

131,404

State of South Dakota, County of Roberts

Filed this 1 Day of Feb. 20 19 At 1:35O'Clock P. M. Book 199 Page 129-133By Asst.
Register of Deeds DeputyFees \$ 30.00

PREPARED BY AND
AFTER RECORDING RETURN TO:
Dakota Range III, 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 AND SHADOW FLICKER WAIVER,
AND GOOD NEIGHBOR AGREEMENT**

THIS MEMORANDUM OF WIND EASEMENT, SETBACK AND SHADOW FLICKER WAIVER, AND GOOD NEIGHBOR AGREEMENT ("**Memorandum**") is made and entered into as of this 17th day of December, 20 18, by Richard A. Knutson and Diane J. Knutson, husband and wife (collectively, "**Owner**"), and Dakota Range III, 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, Setback and Shadow Flicker Waiver, and Good Neighbor 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 Roberts 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 Roberts County, South Dakota (the "**Wind Farm**").

C. Although no Windpower Facilities are planned to be located on Owner's Property, Grantee wishes, in accordance with Sections 1613.03(2)(ii) and 1613.03(10)(a) of Roberts County Zoning Ordinance No. 21 (the "**Ordinance**"), to obtain waivers from Owner, as well as from other owners who are participants in, or neighbors of, the wind project, for (a) building setbacks under **Section 1613.03(2)(i)** of the Ordinance, and (b) potential and actual impacts of shadow flicker on Owner's Property from the operation of the Wind Farm under **Section 1613.03(10)** of the Ordinance.

D. 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, as well as the waivers granted by Owner with regard to building setbacks and shadow flicker, 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 fullest extent allowed by any law, ordinance, regulation or permit that 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, including the setbacks described in **Section 1613.03(2)(i)** of the Ordinance, 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. To the fullest extent allowed by law, Owner hereby waives any and all potential and actual shadow flicker requirements (and variations thereof), whether imposed by applicable law or by any person or entity, including any shadow flicker requirements described in **Section 1613.03(10)** of the Ordinance, or in any governmental entitlement or permit issued to Grantee or affiliate, for the Wind Farm (including wind turbines and appurtenant equipment) installed or constructed or to be installed or constructed on Owner's Property or Wind Farm Property adjoining, adjacent to or near the common boundary between the Owner's Property and any of the Wind Farm Property.

4. 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.

5. 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.

6. 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.

7. 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 Roberts County, 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 pages]

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

GRANTEE:

DAKOTA RANGE III, LLC,
a Delaware limited liability company

By: _____

Name: Brian Wixon

Title: Director of Land Acquisition

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss

COUNTY OF SANTA BARBARA)

On January 8, 2019, before me, Katherine A. Dowling, (Notary Public), personally appeared Brian Wixon, as Director of Land Acquisition of Dakota Range III, LLC, a Delaware limited liability company, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Katherine Dowling
Notary Public



OWNER:

By: [Signature]
Name: Richard A. Knutson

STATE OF South Dakota
COUNTY OF Roberts

)
) ss.
)

On this 17 day of December, 2018, before me, the undersigned officer, personally appeared Richard A. Knutson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

Witness my hand and official seal.



[Signature]
Notary Public South Dakota
(State)
My commission expires: 4-8-22

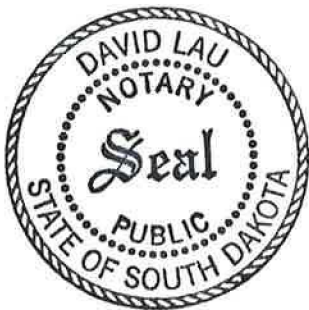
STATE OF South Dakota
COUNTY OF Roberts

By: [Signature]
Name: Diane J. Knutson

)
) ss.
)

On this 17 day of December, 2018, before me, the undersigned officer, personally appeared Diane J. Knutson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

Witness my hand and official seal.



[Signature]
Notary Public South Dakota
(State)
My commission expires: 4-8-22

EXHIBIT A

PROPERTY DESCRIPTION

All that real property located in Roberts County, South Dakota, described as follows:

Tract 1:

The North Thirty-one (31) Rods of the East Thirty-six (36) Rods
of the Southeast Quarter ($SE\frac{1}{4}$) of Section Thirty-two (32) in
Township One Hundred Twenty-two (122) North of Range Fifty-one (51)
West of the 5th P.M.
(Containing 7 acres, more or less)

Filed in - Grant County, Milbank, SD
Recorded on 2/1/2019 9:45 AM
Transaction # 1011381

Document # 236737

Book 301

Page 708 (6 pages)

Rec. Fee \$30.00

Rebecca S Wellnitz by Vick K Gully, Dep
Rebecca Wellnitz, Register of Deeds

Return To:

APEX CLEAN ENERGY

310 4TH STREET NE SUITE 200

CHARLOTTESVILLE, VA 22902

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

WIND PROJECT SETBACK AND SHADOW FLICKER WAIVER

THIS WIND PROJECT SETBACK AND SHADOW FLICKER WAIVER ("**Agreement**") is made and entered into as of this 21st day of November, 2018 ("**Effective Date**"), by and between Jerald C. Olson, a married person, as Land Contract Seller; and Corey J. Amdahl and Stacey L. Amdahl, husband and wife, as Land Contract Buyers (collectively, "**Owner**"), with a tax mailing address of 14631 454th Avenue, Summit, SD 57266, and Dakota Range III, LLC, a Delaware limited liability company ("**Developer**"), with a tax mailing address of c/o Apex Clean Energy, Inc., Court Square Building, 310 4th Street Northeast, Suite 200, Charlottesville, Virginia 22902. The parties hereto shall be collectively referred to as the "**Parties**" and each individually as a "**Party**," unless specifically identified otherwise.

