

Pages 12 Doc Tax \$ _____ EX # _____

Fee Amt \$ 76.00 Ck Pd \$ 76.00

Cash PD \$ _____ Refund \$ _____

Paid by #326 TITLE CCK # 4247

_____ Ck # _____

CUSTOMER CHG CODE _____

RETURN TO #326 TITLE CORE

_____ (ENVELOPE) _____

State of Nebraska Gage County ss. Entered in
Numerical Index and filed for record the
.....16th.....day of.....October.....,20...13...
at...11:00...o'clock...A. M., and recorded as
INSTRUMENT NO

2013- 3527

.....*Ruth E. Simon*.....
Register of Deeds

By Deputy

2013- 3527

9-6-6

3-6-6

TRACT INDEX
COMPUTER _____
COURT FILED _____
DATE _____

EASEMENT AGREEMENT

This **EASEMENT AGREEMENT** (this "Agreement") is made and entered into this 28 day of July, 2013 (the "Effective Date"), by and between Kimberly A. Topp, Trustee of the Kimberly A. Topp Revocable Living Trust under agreement dated the 11th of February, 1999, as to an undivided 1/2 interest, and Bruce A. Topp, Trustee of the Bruce A. Topp Revocable Living Trust under agreement dated the 11th of February, 1999, as to an undivided 1/2 interest (collectively, "Grantor"), whose address is c/o Kimberly A. Topp, Trustee, and Bruce A. Topp, Trustee, 1820 W. Ash Rd., Cortland, NE 68331, and Volkswind Nebraska Land Holdings LLC, a Nebraska limited liability company ("Grantee"), whose mailing address is 205 Southeast Spokane Street, Suite 300, Portland, Oregon 97202. Each of Grantor and Grantee is sometimes referred to as a "Party" and collectively as the "Parties."

A. Grantor is the owner of that certain real property located in Gage County, Nebraska, consisting of approximately 79.00 acres, as to Parcel 1, 160.00 acres, as to Parcel 2, and 153.78 acres, as to Parcel 3, as more particularly described on the attached Exhibit A and incorporated herein by this reference (the "Property").

B. Grantor and Grantee have entered into that certain Wind Energy Ground Lease Agreement of even date herewith with respect to the Property (the "Lease").

C. The Parties are willing to enter into the Lease subject to and conditioned upon the Parties simultaneously executing and filing in the applicable county real estate records, this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. **General Wind Easement:** Subject to the terms and provisions of the Lease, Grantor hereby grants to Grantee an exclusive easement (i) to use the Property for all Wind Energy Purposes, (ii) to convert all of the wind resources of the Property, and (iii) to insure the undisturbed flow of wind across the Property other than any disturbance caused by Grantee's use of the Property. For purposes of this Agreement, "Wind Energy Purposes" means: wind resource evaluation, wind energy development, conversion of wind energy into electrical energy, collection and transmittal of the electrical energy converted from wind energy from a utility-

scale wind energy project on the Property (the "Project"), together with any and all activities related thereto, including, without limitation, (A) determining the feasibility of wind energy conversion on the Property, including studies of wind speed, wind direction and other meteorological data and extraction of soil samples, and archeological, environmental and similar studies; (B) constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, any Windpower Facilities (as defined in the Lease) and any Transmission Facilities (as defined in the Lease) on the Property; and (C) undertaking any other activities, whether accomplished by Grantee or a third party authorized by Grantee, including any media, research, development, demonstration or compliance (including compliance with all applicable laws) activities related to any Windpower Facilities, that Grantee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.

2. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue initially for a period of five (5) years (the "Evaluation Period"), as such Evaluation Period may be extended for an additional five (5) years in accordance with the terms and provisions of the Lease. If Grantee or its successors or assigns (i) installs one or more wind turbines on the Property, and any such wind turbine generates electricity in commercial quantities during the Evaluation Period, then this Agreement shall automatically be extended for the Operating Term of thirty (30) years (the "Operating Term"). Notwithstanding any other provision of this Agreement or the Lease (including any Mortgagee or Assignee protections provisions therein), if the Evaluation Period of this Agreement expires and the Operating Term has not yet commenced, this Agreement and the Lease will terminate at the end of the Evaluation Period. The Evaluation Period and the Operating Term may be referred to collectively as the "Term." Grantee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Evaluation Period upon thirty (30) days' written notice to Grantor. This Easement shall be subject to such other termination rights of the Parties and other terms and conditions as are stated in the Lease. The term of this Agreement shall be coterminous with the Lease. A termination of the all or part of the Lease, as provided in the Lease, will terminate the corresponding portion of this Easement Agreement.

