

Recorded: 8/12/2022 at 11:50:45.0 AM  
County Recording Fee: \$52.00  
Iowa E-Filing Fee: \$3.00  
Combined Fee: \$55.00  
Revenue Tax:  
Delaware County, Iowa  
Daneen Schindler RECORDER  
BK: 2022 PG: 2407

Prepared by: Kelli J. Orton, 666 Grand Avenue, Suite 2000, Des Moines, IA 50309, 515-242-2400

Return to: Mehul Mehta, c/o Greenbacker Renewable Energy Corporation, 230 Park Avenue, Suite 1560 New York, NY 10169

### **OVERHANG AGREEMENT**

THIS OVERHANG AGREEMENT ("Agreement") is executed effective this 10th day of August, 2022 (the "Effective Date"), by and between the Urey S. Anderegg Trust, Karen A. Reis and Patricia Iria Anderegg Rezende with an address of 304 South Bell Street, Edgewood, IA 52042 ("Grantor") and Elk Wind Energy LLC, an Iowa limited liability company and its successors in interest, with an address of c/o Greenbacker Renewable Energy Corporation, 230 Park Avenue, Suite 1560, New York, NY 10169, Attn: General Counsel ("Grantee").

A. Grantor is the owner of a certain tract of real property located in Delaware County, Iowa, and more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property");

B. Grantee is the holder of certain easements and other related rights covering real property located adjacent to and/or in the vicinity of the Property (collectively, the "Benefited Property") on which several wind turbines are located (each, a "Turbine" and collectively, "Wind Energy Facilities");

C. Grantor desires to grant and convey to Grantee an exclusive easement for the right to overhang a portion of the Property; and

IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Overhang Easement.** Grantor does hereby grant, bargain, sell and convey unto Grantee, for the benefit of the Benefited Property, and Grantee's easements and other rights related thereto, an exclusive easement for the right and privilege to permit the blades of one or more Turbines located on adjacent properties to overhang the Property (the "Overhang Easement"), identified and shown on **Exhibit B** ("Overhang Easement Property"). After completing upgrades to the Wind Energy Facilities, Grantee shall prepare a survey with respect to the Overhang Easement Property and label such survey as Exhibit B-1 which shall replace Exhibit B. The Turbine will not extend more than 50 feet onto the Property and the blades will be at a height of at least seventy-five (75) feet above the ground. Grantor shall not interfere with the operation of Turbines that overhang the Overhang Easement Property. Grantor waives any zoning or other setback requirements as needed to allow the rotors of the Turbines located on adjacent properties to occupy and operate in the air space above the Overhang Easement Property.

2. **Wind Non-Obstruction Easement.** Grantor does hereby grant, bargain, sell and convey unto Grantee an easement for the use, maintenance and capture of the free and unobstructed flow of wind currents over and across the Overhang Easement Property and to permit the Wind Energy Facilities on adjacent property to cause air turbulence and wake (the "**Wind Non-Obstruction Easement**" and, together with the Overhang Easement, the "**Easement**"). Grantor agrees to not construct any new structures on the Overhang Easement Property that would interfere with this Wind Non-Obstruction Easement or engage in any activity that might cause a decrease in the output or efficiency of any Turbine. The Easement does not grant Grantee the right to enter onto the Property for any reason, including, but not limited to, placing improvements on the Property.

3. **Term.** The term of this Agreement and of the Easement begins upon the signing of this Agreement by the parties and will end on December 31, 2041 (the "**Term**").

4. **Renewal Term.**

A. If Grantee is not then in default under this Agreement, Grantee shall have the option to extend the Term of this Agreement for one additional 25-year period beginning, without gap or interruption, at the end of the Term ("**Renewal Term**"). Grantee may exercise this option for the Renewal Term by giving Grantor notice of intent to do so at least 3 months before expiration of the Term. If Grantee does not give Grantor timely notice of exercise of this option for a Renewal Term, this Agreement and the easement rights granted herein shall terminate as of the expiration of the Term.

B. The terms and conditions contained in this Agreement shall govern the Renewal Term. For the Renewal Term, consideration for the easements shall be in accordance with Exhibit C.

5. **Payments.**

A. Grantee will pay Grantor the amounts called for in this Section as full consideration for all easements and all other rights Grantor grants to Grantee in this Agreement. If Grantor directs Grantee in writing to make any payments due to Grantor under this Agreement to Grantor's tenant, to another person or entity other than Grantor, or to divide payments among the owners of the Property, Grantor must first provide Grantee with the name, address, type or percentage of payments to be paid to each person, tax identification numbers, and other information needed by Grantee to produce the payments. Grantor's direction to make payments to others in this manner constitutes Grantor's acknowledgement that those payments to others shall be in full satisfaction of Grantee's obligation to make those same payments to Grantor.

B. Exhibit C lists the types of payments Grantee agrees to make under this Agreement, explains conditions under which each type of payment will be made, and explains how the payment will be calculated. Exhibit C is hereby incorporated herein but shall not be recorded.

