

WIND EASEMENT, SETBACK WAIVER, AND GOOD NEIGHBOR AGREEMENT

Execution of Document

This document may not be executed by the parties until at least **10 business days** after it has been delivered to the property owner. The property owner acknowledges that the document was delivered, and if applicable executed, on the dates set forth below.

	Date / Days	Owner Initials
Date document delivered to owner	_____, 20__	
Date document executed by owner	_____, 20__	
Number of business days between delivery and execution (excluding holidays and weekends)	_____ days	

WIND EASEMENT, SETBACK WAIVER, AND GOOD NEIGHBOR AGREEMENT

THIS WIND EASEMENT, SETBACK WAIVER, AND GOOD NEIGHBOR AGREEMENT (this “**Agreement**”), is dated and effective as of _____, 20____ (“**Effective Date**”), by and between «Legal_Name_From_Deed» (“**Owner**”) and Dakota Range I, LLC, a Delaware limited liability company (“**Grantee**”).

RECITALS:

A. Owner is the owner of that certain tract of real property located in [COUNTY] County, South Dakota, more particularly described on Exhibit A attached hereto and made a part hereof (the “**Property**”);

B. Grantee has acquired, or will acquire, certain easements and other related rights covering real property located adjacent to and/or in the vicinity of the Property (collectively, the “**Wind Farm Property**”) for purposes of the construction, installation, maintenance, use and operation of wind energy conversion turbines (“**Wind Turbines**”), electrical distribution and transmission facilities and related roads and facilities (collectively including Wind Turbines, the “**Windpower Facilities**”);

C. Grantee has designed and will site the Windpower Facilities in accordance with all applicable federal, state and local laws and regulations related to design and siting criteria, including with respect to setbacks and audio, visual, and electrical impacts; and

D. Owner desires to participate in the wind farm project that is being developed by Grantee on the Wind Farm Property in [COUNTY] County, South Dakota, (the “**Wind Farm**”) in accordance with the terms and conditions contained herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Grant of Wind Easement.** Owner hereby grants an exclusive easement for the benefit of Grantee to capture, use and convert the free and unobstructed flow of wind currents and wind resources over and across the Property in connection with the Wind Farm (the “**Wind Easement**”). In accordance with the Wind Easement, Owner agrees not to, and not to grant any third parties any right which would, interfere with or obstruct the free flow of wind, wind speed or wind direction over the Wind Farm Property and/or the Property, including, without limitation, by planting trees or constructing buildings or other structures on the Property which would, at any time reach a height of greater than fifty (50) feet. Such Wind Easement shall extend throughout the entire Property to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from each point on the surface of the Property (each such point referred to as a “**Site**”) and for a distance from each Site to the boundaries of the Property, together vertically through all space located above the surface of the Property, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Property through each Site to each point and on and along such line to the opposite exterior boundary of the Property.

2. **Setback Waiver.** To the extent that any applicable law, ordinance, regulation or permit establishes minimum setbacks from the exterior boundaries of the Property (or any structures thereon) for

Windpower Facilities (including Wind Turbines) constructed on the Property or adjacent real property, then Owner agrees to waive and hereby does waive any and all such setbacks and setback requirements for the benefit of Grantee, the owner(s) of the adjacent real property, and their respective successors and assigns. Further, if requested by Grantee, Owner shall execute and deliver to Grantee one or more separate setback waivers and/or easements in a form provided by Grantee, which Grantee may then record at its expense.

3. **Support and Dispute Resolution.** Owner agrees to support and not object to the Wind Farm and to use reasonable efforts to assist Grantee's reasonable requests. In the event Owner has concerns or issues with regard to the construction, installation, maintenance, use or operation of Windpower Facilities, Owner agrees to have informal discussions with Grantee, including in-person meetings, for a period of thirty (30) days before pursuing other means to resolve the issues or concerns. Owner agrees to be deemed a participating landowner with respect to the Wind Farm.

4. **Term of Agreement.** This Agreement shall be for an initial term ("**Development Period**") commencing on the Effective Date and continuing for a period of five (5) years. If, at any time during the Development Period the Operations Date (as defined below) occurs, then the Development Period shall end and the term of this Agreement shall automatically be extended for a period of thirty (30) years (such period, the "**Extended Term**"). Unless earlier terminated, Grantee shall have the sole right and option to extend the Extended Term for two (2) additional five (5) year periods, in each case by providing written notice thereof to Owner within thirty (30) days of the end of the Extended Term. The Development Period plus the Extended Term, as the same may be extended, are collectively referred to in this Agreement as the "**Term.**" Notwithstanding the foregoing, in no event shall the Term of this Agreement be longer than the longest period permitted by law. The "**Operations Date**" means the date that electricity is first sold from the Wind Farm in commercial quantities (i.e. excluding test electricity).