3. **Restricted Uses During Evaluation Period.** Notwithstanding anything contained herein or in the Lease to the contrary, during the Evaluation Period, but prior to Grantee entering a contract for construction of any portion of the Project Grantee's permitted activities shall be limited to the following: extracting soil samples, performing geotechnical tests, and conducting such other tests, studies, surveys, inspections, and analysis on the Property as Grantee deems necessary, useful, or appropriate, as well as constructing, erecting, installing, reinstalling, replacing, relocating, and removing from time to time meteorological and wind measuring equipment, including but not limited to anemometer towers and all necessary and proper appliances and fixtures for use in connection with said towers, to determine the feasibility of wind energy conversion on the Property, on adjacent property, or elsewhere.

4. **Site Plan.** A copy of a preliminary site plan for the proposed installation and operation of Windpower Facilities on the Property is attached hereto as Exhibit B and incorporated herein by this reference (the "Site Plan"). Notwithstanding anything in this Agreement to the contrary, Grantee shall be entitled to amend and modify the Site Plan from time to time related to the location and relocation of the Windpower Facilities and Transmission Facilities, provided that Grantee shall submit a revised Site Plan to Grantor for approval, subject

to and in accordance with the terms and provisions of the Lease. Grantee shall finalize the Site Plan, and such final Site Plan will replace the preliminary Site Plan attached hereto as Exhibit B. Grantor hereby consents to Grantee filing such revised Exhibit B of record in the applicable county records and agrees to be bound thereby.

5. **Additional Easements.** Subject to the terms and provisions of the Lease, Grantor hereby grants and conveys to Grantee and its successors and assigns (i) the exclusive easement in, on, over, above, under, through and across the Property for the right to convert all of the wind resources found on the Property and (ii) a nonexclusive easement for ingress to and egress from the Property, and for the transmission of electricity produced by the Project on, over, and across the Property, as more particularly described in this Agreement, for the purposes described herein and in the Lease (collectively and together with the rights granted in Section 1, the "Easements"), including but not limited to the following:

5.1 **Turbine Site Easement.** Subject to the terms and provisions of the Lease, Grantor grants to Grantee an exclusive easement for the construction, installation, operation, maintenance, repair and replacement (from time to time) of wind turbines and related equipment and facilities on those portions of the Property identified as "Turbine Sites" on the Site Plan, and the exclusive right to construct and operate crane pads, access roads, and parking areas on each such Turbine Site (the "Turbine Site Easement").

5.2 **Access Easement.** Subject to the terms and provisions of the Lease, Grantor grants to Grantee a nonexclusive easement in, on, over, above, under, through and across the Property for vehicular and pedestrian access, ingress and egress to, from and over and across those portions of the Property identified as "Access Roads" on the Site Plan, for purposes related to or associated with Windpower Facilities installed or to be installed on the Property, on adjacent property or elsewhere; which, without limiting the generality of the foregoing, shall entitle Grantee to construct, use and improve any existing and future roads and access routes (i) from time to time located on or providing access to the Property, (ii) across any other property owned by Grantor, and (iii) across any access routes over which Grantor has the right to travel.

5.3 **Transmission Facilities Easement.** Subject to the terms and provisions of the Lease, Grantor grants to Grantee an easement on, over, under, and across the Property for the construction, installation, operation, maintenance, repair, replacement, relocation, and removal from time to time of Transmission Facilities as depicted on Exhibit B (the "Transmission Easement"). Transmission Facilities located on the surface of the Property shall be limited to junction boxes, splice boxes, and other equipment required by technical constraints to be located on the surface of the land for the transmission of electricity created by the Project. Poles and above-ground transmission lines, if any, shall be located as and where shown on Exhibit B. All underground Transmission Facilities shall be buried no fewer than forty (40) inches below the surface of the Property except with the prior written consent of Grantor.

