Book 2011 Page 554
Document 2011 554 Type 06 006 Pages 4
Date 2/10/2011 Time 3:55:59PM
Rec Amt $24.00

DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

Prepared by: Kathleen K. Law, 700 Walnut, Suite 1600, Des Moines, IA 50309; 515-283-3116
Return to: Steve Dryden, 4800 Mills Civic Pkwy, Ste. 207, West Des Moines, IA 50265

SUBORDINATION AND NON-DISTURBANCE AGREEMENT

This is an Agreement between Steven A. Uhlenkamp and Karen E. Uhlenkamp, whose address is 1138-220th Avenue, Edgewood, Iowa 52042 ("Uhlenkamp") and Elk Wind Energy LLC, an Iowa limited liability company, its successors and assigns ("Elk Wind"), whose address is 4800 Mills Civic Pkwy, Ste. 207, West Des Moines, IA 50265.

The parties are making this agreement for the following reasons:

A. Kathleen E. Funke, is the owner ("Owner") of the real property legally described on attached **Exhibit A at Page 4** (the "Property").

B. Uhlenkamp has an interest in some or all of the Property by virtue of that certain Real Estate Contract-Installments dated December 26, 2001, filed June 24, 2002 and recorded in Book 2002 at Page 2339 of the Delaware County Records as amended by that certain Real Estate Contract-Installments dated December 28, 2009, filed February 3, 2010 and recorded in Book 2010 at Page 356 of the Delaware County Records (together, the "Instrument").

C. Owner and Elk Wind are the parties to a Wind Farm Easement Agreement ("Easement Agreement"), as that document may be amended or supplemented from time to time, pertaining to all or part of the Property (the "Easement Properties"). The Easement Properties are shown on **Exhibit B** (to be replaced by **Exhibit C** at a later date) to a Memorandum of Wind Farm Easements ("Memorandum") that will be recorded in the public records together with this document.

D. Effectiveness of the Easement Agreement is conditioned on receipt by Elk Wind of all subordination and non-disturbance agreements from lenders and holders of other liens, encumbrances, or interests in the Property as necessary to assure Elk Wind's undisturbed use and enjoyment of the Easement Properties according to the terms of the Easement Agreement. Uhlenkamp desires to cooperate with and assist Owner to make the Easement Agreement effective.

E. Uhlenkamp wishes to enter into this Agreement to confirm Uhlenkamp's consent to the terms of the Easement Agreement as well as the subordination of Uhlenkamp's interest in the Property to the Easements granted in the Easement Agreement. The parties also wish to confirm

Elk Wind's possession and rights in the Easement Properties will not be disturbed except as specifically agreed below.

NOW, THEREFORE, in consideration of the above and mutual benefit to the parties, Uhlenkamp and Elk Wind agree as follows:

1. **SUBORDINATION.** Whatever right, title, lien, estate and interest Uhlenkamp now has or may hereafter acquire in the Property by virtue of the Instrument shall be junior, inferior and subordinate to the rights of Elk Wind, its successors and assigns, under the Easement Agreement.

2. **NON-DISTURBANCE.** So long as the Easement Agreement is in full force and effect Uhlenkamp shall not disturb Elk Wind's use and possession of the Easement Properties, nor shall Uhlenkamp disturb any other rights in the Property granted Elk Wind in the Easement Agreement, or do anything that would materially interfere with the construction, operation and maintenance of the Wind Farm.

3. **NOTICES.** Any notice or communication required or permitted under this Agreement shall be given in accordance with the procedure in the recorded Memorandum addressed to Elk Wind at the address in the Memorandum and to Uhlenkamp at the address set forth above (as those addresses may be updated of record).

4. **SUCCESSORS AND ASSIGNS**. This Agreement shall inure to the benefit of and shall be binding upon Elk Wind and Uhlenkamp, and their respective heirs, personal representatives, successors and assigns.

Steven A. Uhlenkamp

Karen E. Uhlenkamp

STATE OF IOWA, Delaware **COUNTY, SS**:

This instrument was acknowledged before me on December 23, 2010 by _____

Steven A. Uhlenkamp and Karen E. Uhlenkamp.

Notarial Officer

Seal

AARON THEISEN
COMMISSION NO. 764858
MY COMMISSION EXPIRES
9/27/11

Elk Wind Energy LLC

By: _____

Printed Name: Stephen F. Dryden
Title: Authorized Representative

STATE OF IOWA, Delaware **COUNTY, ss:**

This instrument was acknowledged before me on this 19th day of January, 2011, by Stephen F. Dryden as an Authorized Representative of Elk Wind Energy LLC.

_____
Notarial Officer

Seal

NOTARIAL SEAL IOWA
AARON THEISEN
COMMISSION NO. 764858
MY COMMISSION EXPIRES
9/27/11

EXHIBIT A

Legal Description of the Property

Lot 3 in the Northwest Quarter of the Northwest Quarter (NW 1/4 NW 1/4) of Section Seven (7), Township Ninety (90) North, Range Four (4) West of the 5th P.M., in Delaware County, Iowa, as shown on the Plat of Survey recorded June 7, 1988, in Book 6 of Plat Records, page 9, Excepting therefrom the following described parcel of land; Parcel B as shown on the Plat of Survey recorded June 12, 2002, in Book 2002, page 2185. AND The North One-half of the Southwest Quarter (N 1/2 SW 1/4) and the South One-half of the Northwest Quarter (S 1/2 NW 1/4), of Section Seven (7), Township Ninety (90) North, Range Four (4) West of the 5th P.M., in Delaware County, Iowa; Excepting therefrom the following described parcel of land: Parcel C, as shown on the Plat of Survey recorded June 12, 2002, in Book 2002, page 2185.