Book 2011 Page 558
Document 2011 558 Type 06 006 Pages 4
Date 2/10/2011 Time 3:57:29PM
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
CHG ENJ (X) Return to: Steve Dryden, 4800 Mills Civic Pkwy, Ste. 207, West Des Moines, IA 50265

TENANT SUBORDINATION, NON-DISTURBANCE AND CONSENT AGREEMENT

This is an Agreement between Matt Gaul, whose address is 17743 E. Mission Rd. Strawberry Point, IA 52076 ("Tenant") 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. Rick L. Funke and Mary M. Funke, husband and wife as Joint Tenants with Full Rights of Survivorship, and not as Tenants in Common is the owner ("Owner") of the real property legally described on attached **Exhibit A at Page 4** (the "Property").

B. Tenant leases the Property from Owner for purposes of cultivation and has a farm tenant's interest in the Property.

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 tenants, lenders and holders of other liens and encumbrances, necessary to assure Elk Wind's undisturbed use and enjoyment of the Easement Properties according to the terms of the Easement Agreement. Tenant desires to cooperate with and assist Owner to make the Easement Agreement effective.

E. Tenant and Elk Wind wish to enter into this Agreement to confirm Tenant's consent to the terms of the Easement Agreement as well as the subordination of Tenant'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.

In consideration of the above and mutual benefit to the parties, Tenant and Elk Wind agree as follows:

1. **CONSENT AND SUBORDINATION.** Tenant consents to Owner's execution of the Easement Agreement and hereby subordinates Tenant's interest in the Property to Elk Wind's rights to possession and to the other rights granted Elk Wind under the Easement Agreement. Except as specifically provided in this Agreement, Tenant's rights in the Property remain unchanged. Nothing in this Agreement shall be construed to affect any rights and remedies existing in any agreements between Owner and Tenant.

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

3. **PAYMENTS FOR CROP DAMAGE.** Elk Wind shall make any payments for crop damage required under the terms of the Easement Agreement to Owner unless Owner in writing directs Elk Wind to make all or any part of such payments directly to Tenant. This Agreement shall not alter any arrangements between Owner and Tenant pertaining to sharing of crop damage payments, CRP payments or other farm program payments.

4. **NOTICES.** Any notice or communication required or permitted under this Agreement shall be given in accordance with the recorded Memorandum.

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

Dated this 13th day of January, 2011.

Matt Gaul

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

This instrument was acknowledged before me on this 13th day of January, 2011, by Matt Gaul.

Notarial Officer

Seal

NOTARIAL SEAL IOWA
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 19 day of January, 2011, by Stephen F. Dryden as an Authorized Representative of Elk Wind Energy LLC.

Seal



_____
Notarial Officer

EXHIBIT A

Legal Description

The South Half of the South Half of the Northeast Quarter (S 1/2 of S 1/2 of NE 1/4); and the North Half of the Northwest Quarter of the Southeast Quarter (N 1/2 of NW 1/4 of SE 1/4), and the Northeast Quarter of the Southeast Quarter (NE 1/4 of SE 1/4) of Section 13, Township 90 North, Range 5 West of the 5th P.M., Delaware County, Iowa.