5. **Termination.** Grantee shall have the right throughout the Term to terminate this Agreement as to all or any part of the Property without the consent of Owner upon written notice to Owner. If the Operations Date does not occur prior to the fifth (5th) anniversary of the Effective Date, this Agreement shall automatically terminate.

6. **Consideration.** As consideration for the rights granted herein, Grantee shall make the following payments to Owner during the Term: (i) within thirty (30) days of the Effective Date of this Agreement and on each anniversary thereof until the earlier of the Operations Date or the termination of this Agreement, a payment of One Thousand and No/100 Dollars (\$1,000.00), (ii) upon the Operations Date, an annual payment equal to Ten Dollars (\$10.00) per acre of the Property. The annual payment set forth in (ii) shall be paid by Grantee within thirty (30) days after the Operations Date and then annually within thirty (30) days after each anniversary of the Operations Date. Owner acknowledges and agrees that it shall not be permitted to sever the payments under the Agreement, and shall not be permitted to assign payments due to Owner under the Agreement to a third party. Upon the transfer of an interest in the Property to a third party, the payments hereunder (or the proportionate share thereof) shall inure to the benefit of such party.

7. **Authority.** Owner represents and warrants that it is the sole owner of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Grantee the rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so, and all persons having any ownership or possessory interest in the Property have signed this Agreement as Owner.

8. **Assignment.** Grantee shall have the right at any time, without need for Owner’s consent, to assign or convey all or any portion of this Agreement to an assignee or assignees, on an exclusive or nonexclusive basis, or to mortgage or collaterally assign all or any part of its interest in the Agreement and its rights under the Agreement to any entity (a “**Lender**”) without the consent of Owner. Grantee hereby discloses that Grantee may mortgage or encumber any part of Grantee's rights and interests under the Agreement, provided that any such mortgage attaches only to Grantee's rights and does not otherwise attach to the land or obligate the Owner. Any Lender will have no obligations under this Agreement until such time as it exercises its rights to acquire Grantee’s interest subject to the lien of Lender’s mortgage by foreclosure or otherwise or assumes the obligations of Grantee under this Agreement. So long as any mortgage with a Lender remains in effect, this Agreement shall not be modified, and Owner shall not accept a surrender of the Property or a termination or release of this Agreement, without the prior consent of all Lenders. Owner, upon providing Grantee any notice of default under this Agreement, shall at the same time provide a copy of such notice to each Lender. Owner shall accept any performance by or at the instigation of any such Lender as if the same had been done by Grantee (but no Lender shall have any obligation to remedy or cause the remedy of any default).

9. **Events of Default.** In the event of a material breach of this Agreement by either party which continues for thirty (30) days after written notice of default from the non-defaulting party, the non-defaulting party may terminate this Agreement and/or pursue such other remedies as are available to it at law or in equity; provided, however, if the cure will take longer than thirty (30) days, the non-defaulting party may not terminate this Agreement for length of time necessary to effect such cure so long as the defaulting party commences to cure within the thirty (30) day period and continuously and diligently pursues the cure to completion

10. **Notice.** All notices, requests, demands, waivers, approvals, consents and other communications required or permitted by this Agreement (“**Notices**”) shall be given in writing by personal delivery (confirmed by courier delivery service) or first class U.S. mail, postage prepaid, return receipt requested, certified, addressed as follows:

If to Owner:

«First» «Last»«Title»
 «TrustIncLLC_name»
 «TXMSAD»
 «TXMCTY», «TXMSTE» «TXMZIP»

If to Grantee:

Dakota Range I, LLC
 c/o Apex Clean Energy, Inc.
 Attention: Land Manager
 Court Square Building
 310 4th Street NE, Suite 200
 Charlottesville, VA 22902
 Phone: (434) 220-7595

Grantee shall not be required to make any payment to Owner under this Agreement until such time as Owner has returned to Grantee a completed and executed Internal Revenue Service Form W-9 and a payment instruction form signed by each person or entity holding record title to the Property. Any party may change its address for purposes of this paragraph by giving Notice of such change to the other parties

in the manner provided in this paragraph. Any Notice provided for herein shall become effective only upon actual receipt by the party to whom it is given, unless such Notice is only mailed by certified mail, return receipt requested, in which case it shall be deemed to be received five (5) business days after the date it is mailed.

