

received
4-26-16

Prepared by and after
Recording Return to:
Upstream Wind Energy LLC
Attn: Chris Genetos, Esq.
One South Wacker Drive
Suite 1800
Chicago, IL 60606

WAIVER OF SETBACK REQUIREMENT

THIS WAIVER OF SETBACK REQUIREMENT (“**Agreement**”) is entered into this 1 day of February, 2016 by and between **DOUBLE B TURKEY** (together with their successors, assigns and heirs, “**Owner**”), the owner of certain real estate property located in Antelope County, Nebraska, and **Upstream Wind Energy LLC** (together with its transferees, successors and assigns, (“**Upstream**”). Owner and Upstream are sometimes referred to in this Agreement as a “**Party**” or collectively as the “**Parties**”.

RECITALS

WHEREAS, Owner holds the fee simple title to that certain real property legally described on Exhibit A, attached hereto (the “**Property**”); and

WHEREAS, Upstream intends to construct certain wind energy conversion systems including, without limitation, turbines, foundations, roads and collection systems (collectively, the “**WECS**”), in an area of real property located in Antelope County, Nebraska (“**Upstream Property**”); and

WHEREAS, the WECS shall be constructed on the Upstream Property pursuant to and in accordance with Antelope County, Nebraska Zoning Regulations dated October 2015 and approved by the County Board of Supervisors, Antelope County, Nebraska (the “**County Approval**”); and

WHEREAS, the County Approval requires certain setbacks for all turbines located at the WECS from neighboring dwelling units located on property with which Upstream does not have a lease (as more properly described in the County Approval, the “**Setback Requirements**”) provided, however, that a neighboring dwelling unit located on property with which Upstream does not have a lease may waive this Setback Requirement; and

WHEREAS, Owner, who has a neighboring dwelling unit located on property with which Upstream does not have a lease, has agreed to waive the Setback Requirement with respect to all turbines located at the WECS.

NOW, THEREFORE, for a good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference and made a part hereof.
2. **Waiver.** Owner hereby waives the Setback Requirement to the fullest extent possible with respect to all turbines located at the WECS in consideration of payment in Exhibit B.
3. **Ownership.** Owner hereby represents, warrants and covenants that Owner is the sole and absolute owner of the Property and has the unrestricted right and authority to execute this Agreement and does so without reservation.
4. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between Owner and Upstream regarding the matters covered hereby, and there are no understandings or agreements other than those incorporated in this Agreement regarding said matters. This Agreement shall not be amended, modified, or supplemented at any time, unless by writing executed by the Parties hereto.
5. **Authority.** Each person signing below represents and warrants that such person has the requisite authority to bind the person or the entity on whose behalf such person is signing.
6. **Binding on Successors.** This Agreement and the obligations hereunder are intended to and shall be binding upon the representatives, assigns and successors of Owner and Upstream and shall inure to the benefit of the assigns and successors of Owner and Upstream.
7. **No Party Deemed Drafter.** Upstream and Owner agree that no Party shall be deemed to be the drafter of this Agreement and further that, in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against any Party as the drafter of this Agreement.
8. **Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument. This Agreement may be executed by way of facsimile signature and such signature shall be sufficient to bind the Party so

executing this Agreement. Such Party shall thereafter promptly forward a confirming copy of such facsimile signature to the other Party.

9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.
10. **Severability.** In the event any provision of this Agreement is found to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.
11. **Waiver to Run with the Land.** This Agreement shall run with the land and shall be binding on and shall inure to the benefit of the Parties, hereto, their heirs, executors, administrators, successors, and assigns and shall be enforceable at law or in equity by the Parties hereto, their heirs, administrators, successors, and assigns.
12. **Recordation.** The Parties shall cause the recordation of a duplicate original of this Agreement in the Office of the Recorder for Antelope County, Nebraska promptly after execution of this Agreement.

[signature pages to follow]

EXHIBIT A

The Property as described in Antelope County, Nebraska

Parcel Number	Owner	Description	Acres
000487900	Double B Turkey Farm Inc.	21-26-6 TR SW4SE4 SE4SW4 5 AC	<u>5.0</u>
		Total	5.0

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Recording Return to:
Upstream Wind Energy LLC
Attn: Chris Genetos, Esq.
One South Wacker Drive
Suite 1800
Chicago, IL 60606

WAIVER OF SETBACK REQUIREMENT

THIS WAIVER OF SETBACK REQUIREMENT (“**Agreement**”) is entered into this 1 day of February, 2016 by and between **CORY W. BENNETT** (together with their successors, assigns and heirs, “**Owner**”), the owner of certain real estate property located in Antelope County, Nebraska, and **Upstream Wind Energy LLC** (together with its transferees, successors and assigns, (“**Upstream**”). Owner and Upstream are sometimes referred to in this Agreement as a “**Party**” or collectively as the “**Parties**”.

