefit of one or more Projects (as that term is defined in the Lease): (a) wind machines, wind energy conversion systems and wind power generating facilities (including associated towers, foundations, support structures, guy wires, braces and other structures and equipment and other power generation facilities to be operated in conjunction with wind turbine installations, in each case of any type or technology (collectively, "Generating Units"); (b) transmission facilities, including underground transmission, distribution and collector lines (including junction boxes and associated pads, pedestals, bollards and related equipment, wires and cables, conduit, footings, foundations; (c) overhead and underground control, communications and radio relay systems and telecommunications equipment, including fiber, wires, cables and conduit; (d) roads and erosion control facilities; (e) utility installations;

(f) signs; (g) fences and other safety and protection facilities; (h) one or more permanent meteorological towers, guy wires, braces and wind measurement equipment; and (i) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing (all of the foregoing, including the Generating Units, collectively, "Wind Power Facilities");

2.4 Vehicular and pedestrian ingress, egress and access to and from Wind Power Facilities on, over and across the Property by means of roads and lanes thereon if existing, or otherwise by such roads, (including but not limited to turning radius from public roads, if necessary), as Wind Company or anyone else may construct from time to time, in each case for the benefit of one or more Projects (collectively, "Access Rights"); and

2.5 Undertaking any other activities that Wind Company or a Sublessee determines are necessary, helpful, appropriate or convenient in connection with, incidental to or to accomplish any of the foregoing purposes or for the benefit of one or more Projects, including conducting surveys and environmental, biological, cultural and other tests and studies, including but not limited to geotechnical drilling and studies.

3. Easements.

3.1 In addition to the lease of the Property, Landowner hereby grants and conveys to Wind Company the following easements over the Property (collectively, the "Operations Easements"):

3.1.1 A non-exclusive easement for audio, visual, view, light, flicker, noise, shadow and any other effects attributable to any Project or Operations located on the Property or on adjacent properties over and across the Property.

3.1.2 An exclusive easement to use, convert, maintain and capture the free and unobstructed flow of wind currents and wind resources over and across the Property.

3.1.3 An exclusive easement to permit the rotors of Generating Units located on adjacent properties to overhang the Property.

3.1.4 An exclusive easement to use the Property reasonably necessary to permit the use of cranes required to install, repair or replace the Generating Units from time to time along with an access route for the cranes ("Crane Travel Path Easement"). Wind Company shall have the additional right to temporary earthmoving as necessary to build a suitable access route for the Crane Travel Path Easement.

3.1.5 A seventy-five (75) foot wide non-exclusive easement and right to install, maintain, repair and operate on the Property underground at least forty (40) inches below the surface (or above ground if reasonably necessary or required), (i) distribution and collection lines which carry electrical energy to and/or from the Wind Project Property, (ii) communication lines which carry communications to and from the Wind Project Property and (iii) other above ground improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing ("Distribution Facilities") in each case for the benefit of one or more Projects (collectively the "Distribution Easement").

3.1.6 A non-exclusive easement and right for the Access Rights.

3.1.7 A non-exclusive "Construction Easement" for purposes of constructing, maintaining, repairing, replacing, and removing all or any part or element of the Wind Power Facilities whether located on or off the Property. The portion of the Property subject to the burden of this easement

is referred to as the "Construction Easement Property", is identified and located as shown on Exhibit B to the Lease. The exact size and configuration of the Construction Easement will vary with location and function as reasonably determined by engineering and construction personnel, but is generally expected to comprise an area of approximately three acres at each turbine site, 1.5 acres at each meteorological tower site, an area of approximately 200 feet of additional width on each side of all of the access roads measured from the center line of such access roads, an area approximately 50 feet in width (i) on either side of all buried cable and (ii) on either side of all of the aboveground lines and an area of approximately 250 feet of additional width on each side of the Crane Path Travel Easement. If, in the course of constructing the "Road Improvements" contemplated in Section 10.5 of the Lease, Wind Company determines that any widening of a public road is necessary beyond the public right of way onto the Property, the Construction Easement shall extend up to 50 feet beyond the public right of way onto the Property on each side of such public road. Wind Company may exercise its right to use all or any part of the Construction Easement Property as and when Wind Company deems it necessary or advisable to do so to perform the activities for which this Construction Easement is granted. Wind Company shall have the right to use the Property during the life of the Wind Power Facilities for major repairs requiring a crane and laydown areas and will first notify Landowner of its plans (except in case of emergency) prior to such use. This Construction Easement also shall permit vehicular and pedestrian access in connection with installation or removal of the nacelle or rotor on any Generating Unit to go onto the Property up to 650 feet in any direction from the base of the Generating Unit to hold tag lines securing the nacelle and rotor while they are being lifted into place. When using the Construction Easement, Wind Company will implement suitable wind erosion control on disturbed ground caused by construction or Wind Company's other activities. After each use of the Construction Easement, Wind Company to the extent reasonably possible shall restore the Construction Easement Property to the condition it was in before Wind Company's use.