C. Grantee will adjust the amount of the Annual Payment in accordance with Exhibit C.

D. Grantee will remove any Wind Energy Facilities that overhang the Overhang Easement Property within 180 days of the expiration of the Term or Renewal Term, if applicable, whichever comes later. Grantee will pay the then-current rental rate, pro-rated, for any period beyond the Term or Renewal Term that the overhang exists.

6. **Termination.**

A. Grantor cannot terminate this Agreement, the easements or other rights granted in this Agreement except as follows:

- i. If Grantee fails to make any payment due in accordance with Exhibit C (which will not be recorded) and such failure continues for more than 30 days' after written notice; and
- ii. If any Assignee or Mortgagee has failed to make any payment due in accordance with Exhibit C and such payment is not made within 30 days' notice to the Assignee or Mortgagee.

Neither bankruptcy nor insolvency of Grantee shall be grounds for terminating this Agreement as long as all undisputed payments and all other monetary charges payable by Grantee under Exhibit C are paid by Grantee, Mortgagee, or an Assignee in accordance with the terms of this Agreement.

Grantee, Mortgagees and Assignees retain at all times the right to contest the amounts Grantor claims are due. Until the contest is resolved, to prevent termination under subsection A, Grantee, Mortgagees or Assignees must pay Grantor all uncontested amounts and provide an escrow or other reasonable form of assurance of payment of the contested amounts should the contest be resolved in Grantor's favor.

B. Grantee may terminate this Agreement at any time by providing 30 days' notice.

7. **Ownership.** Grantor is the holder of fee simple title to all of the Property and has the right, without the joinder of any other party, to enter into this Agreement and grant Grantee the Easement. Grantor agrees to warrant and defend its ownership of the Property and Grantee's interest in this Agreement against any other party claiming to have any ownership interest in the Property.

8. **Indemnification & Insurance.** Grantee acknowledges and agrees that it shall hold Grantor and its successors and assigns in interest harmless for any liability, whether known or unknown, that arises from Grantee exercising its grant under this Agreement, including liability resulting in injuries to persons who enter onto the Property, in the exercise of its grant or any failure of Grantee to maintain its facilities on the adjacent property. Grantee acknowledges and agrees that it shall maintain sufficient liability insurance that is standard in the industry.

9. **Assignment & Sublease.** Grantee shall have the right, without Grantor's consent, to sell, convey, lease, or assign all or any portion of its interest in the Property, on either an exclusive or a non-exclusive basis, or to grant subleases, subeasements, co-easements, separate leases, easements, licenses or similar rights with respect to the Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Any such assignment by Grantee of its interests in this Agreement shall release Grantee from all obligations accruing after the date that liability for such obligations is assumed by the Assignee.

10. **Right to Mortgage.** Grantee may, upon notice to Grantor, but without Grantor's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Property. These various security interests in all or a part of the Property are

collectively referred to as a "**Mortgage**" and each holder of the Mortgage, is referred to as "**Mortgagee**." To the extent permitted by the Mortgage at issue, any Mortgagee shall be permitted to exercise or perform any and all of Grantee's rights and obligations hereunder and Grantor shall accept such exercise and performance thereby. Any Mortgagee under any Mortgage shall be entitled to assign its interest or enforce its rights thereunder, as permitted by applicable law, without notice to or approval of Grantor.

11. **Notice.** All notices given or permitted to be given hereunder shall be in writing. Notice is considered given either (i) when delivered in person to the recipient named above, (ii) five days after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) one business day from proper and timely delivery to an overnight courier service addressed by name and address to the party or persons specified in the Preamble. Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both.

12. **Trust Status.** The Grantor warrants to the Grantee all of the following: (i) the trust pursuant to which the transfer is made is duly executed and in existence; (ii) to the knowledge of the Grantor, the person creating the trust was under no disability or infirmity at the time the trust was created; (iii) that the transfer by the trustee to the Grantee is effective and rightful; and (iv) that the trustee knows of no facts or legal claims which might impair the validity of the trust or the validity of the transfer.

13. **Successors & Assigns.** The Easement and any restrictions of this Agreement shall run with the Property and land affected and shall be binding on, Grantor and Grantee, together with their mortgagees, assignees, and respective successors and assigns, heirs, personal representatives, tenants or persons claiming through them.

14. **Permitting Requirements of Governmental Agencies.** Grantor shall assist and fully cooperate with Grantee, at no out-of-pocket expense to Grantor, in complying with or obtaining any zoning and land use permits and approvals, building permits, environmental impact reviews or any other approvals required for Grantee to operate, repair, maintain, improve, use, replace, and remove the Wind Energy Facilities, Grantor appoints Grantee as its agent to submit these permit applications.

15. **Compliance with Law.** Grantee will comply in all material respects with valid laws applicable to the Wind Energy Facilities, except that Grantee has the right to contest the validity or applicability to the Property or Wind Energy Facilities of any law, ordinance, statute, order, regulation, tax, property assessment or the like made by any governmental agency or entity.