RECITALS:

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

B. Developer is a wind farm developer that desires to develop an electric-generating wind farm project on real property located adjacent to and/or in the vicinity of the Property in Grant County, South Dakota (the "**Wind Farm**").

C. Developer expects that some of the Wind Farm improvements will be installed on land adjoining, adjacent to, or near Owner's Property (the "**Wind Farm Property**").

D. Developer wishes, in accordance with Section 1211.03(2)(d) of Grant County Compiled Zoning Ordinances (the "**Ordinance**"), to obtain waivers from Owner, as well as from other Owners who are participants in, or neighbors of, the Wind Farm, for: (a) building setbacks, including, but not limited to those under **Section 1211 Energy System (Wes) Requirements**, and (b) potential and actual impacts of shadow flicker on Owner's Property from the operation of the Wind Farm.

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. **Setback Waiver.** To the fullest extent allowed by any law, ordinance, regulation or permit that establishes minimum setbacks from the exterior boundaries of the Property or any residence, business, or public right-of way thereon) for windpower facilities (including wind turbines) including, but not limited to the setbacks described in **Section 1211 Energy System (Wes) Requirements**, Owner agrees to waive and hereby does waive any and all such setbacks and setback requirements for the benefit of Developer, the owner(s) of the real property on which windpower facilities are sited, and their respective successors and assigns. Notwithstanding the foregoing, Developer shall not construct a wind turbine within One Thousand Two Hundred Fifty Feet (1,250') of any residence on the Property (as measured from the base of the wind turbine to the exterior of the closest wall line of such residence as of the Effective Date).

2. **Shadow Flicker Waiver.** To the fullest extent allowed by law, Owner hereby waives any and all potential and actual shadow flicker requirements (and variations thereof), whether imposed by applicable law or by any person or entity, including any shadow flicker requirements described in any governmental entitlement or permit issued to Developer or affiliate, for the Wind Farm (including wind turbines and appurtenant equipment) installed or constructed or to be installed or constructed on Wind Farm Property adjoining, adjacent to or near the common boundary between the Owner's Property and any of the Wind Farm Property.

3. **Parties Bound; Covenants Running With The Land.** Owner's waivers in this Agreement shall run to the benefit of the Wind Farm Property, Owner, Developer, the owner(s) of the adjacent real property and their respective successors, assigns, heirs, executors and administrators. The Parties agree that all of the waivers and agreements contained in this Agreement touch and concern the real estate described in this Agreement and are expressly intended to, and shall, be covenants running with the land and shall be binding and a burden upon Owner's Property and a benefit to the Wind Farm Property. The Parties agree the waivers and agreements in this Agreement shall be assignable and alienable by the Parties. This Agreement and the waivers herein shall remain in effect for so long as wind turbines or other wind facilities exist on the Wind Farm Property.

4. **Consideration.** As consideration for the waivers granted herein, Developer shall make payments to Owner as set forth in the Fee Schedule attached hereto (the "**Fee Schedule**"). The Fee Schedule shall be omitted from the recorded Agreement as provided in **Section 5** below. Developer shall not be required to make any payment to Owner under this Agreement until such time as Owner has returned to Developer 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.

5. **Recordation.** The Parties agree that Developer may record this Agreement in the official land records of Grant County, South Dakota.

6. **Further Acts and Assurances.** Each Party agrees that they shall execute such additional documents or instruments, and shall undertake such actions as are necessary and appropriate, to effectuate the intent of this Agreement upon the request of the other Party.

7. **Governing Law.** This Agreement shall be governed by the laws of the State of South Dakota.

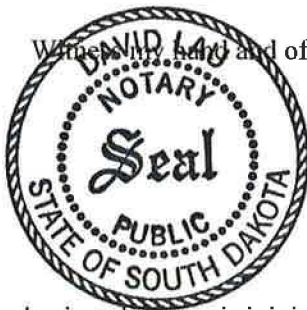
[signatures on following page(s)]

OWNER:

By: Jerald C. Olson
 Name: Jerald C. Olson

STATE OF South Dakota)
) ss.
 COUNTY OF Codington)

On this 25 day of October, 2018, before me, the undersigned officer, personally appeared Jerald C. Olson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.



Witness my hand and official seal.

David Lau
 Notary Public South Dakota
 (State)
 My commission expires: 4-8-22

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

By: Ann J. Olson
 Name: Ann J. Olson

STATE OF South Dakota)
) ss.
 COUNTY OF Codington)

On this 25 day of October, 2018, before me, the undersigned officer, personally appeared Ann J. Olson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

Witness my hand and official seal.