3.1.8 Notwithstanding anything contained herein to the contrary, each Operation Easement shall continue for so long as a Project, the electrical substation serving a Project, or any Wind Power Facility exists on any of the Wind Project Property, including replacements thereof, unless terminated in writing by Lessee, and shall not terminate on, and shall survive after, the termination or expiration of the Lease, so long as Wind Company pays to Landowner the applicable payments required under Section 3.3 of the Lease. Notwithstanding the foregoing, in no event shall any of the Operation Easements continue longer than the longest period permitted by "Law" (as that term is defined in the Lease).

3.1.9 To the extent that Landowner holds any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Property (the "Landowner Easements"), and such Landowner Easements are or could be used for the benefit of the Property, then the same are hereby included in the Lease, and Wind Company shall be entitled to make full use thereof. Upon the request of Wind Company or a Sublessee at any time and from time to time during the term of the Lease, Landowner shall grant thereto (in recordable form and containing such terms and provisions as may reasonably be requested by Wind Company or such Sublessee), for no additional consideration, one or more subeasements of the Landowner Easements (each, a "Landowner Subeasement"). The term of each Landowner Subeasement shall run concurrently with the term of the Lease (or for such shorter period of time as is provided in the applicable Landowner Easement), and shall terminate upon the expiration or termination hereof.

3.1.10 Upon the request of Wind Company at any time and from time to time during the term of the Lease, Landowner shall deliver to Wind Company, duly executed and in recordable form, (i) stand-alone easements of one or more of the Easements and (ii) a subeasement of any Landowner Easement requested by Wind Company or a Sublessee, to the extent Landowner has the right to grant same under said Landowner Easement.

3.1.11 With respect to each Operations Easement, Landowner Subeasement and Separate Easement (each, an "Easement"): (a) to the extent permitted by Law, such Easement shall be appurtenant to the applicable leasehold estate and the Wind Project Property; (b) such Easement shall run with the Property and the Wind Project Property (and such other lands, as applicable) and inure to the benefit of and be binding upon Landowner and the holder of the Easement and their respective successors and assigns, and all persons claiming under them; (c) no act or failure to act on the part of Wind Company, a Sublessee or the holder of the Easement shall be deemed to constitute an abandonment, surrender or termination thereof, except upon recordation by such holder of a quitclaim deed specifically conveying the Easement back to Landowner; (d) nonuse of the Easement shall not prevent the future use of the entire scope thereof in the event the same is needed; and (e) no use of or improvement to the Property (or such other lands) or any lands benefited by the Easement, and no Transfer (as that term is defined in the Lease), shall, separately or in the aggregate, constitute an overburdening of the Easement.

4. Term

4.1 Development Term. The Lease shall initially be for a term (the "Development Term") commencing on the Effective Date and ending on the sooner to occur of (a) six (6) years after the Effective Date or (b) the date on which the "First Extended Term" (as defined below) commences.

4.2. Extended Term. Wind Company shall have the right and option (the "Lease Extension Option") to extend the term of the Lease for up to two (2) years for purposes of constructing the Wind Power Facilities ("First Extended Term"), for one thirty (30) year period ("Second Extended Term"), and for two consecutive ten (10) year periods ("Third Extended Term"), upon the same terms and conditions as set forth in the Lease.

5. Other Provisions. The Lease is for the additional purposes, is of the nature, and are subject to the requirements, restrictions and limitations, set forth therein. The Lease also contains various covenants, obligations and rights of the Parties, including, without limitation, provisions relating to Rent, conduct of operations, restoration of the Property, assignment and lender protections, interference protections, restrictions on grants of easements by Landowner and the waiver of setback requirements by Landowner. Landowner shall have no ownership or other interest in any improvements installed by Wind Company on the Property, and Wind Company may remove any or all improvements at any time or from time to time.

