



Document 2013 2999

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LISA SMITH, COUNTY RECORDER  
MADISON COUNTY IOWA

Prepared by: Kathleen Law, 700 Walnut, Suite 1600, Des Moines, IA 50309; 515-283-3116  
Return to: Stephen F. Dryden, 6205 Mills Civic Parkway, West Des Moines, IA 50266

## MEMORANDUM OF WIND FARM EASEMENT AGREEMENT

Macksburg Wind Energy LLC, an Iowa limited liability company, and its successors and assigns (“**Macksburg Wind**”), and Jimmie D. Smith and Nancy J. Smith, husband and wife, as Joint Tenants with Full Rights of Survivorship and Not as Tenants in Common, and their heirs, successors and assigns (collectively, “**Owner**”), are the parties to a Wind Farm Easement Agreement (the “**Agreement**”) signed at the same time as this Memorandum of Easement (“**Memorandum**”). The Agreement pertains to a wind energy project commonly known as the Macksburg Wind Farm (“**Wind Farm**”), includes a grant of easements, and establishes the rights of the parties and their duties to each other with regard to the Wind Farm. The parties entered into the Agreement pursuant to a Wind Farm Option Agreement, a Memorandum of which is recorded at Book 2013, Page 1740 of the Madison County records.

Capitalized terms that are not defined in this Memorandum have the meanings given them in the Agreement. This Memorandum incorporates all of the terms, conditions, provisions and covenants of the Agreement as if fully set forth in this Memorandum. This Memorandum is not intended to and shall not be construed as in any way modifying or altering the Agreement. If there is a conflict or inconsistency between the provisions of this Memorandum and the terms and conditions of Agreement, the Agreement shall control for all purposes.

Owner and Macksburg Wind have agreed to record this Memorandum to give third parties notice of the existence of the Easements granted to Macksburg Wind in the Agreement and certain other significant provisions of the Agreement.

**1. Grant of Easements.** The Agreement grants to Macksburg Wind on the terms and conditions set forth in the Agreement some or all of the following Easements: Construction Easement, Turbine Site Easement, Access Easement, Collection Facilities Easement, Met Tower Site Easement, Overhang Easement, Wind Non-Obstruction Easement, Noise Easement, Light and Shadow Easement and Studies Easement. The Easements are irrevocable and exclusive except as otherwise provided in the Agreement.

**2. Property Affected by the Easements.** Exhibit A at Page 5 attached to this Memorandum legally describes the real property owned by Owner that is affected by the Agreement (“**Owner’s Property**”). The Wind Non-Obstruction Easement, Noise Easement, Light and Shadow Easement and Studies Easement affect all of Owner’s Property.

Exhibit B attached to this Memorandum is a preliminary site and easement plan for Owner’s Property (“**Site Plan**”). The Site Plan shows the approximate location and boundaries of any proposed Turbine

Site Easement, Met Tower Site Easement, Access Easement, Collection Facilities Easement, Overhang Easement, and Construction Easement that may be located on Owner's Property. After construction of the Wind Farm, Macksburg Wind will separately record **Exhibit C** which shall replace Exhibit B. Exhibit C will be a dimensioned final site and easement plan with respect to Owner's Property that will show the locations of all Wind Energy Facilities, if any, as constructed on or overhanging Owner's Property together with a metes and bounds legal description of the perimeter of the Construction Easement and such other Easements and information as Macksburg Wind deems appropriate.

**3. Term and Renewal.** The "Term" of the Agreement ends 30 years after the Commercial Operation Date of the Wind Farm. Macksburg Wind at its option may extend the Term of the Agreement for one additional 25 year period beginning, without gap or interruption, at the end of the Term ("**Renewal Term**"). Macksburg Wind may exercise this option for the Renewal Term by giving Owner notice of its intent to do so at least 16 months before expiration of the Term. If Macksburg Wind does not give Owner timely notice of its exercise of this option for a Renewal Term, this Agreement and the Easements shall terminate as of the expiration of the Term. The "Commercial Operation Date" for purposes of the Agreement will be determined by Macksburg Wind and specified in a notice of the Commercial Operation Date delivered by Macksburg Wind to Owner.

**4. Termination.** When the Agreement expires or is completely or partially terminated as permitted in the Agreement, Macksburg Wind will file an appropriate complete or partial termination of the Agreement, Easements or other rights granted to Macksburg Wind in the Agreement in the public records in the county in which Owner's Property is located. If, when obligated to do so in accordance with the Agreement, Macksburg Wind fails to file a notice of termination, then Owner may file an affidavit of termination of, as appropriate, the Agreement, Easements or other rights granted to Macksburg Wind in the Agreement together with proof of service of the affidavit on Macksburg Wind and any Lender or Assignee in the manner provided for giving notices. Unless Macksburg Wind or a Lender or Assignee files in the public records in the county in which Owner's Property is located a written objection or denial of termination within 30 days after service of the affidavit, the affidavit will have the same effect as a notice of termination by Macksburg Wind.