David Lau
 Notary Public South Dakota
 (State)
 My commission expires: 4-8-22

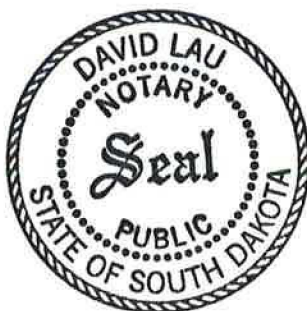
OWNER:

By: Corey J. Amdahl
 Name: Corey J. Amdahl

STATE OF South Dakota)
) ss.
 COUNTY OF Roberts)

On this 6 day of November, 2018, before me, the undersigned officer, personally appeared Corey J. Amdahl, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

Witness my hand and official seal.



David Lau
 Notary Public South Dakota
 (State)
 My commission expires: 4-8-22

By: Stacey L. Amdahl
 Name: Stacey L. Amdahl

STATE OF South Dakota)
) ss.
 COUNTY OF Roberts)

On this 21 day of November, 2018, before me, the undersigned officer, personally appeared Stacey L. Amdahl, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

Witness my hand and official seal.



David Lau
 Notary Public South Dakota
 (State)
 My commission expires: 4-8-22

EXHIBIT A

PROPERTY DESCRIPTION

All that real property located in Grant County, South Dakota, described as follows:

Tract 1:

The Northeast Quarter (NE¼), Section Fourteen (14), Township One Hundred Twenty-one (121) North, Range Fifty-two (52) West of the Fifth P.M., in the Sisseton-Wahpeton Indian Reservation, Grant County, South Dakota.

Tax Parcel Reference: 04.52.14.1000 (160 acres)

PREPARED BY AND
AFTER RECORDING RETURN TO:
Dakota Range III, LLC
3760 State Street, Ste. 200
Santa Barbara, CA 93106
(805) 569-6180
Attn: Land Dept.

WIND PROJECT SETBACK AND SHADOW FLICKER WAIVER

THIS WIND PROJECT SETBACK AND SHADOW FLICKER WAIVER ("Agreement") is made and entered into as of this 27th day of January, 2020 ("Effective Date"), by and between Kristopher J. Bronson, a married person, (collectively or individually, the "Landowner"), whose address is 14873 450th Ave, Ortle, SD 57256, and Dakota Range III, LLC, a Delaware limited liability company ("Lessee"), with a mailing address of 3760 State Street, Ste. 200, Santa Barbara, CA 93105. The parties hereto shall be collectively referred to as the "Parties" and each individually as a "Party," unless specifically identified otherwise.

RECITALS:

A. Landowner is the owner of that certain tract of real property located in Grant County, South Dakota, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property");

B. Lessee is a wind farm developer that desires to develop an electric-generating wind farm project on real property located adjacent to and/or in the vicinity of the Property in Grant County, South Dakota (the "Wind Farm").

C. Lessee expects that some of the Wind Farm improvements will be installed on land adjoining, adjacent to, or near Landowner's Property (the "Wind Farm Property").

D. Lessee wishes, in accordance with Section 1211.03(2)(d) of Grant County Compiled Zoning Ordinances (the "Ordinance"), to obtain waivers from Landowner, as well as from other Landowners who are participants in, or neighbors of, the Wind Farm, for: (a) building setbacks, including, but not limited to those under Section 1211 Energy System (Wes) Requirements, and (b) potential and actual impacts of shadow flicker on Landowner's Property from the operation of the Wind Farm.

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. **Setback Waiver.** To the fullest extent allowed by any law, ordinance, regulation or permit that establishes minimum setbacks from the exterior boundaries of the Property or any residence, business, or public right-of way thereon) for windpower facilities (including wind turbines) including, but not limited

to the setbacks described in **Section 1211 Energy System (Wes) Requirements**, Landowner agrees to waive and hereby does waive any and all such setbacks and setback requirements for the benefit of Lessee, the owner(s) of the real property on which windpower facilities are sited, and their respective successors and assigns. Notwithstanding the foregoing, Lessee shall not construct a wind turbine within One Thousand Two Hundred Fifty Feet (1,250') of any residence on the Property (as measured from the base of the wind turbine to the exterior of the closest wall line of such residence as of the Effective Date).

2. **Shadow Flicker Waiver**. To the fullest extent allowed by law, Landowner hereby waives any and all potential and actual shadow flicker requirements (and variations thereof), whether imposed by applicable law or by any person or entity, including any shadow flicker requirements described in any governmental entitlement or permit issued to Lessee or affiliate, for the Wind Farm (including wind turbines and appurtenant equipment) installed or constructed or to be installed or constructed on Wind Farm Property adjoining, adjacent to or near the common boundary between the Landowner's Property and any of the Wind Farm Property.

3. **Parties Bound: Covenants Running With The Land**. Landowner's waivers in this Agreement shall run to the benefit of the Wind Farm Property, Landowner, Lessee, the owner(s) of the adjacent real property and their respective successors, assigns, heirs, executors and administrators. The Parties agree that all of the waivers and agreements contained in this Agreement touch and concern the real estate described in this Agreement and are expressly intended to, and shall, be covenants running with the land and shall be binding and a burden upon Landowner's Property and a benefit to the Wind Farm Property. The Parties agree the waivers and agreements in this Agreement shall be assignable and alienable by the Parties. This Agreement and the waivers herein shall remain in effect for so long as wind turbines or other wind facilities exist on the Wind Farm Property.