6. Force and Effect. The terms, conditions and covenants of the Lease are incorporated herein by reference as though fully set forth herein. This Memorandum does not supersede, modify, amend or otherwise change the terms, conditions or covenants of the Lease, and this Memorandum shall not be used in interpreting the terms, conditions or covenants of the Lease. In the event of any conflict between this Memorandum and the Lease, the Lease shall control.

7. Governing Law. This Memorandum shall be deemed made and prepared and shall be construed and interpreted in accordance with the internal laws of the State of Iowa, without regard to principles of conflicts of law thereof which may require the application of the law of another jurisdiction.

8. Binding on Successors and Assigns. The Parties hereby agree that all of the covenants and agreements contained in the Lease touch and concern the real estate described in the Lease and this Memorandum and are expressly intended to, and shall, be covenants running with the land and shall be binding and a burden upon the Property and each Parties' present or future estate or interest therein and upon each of the Parties, their respective heirs, administrators, executors, legal representatives, successors and assigns as holders of an estate or interest in the Property (including without limitation, any lender or other person acquiring title from any such person upon foreclosure or by deed in lieu of foreclosure), and

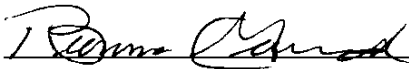
shall benefit Wind Company and its respective heirs, administrators, executors, legal representatives, successors and assigns and the Wind Project Property. To the extent that any of the provisions of this Memorandum are not enforceable as covenants running with the land, the Parties agree that they shall be enforceable equitable servitudes.

9. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

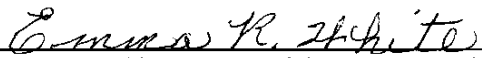
[SIGNATURES ON NEXT PAGE]

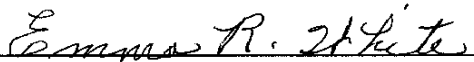
IN WITNESS WHEREOF, the Parties have executed this Memorandum as set forth below.

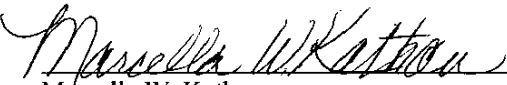
WIND COMPANY: Turtle Creek Wind Farm LLC,
a Delaware limited liability company


By: 
Name: Brenna Gundersen
Title: Project Manager

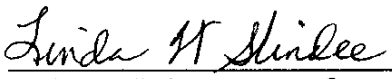
LANDOWNER:

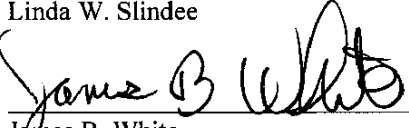

Emma R. White, Trustee of the Emma R. White
Irrevocable Trust


Emma R. White


Marcella W. Kathan



Janet W. Vervaecke


Linda W. Slindee


James B. White


Douglas White


Rhonda Lebrecht


Eric Perkins

ACKNOWLEDGMENTS
FOR WIND COMPANY

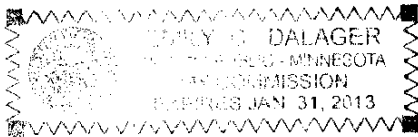
STATE OF Minnesota)
) ss:
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 14th day of December 2010 by Brenna Gunderson as Project Manager of Turtle Creek Wind Farm LLC, a Delaware limited liability company, on behalf of the limited liability company.

My Commission Expires:

Jan. 31, 2013

Emily C. Deery
Notary Public



ACKNOWLEDGMENTS
FOR LANDOWNER

STATE OF Iowa)
) ss:
COUNTY OF Mitchell)

The foregoing instrument was acknowledged before me this 14th day of October, 2010 by **Emma R. White, Trustee of the Emma R. White Irrevocable Trust**, on behalf of the Trust.

My Commission Expires: _____

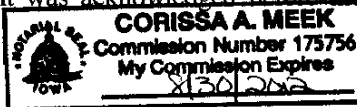


Corissa A. MEEK
Notary Public

STATE OF Iowa)
) ss:
COUNTY OF Mitchell)

The foregoing instrument was acknowledged before me this 14th day of October, 2010 by **Emma R. White**.