5.4 **Overhang Easement.** Subject to the terms and provisions of the Lease, Grantor acknowledges and agrees that the sweep of rotor blades from wind turbines located on adjacent properties may extend into and overhang the Property. Grantor hereby grants to Grantee an easement for the overhang of rotor blades from each wind turbine located on adjacent

properties, if any, the sweep of which extends into and over the Property in those locations identified as the "Overhang Areas" on Exhibit B.

5.5 **Construction Laydown Easement**. Subject to the terms and provisions of the Lease, Grantor grants to Grantee the right to use a portion of the Property as a construction laydown area (the "Construction Laydown Area"), which Construction Laydown Area shall be as described and depicted on the attached Exhibit B, for certain construction work, including but not limited to the storage of equipment and materials for the construction of the Windpower Facilities, the staging of construction work on the Windpower Facilities, and the construction of the Windpower Facilities, whether such Windpower Facilities shall be installed and operated on the Property or in the vicinity of the Property (the "Construction Laydown Easement"). The Construction Laydown Easement includes, but is not limited to, the right of pedestrian and vehicular ingress to and egress from the Construction Laydown Area.

5.6 **Wind Easement**. Subject to the terms and provisions of the Lease, Grantor hereby grants to Grantee an exclusive easement for the free flow of wind over and across the Property. Without limiting the generality of Section 7 below, any obstruction to the free flow of wind by Grantor or persons other than Grantee, its successors or assigns, or persons claiming through or under Grantee, its successors or assigns, is prohibited throughout the entire area of the Property, which shall consist horizontally from any point where any Windpower Facilities are or may be located at any time or from time to time to the boundaries of the Property, together vertically through all space above the surface of the Property to a height of six hundred (600) feet. Notwithstanding the foregoing, Grantor may construct structures or other improvements on the Property as follows: (i) fences and gates that do not exceed eight feet (8') ("Permitted Fences") and (ii) any structure, tree or other improvement that does not exceed seventy-five feet (75'), so long as such structure, tree, or improvement is located at least one thousand feet (1000') from the base of any wind turbine installed or proposed to be installed by Grantee on the Property or any adjacent property. No structure, improvement, or tree, other than Permitted Fences, may be located within one thousand feet (1000') of any wind turbine constructed by Grantee on the Property. Upon thirty (30) day prior written notice to Grantor, Grantee shall have the right to remove any structure or tree that exceeds seventy-five feet (75') in height or that is installed, constructed, or planted within one thousand feet of any wind turbine. Grantee shall not remove any tree, structure, or improvement located on the Property as of the Effective Date. Nothing contained in this Section 5.6 will restrict any activity of any kind or nature on property owned by Grantor but not subject to this Agreement.

5.7 **Noise Easement**. Subject to the terms and provisions of the Lease, Grantor hereby grants to Grantee a noise easement for the right and privilege to generate and maintain audible noise levels in excess of fifty-five (55) db(A) on and above the Property up to but not including the outer wall of each residence on the Property occupied as of the Effective Date at any or all times of the day or night (the "Noise Easement"). In the event that noise levels from any wind turbine located on the Property exceed fifty-five (55) db(A) at the outer wall of any residence located on the Property occupied as of the Effective Date more than five percent (5%) of the hours in any calendar month, as measured by an independent professional using commonly accepted noise measurement instruments and standards, then Grantee shall take commercially reasonable actions to reduce noise levels at any such outer wall to fifty-five (55) db(A), which measures may include, in Grantee's sole discretion, installing landscaping,

insulation, or sound barriers at agreed locations on the Property or adjacent properties. This Noise Easement shall burden the Property and benefit the Project Site, as depicted on Exhibit B.

5.8 **Shadow Easement**. Subject to the terms and provisions of the Lease, Grantor grants Grantee an easement on, over, and across the Property to cast shadows from any Windpower Facilities installed on the Property or elsewhere, including but not limited to wind turbine towers and rotor blades, onto and across the Property. Without limiting the generality of the foregoing, Grantee shall consult with Grantor on the location of all Windpower Facilities to minimize any adverse effects on the Property and occupied residences located on the Property.