**5. Development and Use Restrictions.** The Agreement restricts snowmobiling, hunting and the discharge of firearms on the Owner's Property or in the vicinity of the Wind Energy Facilities for the protection of Macksburg Wind's site personnel and the Wind Energy Facilities. The Agreement also contains development and use restrictions pertaining to construction of new structures on Owner's Property.

**6. Mechanic's Liens.** Owner gives notice that no mechanic's liens arising out of Macksburg Wind's activities on the Owner's Property shall in any manner or degree attach to or affect the rights of Owner in the Owner's Property.

**7. Right to Mortgage and Assign.** Macksburg Wind may without Owner's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Agreement, the Easements, the Easement Properties, or the Wind Energy Facilities. Macksburg Wind shall also have the right without Owner's consent, to sell, assign, lease, grant sub-easements, co-easements, separate easements, leases, licenses or similar rights, however denominated, or otherwise convey away, to one or more persons or entities, all or any part of Macksburg Wind's interest in this Agreement, the Easements, the Easement Properties, other rights granted to Macksburg Wind in the Agreement and the Wind Energy Facilities.

**8. Notices and Questions.** All notices or other communications required or permitted by the Agreement shall be in writing. Notices, shall be deemed given or made when personally delivered; five

(5) days after deposit in the United States mail, first class, postage prepaid, certified; or, one (1) business day after dispatch by Federal Express or other overnight delivery service of national scope to the addresses below, or as changed by any party, Assignee or Lender notifying the other parties in the manner provided above.

If to Owner:

Jimmie Smith  
3055 Fieldstone Ave  
Macksburg, IA 50155

If to Macksburg Wind:

Macksburg Wind Energy LLC  
Attn: Stephen F. Dryden  
6205 Mills Civic Parkway  
West Des Moines, Iowa 50266

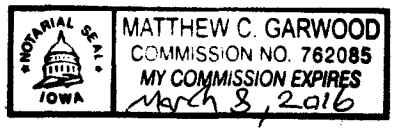
Dated this July 2, 2013.

**MACKSBURG WIND ENERGY LLC**, an Iowa limited liability company

By: *James T. Dimond*  
James T. Dimond, Authorized Representative

STATE OF IOWA, Madison COUNTY, ss:

This record was acknowledged before me on July 2, 2013, by James T. Dimond as Authorized Representative of Macksburg Wind Energy LLC, an Iowa limited liability company.



*Matthew C. Garwood*  
Matthew C. Garwood, Notarial Officer  
My commission expires: March 8, 2016

STAMP

**[OWNER'S SIGNATURES BEGIN ON NEXT PAGE]**

**Owners:**

Signature: *Jimmie D. Smith*  
Jimmie D. Smith

Signature: *Nancy J. Smith*  
Nancy J. Smith

STATE OF Iowa, Madison COUNTY, ss:

This record was acknowledged before me on July 2, 2013, by Jimmie D. Smith and Nancy J. Smith, husband and wife.

