

88178 5/23/2013 9:43 AM PAGE: 1 OF 7
 BOOK: II PAGE: 152 FEES: \$28.00 MM Amended & Restated Wit
 Kim Wilkens, OLIVER COUNTY CLERK
 By *Kim Wilkens* Deputy

MINNESOTA POWER
 30 W SUPERIOR ST
 DULUTH, MN 55802



**AMENDED & RESTATED
 WIND PROJECT OPTION AGREEMENT**

Special Message to Property Owners

This is an important agreement our lawyers have drafted that will bind you and your land for up to 56 years. We will give you enough time to study and thoroughly understand it. We strongly encourage you to hire a lawyer to explain this agreement to you. You may talk with your neighbors about the wind project and find out if they also received a proposed contract. You and your neighbors may choose to hire the same attorney to review the agreement and negotiate changes on your behalf.

SEQUENCE NO. 25932-A

**AMENDED & RESTATED
WIND PROJECT OPTION AGREEMENT**

This Amended & Restated Wind Project Option Agreement ("Option") is made as of May 8, 2013, by and between **Keith G. Kessler and Deanna A. Kessler, husband and wife** ("Owner") as owner of the real property described on attached **Attachment 1** ("Owner's Property") and RendField Land Company, Inc., a Minnesota corporation ("Developer"). **This Amended & Restated Wind Project Option replaces the Wind Project Option Agreement recorded as Document No. 192255 in the office of the County Recorder's Office on July 13, 2009, Mercer County, North Dakota.**

1. Grant of Option. Owner hereby grants to Developer the exclusive and irrevocable option to acquire the exclusive right to convert all of the wind resources of the Owner's Property into energy, subject to and in accordance with the terms and conditions set forth in this Agreement.

2. Payment and Grant of "Most Favored Nation" Status. Developer shall pay to Owner the non-refundable sum of [REDACTED] (\$ [REDACTED] per acre) within 30 business days of the date hereof and on each anniversary hereof (the "Option Payment(s)"). If, within 8 months of the date hereof, Developer enters into an option agreement for wind development purposes (not including electric transmission purposes) with another landowner with similar property within a 10 mile radius of the Owner's Property, which such option agreement includes a higher Option Payment or higher Annual Installment Payments (as defined in the Wind Project Easement Agreement attached as **Attachment 2**), then this Amended & Restated Wind Project Option Agreement (and the Wind Project Easement Agreement, as applicable) will be amended to reflect such higher payments.

3. Option Term. The term of the Option shall be Five (5) years (the "Option Term"), unless earlier terminated by Developer. Developer may terminate this Option at any time upon thirty (30) days' written notice to Owner.

4. Exercise of Option. Developer may give written notice to Owner of the exercise of this Option during the Option Term, which such notice may exercise this Option as to all or only a part of Owner's Property. In the event of exercise of the Option by Developer, Developer and Owner agree to promptly execute a Wind Project Easement Agreement in the form of **Attachment 2**. If Developer exercises this Option as to only a part of the Owner's Property, this Option shall remain in effect as to the remainder of Owner's Property for the rest of the Option Term and Option Payments shall be adjusted proportionate to the acreage remaining under option.

5. Failure to Exercise Option or Make Option Payments. If Developer fails to give written notice of exercise of this Option on or before the Option Term expires, or if Developer fails to make any Option Payment when due, and such failure continues for fifteen (15) days after written notice thereof from Owner, this Option shall automatically terminate, Developer shall have no rights herein and Owner shall retain the Option Payment(s).