16. **Real Estate Taxes.** Grantor shall pay when due any property taxes levied or assessed by any governmental authority against the Property and any other monetary obligations associated with the Property, subject to your right to contest the taxes or monetary obligations in a manner that does not jeopardize Grantee's rights under this Agreement.

17. **Tax Credits and Other Incentives.** If under applicable law Grantee becomes ineligible for any tax credit, renewable energy credit, environmental credit or benefit, any benefit, credit or incentive for alternative energy expenditure, or any other benefit, credit or incentive associated with the Wind Farm, the operation of the Wind Farm, the generation or production of electric energy, or other similar matter established by any local, state or federal government (collectively, a "**Green Credit**"), then, at Grantee's option, Grantor agrees to amend this Agreement or replace it with a different instrument so as to convert Grantee's interest in the Easement Property to a substantially similar interest that makes Grantee eligible for the Green Credit. Grantee will pay Grantor reasonable legal fees and other

out of pocket expenses related to preparation, review, execution and delivery of the amendment or replacement agreement.

18. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Iowa, without regard to conflicts of law principles. The parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good faith negotiation. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity. Each party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Agreement shall be to the Court.

19. **Condemnation.** Should title to or possession of all of the Property be taken in condemnation proceedings or by inverse condemnation by a government agency, governmental body or private party under the exercise of the right of eminent domain, or should a partial taking render the remaining portion of the Property unsuitable for Grantee's use (as determined by Grantee) then this Agreement shall terminate upon such vesting of title or taking of possession. All payments (including severance damages) made on account of any such taking or any threatened taking shall be deposited promptly with an independent third-party escrow company agreed upon by the parties. Grantor shall be entitled to all portions of the award, except that Grantee shall receive any portion of the award that is attributable to the following: (i) any removal and relocation costs of the Wind Energy Facilities; (ii) any loss of or damage to any Wind Energy Facilities, (iii) Grantee's loss of use of the Property, and (iv) Grantee's lost profits. Grantee shall have the right to participate in any settlement proceedings, and Grantor shall not enter into any binding settlement agreement without Grantee's prior written consent. If title to or possession of part of the Property is taken in eminent domain proceedings and this Agreement remains in effect, then there shall be an equitable reduction of payments to reflect the change.

20. **Severability.** Should any provision of this Agreement, in a final and unappealable decision by a court of competent jurisdiction, be held to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Agreement, the Term (or Renewal Term, if applicable) shall not be for a longer period than the longest period permitted by applicable law.

21. **Entire Agreement/Amendments.** This Agreement constitutes the entire agreement between the parties respecting its subject matter and replaces and supersedes any prior oral or written agreements or understandings. Any agreement, understanding or representation respecting the subject matter of this Agreement not expressly set forth in this Agreement, or in a later writing signed by both parties, is null and void. This Agreement and the Property shall not be modified or amended except in a writing signed by the parties or their successors in interest.

*[Signature Page Follows]*



OWNER:

Urey S. Anderegg Trust

Karen A Reis  
Print Name: Karen A. Reis  
Its: Trustee

**ACKNOWLEDGMENT**

STATE OF IOWA )  
COUNTY OF Jones ) ss.  
)

This instrument was acknowledged before me on July 5, 2022, by  
Karen A. Reis, Trustee of the Urey S. Anderegg Trust.

Angela M McDonough  
NOTARY PUBLIC IN AND FOR SAID STATE

Karen A. Reis

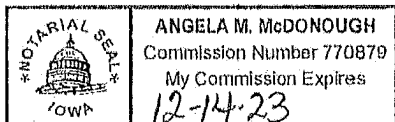
Karen A Reis  
Karen A. Reis

**ACKNOWLEDGMENT**

STATE OF IOWA )  
COUNTY OF Jones ) ss.  
)

This instrument was acknowledged before me on July 5, 2022, by Karen A. Reis.

Angela M McDonough  
NOTARY PUBLIC IN AND FOR SAID STATE



Patricia Iria Anderegg Rezende

*Patricia Iria Anderegg Rezende*  
Patricia Iria Anderegg Rezende

**ACKNOWLEDGMENT**

STATE OF IOWA

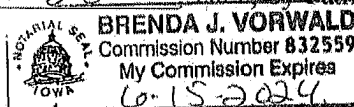
)

COUNTY OF Delaware

) ss.

)

This instrument was acknowledged before me on 7-26, 2022, by Patricia Iria Anderegg Rezende.



*Brenda Vorwald*

NOTARY PUBLIC IN AND FOR SAID STATE



**EXHIBIT A**  
**Legal Description of Property**

The Northeast Quarter of the Northeast Quarter of Section 14, Township 90 North, Range 5 West of the 5<sup>th</sup> P.M.

AND

The North One-Half of the Northwest Quarter of Section 13, Township 90 North, Range 5 West of the 5<sup>th</sup> P.M.

## EXHIBIT B

### Depiction of Overhang Easement Property

The Overhang Easement Property shall be the southernmost 50 feet of each parcel described in Exhibit A, as depicted below.