My Commission Expires: _____



Corissa A. MEEK
Notary Public

STATE OF Iowa)
) ss:
COUNTY OF Mitchell)

The foregoing instrument was acknowledged before me this 14th day of October, 2010 by **Marcella W. Kathan**.

My Commission Expires: _____



Corissa A. MEEK
Notary Public

STATE OF Missouri)
COUNTY OF Miller) ss:

The foregoing instrument was acknowledged before me this 12 day of November 2010 by **Janet W. Vervaecke**.

My Commission Expires: Sept. 20, 2013

Nicole Chapman
Notary Public



NICOLE CHAPMAN
My Commission Expires
September 20, 2013
Miller County
Commission #09870257

STATE OF Iowa)
COUNTY OF Mitchell) ss:

The foregoing instrument was acknowledged before me this 15th day of October, 2010 by **Linda W. Slindee**.

My Commission Expires:



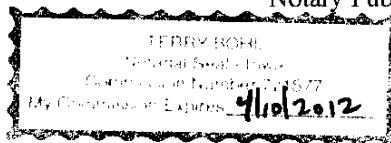
Corissa A Meek
Notary Public

STATE OF Iowa)
COUNTY OF Mitchell) ss:

The foregoing instrument was acknowledged before me this 23rd day of Nov., 2010 by **James B. White**.

My Commission Expires: 4/10/2012

Terry Rohl
Notary Public



STATE OF Iowa)
) ss:
COUNTY OF Mitchell)

The foregoing instrument was acknowledged before me this 18th day of October, 2010 by **Douglas White**.

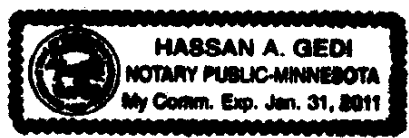
My Commission Expires:  Corissa A. Meek
Notary Public

STATE OF Minnesota)
) ss:
COUNTY OF Olmsted)

The foregoing instrument was acknowledged before me this 28th day of October, 2010 by **Rhonda Lebrecht**.

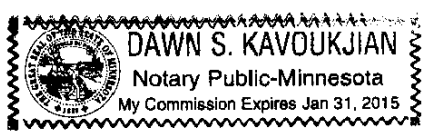
My Commission Expires: Jan 31st, 2011 Hassan A. Gedi
Notary Public

STATE OF Minnesota)
) ss:
COUNTY OF Hennepin)



The foregoing instrument was acknowledged before me this 20th day of October, 2010 by **Eric Perkins**.

My Commission Expires: 1/31/2015 Dawn S. Kavoukjian
Notary Public



THIS INSTRUMENT WAS DRAFTED BY:

LeAnn Vaughn, Esq.
Turtle Creek Wind Farm LLC
808 Travis Street, Suite 700
Houston, Texas 77002
(713) 356-2586

EXHIBIT A

Description of the Property

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF MITCHELL, STATE OF IOWA:

Parcel 1:

THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION ONE (1), EXCEPT RAILROAD RIGHT OF WAY; IN TOWNSHIP 99 NORTH, RANGE 18, WEST OF THE 5TH PRINCIPAL MERIDIAN, MITCHELL COUNTY, IOWA.

PIN: 05.01.100.002

Parcel 2:

THE SOUTH HALF OF THE NORTHEAST FRACTIONAL QUARTER (NE FRL. 1/4) OF SECTION TWO (2), EXCEPT RAILROAD RIGHT OF WAY; IN TOWNSHIP 99 NORTH, RANGE 18, WEST OF THE 5TH PRINCIPAL MERIDIAN, MITCHELL COUNTY, IOWA.

PIN: 05.02.200.003

Parcel 3:

THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION TWO (2); AND LOT ONE (1) IN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION TWO (2); ALL IN TOWNSHIP 99 NORTH, RANGE 18, WEST OF THE 5TH PRINCIPAL MERIDIAN, EXCEPT RAILROAD RIGHT OF WAY, MITCHELL COUNTY, IOWA.

PIN: 05.02.400.001

Wind Company reserves the right to substitute a full and complete legal description when received and Landowner consents to such substitution.

E. W. (initialed by Landowner)

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