

Recorded: 12/28/2023 at 9:11:05.0 AM
County Recording Fee: \$32.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$35.00
Revenue Tax: \$0.00
Delaware County, Iowa
Daneen Schindler RECORDER
BK: 2023 PG: 3243

Prepared by: Jeffrey I. Nielson, Stoel Rives LLP, 101 S. Capitol Blvd, Suite 1900, Boise, ID 83702
Return to: Mehul Mehta, c/o Greenbacker Renewable Energy Corporation, 230 Park Avenue, Suite 1560, New York, NY 10169

FIRST AMENDMENT TO WIND FARM NEIGHBOR AGREEMENT

(Elk Wind Farm)

This First Amendment to Wind Farm Neighbor Agreement (“**First Amendment**”) is entered into as of the 5 day of December, 2023, by and between David L. Philipp and Anna J. Philipp (“**Owner**” or “**You**”) and Elk Wind Energy LLC, an Iowa limited liability company (“**Elk**” or “**We**”).

BACKGROUND

A. Owner and Elk entered into a Wind Farm Neighbor Agreement dated on or about January 14, 2011 (the “**Agreement**”), which was recorded (except for Exhibits B, C and D thereto, which were not recorded) in the official records of the Recorder of Delaware County, Iowa, on December 5, 2011 at Book 2011, Page 3917. Capitalized terms used but not defined in this First Amendment have the meanings given them in the Agreement.

B. Under the terms of the Agreement, Elk has constructed Wind Energy Facilities on property adjacent to Owner’s real property legally described on **Exhibit A** attached hereto and referred to as “**Your Property**” in the Agreement.

C. Elk is planning to perform work at the Wind Farm to upgrade certain components of the Wind Energy Facilities, which may include, without limitation, installing longer turbine blades (the “**Repowering**”). The planning process, market conditions, availability of labor and supplies, and financing are among the factors that influence whether and when Elk will undertake the Repowering. However, Elk currently expects to commence the Repowering before the end of 2022.

D. The purpose of this First Amendment is to (1) provide Elk with necessary rights to perform the Repowering; (2) provide for compensation to Owner for any inconvenience experienced by

Owner as a result of the Repowering; (3) extend the Term of the Agreement; and (4) clarify Elk's payment obligations under the Agreement.

AGREEMENT

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Elk and Owner agree as follows:

1. Incorporation. Paragraphs A through D of the above Background section are incorporated into and made a part of this First Amendment by this reference.

2. Effect of Amendment. Except as specifically modified by this First Amendment, all of the terms and conditions set forth in the Agreement will remain unchanged and in full force and effect.

3. Repowering; Cooperation. Owner consents to the Repowering and agrees to reasonably cooperate with Elk to achieve the Repowering, including by executing and delivering to Elk any agreements, certificates, instruments and documents that Elk may reasonably request in connection with the Repowering.

4. Term. Section 8.1 is hereby deleted in its entirety and replaced with the following new Section 8.1:

"8.1 TERM AND EXPIRATION DATE. The term of this Agreement and of the easements begins upon the signing of this Agreement by the parties, and will end on the "expiration date," which is the date that is fifty (50) years after the Commercial Operation Date of the Wind Farm. "Commercial Operation Date" for purposes of this Agreement means the date the Wind Energy Facilities are constructed, tested, interconnected with the transmission provider's transmission and distribution system, staffed and operational. The parties agree that the Commercial Operation Date occurred on December 1, 2011 and that the expiration date of this Agreement is, therefore, December 1, 2061."

5. Payment Obligations. Until the expiration date or earlier termination of this Agreement, Elk will continue to make payments to Owner under the terms of the Agreement, as amended by this First Amendment. **Exhibit D-1** to this First Amendment describes the amounts Elk will pay to Owner for (a) consideration for this First Amendment, (b) compensation for any inconvenience experienced by Owner in connection with the Repowering, and (c) annual Easement Payments for the years 2041 through 2061. Exhibit D-1 is intended to supplement Exhibit D to the Agreement and does not amend or supersede Exhibit D to the Agreement, except that the annual Easement Payment for the year 2041 shall be governed by Exhibit D-1 and not Exhibit D to the Agreement. Exhibit D-1 to this First Amendment will not be recorded.

6. Notice. The addresses for Owner and Elk set forth in the "Parties" section of the Agreement are hereby deleted in their entirety, and Section 7 of the Agreement is hereby deleted in its entirety and replaced with the following:

“7. NOTICE. All notices under this Agreement shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier that retains evidence of delivery; (c) on the date sent by e-mail (with confirmation of transmission) if sent during normal business hours of the recipient (provided that such notice will be effective on the next business day if sent after normal business hours of the recipient); or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 7):

To Owner: David L. Philipp and Anna J. Philipp
2077 140th Street
Greeley, IA 52050

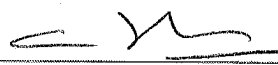
To Elk: Elk Wind Energy LLC
c/o Greenbacker Renewable Energy Corporation
230 Park Avenue, Suite 1560
New York, NY 10169
Attention: General Counsel
Email: generalcounsel@greenbackercapital.com”

[Remainder of page left intentionally blank; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have signed this FIRST Amendment on the date first written above.

ELK:

Elk Wind Energy LLC,
an Iowa limited liability company

By: 

Name: Claude Vuillieme

Title: Authorized Person

ACKNOWLEDGMENT

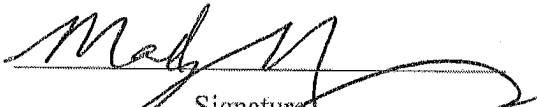
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On December 26, 2023, before me, Mandy Yang, a Notary Public, personally appeared Claude Vuillieme, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.


Signature

[SEAL]

Mandy Yang
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01YA6426324
Qualified in Queens County
Commission Expires December 6, 2025

OWNER:

David L. Philipp
David L. Philipp



Anna J. Philipp
Anna J. Philipp

ACKNOWLEDGMENT

STATE OF IOWA)
COUNTY OF Delaware) ss.

This instrument was acknowledged before me on December 5, 2023, by David L. Philipp and Anna J. Philipp.

Kevin R. Lehs
Signature of Notary Public

My commission expires: 11/17/2026

EXHIBIT A
LEGAL DESCRIPTION OF YOUR PROPERTY

The Northwest Quarter (NW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twenty Three (23), Township Ninety (90) North, Range Five (5), West of the Fifth P.M., Delaware County, Iowa.

Net Acreage of Your Property as determined by the County Assessor's records (or if net acreage cannot be determined from the County Assessor's records, net acreage shall be determined by accurate survey or agreement of the parties): 40.00