

DOCUMENT PREPARED BY &
RECORDING REQUESTED BY:
E.ON Climate & Renewables

AND WHEN RECORDED MAIL TO:
E.ON Climate & Renewables
701 Brazos Street
Suite 1400
Austin, TX 78701
Attn: Amy Kyrish

STATE OF NEBRASKA)
JEFFERSON COUNTY)§ 2017-00105
Record the 2nd day of February A.D. 2017
At 9:05 o'clock a.m. and recorded in
MISC Record No. 39 Page 233
M. Cynthia Newman, County Clerk

Sharon Gian ✓
Deputy County Clerk
\$58.00 pd. Stahl, Bernal, Davies, Etc

THIS SPACE FOR RECORDER'S USE ONLY

Memorandum of Lease and Easement Agreement

MASCHMAN AG., INC.

Pawnee Spirit Wind Farm
Jefferson County Recording
Prepared by Jennifer Waits

Return to:
E.ON Climate & Renewables
701 Brazos Street
Suite 1400
Austin, Texas 78701

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION

After recording return to:
EC&R Development, LLC
Attn: Legal Department
701 Brazos Street, Suite 1400
Austin, TX 78701

MEMORANDUM OF LEASE AND EASEMENT AGREEMENT

THIS MEMORANDUM OF LEASE AND EASEMENT AGREEMENT ("Memorandum") executed effective as of the 25 day of January, 2017, by and between Maschman Ag., Inc. as owner ("Owner"), and EC&R Development, LLC, a Delaware limited liability company ("Tenant"). Owner and Tenant may hereafter be referred to as, together, the "Parties" and each, a "Party".

Recitals

A. The Parties have entered into a Lease and Easement Agreement, dated January 25, 2017 (as it may be amended or amended and restated from time to time, the "Lease and Easement Agreement"), which Owner by its terms leases and grants to Tenant certain interests in land located in Jefferson County, Nebraska, as more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property").

B. The parties desire to enter into and record this Memorandum in order that third parties may have notice of the interests of the Tenant in the Property and adjacent real property owned by Owner resulting from the Lease and Easement Agreement. Capitalized terms used and not defined herein have the meaning given the same in the Lease and Easement Agreement.

Agreements

NOW, THEREFORE, in consideration of the rents and covenants provided in the Lease and Easement Agreement to be paid and performed by Tenant, Owner and Tenant hereby agree as follows:

1. Lease. Owner has leased the Property to Tenant (the "Lease") on the terms and provisions set forth in the Lease and Easement Agreement. The Lease is for the use of the Property solely for wind energy purposes, and also provides that Tenant shall have the exclusive right to use the Property for wind energy purposes, including but not limited to converting wind energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with the following activities related thereto: (i) determining the feasibility of wind energy conversion on the Property, including studies of wind speed, wind direction and other meteorological data and extracting soil samples, and all other testing, studies or sampling desired by Tenant; (ii) developing, constructing, installing, using, replacing, relocating, controlling, using and removing from time to time, and maintaining and operating wind Generating Units, Transmission

Facilities, electric transformers, energy storage facilities, telecommunications equipment related to Generating Units, roads, meteorological towers and wind measurement equipment, foundations, pads, footings, communication cables and/or networks, lay-down and staging areas, crane pads, maintenance, administrative, operations and storage buildings, reasonable signage and all related or ancillary improvements and equipment (collectively, the "Windpower Facilities"); and (iii) undertaking any other activities, whether accomplished by Tenant or a third party authorized by Tenant, that Tenant reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing, including the right to erect, construct, reconstruct, replace, relocate, remove, control, maintain and use the Windpower Facilities.

2. Grant of Easements. Owner has also granted (or shall grant) to Tenant the following easements ("Easements"): (i) an exclusive easement on the Property which prohibits, among other things, planting of trees and construction of buildings or other improvements that will exceed a height of forty (40) feet from the surface, or engaging in any other activity on such property that might cause a material decrease in the output or efficiency of any Generating Units; and (ii) certain other easements and rights to use and enjoy the Property and adjacent real property owned by Owner on the terms and conditions set forth in the Lease and Easement Agreement, all as more particularly set forth in the Lease and Easement Agreement.

3. Term.

(a) The Development Term shall commence on the Effective Date and continue for a period of seven (7) years, *provided, however*, that if, prior to the expiration of the Development Term, the Commencement of Construction occurs, the Development Term shall be automatically extended until the earlier of (i) the Generation Commencement Date, or (ii) the date that is seven years and eighteen (18) months from the Effective Date.

(b) The Operations Term, if it occurs, shall commence on the Generation Commencement Date and continue until the end of the thirtieth (30th) full calendar year occurring thereafter; provided, however, if Section 2.2(a)(ii) above is applicable and the Generation Commencement Date has not occurred by the end of such one year period, Tenant (or a Lender) may give written notice of the commencement of the Operations Term before the end of such one year period, and the Operations Term will be deemed to have commenced as of the date of such notice and shall continue until the end of the thirtieth (30th) full calendar year occurring thereafter

4. Rights of Mortgagees. Pursuant to the Lease and Easement Agreement, any Mortgagee of Tenant or Tenant's assignees has certain rights regarding notice and right to cure any default of Tenant under the Lease and Easement Agreement, and the right to take possession of the Property, and to acquire the leasehold estate by foreclosure, as well as other rights as set forth in the Lease and Easement Agreement.

5. Assignment. Tenant's rights and obligations under the Lease and Easement Agreement shall be assignable without Owner's prior written consent as provided in the Lease and Easement Agreement.