6. Developer Access and Met Tower Construction.

- (a) During the Option Term, Developer and Developer's agents and contractors shall be entitled to enter upon the Owner's Property to perform engineering surveys, soil tests, environmental tests, and such other inspections, tests and studies as Developer deems necessary, all at Developer's sole cost and expense.
- (b) During the Option Term, Developer and Developer's agents and contractors shall be entitled to enter upon Owner's Property to construct, erect, install, reinstall, replace, relocate and remove 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 (collectively "Met Tower"), to determine the feasibility of wind energy conversion on the Property, on adjacent property or elsewhere.
- (c) Developer shall pay Owner a Met Tower Fee for each meteorological tower, if any, installed on the Owner's Property by Developer that operates during the Option Term in an amount equal to [REDACTED] (\$ [REDACTED]) per Met Tower per year.
- (d) Developer shall not construct roads, lanes or other surface improvements to access the Met Tower except with the express written consent of Owner, which consent will not be unreasonably withheld. If a road is not constructed, after each use of Owner's property to access the Met Tower, Developer to the extent reasonably possible, shall restore the Owner's Property to the condition that it was in before Developer's access.
- (e) Developer agrees to indemnify, defend and hold Owner harmless from any and all claims, of whatever nature, arising out of or relating to any act or omission of Developer or Developer's agents or contractors on the Owner's Property in the exercise of Developer's rights under this Option.
- (f) To the extent that any damage is caused to the Owner's Property by Developer, Developer shall, prior to expiration of the Option Term if this Option is not exercised, restore the Owner's Property to the condition as it exists as of the date hereof.
- (g) Developer shall pay Owner the fair market value for actual crop loss and damage resulting from Developer's exercise of its rights under this Option. Owner will provide Developer with an invoice for such crop loss and damage by November 15 of each year, based upon which Developer will make payment for crop loss and damage by December 15 of such year. Developer may use crop yield information from the records of the Federal Farm Insurance Corporation and value information from the Farm Services Agency or similar source of crop market value information for the period between April 1 and November 1 of that year to confirm fair market value and crop yields.

(h) Developer shall not permit any mechanic liens to be filed against the Owner's Property, and shall immediately discharge or obtain releases of any such mechanic liens. Developer shall not be liable for any existing conditions on the Owner's Property, provided the Owner's Property is restored to the condition as it exists on the date hereof.

7. Representations and Warranties By Owner. Owner represents and warrants to Developer that Owner is the sole owner of the Owner's Property and has the unrestricted right and authority to sign this Option and to grant Developer the rights granted herein. When signed by both parties, this Option constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

8. Notices. All notices or other communications required or permitted by this Option shall be in writing. Notices and payments shall be deemed given or made when personally delivered; five (5) days after deposit in the United States mail, first class, postage prepaid, certified; or, one (1) business day after dispatch by Federal Express or other overnight delivery service of national scope, addressed as follows:

If to Owner: **Keith G. and Deanna A. Kessler**
6001 26th Street S.W.
Glen Ullin, ND 58631

If to Developer: RendField Land Company, Inc.
30 W. Superior St.
Duluth, MN 55802
Attn: General Manager – Renewable Operations

Any party may change its address for purposes of this paragraph by giving written notice of the change to the other parties in the manner provided in this paragraph.

9. Entire Agreement. This Option and its Attachments constitute the entire agreement between the parties with respect to the subject matter hereof and thereof. This Option may not be changed orally, but only by an agreement signed by the parties.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota, irrespective of the domicile of the parties.

11. Binding Effect. This Option shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

12. Time Is of the Essence. Time is of the essence in the performance of the terms and conditions of this Option.

13. Savings Clause. If any term or condition of this Option is held to be invalid or unenforceable, such term or condition shall not be enforced, but all other terms and conditions of this Option shall be deemed in full force and effect.

[Remainder of page intentionally blank]

ATTACHMENT 1

Legal Description of Owner's Property

NW¼, N½SE¼ and the SE¼SE¼ of Section 15

NE¼ and the S½ of Section 16

Lots 1 and 2 and the E½NW¼ of Section 18

T141N R87W, Oliver County, North Dakota, 5th Principal Meridian

and

SE¼ of Section 1

E½E½ and the NW¼SE¼ of Section 12

T141N R88W, Mercer County, North Dakota, 5th Principal Meridian

MORTGAGEE
MORTGAGOR
INDEXED ✓

STATE OF NORTH DAKOTA
COUNTY OF MERCER

202080
OFFICE OF
COUNTY RECORDER

I hereby certify that the within instrument was filed in this office for record this 5/13/2013 at 9:57 AM, and was duly recorded as Book 194 MISC on Page 679 Fee: \$28.00

County Recorder *Brenda L. Cook*

By Deputy *Kathryn Schumann*,

Return To: MINNESOTA POWER, 30 WEST SUPERIOR ST
DULUTH, MN 55802-2093

