

265328 Page 1 of 9
1/26/2018
Burke County Recorder



\$65.00

265328
STATE OF NORTH DAKOTA BURKE COUNTY
I hereby certify that this instrument was filed for record
on 1/26/2018 @ 1:05 PM
Bonnie L. Bohnsack, County Recorder

By *Jacqueline A. Hochstedt*

OPTION AND TRANSMISSION EASEMENT

THIS OPTION AND TRANSMISSION EASEMENT ("**Agreement**"), is executed effective this 5th day of JANUARY, 2018 ("**Effective Date**"), by and between James L. Jorgenson and Jodi Jorgenson, husband and wife, whose address for notices is: 7835 94th Avenue NW, Powers Lake, ND 58773 ("**Grantor**") and Burke Wind, LLC, a Delaware limited liability company, whose address for notices is: 700 Universe Blvd., Attn: Land Services, Juno Beach, FL 33408 ("**Grantee**"). Grantor and Grantee are sometimes individually referred to as a "**Party**" and collectively, as the "**Parties**".

PREMISES

A. Grantor is the owner of a certain tract of real property located in Burke 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 option to acquire 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 to acquire the Easements referenced in Section 2 ("**Option**") 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 ("**Initial Option Term**"). Grantee shall have a single election to extend the Initial 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 Option Term 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 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 ("**Commencement Date**"). On the Commencement Date, the Easements referenced in Section 2 shall automatically become effective, and the Parties shall be subject to all of the terms and conditions of this Agreement with respect to such Easements 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 Easements 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.**

2.1 **Easements.** Upon the Commencement Date, Grantor does hereby grant, bargain, sell and convey unto Grantee, an exclusive easement under, on along and in the Easement Area 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 telecommunication services, and all necessary and proper foundations, footings, cross arms and other appliances, facilities and fixtures for use in connection therewith (collectively, the "**Facilities**"); together with (i) an easement for vehicular and pedestrian ingress to and egress from the Facilities over and along the Property and Grantor's adjacent property by means of any existing roads or lanes thereon, or otherwise by such route or routes as Grantee or Grantor may construct from time to time; (ii) an exclusive easement for the right and privilege to permit the above ground Facilities to overhang the Property adjacent to the Easement Area; and (iii) a temporary easement ("**Construction Easement**") along and under that portion of the Property comprising the fifty (50) feet in width adjacent to and along the entire boundary of the Easement Area during, and for the purpose of, the initial construction and installation of the Facilities and storage of materials and equipment related thereto (collectively, "**Easements**"). The Easement Area shall not exceed one hundred fifty (150) feet in width except where appurtenances to the Facilities (e.g. supporting guy wires) are constructed, in which case the Easement Area may be



extended up to an additional seventy-five (75) feet. After completion of construction of the Facilities, Grantee, to the extent reasonably possible, shall restore the Construction Easement to the condition it was in prior to construction of the Facilities; provided, however, Grantee shall not be required to replant or restore any trees or other vegetation, which were removed from the Property pursuant to Section 3.

2.2 **Relocation.** During the final development and construction of the Facilities, Grantee may change the location and route of the Easements so long as the nature and extent of the relocated or rerouted Easements are not materially different and impose no greater burden on the Property than the original locations or routes. In the event Grantee does relocate the Easements under this Section, Grantee shall provide to Grantor a revised **Exhibit B**, which shall show the location of the Easements and shall substitute for the **Exhibit B**, delivered with the Option Notice. Grantee shall have the right to record in the County where the Property is located a notice incorporating the revised **Exhibit B**.