4. **Consideration**. As consideration for the waivers granted herein, Lessee shall make payments to Landowner as set forth in the Fee Schedule attached hereto (the "Fee Schedule"). The Fee Schedule shall be omitted from the recorded Agreement as provided in **Section 5** below. Lessee shall not be required to make any payment to Landowner under this Agreement until such time as Landowner has returned to Lessee 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.

5. **Recordation**. The Parties agree that Lessee may record this Agreement in the official land records of Grant County, South Dakota.

6. **Further Acts and Assurances**. Each Party agrees that they shall execute such additional documents or instruments, and shall undertake such actions as are necessary and appropriate, to effectuate the intent of this Agreement upon the request of the other Party.

7. **Governing Law**. This Agreement shall be governed by the laws of the State of South Dakota.

[signatures on following page(s)]

DAKOTA RANGE III, LLC,
a Delaware limited liability company

Title: Vice President

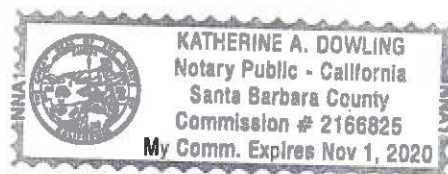
STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA BARBARA)

On January 27, 2020 before me, Katherine A. Dowling, (Notary Public), personally appeared Jonathan Koehn, Vice President of Dakota Range III, LLC, a Delaware limited liability company, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

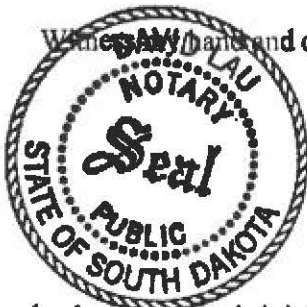


LANDOWNER:

By: *Kristopher J. Bronson*
Name: Kristopher J. Bronson, a married person

STATE OF South Dakota)
COUNTY OF Grant) ss.
)

On this 27 day of January, 2020, before me, the undersigned officer, personally appeared Kristopher J. Bronson, a married person, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.



David Lau
Notary Public South Dakota
(State)
My commission expires: 4-8-22

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

By: *TamiJo Bronson*
Name: TamiJo Bronson

STATE OF South Dakota)
COUNTY OF Grant) ss.
)

On this 27 day of January, 2020, before me, the undersigned officer, personally appeared TamiJo Bronson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.



David Lau
Notary Public South Dakota
(State)
My commission expires: 4-8-22

EXHIBIT A

PROPERTY DESCRIPTION

All that real property located in Grant County, South Dakota, described as follows:

THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 121 NORTH, RANGE 52 WEST OF
THE FIFTH PRINCIPAL MERIDIAN, SISSETON AND WAHPETON INDIAN RESERVATION,
GRANT COUNTY, SOUTH DAKOTA

PIN 04.52.14.2000 (160.00 acres)

Filed in - Grant County, Milbank, SD
Recorded on 6/13/2019 10:40 AM
Transaction # 1011978

Document # 237334

Book 303

Page 366 (6 pages)

Rec. Fee \$30.00

PREPARED BY AND
AFTER RECORDING RETURN TO:
Dakota Range III, LLC
c/o Apex Clean Energy, Inc.
Court Square Building 3
310 4th Street NE, Suite 200
Charlottesville, Virginia 22902
Attention: Katherine Beury, Esq.

Rebecca A Wellnitz
Rebecca Wellnitz, Register of Deeds

Return To:
APEX CLEAN ENERGY
310 4TH STREET NE SUITE 300
CHARLOTTESVILLE, VA 22902

434-220-7595 *fw*

WIND PROJECT SETBACK AND SHADOW FLICKER WAIVER

THIS WIND PROJECT SETBACK AND SHADOW FLICKER WAIVER ("**Agreement**") is made and entered into as of this 6th day of November, 2018 ("**Effective Date**"), by and between David Leroy Nelson, a/k/a David L. Nelson, a married person ("**Owner**"), with a tax mailing address of 14696 455th Avenue, Summit, SD 57266, and Dakota Range III, LLC, a Delaware limited liability company ("**Developer**"), with a tax mailing address of c/o Apex Clean Energy, Inc., Court Square Building, 310 4th Street Northeast, Suite 200, Charlottesville, Virginia 22902. The parties hereto shall be collectively referred to as the "Parties" and each individually as a "Party," unless specifically identified otherwise.

RECITALS:

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

B. Developer is a wind farm developer that desires to develop an electric-generating wind farm project on real property located adjacent to and/or in the vicinity of the Property in Grant County, South Dakota (the "**Wind Farm**").

C. Developer expects that some of the Wind Farm improvements will be installed on land adjoining, adjacent to, or near Owner's Property (the "**Wind Farm Property**").