5.9 **Met Tower Site Easement**. Subject to the terms and provisions of the Lease, Grantor grants Grantee an easement for the construction, installation, and operation of one or more anemometer towers, meteorological measuring devices, facilities, and equipment (each, a "Met Tower") including but not limited to Transmission Facilities, on each portion of the Property identified as a "Met Tower Site" on the attached Exhibit B.

6. **Covenant Not to Transfer**. Grantor agrees that it shall have no right at any time while this Agreement or the Lease remains in effect to reserve, assign, transfer, or convey any "wind rights," howsoever named, relating to the Property, this Agreement, the Lease, or as to the free flow of wind over the Property or the right to convert the wind resources of the Property, such wind rights being expressly granted to Grantee in this Agreement and the Lease.

7. **Exclusivity; No Interference**. Subject to the terms and provisions of the Lease, Grantor agrees that Grantee shall have the exclusive right to convert all of the wind resources of the Property. Grantor's activities and the exercise of any rights granted by Grantor to any person or entity, to conduct activities on the Property, shall at no time unreasonably impede or interfere with: (i) the siting, permitting, construction, installation, maintenance, operation, replacement or removal of Windpower Facilities, whether located on the Property or elsewhere; (ii) the flow of wind, wind speed, or wind direction over and across the Property except for structures specifically permitted in accordance with Section 5.6 of this Agreement; (iii) access over the Property to Windpower Facilities, whether located on the Property or elsewhere; or (iv) the undertaking of any other activities of Grantee permitted under this Agreement. In no event during the term of this Agreement shall Grantor construct, build or locate, or allow others to construct, build, or locate, wind energy conversion systems, any wind turbines or similar projects on the Property.

8. **Successors and Assigns**. This Agreement and the Lease shall burden the Property and shall run with the land. This Agreement and the Lease shall inure to the benefit of and be binding upon Grantor and Grantee and to the extent provided in any assignment or other transfer in accordance with the Lease, any Assignee and its respective heirs, transferees, successors and assigns, and all persons claiming under them. References to Grantee in this Agreement and references to Lessee in the Lease, as applicable, shall be deemed to include Assignees that hold a direct ownership interest in this Agreement and/or the Lease, as applicable, and actually are exercising rights under this Agreement and/or the Lease, as applicable, to the extent consistent with such interest, and for the purposes of binding such Assignees to this Agreement and/or the Lease, as applicable. The Parties acknowledge and agree that Grantor has the right to sell, convey, or otherwise transfer all or any portion of the Property and all or any

portion of Grantor's contractual rights to receive payments under this Agreement; provided, however, Grantor agrees that it shall have no right at any time while this Agreement or the Lease remains in effect to reserve, assign, transfer or convey any "wind rights," howsoever named, relating to the Property, this Agreement, or as to the free flow of wind over the Property or the right to convert the wind resources of the Property, such wind rights being expressly granted to Grantee in this Agreement. Grantor shall provide written notice to Grantee of any sale, conveyance, or other transfer of the Property or any portion thereof or interest therein, and the manner in which any payments hereunder have been allocated as between Grantor and such transferee. In the absence of any such notice of transfer or allocation, Grantee shall have the right to continue to make payments under the Lease to the party named for Grantor, or to allocate payments hereunder among Grantor parties as Grantee shall determine, in its sole discretion, pending receipt of any contrary written instructions from the party named for Grantor in accordance with the Lease.

9. **Partial Invalidity.** Should any provision of this Agreement 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. Notwithstanding any other provision of this Agreement, the Parties agree that in no event shall the term of this Agreement be longer than the longest period permitted by applicable law.

10. **Recordation.** The Grantor and Grantee agree that, upon execution by both Parties, this Agreement shall be recorded in real estate records of Gage County, Nebraska, so that third parties have notice of this Agreement and otherwise to comply with applicable law.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE AND
ACKNOWLEDGEMENT PAGES TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the above date.


