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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

# LENDER NON-DISTURBANCE AGREEMENT

This Non-Disturbance Agreement (this "Agreement"), dated as of 02-02, 2011, is made and entered into by and between Elk Wind Energy LLC, an Iowa limited liability Elk Wind ("Elk Wind"), and Farmers & Merchants Savings Bank ("Lender").

## RECITALS

A. Elk Wind and Daniel J. Funke and Julie Marie Funke, husband and wife, as joint tenants with full rights of survivorship, and not as tenants in common ("Owner") are parties to a Wind Farm Easement Agreement, dated as of December 23rd, 2010 ("Easement Agreement") affecting the real property described on attached **Exhibit A at Page #5** (the "Property");

B. Lender is the owner of a promissory note (the "Note") executed by Owner and secured by a mortgage (the "Mortgage") recorded in Book 2009 at Page 180 in the Delaware County records that is a lien on all or a portion of the Property;

C. Elk Wind has requested that Lender agree not to disturb any possessory rights of Elk Wind under the Easement Agreement with respect to the Easement Property if Lender forecloses the Mortgage; and

D. Lender is willing to so agree on the terms and conditions set forth in this Agreement.

## AGREEMENT

In consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Lender covenants and agrees with Elk Wind that, provided (i) the Easement Agreement is in full force and effect and (ii) no default exists under the Easement Agreement beyond the applicable grace period, Elk Wind's right to possession of the Property, and the terms and provisions of the Easement Agreement, shall not be affected or disturbed by Lender in the exercise of any of its rights under the Mortgage or of any rights otherwise available to Lender at law or in equity.

2. If a Successor Owner (as defined below) comes into possession or ownership of the Property, then such Successor Owner shall (i) thereby succeed to the position of the Owner under the Easement

Agreement and (ii) not disturb the possession of the Elk Wind except in accordance with the terms of the Easement Agreement or this Agreement, and the Easement Agreement shall continue in full force and effect. "Successor Owner" means any person or entity (including, without limitation, Lender or any nominee or designee of Lender) that while this Agreement is in effect acquires possession or ownership of the Easement Property by reason of foreclosure of the Mortgage, any other exercise by Lender of rights and remedies available to Lender as holder of the Mortgage or delivery of a deed to the Easement Property in lieu of foreclosure.

3. All notices, requests and communications under this Agreement must be in writing and will be deemed to have been duly given only if delivered personally or by nationally recognized courier service or mailed (first class postage prepaid) to the parties at the following addresses:

If to Lender:
Farmers & Merchants Savings Bank
101 E. Main Street, PO Box 558
Manchester, IA 52057
Attention: Keith Kramer

If to the Elk Wind:
Elk Wind Energy LLC
4800 Mills Civic Pkwy, Ste. 207
West Des Moines, IA 50265
Work: 515-223-0511
Fax: 515-223-0589

All such notices, requests and other communications will (i) if delivered personally or by nationally recognized courier to the address as provided in this Section, be deemed given upon delivery, and (ii) if delivered by mail in the manner described above to the address provided in this Section, be deemed given upon receipt. Any party may from time to time change its address or other information for purpose of notices to that party by giving notice specifying such change to the other party.

4. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of Lender and the Elk Wind.

5. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Remainder of page intentionally left blank; next page is signature page]

Farmers & Merchants Savings Bank

By: Keith A Kramer

Printed Name: KEITH A KRAMER

Title: SENIOR VICE-PRESIDENT

STATE OF IOWA, DELAWARE COUNTY) ss:

This instrument was acknowledged before me on 2-02-11, 20 11 by

KEITH A KRAMER as SENIOR VICE-PRESIDENT.
(name of person signing) (type of authority, e.g. officer, manager, trustee etc.)

of Farmers & Merchants Savings Bank.

Rosemary Drees
Notarial Officer

Seal

NOTARIAL SEAL IOWA
Rosemary Drees
COMMISSION NUMBER 144070
My Commission Expires
7/30/2011

Elk Wind Energy LLC

By: _____

Name: Stephen F. Dryden
Title: Authorized Representative

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

This instrument was acknowledged before me on this _____ day of _____,

20__, by Stephen F. Dryden as an Authorized Representative of Elk Wind Energy LLC.

_____
Notarial Officer

Seal

Farmers & Merchants Savings Bank

By: _____

Printed Name: _____

Title: _____

STATE OF _____, _____ COUNTY) ss:

This instrument was acknowledged before me on _____, 20__ by _____

_____ as _____

(name of person signing) (type of authority, e.g. officer, manager, trustee etc.)

of Farmers & Merchants Savings Bank.

_____

Notarial Officer

Seal

Elk Wind Energy LLC

By: Stephen F. Dryden

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

The Northwest Fractional Quarter (NW Frl. 1/4), Except "R.E.C. Place" according to the plat recorded October 13, 1975, in Book 3 of Plat Records, page 51; and the West One-half of the Northeast Quarter (W 1/2 NE 1/4), all in Section Eighteen (18), Township Ninety (90) North, Range Four (4) West of the 5th P.M., Delaware County, Iowa.