

COUNTY RECORDER, MORTON COUNTY, ND

426009

I certify that this instrument was filed and recorded.
Carrole Schaner, County Recorder Fee \$31.00 *pd.*

By *Carrole Schaner* 1/7/2010 10:20 AM

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NEXTERA ENERGY RESOURCES
700 UNIVERSE BLVD
JUNO BEACH FL 33408

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Morton County
Mandan ND 58554
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AFTER RECORDING RETURN TO

Orin Shakerdge, Esq.
NextEra Energy Resources, LLC
700 Universe Blvd., LAW/JB
Juno Beach, FL 33408

(This space reserved for recording information)

TRANSMISSION EASEMENT

THIS TRANSMISSION EASEMENT ("**Agreement**"), is executed effective this 9th day of November, 2009 ("**Effective Date**"), by and between Marcus Zander and Mary L. Zander, husband and wife ("**Grantor**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Grantee**").

PREMISES

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

B. Grantor desires to grant and convey to Grantee an exclusive easement for the erection, installation and maintenance of certain facilities for the transmission of electric power over and across a certain portion of the Property.

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. **Option.** Grantor grants to Grantee an exclusive option ("**Option**") to acquire the Easement referenced in Section 2 in accordance with the following terms and conditions.

1.1. **Option Term.** The initial period during which Grantee may exercise the Option shall be for a term of thirty-six (36) months, commencing on the Effective Date and expiring on the date immediately preceding the third (3rd) anniversary of the Effective Date ("**Option Term**"). Grantee shall have a single election to extend the Option Term for an additional twenty-four (24) months ("**Extended Option Term**") by written notice to Grantor at any time prior to the third (3rd) anniversary of the Effective Date. References herein to the Option Term shall mean the initial thirty-six (36) month period and, to the extent exercised by Grantee, also the Extended Option Term, unless expressly stated otherwise.

1.2 **Use.** During the Option Term, Grantee and its employees, agents and contractors shall have a non-exclusive right to enter upon the Property and the right of ingress and egress over and across the Property for the purposes of (i) surveying the Property; and (ii) performing such other tests and studies as Grantee may desire in connection with the Option,

including, without limitation, environmental, avian and cultural resource assessments, and geotechnical, foundation and soil tests.

1.3 **Right to Grant Option.** Grantor warrants and represents to Grantee that (i) Grantor is the holder of fee simple title to all of the Property; (ii) Grantor has the authority to grant this Option and Agreement to Grantee without the consent or approval of any other party; and (iii) there are no other existing options, rights of first refusal, contracts to purchase, leases or mortgages that encumber the Property or would prevent Grantee from exercising its rights with respect to the Option except as disclosed in writing to Grantee.

1.4 **Exercise of Option.** Grantee may exercise the Option by giving written notice to Grantor ("**Option Notice**") at any time during the Option Term. Grantee shall specify in the Option Notice the commencement date, which shall be a day that is the first day of a month and a day that is not sooner than thirty (30) days and not later than sixty (60) days after the date the Option Notice is given to Grantor ("**Commencement Date**"). On the Commencement Date, the Easement referenced in Section 2 shall automatically become effective, and Grantee and Grantor shall be subject to all of the terms and conditions of this Agreement with respect to such Easement and all rights and obligations relating thereto. Along with the Option Notice, Grantee shall deliver to Grantor a proposed plan of development showing the contemplated location and route of the Easement referenced in Section 2, which shall serve as and be incorporated herein as the **Exhibit B** to this Agreement ("**Easement Area**"). If Grantee fails to exercise the Option within the Option Term, the Option and the rights of Grantee as the optionee shall automatically terminate.

2. **Grant.** Upon exercise of the Option, Grantor does hereby grant, bargain, sell and convey unto Grantee, an exclusive easement (the "**Easement**") under, on, along and in the Easement for the purposes of erecting, constructing, replacing, relocating, improving, enlarging, removing, maintaining and utilizing, from time to time, a line or lines of towers and/or poles, with such wires and/or cables, for the transmission of electrical energy, and all necessary and proper foundations, footings, cross arms and other appliances, facilities and fixtures for use in connection therewith (collectively, the "**Facilities**") under, on, along and in the Easement Area; together with (i) the right of ingress to and egress from the Facilities over and along the Property; and (ii) a temporary easement along and under that portion of the Property comprising the fifty (50) feet adjacent to and along the entire boundary of the Easement Area during the initial construction and installation of the Facilities.

3. **No Interference.** Grantor shall not construct, install, or permit to be constructed or installed, any improvements, fences, structures, buildings, foliage or vegetation, utility lines or other improvements of any type whatsoever upon or near the Easement Area which would inhibit or impair any of Grantee's rights or benefits as set forth in this Agreement. Grantee shall have the right, without compensation to Grantor, to cut, prune and remove or otherwise dispose of any foliage or vegetation on or near the Easement Area that Grantee deems a threat or potential threat to the Facilities or its rights hereunder. Grantor shall not grant or permit any person or person(s) claiming through Grantor, other than Grantee, any right-of-way, encumbrance, easement or other right or interest in, to or affecting the Easement Area, without the prior written consent of Grantee in each instance, which consent Grantee may grant, withhold or deny in its sole discretion.