6. Non-Interference and Setbacks. Neither Owner's activities nor the exercise of any rights hereafter given or granted by Owner to any other person or entity (whether exercised on the Property or elsewhere), shall materially interfere or take any action that may interfere or decrease the output or efficiency of any Windpower Facilities with Tenant's then-existing lease, easement or other rights relating to (i) access by Tenant or its Affiliates or contractors to the Property or any lands in the vicinity of or adjacent to the Property used by Tenant in the Operations, (ii) Operations of Tenant or its Affiliates or contractors on the Property or on lands in the vicinity of or adjacent to the Property used by Tenant in the Operations, (iii) the exercise of Tenant's rights under the Lease and Easement Agreement, or (iv) the undertaking of any other activities permitted by Tenant under the Lease and Easement Agreement. To the extent permitted by law Owner has waived any and all setbacks and setback requirements, whether imposed by applicable law or by any person or entity, including any setback requirements described in the zoning ordinance of the County or in any governmental entitlement or permit heretofore or hereafter issued to Tenant.

7. Subordination. The Lease and Easement Agreement provides that from and after its effective date, any right, title or interest created by Owner in favor of or granted to any third party shall be subject to (i) the Lease and Easement Agreement and all of Tenant's rights, title and interests created thereby, (ii) any lien of any lender of Tenant's then in existence on the leasehold estate created by the Lease and Easement Agreement, and (iii) Tenant's right to create a lien in favor of any lender of Tenant's.

8. Effect. All of the terms, conditions, provisions and covenants of the Lease and Easement Agreement are hereby incorporated into this Memorandum by reference as though fully set forth herein. This Memorandum has been prepared for the purpose of recordation and notice only, and shall not alter, expand or amend the Lease and Easement Agreement in any way. Should there be any inconsistency between the terms of this Memorandum and the Lease and Easement Agreement, the terms of the Lease and Easement Agreement shall prevail.

9. Other Provisions. The Lease and the Easements are for the additional purposes, are of the nature, and are subject to the requirements and limitations, set forth in the Lease and Easement Agreement. The Lease and Easement Agreement also contains various covenants, obligations and rights of the Parties, including, without limitation, provisions relating to Rent, quitclaim or release of portions of the Property, conduct of operations, restoration of the Property, and Tenant's option to purchase up to fifteen (15) acres of the Property for occupancy by a substation, operations & maintenance building, and/or laydown or storage yard. Owner shall have no ownership or other interest in any Windpower Facilities installed by Tenant on the Property, and Tenant may remove any or all Windpower Facilities at any time or from time to time.

10. Binding on Successors and Assigns. The Property shall be held, conveyed, assigned, hypothecated, encumbered, leased, used and occupied subject to the covenants, terms and provisions set forth in the Lease and Easement Agreement, which covenants, terms and provisions shall run with the Property and shall be binding upon and inure to the benefit of the Parties and each other person and entity having any interest therein during their ownership thereof, and their respective lessees, heirs, executors, administrators, successors and assigns.

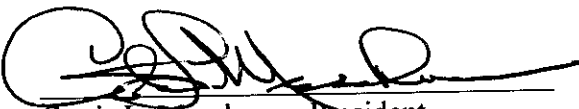
11. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

12. Abstract. This Memorandum is an "abstract" as referred to in Neb. Rev. Stat. § 66-911.01.

[Signature Pages to Follow]

IN WITNESS HEREOF, the Parties have executed this Memorandum to be effective as of the Effective Date.

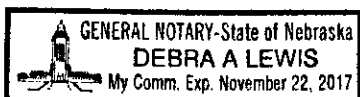
OWNER: MASCHMAN AG., INC.

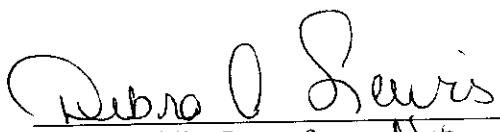
By: 
Curtis L. Maschman, President
Maschman Ag., Inc.

Address: 1123 Central Avenue
Humboldt, NE 68326

STATE OF Nebraska §
§
COUNTY OF Richardson §

The foregoing instrument was acknowledged before me on the 6 day of
January, 2011, by Curtis L. Maschman, President of Maschman Ag., Inc.

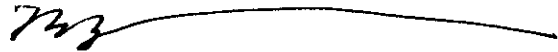



Notary Public, State of Nebraska

My Commission Expires: 11-22-17

TENANT:

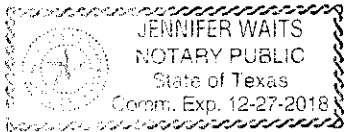
EC&R Development, LLC
701 Brazos, Suite 1400
Austin, TX 78701

By: 
Name: Paul Bowman
Title: Senior Vice President

Approved by Legal
sm

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me on the 25 day of JANUARY, 2017, by Paul Bowman, Senior Vice President on behalf of EC&R Development, LLC, a limited liability company.



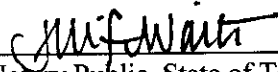

Notary Public, State of Texas
My Commission Expires: 12.27.2018

Exhibit A
to
Memorandum of Lease and Easement Agreement

Description of Property

The following described lands situated in Jefferson County, Nebraska, to-wit:

Tract 1: The Southeast Quarter (SE/4) of Section Twenty (20), Township Four (4) North, Range Two (2) East of the 6th P.M., in Jefferson County, Nebraska; SUBJECT TO All Existing Legal Highways.

Being all of Owner's real property in each Section of said Township referenced above.

Total Acreage 160 acres, more or less.