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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 Nicklos J. Andersen and Leandra M. Andersen, husband and wife, whose address is 1330 Buddy Holly Ln, Clear Lake, IA ("Andersen") 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. Andersen has an interest in some or all of the Property by virtue of a Waste Disposal Lease Agreement dated October 16, 2000, filed November 2, 2000 and recorded in Book 2000 at Page 3248 of the Delaware County Records (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. Andersen desires to cooperate with and assist Owner to make the Easement Agreement effective.

E. Andersen wishes to enter into this Agreement to confirm Andersen's consent to the terms of the Easement Agreement as well as the subordination of Andersen'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, Andersen and Elk Wind agree as follows:

1. **SUBORDINATION.** Whatever right, title, lien, estate and interest Andersen 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. Except as specifically provided in this Agreement, Andersen'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 Andersen.

2. **NON-DISTURBANCE.** So long as the Easement Agreement is in full force and effect Andersen shall not disturb Elk Wind's use and possession of the Easement Properties, nor shall Andersen 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 Andersen 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 Andersen, and their respective heirs, personal representatives, successors and assigns.

Nicklos J. Andersen

Leandra M. Andersen

STATE OF ~~IOWA~~ FLORIDA, MARTIN COUNTY, SS:

This instrument was acknowledged before me on FEBRUARY 3RD, 2011 by

Nicklos J. Andersen and Leandra M. Andersen.

STEPHEN MARK PICHE
Commission # DD 918606
Expires August 20, 2013
Bonded Thru Troy Fain Insurance 800-385-7019

Seal

Notarial Officer

**Elk Wind Energy LLC**

By: Stephen F Dryden

Printed Name: Stephen F. Dryden
Title: Authorized Representative

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

This instrument was acknowledged before me on this 28 day of January, 2011, by Stephen F. Dryden as an Authorized Representative of Elk Wind Energy LLC.

NOTARIAL SEAL IOWA
BETH I STENE
COMMISSION NUMBER 761873
MY COMMISSION EXPIRES
February 22, 2013

Beth I Stene
Notarial Officer

Beth I Stene

## EXHIBIT A

Legal Description of the Property

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.