RECITALS

WHEREAS, Owner holds the fee simple title to that certain real property legally described on Exhibit A, attached hereto (the “**Property**”); and

WHEREAS, Upstream intends to construct certain wind energy conversion systems including, without limitation, turbines, foundations, roads and collection systems (collectively, the “**WECS**”), in an area of real property located in Antelope County, Nebraska (“**Upstream Property**”); and

WHEREAS, the WECS shall be constructed on the Upstream Property pursuant to and in accordance with Antelope County, Nebraska Zoning Regulations dated October 2015 and approved by the County Board of Supervisors, Antelope County, Nebraska (the “**County Approval**”); and

WHEREAS, the County Approval requires certain setbacks for all turbines located at the WECS from neighboring dwelling units located on property with which Upstream does not have a lease (as more properly described in the County Approval, the “**Setback Requirements**”) provided, however, that a neighboring dwelling unit located on property with which Upstream does not have a lease may waive this Setback Requirement; and

WHEREAS, Owner, who has a neighboring dwelling unit located on property with which Upstream does not have a lease, has agreed to waive the Setback Requirement with respect to all turbines located at the WECS.

NOW, THEREFORE, for a good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein by reference and made a part hereof.
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3. **Ownership**. Owner hereby represents, warrants and covenants that Owner is the sole and absolute owner of the Property and has the unrestricted right and authority to execute this Agreement and does so without reservation.
4. **Entire Agreement; Modification**. This Agreement constitutes the entire agreement between Owner and Upstream regarding the matters covered hereby, and there are no understandings or agreements other than those incorporated in this Agreement regarding said matters. This Agreement shall not be amended, modified, or supplemented at any time, unless by writing executed by the Parties hereto.
5. **Authority**. Each person signing below represents and warrants that such person has the requisite authority to bind the person or the entity on whose behalf such person is signing.
6. **Binding on Successors**. This Agreement and the obligations hereunder are intended to and shall be binding upon the representatives, assigns and successors of Owner and Upstream and shall inure to the benefit of the assigns and successors of Owner and Upstream.
7. **No Party Deemed Drafter**. Upstream and Owner agree that no Party shall be deemed to be the drafter of this Agreement and further that, in the event that this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against any Party as the drafter of this Agreement.
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executing this Agreement. Such Party shall thereafter promptly forward a confirming copy of such facsimile signature to the other Party.

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10. **Severability.** In the event any provision of this Agreement is found to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.
11. **Waiver to Run with the Land.** This Agreement shall run with the land and shall be binding on and shall inure to the benefit of the Parties, hereto, their heirs, executors, administrators, successors, and assigns and shall be enforceable at law or in equity by the Parties hereto, their heirs, administrators, successors, and assigns.
12. **Recordation.** The Parties shall cause the recordation of a duplicate original of this Agreement in the Office of the Recorder for Antelope County, Nebraska promptly after execution of this Agreement.

[signature pages to follow]

IN WITNESS WHEREOF, this Agreement has been executed by Owners and Upstream on and as of the date first above written.

[OWNER]
CORY W. BENNETT

By: Cory W. Bennett
Cory Bennett

UPSTREAM WIND ENERGY LLC

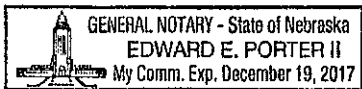
By: Michael Baird
Name: Michael Baird
Title: Vice President

ACKNOWLEDGEMENT

STATE OF NEBRASKA)
) SS:
COUNTY OF ANTELOPE)

Personally came before me this 01 day of FEB, 2016, Cory W. Bennett, who executed the foregoing instrument, and acknowledged the same.

(SEAL)



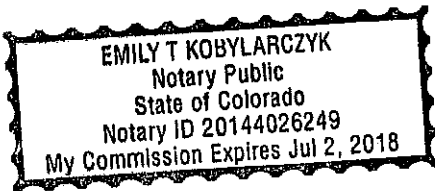
Name: E.E. PORTER II
NOTARY PUBLIC
My commission expires: 12/19/17

ACKNOWLEDGEMENT

STATE OF Colorado)
) SS:
COUNTY OF Arapahoe)

Personally came before me this 1 day of February, 2016,
Michael Baird, Vice President of Upstream Wind Energy
LLC, a Delaware limited liability company, who executed the foregoing instrument, and
acknowledged the same, on behalf of Upstream Wind Energy LLC.

(SEAL)



Name: Emily Kobylarczyk
NOTARY PUBLIC
My commission expires: July 2, 2018

EXHIBIT A

The Property as described in Antelope County, Nebraska

Parcel Number	Owner	Description	Acres
000487501	Cory Bennett	21-26-6 IR TR SW4SW4 6.2 AC	<u>6.2</u>
		Total	6.2