D. Developer wishes, in accordance with Section 1211.03(2)(d) of Grant County Compiled Zoning Ordinances (the "**Ordinance**"), to obtain waivers from Owner, as well as from other Owners who are participants in, or neighbors of, the Wind Farm, for: (a) building setbacks, including, but not limited to those under **Section 1211 Energy System (Wes) Requirements**, and (b) potential and actual impacts of shadow flicker on Owner's Property from the operation of the Wind Farm.

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. **Setback Waiver.** To the fullest extent allowed by any law, ordinance, regulation or permit that establishes minimum setbacks from the exterior boundaries of the Property or any residence, business,

or public right-of way thereon) for windpower facilities (including wind turbines) including, but not limited to the setbacks described in **Section 1211 Energy System (Wes) Requirements**, Owner agrees to waive and hereby does waive any and all such setbacks and setback requirements for the benefit of Developer, the owner(s) of the real property on which windpower facilities are sited, and their respective successors and assigns. Notwithstanding the foregoing, Developer shall not construct a wind turbine within One Thousand Two Hundred Fifty Feet (1,250') of any residence on the Property (as measured from the base of the wind turbine to the exterior of the closest wall line of such residence as of the Effective Date).

2. **Shadow Flicker Waiver.** To the fullest extent allowed by law, Owner hereby waives any and all potential and actual shadow flicker requirements (and variations thereof), whether imposed by applicable law or by any person or entity, including any shadow flicker requirements described in any governmental entitlement or permit issued to Developer or affiliate, for the Wind Farm (including wind turbines and appurtenant equipment) installed or constructed or to be installed or constructed on Wind Farm Property adjoining, adjacent to or near the common boundary between the Owner's Property and any of the Wind Farm Property.

3. **Parties Bound; Covenants Running With The Land.** Owner's waivers in this Agreement shall run to the benefit of the Wind Farm Property, Owner, Developer, the owner(s) of the adjacent real property and their respective successors, assigns, heirs, executors and administrators. The Parties agree that all of the waivers and agreements contained in this Agreement touch and concern the real estate described in this Agreement and are expressly intended to, and shall, be covenants running with the land and shall be binding and a burden upon Owner's Property and a benefit to the Wind Farm Property. The Parties agree the waivers and agreements in this Agreement shall be assignable and alienable by the Parties. This Agreement and the waivers herein shall remain in effect for so long as wind turbines or other wind facilities exist on the Wind Farm Property.

4. **Consideration.** As consideration for the waivers granted herein, Developer shall make payments to Owner as set forth in the Fee Schedule attached hereto (the "**Fee Schedule**"). The Fee Schedule shall be omitted from the recorded Agreement as provided in **Section 5** below. Developer shall not be required to make any payment to Owner under this Agreement until such time as Owner has returned to Developer 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.

5. **Recordation.** The Parties agree that Developer may record this Agreement in the official land records of Grant County, South Dakota.

6. **Further Acts and Assurances.** Each Party agrees that they shall execute such additional documents or instruments, and shall undertake such actions as are necessary and appropriate, to effectuate the intent of this Agreement upon the request of the other Party.

7. **Governing Law.** This Agreement shall be governed by the laws of the State of South Dakota.

[signatures on following page(s)]

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

DEVELOPER:

DAKOTA RANGE III, LLC,
a Delaware limited liability company

By: 

Name: Brian Wixon

Title: Director of Land Acquisition

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss

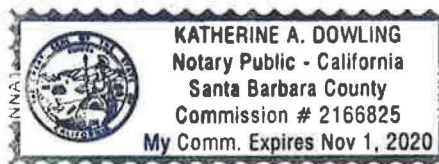
COUNTY OF SANTA BARBARA)

On May 2, 2019, before me, Katherine A. Dowling, (Notary Public), personally appeared Brian Wixon, as Director of Land Acquisition of Dakota Range III, LLC, a Delaware limited liability company, personally known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Notary Public



OWNER:By: David L. NelsonName: David Leroy Nelson, a/k/a David L. NelsonSTATE OF South Dakota

)

COUNTY OF Grant

) ss.

)

On this 6 day of November, 2018, before me, the undersigned officer, personally appeared David Leroy Nelson, a/k/a David L. Nelson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

Witness my hand and official seal.

By: David LauNotary Public South Dakota

(State)

My commission expires: 4-8-22

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

By: Sue NelsonName: Sue NelsonSTATE OF South Dakota

)

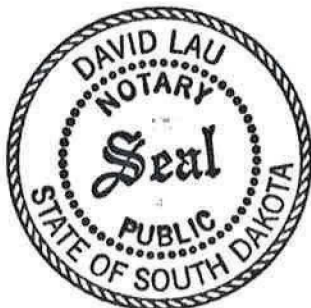
COUNTY OF Grant

) ss.

)

On this 6 day of November, 2018, before me, the undersigned officer, personally appeared Sue Nelson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

Witness my hand and official seal.