GRANTOR:

Kimberly A. Topp Revocable Living Trust under agreement dated the 11th of February, 1999

By:  _____

GRANTOR:

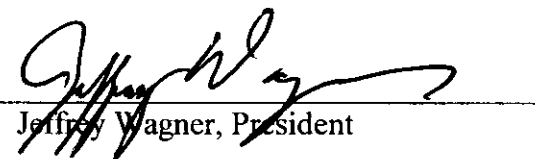
Bruce A. Topp Revocable Living Trust under agreement dated the 11th of February, 1999

By:  _____

GRANTEE:

VOLKSWIND NEBRASKA LAND HOLDINGS LLC,
A Nebraska Limited Liability Company

By: Volkswind USA Inc., a Delaware Corporation, Managing Member

By:  _____
Jeffrey Wagner, President

STATE OF NEBRASKA,
COUNTY OF Lancaster, ss.

This instrument was acknowledged before me on this 28 day of July, 2013, by Kimberly A. Topp, as Trustee of the Kimberly A. Topp Revocable Living Trust under agreement dated the 11th of February, 1999.



Jeri L. Williams
Notary Public

STATE OF NEBRASKA,
COUNTY OF Lancaster, ss.

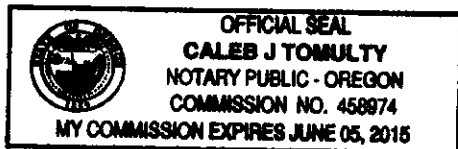
This instrument was acknowledged before me on this 28 day of July, 2013, by Bruce A. Topp, as Trustee of the Bruce A. Topp Revocable Living Trust under agreement dated the 11th of February, 1999.



Jeri L. Williams
Notary Public

STATE OF OREGON, MULTNOMAH COUNTY, ss.

This instrument was acknowledged before me on this 23 day of SEPTEMBER, 2013, by Jeffrey Wagner, as the President of Volkswind USA Inc., the Managing Member of Volkswind Nebraska Land Holdings LLC, a Nebraska Limited Liability Company, and was signed on behalf of said company and the undersigned acknowledged the execution of this instrument to be the voluntary act and deed of said company by it voluntarily executed.



Caleb J Tomulty
Notary Public

EXHIBIT A of Easement Agreement

Legal Description of Property

All of that real property located in Gage County, Nebraska more particularly described as follows:

PARCEL 1:

The South Half of the Northeast Quarter of Section 9, Township 6 North, Range 6 East of the 6th Principal Meridian, Gage County, Nebraska.

EXCEPT 1 acre located in the Northeast corner of said South Half of the Northeast Quarter.

PARCEL 2:

The Southeast Quarter of Section 9, Township 6 North, Range 6 East of the 6th Principal Meridian, Gage County, Nebraska.