11. **Confidentiality.** The parties acknowledge that prior to the execution of this Agreement, neither party may require the other party to maintain the confidentiality of any negotiations or the terms of the Agreement. After the Effective Date, however, both parties shall maintain in confidence, for the benefit of the other party, all information pertaining to the financial terms of or payments under this Agreement. Neither party will use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of the other party. Notwithstanding the foregoing, each party may disclose such information to such party's lenders, attorneys, accountants and other advisors; any prospective purchaser or lessee of such party's interests in Property; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided the party making such disclosure advises the party receiving the information of the confidentiality of the information. The provisions of this Section shall survive the termination or expiration of this Agreement.

12. **Nature of Rights.** The easements and related rights granted by Owner in this Agreement to Grantee are easements in gross. Such easements and other rights granted are independent of any lands or estates or interest in lands, there is no other real property benefiting from the easements and related rights and, as between the Property and other tracts of property on which Grantee may locate improvements, no tract is considered dominant or servient as to the other. The burdens of the easements and related rights granted to Owner in this Agreement shall run with and against the Property and shall be a charge and burden on the Property and shall be binding upon and against Owner and its successors, assigns, permittees, licensees, lessees, employees and agents.

13. **Essential Services.** 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.

14. **Binding Effect; Governing Law.** All the terms, conditions, covenants and other provisions contained in this Agreement, including benefits and burdens, shall be binding upon and shall run with the land and shall inure to the benefit of and be enforceable by Owner and Grantee, and their respective heirs, successors and assigns. For the avoidance of doubt, in the event the Property is transferred out of the possession of the person(s) that is Owner on the Effective Date, the transferee(s) of such transfer shall become the new Owner. The provisions hereof shall be governed by and construed in accordance with the laws of the State of South Dakota.

[signature page follows]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have signed this Agreement as of the Effective Date.

OWNER:

By: _____
«Signee_1_First»
«Signee_1_Last»«Signee_1_comma1»
«Signee_1_Title»«Signee_1_comma2»
«Signee_1_Entity»

The undersigned spouse is joining this Agreement to acknowledge and accept its contents and to ratify the Agreement as applicable to his/her interest in the Property.

By: _____
Printed Name: _____

By: _____
«Signee_2_First»
«Signee_2_Last»«Signee_2_comma1»
«Signee_2_Title»«Signee_2_comma2»
«Signee_2_Entity»

The undersigned spouse is joining this Agreement to acknowledge and accept its contents and to ratify the Agreement as applicable to his/her interest in the Property.

By: _____
Printed Name: _____

GRANTEE:

DAKOTA RANGE I, LLC, a Delaware limited liability company

By: Apex GCL, LLC, a Delaware limited liability company, its sole member

By: Apex Clean Energy Holdings, LLC, a Delaware limited liability company, its sole member

By: _____
Name: Jeanine G. Wolanski
Title: Vice President of Land Management

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that real property located in «Parcel_County» County, South Dakota, described as follows:

Tax Parcel Reference:

PREPARED BY AND
AFTER RECORDING RETURN TO:
Dakota Range I, LLC
c/o Apex Clean Energy, Inc.
Court Square Building
310 4th Street NE, Suite 200
Charlottesville, Virginia 22902
Attention: Katherine Beury, Esq.

MEMORANDUM OF WIND EASEMENT, SETBACK WAIVER, AND GOOD NEIGHBOR AGREEMENT

THIS MEMORANDUM OF WIND EASEMENT, SETBACK WAIVER, AND GOOD NEIGHBOR AGREEMENT (“**Memorandum**”) is made and entered into as of this _____ day of _____, 201__, by «Legal_Name_From_Deed» (“**Owner**”); and Dakota Range I, LLC, a Delaware limited liability company (“**Grantee**”), with reference to the following facts:

RECITALS:

A. Owner and Grantee executed and entered into that certain Wind Easement and Wind Farm Participation and Support Agreement of even date herewith (“**Effective Date**”) (as the same may be amended, modified or supplemented from time to time, the “**Agreement**”), concerning certain land located in [COUNTY] County, South Dakota, as more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Grantee is developing a wind farm project on real property located adjacent to and/or in the vicinity of the Property in [COUNTY] County, South Dakota (the “**Wind Farm**”).

