

RECORDING REQUESTED BY AND  
AFTER RECORDING, RETURN TO:

North Hurlburt Wind, LLC  
c/o Caithness Corporation  
565 Fifth Avenue, 29th Floor  
New York, NY 10017  
Attn: Gail Conboy

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### NOISE EASEMENT AGREEMENT

This **NOISE EASEMENT AGREEMENT** (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2010 (the “**Effective Date**”) by and between \_\_\_\_\_, “**Grantor**”) and **NORTH HURLBURT WIND, LLC**, a Delaware limited liability company (“**Grantee**”). Each of Grantor and Grantee is sometimes referred to as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. Grantee is a wind farm developer that desires to develop, construct, and operate a renewable wind power project or projects consisting of wind-powered turbines and generators capable of producing electricity and associated appurtenances, equipment, facilities and roadways that will produce and transmit electrical energy, including without limitation related power lines, and other equipment and facilities used or useful in connection with the production and transmission of electrical energy (collectively, the “**Wind Project**”) on lands located in Gilliam and Morrow Counties, Oregon as generally described in the attached Exhibit A and incorporated herein by this reference (the “**Wind Project Property**”).

B. Grantor is the owner of certain real property located in \_\_\_\_\_ County, Oregon, upon a portion of which Grantor maintains a residence and accessory structures, as described in the attached Exhibit B, and to the extent an accessory structure constitutes a noise sensitive property under the Oregon Department of Environmental Quality (“**DEQ**”) noise level standards for new industrial or commercial noise sources (hereinafter, the “**DEQ New Noise Source Standards**”), both the residence and qualifying accessory structures are incorporated herein by this reference (the “**Residence Property**”).

C. Grantor has been advised and is of the opinion that construction, operation, and maintenance of the Wind Project (collectively, “**Wind Project Operations**”) on the Wind Project Property may subject the Residence Property to noise influence that may exceed the DEQ New Noise Source Standards; that these present and future noise influences might be annoying to users of the Residence Property and might interfere with the unrestricted use and enjoyment of the Residence Property in its intended use; that these noise influences might change over time by virtue of construction activities, maintenance, seasonal wind variations, and time-of-day wind variations; that changes in Wind Project Operations could result in increased noise influences; and

that Grantor's or the user's own personal perceptions of the noise exposure could change, and that Grantor's sensitivity to Wind Project noise could increase.

D. Grantee wishes to obtain from Grantor, on the terms stated below, a nonexclusive easement to allow the Wind Project and the Wind Project Operations to increase the ambient statistical noise levels L10 and L50 by more than 10 dBA at the appropriate measurement points on the Residence Property (but not above limits specified in Table 8 of Oregon Administrative Rule ("OAR") Chapter 340, Division 035 (2008)). Grantor is willing to grant Grantee the easement on the terms and provisions set forth herein.

## **AGREEMENT**

**NOW, THEREFORE,** in accordance with OAR 340-035-0035(1)(b)(B)(iii), Grantor conveys and grants to Grantee a nonexclusive easement and waiver as follows:

1. **Grant of Easement.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, Grantor hereby conveys and grants to Grantee a nonexclusive easement (the "**Noise Easement**") to allow the Wind Project and the Wind Project Operations to increase the ambient statistical noise levels L10 and L50 by more than 10 dBA at the appropriate measurement points on the Residence Property (but not above limits specified in Table 8 of OAR Chapter 340, Division 035 (2008)) ("**Permitted Noise Levels**"). The Noise Easement shall burden the Residence Property and benefit the Grantee, the Wind Project, and the Wind Project Property.

2. **Term.** The Noise Easement shall be and remain in effect until the date on which all Wind Project Operations are permanently discontinued. Upon termination of the Noise Easement, the Grantee shall execute a quitclaim deed in recordable form conveying to Grantor all its interests in the Noise Easement, which Grantor may then record.

3. **Waiver.** Grantor, for and on behalf of itself, its successors, heirs, and assigns, waives and releases any right, claim, or cause of action that Grantor previously had, has now, or may have in the future, against, and covenants not to sue, Grantee and/or its past, present, and future officers, officials, directors, members, managers, employees, agents, sublessees, predecessors, successors, heirs, and assigns, as a direct or indirect result of any prior noise levels or the Permitted Noise Levels on the Residence Property that may have been caused or that may be caused by the Wind Project or the Wind Project Operations.

4. **Governing Law.** This Agreement shall be governed by the laws of the State of Oregon.

5. **Authority.** The signatories hereto warrant that they have the authority to execute this Agreement on behalf of Grantor and Grantee, as the case may be, and that any entity on whose behalf they are signing has executed this Agreement pursuant to its governing documents or a resolution of those having the power to control its affairs of this nature.

6. **Successors, Heirs, and Assigns.** The Noise Easement shall bind the Grantor and the Residence Property for the benefit of the Grantee, the Wind Project, and the Wind Project Property, and shall run with the land as to the Residence Property. This Agreement shall inure to

the benefit of and be binding on the heirs, successors, assigns and personal representatives of the Parties hereto. Grantee shall have the right without Grantor's consent to sell, convey, lease, or assign all or any portion of its interests under this Agreement and/or the Noise Easement to one or more persons or entities that acquire any rights or interests in the Wind Project or the Wind Project Property. Grantee shall have the right without Grantor's consent to encumber, mortgage or hypothecate its interests under this Agreement and/or the Noise Easement to one or more lenders or other financing parties.

7. **Further Acts and Assurances.** Each Party shall execute such additional documents or instruments, and shall undertake such actions as are reasonably necessary and appropriate to effectuate the intent of this Agreement.

8. **Attorneys' Fees.** In the event any suit, arbitration, or action is instituted to interpret or enforce the terms of this Agreement or to rescind this Agreement, the prevailing Party shall be entitled to recover from the other Party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law.

9. **Compensation.** In consideration of the Noise Easement granted hereby, Grantee shall pay to Grantor compensation as set forth in Exhibit C and incorporated herein by reference. Exhibit C shall be redacted in the recorded version of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**GRANTOR:**

**GRANTEE:**

\_\_\_\_\_  
  
\_\_\_\_\_

NORTH HURLBURT WIND, LLC, a  
Delaware limited liability company  
By: CAITHNESS SHEPHERDS FLAT, LLC  
A Delaware limited liability company  
Its Member  
By: CAITHNESS NORTHWESTERN  
WIND, LLC  
A Delaware limited liability  
company  
Its Managing Member

By: \_\_\_\_\_

Officer Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Acknowledgments begin on following page.]

**GRANTOR ACKNOWLEDGMENT**

STATE OF OREGON                    )  
                                                  ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires:

STATE OF OREGON                    )  
                                                  ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires:

[Acknowledgments continue on next page.]

**GRANTEE ACKNOWLEDGMENT**

State of New York  
County of \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A  
TO  
NOISE EASEMENT AGREEMENT**

**Wind Project Property**

All of the real property in Gilliam and Morrow Counties, Oregon described and authorized for the construction, operation and retirement of the Shepherds Flat Wind Farm pursuant to the Site Certificate for the Shepherds Flat Wind Farm, issued by the Oregon Energy Facility Siting Council (“**Council**”) on July 25, 2008, as amended by that certain Site Certificate for Shepherds Flat North, issued by the Council on September 11, 2009, as may be subsequently modified and amended by the Council from time to time.