*Matthew C. Garwood*  
Matthew C Garwood Notarial Officer

My commission expires: March 8, 2016

STAMP

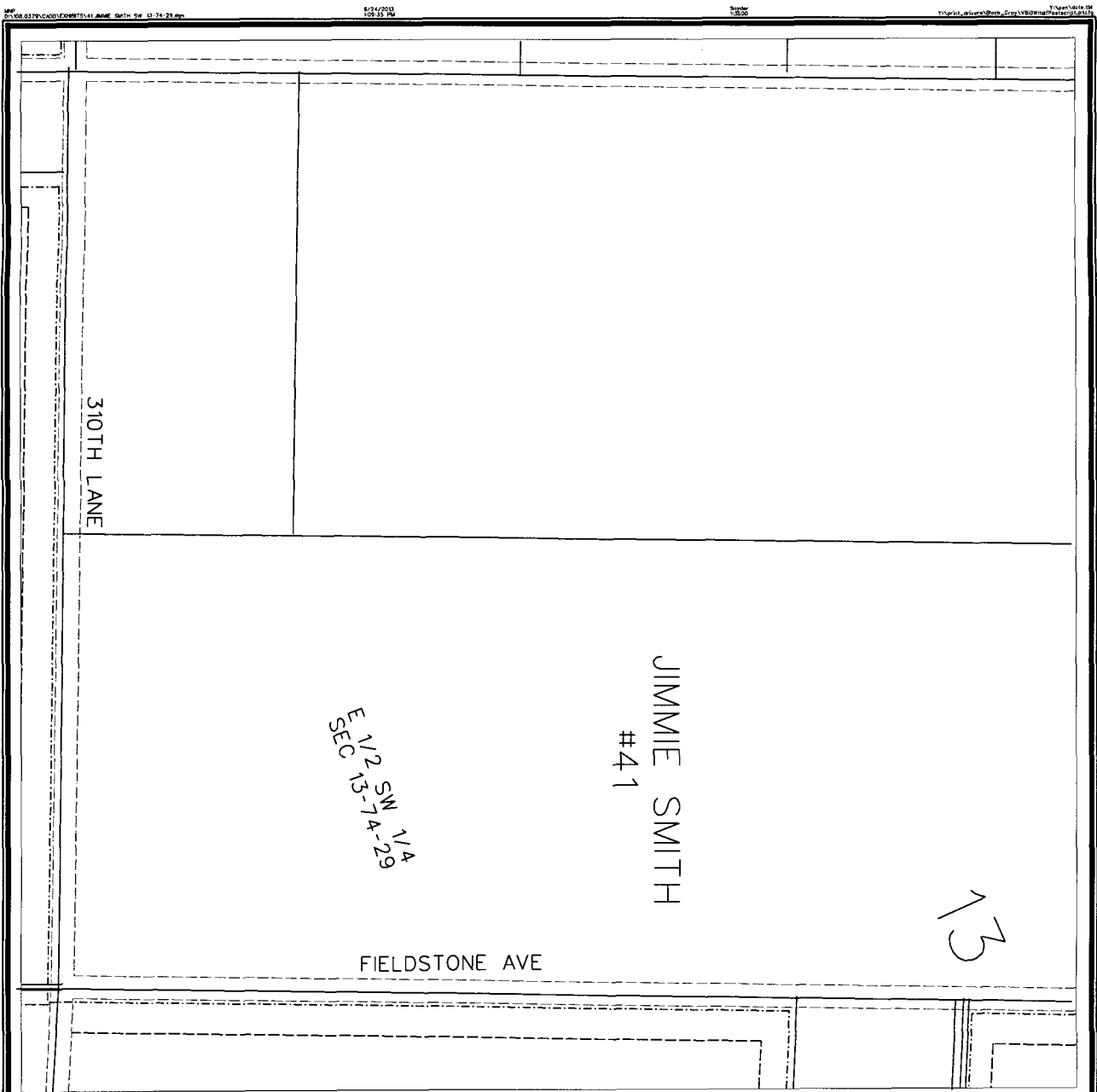


## **EXHIBIT A**

### **LEGAL DESCRIPTION OF OWNER'S PROPERTY**

The East Half (½) of the Northwest Quarter (¼) and the East Half (½) of the Southwest Quarter (¼) of Section Thirteen (13), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th Principal Meridian, Madison County, Iowa.

**Net Acreage of Owner's Property per County Assessor's Records:153.23**



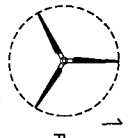
E 1/2 SW 1/4  
SEC 13-74-29

JIMMIE SMITH  
#41

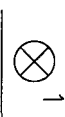
13

NOTE: INFORMATION SHOWN INCLUDING PROPERTY BOUNDARY LINES IS A GRAPHIC REPRESENTATION OF EXISTING AND PROPOSED FEATURES AND IS NOT BASED ON LAND SURVEYS. ACTUAL PROPERTY BOUNDARY LINES AND EASEMENTS TO BE DETERMINED PRIOR TO CONSTRUCTION. ALL TURBINE ACCESS ROAD, COLLECTION AND TRANSMISSION LINE LOCATIONS ARE PRELIMINARY AND SUBJECT TO FINAL DESIGN.

**LEGEND**

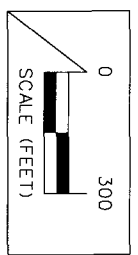
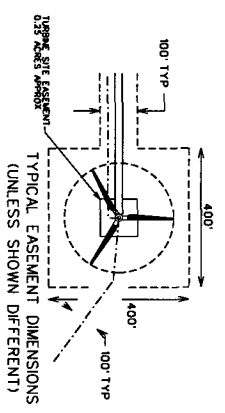


PROPOSED TURBINE WITH NUMBER



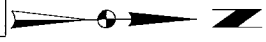
PROPOSED MET TOWER WITH NUMBER

- PROPERTY LINES
- ACCESS ROADS
- COLLECTION FACILITIES
- EXISTING ROAD RIGHT-OF-WAY
- CONSTRUCTION EASEMENT



SCALE (FEET)

ISSUE DATE: 06-24-2013



MACKSBURG WIND PROJECT

EXHIBIT B - JIMMIE SMITH SW 13-74-29

MADISON COUNTY, IOWA

**SNYDER & ASSOCIATES**

1751 MADISON AVENUE  
COUNCIL BLUFFS, IOWA 51503 | 712-322-3202

ATLANTIC, IA 712-244-0095  
Cedar Rapids, IA 319-382-7594

MARYVILLE, MO 657-562-8888  
ST. JOSEPH, MO 417-584-5222

MARKS	REVISION	DATE	BY
Engineer: <b>JWK</b>	Checked By: <b>MGG</b>	Scale: 1"= 300'	
Technician: <b>MND</b>	Date: <b>05-21-13</b>	Sheet No: <b>1080379</b>	File No:

**EXHIBIT C**

**HOLDING PAGE FOR FINAL AS-BUILT DRAWING FOR OWNER'S  
PROPERTY**