3. **Interference.** Grantor expressly reserves the right to use the Property for all other purposes not granted to Grantee under this Agreement; provided, however, Grantor covenants and agrees that neither Grantor nor its agents, lessees, invitees, guests, licensees, successors or assigns will (i) interfere with, impair or prohibit the free and complete use and enjoyment by Grantee of its rights granted by this Agreement; (ii) take any action which will in any way interfere with or impair the transmission of electric, electromagnetic or other forms of energy to or from the Easement Area; or (iii) take any action which will interfere with or impair Grantee's access over and across the Property and to the Easement Area for the purposes specified in this Agreement. Grantor shall not be permitted to drill or excavate for minerals on the surface of the Easements, but Grantor may extract oil, gas, or other minerals from and under the Easements by directional drilling or other means which do not interfere with or disturb Grantee's use of the Easements. Grantor shall not construct or place any buildings, structures, plants, or other obstructions on the Property which would result in the violation of the minimum clearance requirements of the National Electric Safety Code or would interfere with the operation and maintenance of the Facilities. Grantor shall not excavate so near the sides of or underneath the Facilities installed as to undermine or otherwise adversely affect their stability and usability. Grantee shall also have the right and privilege to trim, cut down, or control the growth of trees or any other vegetation on the Property, as in the sole judgment of Grantee may interfere with maintenance or operation of the Facilities. Grantor will cooperate with Grantee to avoid pasturing animals on or near the Facilities during periods of construction, maintenance or removal activity by Grantee.

4. **Term and Termination.** The term of the Easements and the terms and conditions of this Agreement with respect to such Easements, and all rights and obligations relating thereto, is ninety-nine (99) years commencing on the Commencement Date ("**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. **Removal.** If this Agreement is terminated by Grantee, and after receiving a written request from Grantor, Grantee shall remove all Facilities on the Property and restore the

Property to its approximate original condition that existed before Grantee constructed its Facilities, all at Grantee's sole cost and expense. Such removal by Grantee shall be accomplished within one (1) year after receiving a written request from Grantor and include any Facilities to a depth of forty-eight inches (48") beneath the surface of the Property.

6. **Indemnification and Insurance.** Grantee shall maintain liability insurance insuring the Parties 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.

7. **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 Agreement, the Easements, 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.

8. **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, in part, 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 may be less than 500 feet from Grantor's residence or place of business.



9. **Binding Effect; Governing Law.** This Agreement shall be binding upon and shall inure to the benefit of both Parties, 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.

10. **Construction Liens.** Grantee shall not permit any liens arising out of Grantee's use of the Property under this Agreement to be filed against the Property. Grantee shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security that Grantor may reasonably request, or remove such lien from the Property in the manner provided by applicable law.

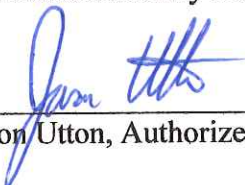
[Signatures on Following Pages]

265328 Page 5 of 9
1/26/2018
Burke County Recorder



Grantee:

Burke Wind, LLC
a Delaware limited liability company

By: 
Jason Utton, Authorized Representative

ACKNOWLEDGEMENT

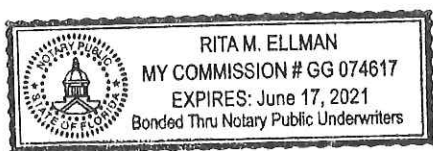
STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

This instrument was acknowledged before me this 5th day of January, 2017, by Jason Utton, as Authorized Representative of Burke Wind, LLC, a Delaware limited liability company.


Notary Public, Commission No. _____

My Commission Expires:

(SEAL)



AFTER RECORDING RETURN TO

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

265328 Page 7 of 9
1/26/2018
Burke County Recorder



EXHIBIT A

Legal Description of Property

Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 32, Township 159 North,
Range 93 West of the 5th P.M., Burke County, North Dakota.

265328 Page 8 of 9
1/26/2018
Burke County Recorder



HOLDING PAGE FOR EXHIBIT B

Depiction of Easement Area

265328 Page 9 of 9
1/26/2018
Burke County Recorder



265328
NEXTERA ENERGY RESOURCES, LLC
700 UNIVERSITY BLVD.
JUNO BEACH, FL 33408

Grant. _____ Legal _____ Relates _____ Satisfy _____ Verified