

Jodi Theisen

MISC 2016 3454

STATE OF SOUTH DAKOTA-COUNTY OF DEUEL-SS  
FILED FOR RECORD THE 30th DAY OF SEPTEMBER  
2016 AT 10:43O'CLOCK AM AND RECORDED  
IN BOOK 2016 OF MISC PAGE 3454  
Casey Severson *Casey Severson*  
Register of Deeds Deputy  
RF: \$30.00 RT: Invenergy



RECORDED ✓  
NUMERICAL ✓  
GRANTOR ✓  
GRANTEE ✓  
SAT. ASSG.  
5pg #1753

Drafted by and after recording return to:  
Invenergy Wind Development LLC  
Attn: Land Administration  
One South Wacker Drive  
Suite 1800  
Chicago, Illinois 60606

MEMORANDUM OF WIND LEASE AND EASEMENT AGREEMENT

THE STATE OF SOUTH DAKOTA   §  
  §  
COUNTY OF DEUEL                   §

KNOW ALL PERSONS BY THESE PRESENTS:

THIS MEMORANDUM OF WIND LEASE AND EASEMENT AGREEMENT (this "Memorandum"), is made, dated and effective as of September 9, 2016 (the "Effective Date"), between **Keith Theisen and Jodi Theisen, husband and wife** (together with its successors, assigns and heirs, "Owner"), whose address is 47338 177th St., Clear Lake, SD 57226 and **Invenergy Wind Development LLC**, a Delaware limited liability company (together with its transferees, successors and assigns, "Grantee"), whose address is One South Wacker Drive, Suite 1800, Chicago, IL 60606, with regards to the following:

1. Owner and Grantee did enter into that certain WIND LEASE AND EASEMENT AGREEMENT of even date herewith (the "Agreement"), which grants and conveys to Grantee an easement and lease to convert, maintain and capture the flow of wind and wind resources over across and through the real property located in Deuel County, South Dakota as more particularly described in Exhibit A attached hereto (the "Property"). Capitalized terms used and not defined herein have the meaning given the same in the Agreement.
2. The Agreement grants certain easements that benefit Grantee, and among other things, contains certain additional terms regarding payments to be made by Grantee to Owner, rights of Grantee and Owner to terminate the grant of easements, compliance with governmental requirements, representations and warranties by Grantee and Owner to each other, third party use restrictions, and other matters.
3. The Agreement shall commence on the Effective Date and continue until the twenty-fifth (25th) anniversary of the earlier of (i) the date five (5) years thereafter, or (ii) the date on which Grantee begins selling electrical energy generated by substantially all of the wind turbines to be included in the Project (as defined in the Agreement) to a third party power purchaser, regardless of whether Windpower Facilities are installed on the Property, and may be extended for an additional period of twenty (20) years at Grantee's option in accordance with the terms specified in the Agreement. Notwithstanding the foregoing, Grantee may extend the Development Period by two (2) years to the seventh (7th) anniversary of the

Effective Date pursuant to the terms specified in the Agreement; in such event the additional period of twenty (20) years shall be reduced to eighteen (18) years.

4. This Memorandum does not supersede, modify, amend or otherwise change the terms, conditions or covenants of the Agreement, and Owner and Grantee executed and are recording this Memorandum solely for the purpose of providing constructive notice of the Agreement and Grantee's rights thereunder. The terms, conditions and covenants of the Agreement are set forth at length in the Agreement and are incorporated herein by reference as though fully set forth herein. This Memorandum shall not, in any manner or form whatsoever, alter, modify or vary the terms, covenants and conditions of the Agreement.

5. This Memorandum shall also bind and benefit, as the case may be, the heirs, legal representatives, assigns and successors of the respective parties hereto, and all covenants, conditions and agreements contained in the Agreement shall be construed as covenants running with the land.

6. Except as otherwise set forth in the Agreement, Owner shall have no ownership, lien, security or other interest in any Windpower Facilities installed on the Property, or any profits derived therefrom, and Grantee may remove any or all Windpower Facilities at any time. Except for any competing developers of wind energy projects, Grantee shall accommodate the reasonable development of essential services on the Property, including any electric transmission and distribution lines and associated facilities, telecommunications facilities, and rural water systems, provided that such services do not interfere with the Windpower Facilities.

7. Addresses of the parties are as follows:

If to Owner:  
Keith and Jodi Theisen  
47338 177th St  
Clear Lake, SD 57226

If to Grantee:  
Invenergy LLC  
Attn: General Counsel  
One S. Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
Fax: 312-224-1444

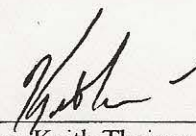
8. This Memorandum may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

[signature page to follow]

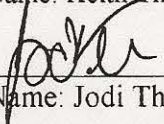
IN WITNESS WHEREOF, the parties have executed this Memorandum to be effective as of the date first written above.

**"Owner(s)"**  
Keith Theisen and Jodi Theisen, husband and wife

**"Grantee"**  
Invenergy Wind Development LLC

  
Name: Keith Theisen

  
By: \_\_\_\_\_  
Name: Kevin Parzyck  
Title: Vice President, Development

  
Name: Jodi Theisen

**ACKNOWLEDGMENT OF OWNER**

STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF DEUEL )

Personally came before me this 30 day of August, 2016, Keith Theisen and Jodi Theisen, husband and wife, who executed the foregoing instrument individually and acknowledged the same.



(SEAL)  
Name: Robert M Johnson  
Notary Public, State of South Dakota  
My Commission Expires: 2-22-22

**ACKNOWLEDGMENT OF GRANTEE**

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

Personally came before me this 9 day of September, 2016, Kevin Parzyck who executed the foregoing instrument as Vice President of Invenergy Wind Development LLC, and acknowledged the same.

(SEAL)  
Name: Samia K Atasi  
Notary Public, State of Illinois  
My Commission Expires: 4/9/19



**Exhibit D**  
**Special Conditions**

- I. Upon completion of construction, all Property disturbed by Grantee and not required for continuing operations of the Windpower Facilities shall be restored to a condition reasonably similar to its original condition, consistent with the continued use of the Property pursuant to this Agreement. Reclamation shall include, as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion. Included in the scope of reclamation activities shall be the repair, and when reasonably determined to be necessary, the replacement of underground drainage tile that was disturbed during the construction process. Grantee shall use commercially reasonable efforts to substantially replace removed topsoil to its general original location, with the exception of the access roads and wind turbine foundations. Except for de minimus amounts that are removed as a consequence of construction, topsoil shall not be removed from the Property without the consent of Owner.

**EXHIBIT A**  
**To Memorandum**  
**Keith and Jodi Theisen Property**

Schedule of Locations:

<u>Record Number</u>	<u>County</u>	<u>Township/ Range</u>	<u>Section</u>	<u>Acreage</u>
2263	Deuel	116/49	29	13.98
			<b>Total</b>	<hr/> <b>13.98</b>

Legal Description:

Lot M-1, in the Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section Twenty-nine (29), Township One Hundred Sixteen (116) North, Range Forty-nine (49), West of the 5th P.M., (Altamont Township), Deuel County, South Dakota.