4. **Term.** The term of this Agreement shall commence on the Commencement Date and expire on December 31, 2108 ("**Term**"), unless terminated as provided in this Agreement. Grantee shall have the right to terminate this Agreement as to all or any part of the Easement Area, at any time, effective upon thirty (30) days' written notice to Grantor.

5. **Indemnification and Insurance.** Grantee shall maintain liability insurance insuring Grantee and Grantor against loss caused by Grantee's use of the Property. The amount of insurance shall be not less than \$3,000,000.00 of combined single limit liability coverage. Grantee shall indemnify and at its expense defend Grantor against liability for injuries and claims for direct damage to the extent that they are caused by Grantee's exercise of rights granted in this Agreement. This indemnity does not cover losses of rent, business opportunities, crop production, and profits that may result from Grantor's loss of use of the Property.

6. **Assignment; Mortgage Rights.**

(a) Grantee, without Grantor's consent or approval, shall have the right to mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Easement, the Easement Area, or the Facilities (collectively, its "**Facilities Assets**"). These various security interests in all or a part of the Facilities Assets are collectively referred to as "**Mortgage**" and the holders of the Mortgages, their designees and assigns are referred to as "**Mortgagee**." Grantee shall also have the right without Grantor's consent to sell, convey, lease, or assign all or any portion of its Facilities Assets on either an exclusive or a non-exclusive basis, or to grant sub-easements co-easements, separate easements, leases, licenses or similar rights, however denominated (collectively, "**Assignment**"), to one or more persons or entities (collectively, "**Assignee**"). Grantee's notice to Grantor shall include the name and address of each Mortgagee and/or Assignee.

(b) Assignees and Mortgagees shall use the Facilities Assets only for the uses permitted under this Agreement. As a precondition to exercising any rights or remedies related to any alleged default by Grantee under this Agreement, Grantor shall give written notice of the default to each Mortgagee at the same time it delivers notice of default to Grantee, specifying in detail the alleged event of default and the required remedy. 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.

7. **Setback Waiver.** Grantor hereby waives any and all benefits of North Dakota Century Code Section 49-22-05.1 and North Dakota Administrative Code Section 69-06-08-02, and all amendments thereto or replacements thereof, which provide that energy conversion facilities and transmission facilities located within 500 feet of a residence or place of business must be designated as an avoidance area; and agrees that such facilities may be constructed at the location as depicted on a map provided to Grantor, which facilities are less than 500 feet from Grantor's residence or place of business.

8. **Binding Effect; Governing Law.** This Agreement shall be binding upon and shall inure to the benefit of both Grantor and Grantee, and their respective heirs, successors and assigns, and shall be deemed a covenant running with the land for all purposes. The provisions hereof shall be governed by and construed in accordance with the laws of the State of North Dakota.

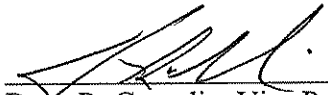
9. **Waiver of Exclusive Easement.** Grantee hereby waives its right to the exclusive option granted to it (Grantee) in that prior Option for Wind Farm Easement Agreement entered by and between Grantor and Grantee for the sole, specific, and only purpose of Grantor granting to Grantee, its successors, and assigns, this Transmission Easement Agreement.

[Remainder of Page Intentionally Left Blank]

[Signatures follow on next page]

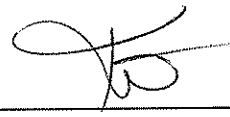
Grantee:

Boulevard Associates, LLC
A Delaware limited liability company

By: 
Dean R. Gosselin, Vice President

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

This instrument was acknowledged before me this 9th day of November, 2009, by Dean R. Gosselin as Vice President of Boulevard Associates, LLC, a Delaware limited liability company.


Notary Public, Commission No. _____

My Commission Expires:

(SEAL)

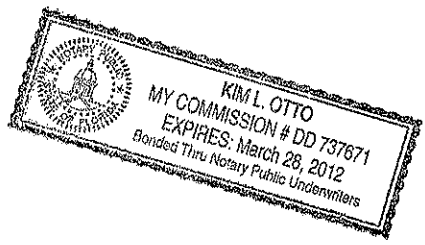


EXHIBIT A

Legal Description of Property

Parcel 1

The Southwest Quarter (SW¹/₄) of Section 10, Township 140 North, Range 83 West of the Fifth Principal Meridian, located in Morton County, North Dakota.

Parcel 2

The Northwest Quarter (NW¹/₄) of Section 15, Township 140 North, Range 83 West of the Fifth Principal Meridian, located in Morton County, North Dakota.

HOLDING PAGE FOR EXHIBIT B

Depiction of Easement Area

County Recorder
Morton County
Mandan ND 58554

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