

**THIS INSTRUMENT DRAFTED BY AND  
AFTER RECORDING RETURN TO**

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**PARTICIPATION AGREEMENT**

THIS PARTICIPATION AGREEMENT ("**Agreement**") is dated this 23 day of July, 2019 ("**Effective Date**") by and between Brian Schlotterbeck and Becky Schlotterbeck, husband and wife, with an address of P.O. Box 1908, Watertown, SD 57201 ("**Owner**") and Crowned Ridge Wind II, LLC, a Delaware limited liability company ("**Operator**"), with an address of 700 Universe Blvd., Attn: Land Services Administration, Juno Beach, FL 33408, and its successors in interests. Owner and Operator are sometimes collectively referred to hereinafter as the "**Parties**".

RECITALS

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

B. Operator is the holder of certain easements and other related rights covering real property located adjacent to and/or in the vicinity of the Property because it is developing a wind energy conversion system including wind turbines, collection lines, roads, and an electric substation in Codington, Deuel and Grant Counties, South Dakota (collectively "**Wind Farm**").

C. Operator desires to have certain landowners participate in the benefit of the Wind Farm and Owner agrees to grant and convey to Operator an option to acquire an easement for wind non-obstruction and an easement for effects on the Property attributable to the Wind Farm.

For good and valuable consideration set forth herein, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the easements in accordance with the following terms and conditions.

(a) The term of the Option shall be for three (3) years, commencing on the Effective Date ("**Option Term**").

(b) On the Effective Date, Operator and its employees, agents and contractors shall have a right to enter upon the Property and the right of ingress and egress over and across the Property for the purposes of surveying the Property.

(c) Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the date on which the Easements (as defined in Section 2 below) will become effective ("**Commencement Date**").

(d) If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as provided herein shall automatically terminate.

2. **Easements.** On the Commencement Date, Owner grants Operator an exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed flow of wind currents over and across the Property as described in **Exhibit A**. Owner shall not engage in any activity on the Property that might interfere with wind speed or wind direction over the Property; cause a decrease in the output or efficiency of any wind turbine or accuracy of any meteorological equipment; or otherwise interfere with Operator's operation of the Wind Farm or exercise of any rights granted in this Agreement. Owner grants to Operator an easement for sounds, visual, light, flicker, shadow, vibration, wake, electromagnetic, electrical and radio frequency interference, and any other effects (collectively "**effects**") on the Property caused or alleged to be caused by the Wind Farm. The easements described in this paragraph shall collectively be referred to as "**Easements**".

3. **Term.** The term of the Agreement ("**Term**") shall commence on the Commencement Date and end fifty (50) years after the Commencement Date, subject to the rights of termination as provided in this Agreement. Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement. Termination shall be effective thirty (30) days after written notice of such termination to Owner.

4. **Authority.** Owner is the holder of fee simple title to all of the Property, and has the right, without the joinder of any other party, to enter into this Agreement and grant Operator the Easements. Owner agrees to warrant and defend its ownership of the Property and Operator's interest in this Agreement against any other party claiming to have any ownership interest in or other claim to the Property.

5. **Assignment.** This Agreement, and its rights and obligations, may be assigned by either party to its respective heirs, successors and assigns. The Easements shall run with the Property and shall be binding on Owner and Operator, together with their mortgagees, assignees, and respective successors and assigns, heirs, personal representatives, tenants or persons claiming through them.

6. **Reserved Uses.** Owner reserves the right to use the Property for all other purposes not granted to Operator under this Agreement, including ranching and agricultural uses, and all recreational uses, provided that no such other use interferes with the Easements.

7. **Release.** Owner hereby releases Operator from any and all claims for damages

arising from any injury or harm or conditions related to the Property, including but not limited to, any harm or loss due to nuisance, trespass, disturbance, effects, diminishment of the value of the Property, proximity of the Wind Farm to Owner's Property and/or residence, diminishment or interference with the ability to use or enjoy the Property, and any other injury or harm, of whatever kind or character, to persons or property, whether now known or unknown, or which may appear or develop in the future, caused or alleged to be caused by the Wind Farm or by Operator, its parent companies, affiliates, successors, assigns, whether claimed or not claimed, or which hereafter might be brought by Owner or any of their successors and assigns.

8. **Governing Law.** Operator shall comply with valid laws applicable to the Property and Owner shall not be liable in the event that Operator violates a law relating to the Easements on the Property. This Agreement shall be governed by and interpreted in accordance with the laws of the State of South Dakota. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity. **Each party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Agreement shall be to the court of competent jurisdiction.**

9. **Compensation.** Operator shall pay Owner the amounts set forth in a separate Compensation Agreement as the consideration for this Agreement. The Parties acknowledge and agree that the Compensation Agreement shall not be recorded with the County Recorder, and that by separating the Compensation Agreement from this Agreement prior to recording does not in any way affect the validity of this Agreement.

[Signatures on following pages]





**EXHIBIT A**

**Legal Description of Property**

The South 396' of the North 1,696' of the West 460' of the Fractional Northwest Quarter (Frl.NW¼) of Section 6, Township 117 North, Range 50, West of the Fifth Principal Meridian, Deuel County, South Dakota.