By: David LauNotary Public South Dakota

(State)

My commission expires: 4-8-22

EXHIBIT APROPERTY DESCRIPTION

All that real property located in Grant County, South Dakota, described as follows:

Tract 1:

The East Half of the Northwest Quarter (E/2 NW/4) and Government Lots One (1) and Two (2) in Section Eighteen (18), Township One Hundred Twenty-one (121) North, Range Fifty-one (51), West of the 5th P.M., in the Sisseton and Wahpeton Indian Reservation, Grant County, South Dakota. subject to highway rights of way, visible or recorded easements, and reservations of record, if any;

SAVE AND EXCEPT

A STRIP OF LAND CONVEYED TO GRANT COUNTY, SOUTH DAKOTA IN QUIT CLAIM DEED DATED DECEMBER 23, 1980, RECORDED DECEMBER 24, 1980 IN BOOK 89, PAGE 727, OFFICIAL PUBLIC RECORDS, GRANT COUNTY, SOUTH DAKOTA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

A STRIP OF LAND OVER AND ACROSS THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 121 NORTH, RANGE 51 WEST OF THE FIFTH PRINCIPAL MERIDIAN. GRANT COUNTY, SOUTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS

A STRIP OF LAND PARALLEL TO AND ADJACENT TO THE REGULAR PUBLIC ROAD RIGHT OF WAY ALONG THE WEST SIDE OF SAID SECTION 18, SAID STRIP OF LAND BEING 17 FEET WIDE AND 2621.5 FEET LONG AND EXTENDING FROM THE SOUTH BOUNDARY LINE OF THE REGULAR PUBLIC ROAD RIGHT OF WAY ALONG THE NORTH SIDE OF SAID SECTION 18, TO THE EAST AND WEST QUARTER LINE OF SAID SECTION 18, CONTAINING 1.02 ACRES, MORE OR LESS

Tax Parcel Reference: 05.51.18.2000 (159.77 acres)

AND

Tract 2:

The Southwest Quarter (SW/4) of Section Eighteen (18), Township One Hundred Twenty-one (121) North, Range Fifty-one (51), West of the 5th P.M., subject to easements, restrictions, and encumbrances of record, if any;
In the former Sisseton and Wahpeton Indian Reservation.

SAVE AND EXCEPT

A STRIP OF LAND CONVEYED TO GRANT COUNTY, SOUTH DAKOTA IN QUIT CLAIM DEED DATED DECEMBER 23, 1980, RECORDED DECEMBER 24, 1980 IN BOOK 89, PAGE 727, OFFICIAL PUBLIC RECORDS, GRANT COUNTY, SOUTH DAKOTA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

A STRIP OF LAND 17 FEET WIDE, OVER AND ACROSS THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 121 NORTH, RANGE 51 WEST OF THE FIFTH PRINCIPAL MERIDIAN, GRANT COUNTY, SOUTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS

A STRIP OF LAND PARALLEL TO AND ADJACENT TO THE REGULAR PUBLIC ROAD RIGHT OF WAY ALONG THE WEST SIDE OF SAID SECTION 18, SAID STRIP OF LAND BEING 17 FEET WIDE AND 2615.3 FEET LONG AND EXTENDING FROM THE EAST AND WEST QUARTER LINE OF SAID SECTION 18 TO THE NORTH BOUNDARY LINE OF THE REGULAR PUBLIC ROAD RIGHT OF WAY ALONG THE SOUTH SIDE OF SAID SECTION 18, CONTAINING 1.02 ACRES, MORE OR LESS

Tax Parcel Reference: 05.51.18.3000 (159.15 acres)

AND

Tract 3:

The Fractional Northwest Quarter (NW1/4), which includes Lot 2, of Lowe Addition, except Lowe Addition and except a Seventeen (17') foot wide strip parallel to and adjacent to the regular public road right of way along the west side of said property deeded to the State of South Dakota in Deed Record 58 on page 147, in Section 30, Township 121 North, Range 51 West of the 5th P.M., in the former Sisseton-Wahpeton Indian Reservation, Grant County, South Dakota, subject to visible recorded easements and reservations of record, if any.

Tax Parcel Reference: 05.51.30.2000 (142.35 acres)

131-557

State of South Dakota, County of Roberts
Filed this 4 Day of Mar 20 19 At 3:00
O'Clock P. M. Book 191 Page 392-398
By [Signature]
Register of Deeds Deputy
Fees \$ 30.00

PREPARED BY AND
AFTER RECORDING RETURN TO:
Dakota Range III, LLC
c/o Apex Clean Energy, Inc.
Court Square Building
310 4th Street NE, Suite 200
Charlottesville, Virginia 22902
Attention: Katherine Beury, Esq.
434-220-7525

WIND PROJECT SETBACK AND SHADOW FLICKER WAIVER

THIS WIND PROJECT SETBACK AND SHADOW FLICKER WAIVER ("**Agreement**") is made and entered into as of this 2nd day of November, 2018 ("**Effective Date**"), by and between Gregory Pearson and Colleen Pearson, Trustees under the Gregory and Colleen Pearson Living Trust, dated April 07, 2014 ("**Owner**"), with a tax mailing address of 14356 452nd Avenue, Ortle, SD 57256, and Dakota Range III, LLC, a Delaware limited liability company ("**Developer**"), with a tax mailing address of c/o Apex Clean Energy, Inc., Court Square Building, 310 4th Street Northeast, Suite 200, Charlottesville, Virginia 22902. The parties hereto shall be collectively referred to as the "Parties" and each individually as a "Party," unless specifically identified otherwise.

RECITALS:

- A. Owner is the owner of that certain tract of real property located in Roberts County, South Dakota, more particularly described on Exhibit A attached hereto and made a part hereof (the "**Property**");
- B. Developer is a wind farm developer that desires to develop an electric-generating wind farm project on real property located adjacent to and/or in the vicinity of the Property in Roberts County, South Dakota (the "**Wind Farm**").
- C. Developer expects that some of the Wind Farm improvements will be installed on land adjoining, adjacent to, or near Owner's Property (the "**Wind Farm Property**").
- D. Developer wishes, in accordance with Sections 1613.03(2)(ii) and 1613.03(10)(a) of Roberts County Zoning Ordinance No. 21 (the "**Ordinance**"), to obtain waivers from Owner, as well as from other Owners who are participants in, or neighbors of, the Wind Farm, for: (a) building setbacks under **Section 1613.03(2)(i)** of the Ordinance, and (b) potential and actual impacts of shadow flicker on Owner's Property from the operation of the Wind Farm under **Section 1613.03(10)** of the Ordinance.

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. **Setback Waiver.** To the fullest extent allowed by any law, ordinance, regulation or permit that 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, including but not limited to the setbacks described in **Section 1613.03(2)(i)** of the Ordinance, Owner agrees to waive and hereby does waive any and all such setbacks and setback requirements for the benefit of Developer, the owner(s) of the adjacent real property, and their respective successors and assigns.

2. **Shadow Flicker Waiver.** To the fullest extent allowed by law, Owner hereby waives any and all potential and actual shadow flicker requirements (and variations thereof), whether imposed by applicable law or by any person or entity, including but not limited to any shadow flicker requirements described in **Section 1613.03(10)** of the Ordinance, or in any governmental entitlement or permit issued to Developer or affiliate, for the Wind Farm (including wind turbines and appurtenant equipment) installed or constructed or to be installed or constructed on Owner's Property or Wind Farm Property adjoining, adjacent to or near the common boundary between the Owner's Property and any of the Wind Farm Property.

3. **Parties Bound; Covenants Running With The Land.** Owner's waivers in this Agreement shall run to the benefit of the Wind Farm Property, Owner, Developer, the owner(s) of the adjacent real property and their respective successors, assigns, heirs, executors and administrators. The Parties agree that all of the waivers and agreements contained in this Agreement touch and concern the real estate described in this Agreement and are expressly intended to, and shall, be covenants running with the land and shall be binding and a burden upon Owner's Property and a benefit to the Wind Farm Property. The Parties agree the waivers and agreements in this Agreement shall be assignable and alienable by the Parties. This Agreement and the waivers herein shall remain in effect for so long as wind turbines or other wind facilities exist on the Wind Farm Property.

4. **Consideration.** As consideration for the waivers granted herein, Developer shall make payments to Owner as set forth in the Fee Schedule attached hereto (the "**Fee Schedule**"). The Fee Schedule shall be omitted from the recorded Agreement as provided in **Section 5** below. Developer shall not be required to make any payment to Owner under this Agreement until such time as Owner has returned to Developer 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.

5. **Recordation.** The Parties agree that Developer may record this Agreement in the official land records of Roberts County, South Dakota.

6. **Further Acts and Assurances.** Each Party agrees that they shall execute such additional documents or instruments and shall undertake such actions as are necessary and appropriate, to effectuate the intent of this Agreement upon the request of the other Party.

7. **Governing Law.** This Agreement shall be governed by the laws of the State of South Dakota.

[signatures on following page(s)]

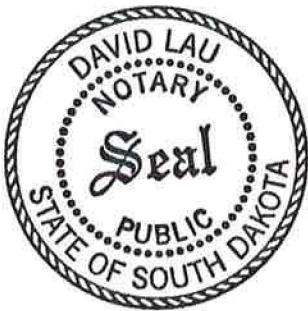
OWNER:

By: Gregory Pearson
Name: Gregory Pearson, Trustee under the Gregory & Colleen Pearson Living Trust, dated April 07, 2014

STATE OF South Dakota)
COUNTY OF Roberts) ss.
)

On this 2 day of November, 2018, before me, the undersigned officer, personally appeared Gregory Pearson, Trustee under the Gregory & Colleen Pearson Living Trust, dated April 07, 2014, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

Witness my hand and official seal.



David Lau
Notary Public South Dakota
(State)
My commission expires: 4-8-22

By: Colleen Pearson
Name: Colleen Pearson, Trustee under the Gregory & Colleen Pearson Living Trust, dated April 07, 2014

STATE OF South Dakota)
COUNTY OF Roberts) ss.
)

On this 2 day of November, 2018, before me, the undersigned officer, personally appeared Colleen Pearson, Trustee under the Gregory & Colleen Pearson Living Trust, dated April 07, 2014, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

Witness my hand and official seal.



David Lau
Notary Public South Dakota
(State)
My commission expires: 4-8-22

EXHIBIT A

PROPERTY DESCRIPTION

All that real property located in Roberts County, South Dakota, described as follows:

Tract 1:

THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE $\frac{1}{4}$ NW $\frac{1}{4}$; THE SOUTH HALF OF THE NORTHWEST QUARTER (S $\frac{1}{4}$ NW $\frac{1}{4}$); THE NORTH HALF OF THE SOUTHWEST QUARTER (N $\frac{1}{2}$ SW $\frac{1}{4}$) *except Lots 1 and 2 of Pearson Subdivision*, ALL IN SECTION 35, TOWNSHIP 122 NORTH, RANGE 52 WEST OF THE 5TH P.M., ROBERTS COUNTY, SOUTH DAKOTA.

Tax Parcel Reference: 13087 (184.39 acres)

AND

Tract 2:

The West Half of the Northeast Quarter (W1/2 NE1/4) and the East Half of the Northwest Quarter (E1/2 NW1/4) of Section Twenty-five (25), Township One Hundred Twenty-two (122) North, Range Fifty-two (52) West of the 5th P.M., Roberts County, South Dakota.

SAVE AND EXCEPT

A STRIP OF LAND CONVEYED TO ROBERTS COUNTY IN WARRANTY DEED DATED APRIL 5, 1938. RECORDED AUGUST 2, 1938 IN BOOK 40, PAGE 135, OFFICIAL PUBLIC RECORDS, ROBERTS COUNTY,

SOUTH DAKOTA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

A STRIP OF LAND PARALLEL TO AN ADJACENT TO THE REGULAR PUBLIC ROAD RIGHT OF WAY ALONG THE NORTH SIDE OF SECTION 25, TOWNSHIP 122 NORTH, RANGE 52 WEST OF THE FIFTH PRINCIPAL MERIDIAN, SAID STRIP OF LAND BEING 17 FEET WIDE AND 1322.1 FEET, MORE OR LESS, LONG AND EXTENDING FROM THE NORTH AND SOUTH ONE QUARTER LINE OF SAID SECTION 25 TO THE NORTH AND SOUTH ONE SIXTEENTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 25, THE STRIP OF LAND DESCRIBED CONTAINS 0.52 ACRES, MORE OR LESS

ALSO SAVE AND EXCEPT

A STRIP OF LAND CONVEYED TO ROBERTS COUNTY IN WARRANTY DEED DATED APRIL 5, 1938, RECORDED AUGUST 2, 1938 IN BOOK 40, PAGE 136, OFFICIAL PUBLIC RECORDS, ROBERTS COUNTY, SOUTH DAKOTA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

A STRIP OF LAND PARALLEL TO AN ADJACENT TO THE REGULAR PUBLIC ROAD RIGHT OF WAY ALONG THE NORTH SIDE OF SECTION 25, TOWNSHIP 122 NORTH, RANGE 52 WEST OF THE FIFTH PRINCIPAL MERIDIAN, SAID STRIP OF LAND BEING 17 FEET WIDE AND 1307.9 FEET, MORE OR LESS, LONG AND EXTENDING FROM THE NORTH AND SOUTH ONE SIXTEENTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 25 TO THE NORTH AND SOUTH ONE QUARTER LINE OF SAID SECTION 25, THE STRIP OF LAND DESCRIBED CONTAINS 0.51 ACRES, MORE OR LESS

ALSO SAVE AND EXCEPT

A STRIP OF LAND CONVEYED TO THE STATE OF SOUTH DAKOTA IN HIGHWAY USE DEED DATED JANUARY 21, 1978, RECORDED MARCH 15, 1978 IN BOOK 72, PAGE 610 AND BOOK 72, PAGE 611, OFFICIAL PUBLIC RECORDS, ROBERTS COUNTY, SOUTH DAKOTA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

LOT H-2 IN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 122 NORTH, RANGE 52 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN ROBERTS COUNTY, SOUTH DAKOTA, AS SHOWN BY PLAT MADE BY CLAUD C. FUEHL, REGISTERED LAND SURVEYOR, UNDER DATE OF NOVEMBER 16, 1977; SAID PLAT TO BE FILED IN THE OFFICE OF THE REGISTER OF DEEDS IN ROBERTS COUNTY, SOUTH DAKOTA, SAID LOT H-2 CONTAINS 2.53 ACRES, MORE OR LESS

Tax Parcel Reference: 6532 (141.65 acres)

AND

Tract 3:

THE WEST HALF OF THE SOUTHWEST QUARTER (W $\frac{1}{2}$ SW $\frac{1}{4}$) OF SECTION 27, TOWNSHIP 122 NORTH, RANGE 52 WEST OF THE 5TH P.M., ROBERTS COUNTY, SOUTH DAKOTA;

Tax Parcel Reference: 6543 (80 acres)

AND

Tracts 4-5:

THE SOUTHWEST QUARTER (SW $\frac{1}{4}$) AND THE NORTHWEST QUARTER (NW $\frac{1}{4}$), *ALSO DESCRIBED AS THE WEST HALF OF (W $\frac{1}{2}$)*, OF SECTION 34, TOWNSHIP 122 NORTH, RANGE 52 WEST OF THE 5TH P.M. ROBERTS COUNTY, SOUTH DAKOTA

Tax Parcel References: 6554 (160 acres)
6553 (160 acres)