C. Owner and Grantee desire to enter into this Memorandum which is to be recorded in order that third parties may have notice of the interest of Grantee in the Property, and of certain easements and rights granted to Grantee in the Property pursuant to the Agreement, and for the purposes more particularly set forth below.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties, intending to be and being legally bound, hereby agree as follows:

1. Owner hereby grants an exclusive easement for the benefit of Grantee to capture, use and convert the free and unobstructed flow of wind currents and wind resources over and across the Property in connection with the Wind Farm (the “**Wind Easement**”). In accordance with the Wind Easement, Owner agrees not to, and not to grant any third parties any right which would, interfere with or obstruct the free flow of wind, wind speed or wind direction over the Wind Farm and/or the Property, including, without limitation, by planting trees or constructing buildings or other structures on the Property which would, at any time reach a height of greater than fifty (50) feet.

2. To the extent that any applicable law, ordinance, regulation or permit establishes minimum setbacks from the exterior boundaries of the Property for Windpower Facilities (as defined in the Agreement) (including Wind Turbines (as defined in the Agreement)) constructed on the Property or adjacent real property, then Owner agrees to waive and hereby does waive any and all such setbacks and setback requirements for the benefit of Grantee, the owner(s) of the adjacent real property, and their respective successors and assigns. Further, if requested by Grantee, Owner shall execute and deliver to Grantee one or more separate setback waivers and/or easements in a form provided by Grantee, which Grantee may then record at its expense.

3. Owner agrees to participate in and support the Wind Farm to the extent set forth in the Agreement. The term of the Agreement is for a period beginning on the Effective Date and continuing for a period of up to forty-five (45) years, unless earlier terminated pursuant to the terms of the Agreement.

4. 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.

5. All of the terms, conditions, provisions, and covenants of the Agreement are hereby incorporated into this Memorandum by reference as though fully set forth herein, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document. Should there be any inconsistency between the terms of this Memorandum and the Agreement, the terms of the Agreement shall prevail.

6. The Agreement, evidenced by this Memorandum, shall be memorialized by the execution and recording by Grantee, or its successors, or assigns of this Memorandum in the Official Records of Real Property of the County in which the Property is located, whereupon all the easements and rights that are the subject of the Agreement shall immediately become effective and binding upon the Property and Owner, all successive owners of the Property, and the successors and assigns of Owner, all for the benefit of Grantee and its successors and assigns. This Memorandum may be executed in two or more counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

[signatures on following page(s)]

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date first set forth above.

GRANTEE:

DAKOTA RANGE I, LLC, a Delaware limited liability company

By: Apex GCL, LLC, a Delaware limited liability company, its sole member

By: Apex Clean Energy Holdings, LLC
a Delaware limited liability company,
its sole member

By: _____
Name: Jeanine G. Wolanski
Title: Vice President of Land Management

COMMONWEALTH OF VIRGINIA

CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Jeanine G. Wolanski, Vice President of Land Management for Apex Clean Energy Holdings, LLC, a Delaware limited liability company, the sole member of Apex GCL, LLC, a Delaware limited liability company, the sole member of Dakota Range I, LLC, a Delaware limited liability company, on behalf of the company.

Notary Public

OWNER:

By: _____
«Signee_1_First»
«Signee_1_Last»«Signee_1_comma1»
«Signee_1_Title»«Signee_1_comma2»
«Signee_1_Entity»

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 201_, before me, the undersigned officer, personally appeared «Signee_1_First»«Signee_1_Last», known to me or satisfactorily proven to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purpose therein contained.

Witness my hand and official seal.

Notary Public _____
(State)
My commission expires: _____

The undersigned spouse is joining this Agreement to acknowledge and accept its contents and to ratify the Agreement as applicable to his/her interest in the Property.

By: _____
Name:

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 201_, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purpose therein contained.

Witness my hand and official seal.

Notary Public _____
(State)
My commission expires: _____

By: _____
«Signee_2_First»
«Signee_2_Last»«Signee_2_comma1»
«Signee_2_Title»«Signee_2_comma2»
«Signee_2_Entity»

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 201_, before me, the undersigned officer, personally appeared «Signee_2_First»«Signee_2_Last», known to me or satisfactorily proven to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purpose therein contained.

Witness my hand and official seal.

Notary Public _____
(State)
My commission expires: _____

The undersigned spouse is joining this Agreement to acknowledge and accept its contents and to ratify the Agreement as applicable to his/her interest in the Property.

By: _____
Name:

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 201_, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person(s) whose name(s) is subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purpose therein contained.

Witness my hand and official seal.

Notary Public _____
(State)
My commission expires: _____

EXHIBIT A

PROPERTY DESCRIPTION

All that real property located in «Parcel_County» County, South Dakota, described as follows: