

00170559

B: 507 P: 163 Fee \$37.00
Connie Hansen, Millard Recorder
08/14/2009 04:05:56 PM By FIRST AMERICAN TITLE IN Page 1 of 10

WHEN RECORDED, RETURN TO:

PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Attention: Kerry L. Owens

NCS 344152

Ent 240605 Bk 437 Pg 868
Date: 25-AUG-2009 9:37AM
Fee: \$36.00 ACH
Filed By: CP
BRUCE BROWN, Recorder
BEAVER COUNTY CORPORATION
For: FIRST AMERICAN NCS - COTTONW
Recorded Electronically by Simplifile

Space above for County Recorder's Use

PARTIAL ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT

THIS PARTIAL ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT (this "Agreement") is made effective as of the 22nd day of April, 2009 ("Effective Date"), by and between Milford Wind Corridor Phase I, LLC, a Delaware limited liability company (together with its successors and assigns, the "Assignor"); Milford Wind Corridor Phase II, LLC, a Delaware limited liability company (together with its successors and assigns, the "Assignee"); and Circle Four LLC, a Delaware limited liability company (together with its successors and assigns, the "Lessor"), with reference to the following:

RECITALS:

- A. Assignor and Lessor entered into that certain Land Lease Agreement ("Lease") dated February 22, 2007, pertaining to certain premises located at Millard County and Beaver County, Utah ("Premises"). The Lease is evidenced by that certain Memorandum of Lease ("Memorandum") recorded in the Beaver County Recorder's Office on February 26, 2007, as Entry No. 230418, in Book 402, beginning at Page 392 and in the Millard County Recorder's Office on February 26, 2007, as Entry No. 160231, in Book 462, beginning at Page 467.
- B. Pursuant to Section 17.1 and Section 17.5 of the Lease, Lessor and Assignor have agreed to segregate all portions of the Premises located in Millard County, Utah ("Millard County Premises") and more particularly described on Exhibit A attached hereto and made a part hereof and to provide for separate leases as to the Millard County Premises and the portion of the Premises located in Beaver County, Utah ("Beaver County Premises").
- C. Assignor desires to partially assign pro tanto to Assignee, and Assignee desires to assume and receive from Assignor, a partial assignment of all right, title and interest of Assignor arising under the Lease as to but only as to the Millard County Premises.
- D. Lessor and Assignor have entered or will enter into that certain Amended and Restated Land Lease Agreement made effective as of February 22, 2007 and executed April 22nd, 2009 ("Beaver County Lease"), concerning all portions of the Beaver County Premises.
- E. Lessor and Assignor have entered or will enter into that certain Amended and Restated Land Lease Agreement made effective as of February 22, 2007 and executed April 22nd, 2009 ("Millard County Lease"), concerning all portions of the Millard County Premises.

F. Lessor has agreed to consent to the terms of the assignment and assumption of the Lease by executing this Agreement.

AGREEMENT:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, Assignor, Assignee and Lessor agree as follows:

1. Beaver County Lease. The parties intend by this Agreement an assignment pro tanto of the Lease as to the Millard County Premises and do not intend a sublease of the Millard County Premises. As of the Effective Date, the parties agree the Beaver County Lease shall operate as a separate lease between Lessor and Assignor for all purposes with respect to but only with respect to the Beaver County Premises. Lessor shall look solely to Assignor for payment of rents and other amounts and performance of all obligations under the Beaver County Lease with respect to the Beaver County Premises including, without limitation, any obligations of Assignor that may have arisen prior to the Effective Date as to but only as to the Beaver County Premises. Assignor shall not be responsible for payment of rent and other amounts or performance of any obligations arising under the Millard County Lease and/or with respect to the Millard County Premises arising before or after the Effective Date.
2. Millard County Lease. As of the Effective Date, the parties agree the Millard County Lease shall operate as a separate lease between Lessor and Assignee for all purposes with respect to but only with respect to the Millard County Premises. Lessor shall look solely to Assignee for payment of rents and other amounts and performance of all obligations under the Millard County Lease with respect to the Millard County Premises including, without limitation, any obligations of Assignor that may have arisen prior to the Effective Date as to but only as to the Millard County Premises. Assignee shall not be responsible for payment of rent and other amounts or performance of any obligations arising under the Beaver County Lease and/or with respect to the Beaver County Premises arising before or after the Effective Date.
3. Assignment. Effective as of the Effective Date, Assignor assigns and conveys to Assignee all right, title and interest of Assignor arising under the Lease with respect to the Millard County Premises.
4. Assumption. Effective as of the Effective Date, in consideration of Assignor executing and delivering this Agreement, Assignee assumes and agrees to perform all of the obligations and responsibilities of Assignor arising under the Lease with respect to the Millard County Premises including, without limitation, any obligations of Assignor that may have arisen prior to the Effective Date as to but only as to the Millard County Premises.
5. Consent by Lessor. Lessor consents to the assignment of the Lease as to the Millard County Premises, and, effective as of the Effective Date, releases and fully discharges Assignor from all duties, obligations or liabilities arising under the terms of the Lease with respect to the Millard County Premises arising both before and after the Effective Date.
6. Memoranda of Lease. Concurrently herewith Assignee and Lessor shall execute and either party may record an amended and restated memorandum of lease with respect to the Millard County Lease and the Millard County Premises. Concurrently herewith Assignor and

Lessor shall execute and record an amended and restated memorandum of lease with respect to the Beaver County Lease and the Beaver County Premises.

7. Amendment to Lease. This Agreement amends the Lease. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall control. Unless otherwise indicated herein, all capitalized terms used in this Agreement shall have the definitions assigned to them in the Lease.

8. General Provisions.

(a) Each party shall, whenever and as often as it shall be requested by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents as may be necessary in order to complete and evidence the assignment, conveyance and transfer herein provided and to do all things as may be reasonably requested in order to carry out the intent and purpose of this Agreement.

(b) If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby and the parties shall promptly negotiate to restore this Agreement as near as possible to its original intent and economic effect.

(c) Nothing contained in this Agreement shall be construed to create a partnership or joint venture between or among any of the parties or their successors in interest.

(d) The execution, delivery, and performance of this Agreement has been duly authorized by all necessary action of the parties, and when duly executed and delivered, will be a legal, valid and binding obligation, enforceable in accordance with its terms.

(e) The terms of this Agreement are not to be construed against any party because that party drafted this Agreement or construed in favor of any party because that party failed to understand the legal effect of the provisions of this Agreement.

(f) This Agreement represents the entire agreement among the parties with respect to the subject matter hereof and supersedes any previous agreement, written or oral, between the parties. No change, modification, addition, or termination of this Agreement shall be enforceable unless in writing and signed by the party against whom enforcement is sought.

(g) This Agreement is not intended to be a third party beneficiary contract for the benefit of any third parties, and shall not be deemed to confer any rights upon any person or entity other than the parties to this Agreement, nor obligate the parties to this Agreement to any person or entity other than the parties to this Agreement.

(h) The headings of the Sections contained herein are for convenience only and do not define, limit, or construe their contents.

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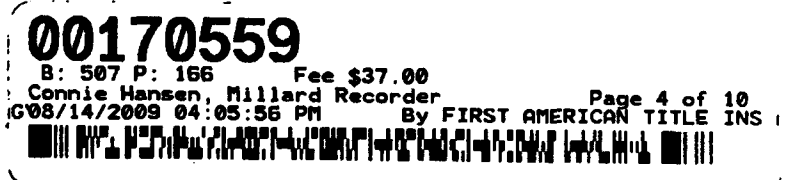
(i) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective officers, directors, representatives, affiliates, parents, subsidiaries, agents, principals, corporate divisions, trustees, heirs, executors, successors and assigns.

(j) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah.

(k) Each party shall bear its own attorney's fees and costs incurred in connection with any claim, controversy or dispute arising under or in connection with this Agreement.

(l) This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, whether by facsimile or otherwise, shall be deemed an original, but all of which together shall constitute one and same instrument.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, Assignor, Assignee and Lessor have executed this Agreement as of the dates below written to be effective as of the date first set forth above.

ASSIGNOR:

Milford Wind Corridor Phase I, LLC,
a Delaware limited liability company

Date: April 9, 2009

By: [Signature]
Print Name: Evelyn Lim
Title: Secretary

ASSIGNEE:

Milford Wind Corridor Phase II, LLC,
a Delaware limited liability company

Date: April 9, 2009

By: [Signature]
Print Name: Evelyn Lim
Title: Secretary

LESSOR:

Circle Four LLC, a Delaware limited liability company

Date: April , 2009

By: _____
Print Name: _____
Title: _____

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STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of April, 2009, by _____, as _____ of Circle Four LLC, a Delaware limited liability company.

NOTARY PUBLIC
Residing at: _____

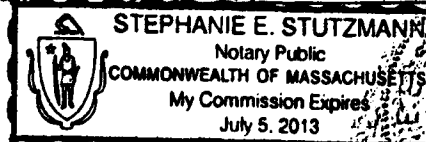
My Commission Expires:

Commonwealth
~~STATE OF~~ Massachusetts)
: ss.
COUNTY OF Middlesex)

The foregoing instrument was acknowledged before me this 9th day of April, 2009, by Evelyn Lim, as Secretary of Milford Wind Corridor Phase I, LLC, a Delaware limited liability company.

Stephanie E. Stutzmann
NOTARY PUBLIC
Residing at: Boston, MA

My Commission Expires:
July 5, 2013

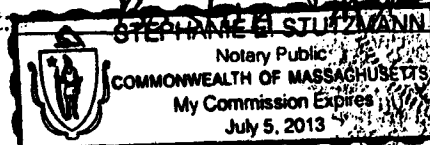


Commonwealth
~~STATE OF~~ Massachusetts)
: ss.
COUNTY OF Middlesex)

The foregoing instrument was acknowledged before me this 9th day of April, 2009, by Evelyn Lim, as Secretary of Milford Wind Corridor Phase II, LLC, a Delaware limited liability company.

Stephanie E. Stutzmann
NOTARY PUBLIC
Residing at: _____

My Commission Expires:
July 5, 2013



IN WITNESS WHEREOF, Assignor, Assignee and Lessor have executed this Agreement as of the dates below written to be effective as of the date first set forth above.

ASSIGNOR:

Milford Wind Corridor Phase I, LLC,
a Delaware limited liability company

Date: April ____, 2009

By: _____
Print Name: _____
Title: _____

ASSIGNEE:

Milford Wind Corridor Phase II, LLC,
a Delaware limited liability company

Date: April ____, 2009

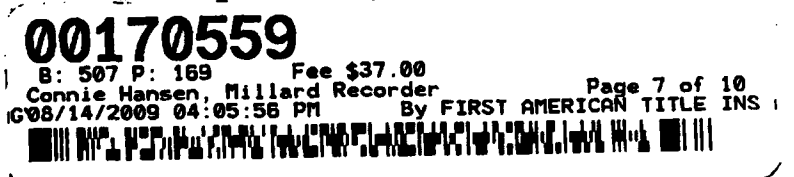
By: _____
Print Name: _____
Title: _____

LESSOR:

Circle Four LLC, a Delaware limited liability company

Date: April 16, 2009

By: Dwight D. Potter
Print Name: Dwight D. Potter
Title: General Manager

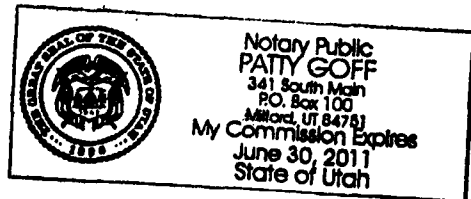


STATE OF Utah)
COUNTY OF Beaver) : ss.

The foregoing instrument was acknowledged before me this 16th day of April, 2009, by Dwight D. Potter, as General Manager of Circle Four LLC, a Delaware limited liability company.

Patty Goff
NOTARY PUBLIC
Residing at: 341 So. Main, Milford, UT 84751

My Commission Expires:
June 30, 2011



STATE OF _____)
COUNTY OF _____) : ss.

The foregoing instrument was acknowledged before me this _____ day of April, 2009, by _____, as _____ of Milford Wind Corridor Phase I, LLC, a Delaware limited liability company.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

STATE OF _____)
COUNTY OF _____) : ss.

The foregoing instrument was acknowledged before me this _____ day of April, 2009, by _____, as _____ of Milford Wind Corridor Phase II, LLC, a Delaware limited liability company.

NOTARY PUBLIC
Residing at: _____

My Commission Expires:

**EXHIBIT A
TO
PARTIAL ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT**

(Legal Description of Millard County Premises)

The Premises consist of the following Parcels located in Millard County and Beaver County, Utah:

PARCEL 1: (8737)

THE SOUTH HALF OF SECTION 31, TOWNSHIP 25, SOUTH,
RANGE 9 WEST, SALT LAKE BASE AND MERIDIAN.

PARCEL 2: (8738)

ALL OF SECTION 32, TOWNSHIP 25 SOUTH, RANGE 9
WEST, SALT LAKE BASE AND MERIDIAN.

PARCEL 3: (8739)

THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP
25 SOUTH, RANGE 9 WEST, SALT LAKE BASE AND
MERIDIAN.

PARCEL 4: (8739-1)

THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP
25 SOUTH, RANGE 9 WEST, SALT LAKE BASE AND
MERIDIAN.

PARCEL 5: (8911-A)

THE NORTH 120.32 ACRES OF THE SOUTHEAST QUARTER
OF SECTION 6, TOWNSHIP 26 SOUTH, RANGE 9 WEST,
SALT LAKE BASE AND MERIDIAN.

PARCEL 6: (8734)

THE SOUTH HALF OF SECTION 29, TOWNSHIP 25 SOUTH,
RANGE 9 WEST, SALT LAKE BASE AND MERIDIAN.

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PARCEL 7: (8735)

THE SOUTH HALF OF SECTION 30, TOWNSHIP 25 SOUTH,
RANGE 9 WEST, SALT LAKE BASE AND MERIDIAN.

PARCEL 8: (8733)

THE NORTH HALF OF SECTION 29, TOWNSHIP 25 SOUTH,
RANGE 9 WEST, SALT LAKE BASE AND MERIDIAN.

LESS: THE SOUTH HALF OF THE NORTHWEST QUARTER
OF SAID SECTION 29.

PARCEL 9: (Beaver Co. - 1-217-1)

THAT PORTION OF THE SOUTHEAST QUARTER OF
SECTION 6, TOWNSHIP 26 SOUTH, RANGE 9 WEST, SALT
LAKE BASE AND MERIDIAN, LYING WITHIN BEAVER
COUNTY.