PARCEL 3: ^{BV} ~~Northeast~~ Northwest

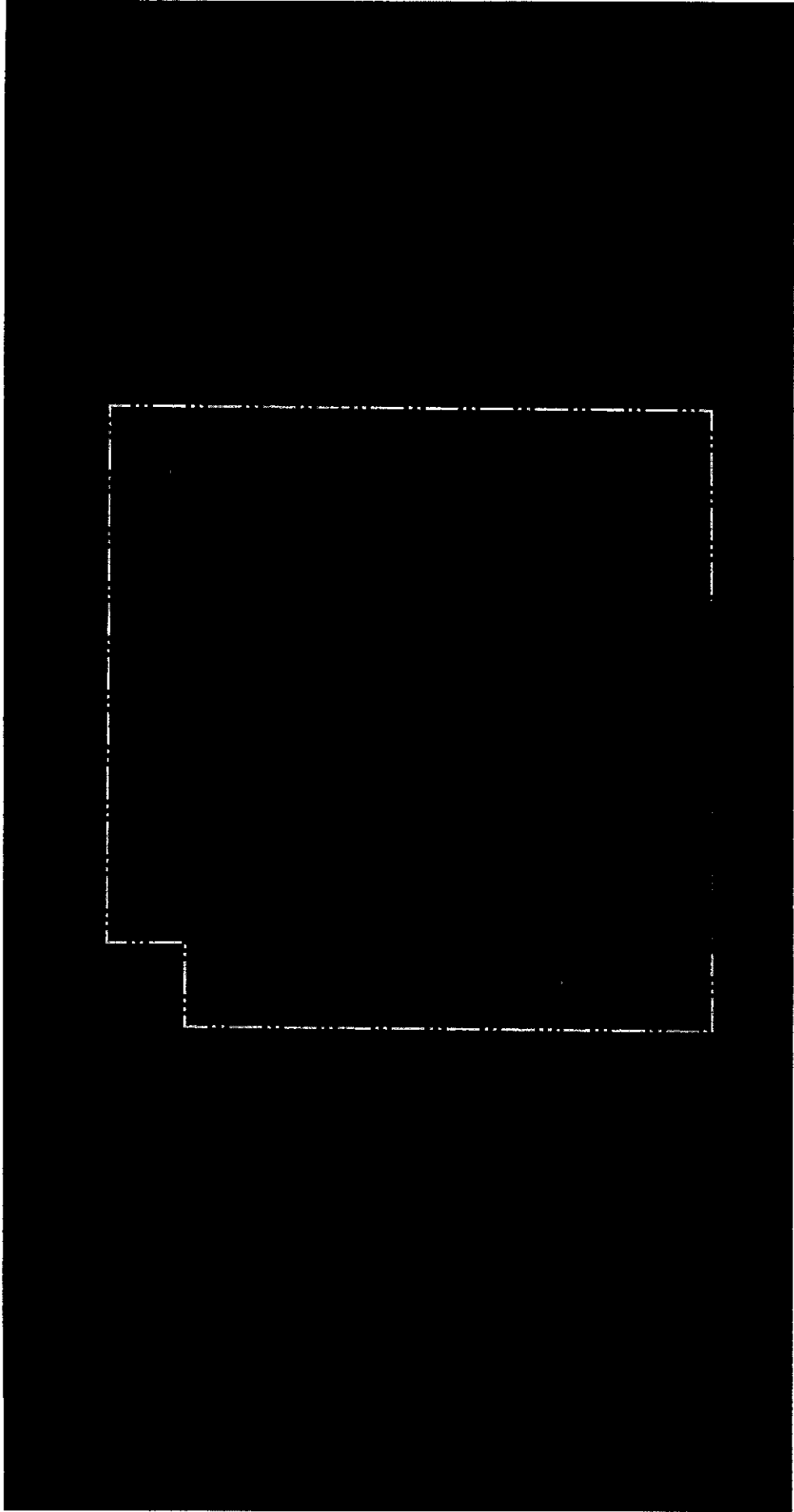
The ~~Northeast~~ Quarter of Section 3, Township 6 North, Range 6 East of the 6th Principal Meridian, Gage County, Nebraska.

EXCEPT the North 372.5 feet of the West 368 feet of said Northwest Quarter.

EXHIBIT B of Easement Agreement

Site Plan

[See the Attached]



NORTH ↑ 1/2 MILE

- LEGEND:**
- Pivot
 - Property Boundary
 - Home Exclusion
 - Access Road
 - Turbine Site

COUNTY: Gage County, Nebraska
SECTION: 3-6-6 (NW1/4)
ACRES: 153.78
TURBINES: 2 potential wind turbine sites

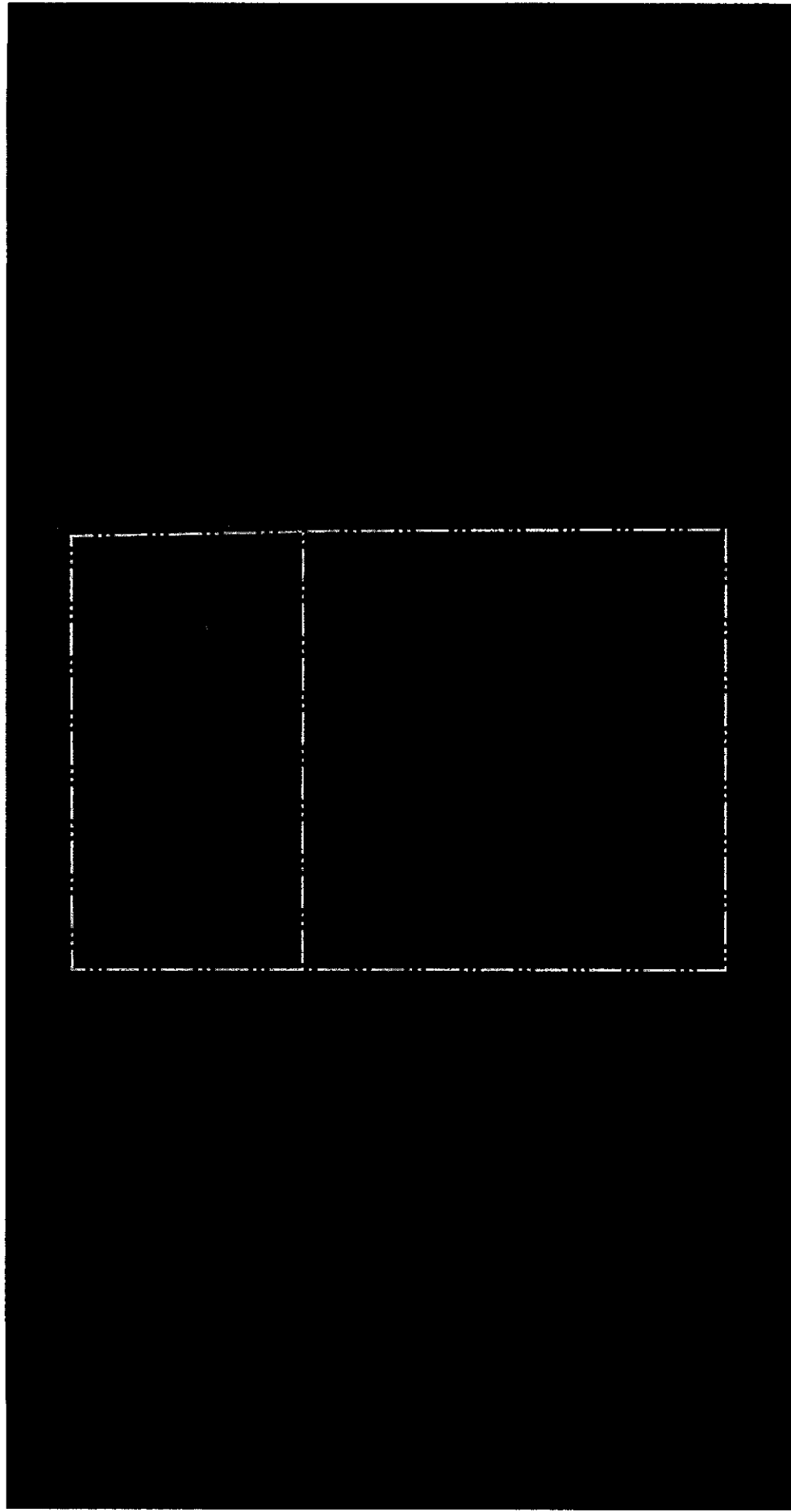
SITE PLAN: Bruce & Kimberly Topp

DATE: 4/18/13

AUTHOR: Nels Hefty



Volkswind USA, Inc.
 205 SE Spokane St., Suite 306
 Portland, OR 97202
 Phone: 503 236 4900
 Fax: 503 445 1572
 www.volkswind.us



NORTH ↑ 1/2 MILE

- LEGEND:**
- Pivot
 - Property Boundary
 - Home Exclusion
 - Access Road
 - Turbine Site

COUNTY: Gage County, Nebraska
SECTION: 9-6-6 (SE1/4 & S1/2 of NE1/4)
ACRES: 79, 160
TURBINES: 2 potential wind turbine sites

SITE PLAN: Bruce & Kimberly Topp

DATE: 4/18/13

AUTHOR: Nels Hefly

VOLKSWIND
 Volkswind USA, Inc. Phone: 503 256 4900
 205 SE Spokane St., Suite 306 Fax: 503 445 1572
 Portland, OR 97202 www.volkswind.us