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DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

INSTRUMENT PREPARED BY:	Kathleen Law; 700 Walnut, Ste 1600, Des Moines, IA 50309; 515-283-3116
GNJ ⊗ **RETURN TO:**	Steve Dryden, 4800 Mills Civic Parkway, Ste.207, WDM, IA 50265

FENCE AGREEMENT

THIS IS AN AGREEMENT ("Agreement") by and between John W. Wiley, single; Nathan McGlaughlin, single; Hope McGlaughlin, single; Barbara Ann Bockenstedt a/k/a Barbra Ann Bockenstedt and George Bockenstedt, wife and husband; Karen Lynn Wielert and Alan Wielert, wife and husband; Donna Mae Phipps and Brian Phipps, wife and husband; Beth Ellen Wiley, single; Jill Renee Wiley n/k/a Jill Renee Olson and Sean Olson, wife and husband; Mark Patrick Wiley and Linda Wiley, husband and wife; Nicholas John Wiley and Lori Wiley, husband and wife; and David Douglas Wiley and Barbara Wiley, husband and wife (collectively "Seller") and Elk Wind Energy LLC, an Iowa limited liability company ("Buyer").

WHEREAS, Buyer, pursuant to a warranty deed recorded in Book 2011 at Page 1466 of the Delaware County Records has purchased from Seller certain real property legally described as:

> PARCEL "A" IN THE NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 19, TOWNSHIP 90 NORTH, RANGE 04 WEST OF THE 5TH P.M., DELAWARE COUNTY, IOWA, ACCORDING TO A PLAT OF SURVEY RECORDED IN BOOK 2011 AT PAGE 1008 OF THE DELAWARE COUNTY RECORDS

(the "Real Property"); and

WHEREAS, Seller and Buyer, on the terms set forth in this Agreement desire to provide for construction and maintenance of a "lawful" and "tight" fence (the "Fence") as those terms are defined in Chapter 359A of the Code of Iowa along the entire southern boundary line of the Real Property (the "Fence Line").

NOW, THEREFORE, in consideration of the foregoing premises which are incorporated herein and the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **OBLIGATIONS OF BUYER.** Buyer shall construct the Fence along the Fence Line with the costs of such construction to be paid by Buyer.

2. **OBLIGATIONS OF SELLER.** After the Fence has been constructed, Seller shall thereafter maintain the Fence at Seller's sole expense.

3. **CONSTRUCTION EASEMENT.** For the initial construction of the Fence along the Fence Line and Construction Easement Area for maintenance purposes thereafter, Buyer and its contractors, agents or employees shall have an easement to enter upon land of Seller adjacent to and extending a distance of one hundred feet (100') from the Fence Line ("Construction Easement Area").

4. **CROP DAMAGE.** In the event and to the extent that Buyer's exercise of the rights granted under this Agreement causes damage to growing crops within the Construction Easement Area, Buyer shall compensate Seller for such damage within thirty (30) days after Seller's written notice of such crop damage. If the parties disagree as to the amount of crop damage, they agree to share the cost of hiring an independent crop loss adjuster to determine the amount of the loss.

5. **FAILURE TO PERFORM.** If either party to this Agreement fails to perform any of said party's obligations under this Agreement and does not remedy such failure after a date specified in a notice of default to the non-performing party, the other party may perform any of the non-performing party's unperformed obligations under this Agreement at the non-performing party's sole expense. The date specified for curing the default shall not be less than 30 days from the date the notice is given.

6. **INDEMNIFICATION.** In addition to the other indemnities provided for herein, (a) Seller shall defend, indemnify and hold Buyer harmless from any loss, liability, damage, or expense, including reasonable attorneys' fees, arising in connection with or resulting from any breach of warranty, misrepresentation or nonfulfillment of any agreement on the part of Seller under this Agreement (unless waived by Buyer); and (b) Buyer shall defend, indemnify and hold Seller harmless from any loss, liability, damage or expense, including reasonable attorneys' fees, arising in connection with or resulting from any breach of warranty, misrepresentation or nonfulfillment of any agreement on the part of Buyer under this Agreement (unless waived by Seller).

7. **NOTICE.** Unless otherwise required by law, any notice or demand required or permitted by the terms of this Agreement shall be sufficient and deemed complete when expressed in writing and either (a) personally delivered to the person entitled thereto, or (b) deposited at any office of the United States Postal Service in the form of certified mail addressed to the last known mailing address of the person entitled

thereto, or (c) served on the person entitled thereto in the manner of an original notice under the Iowa Rules of Civil Procedure.

8. **ENTIRE AGREEMENT.** This instrument constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior statements, representations, promises and agreements, oral or written. No addition to or change in the terms of this agreement shall be binding upon the parties unless it is expressed in a writing signed by the parties.

9. **RUNS WITH THE LAND.** This Agreement runs with the land (Real Property and Construction Easement Area) and shall be binding upon and inure to the benefit of the respective successors and assigns of all parties executing this Agreement.

10. **CONSTRUCTION.** Words and phrases used in this agreement shall be construed as in the single or plural number, and as masculine, feminine or neuter gender, according to the context. This agreement shall be governed exclusively by and construed in accordance with the laws of the State of Iowa. The paragraph headings in this agreement are for convenience only and in no way define or limit the scope or intent of any provisions of this agreement. This agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

11. **GOVERNING LAW; WAIVER OF JURY TRIAL.** This Agreement shall be governed by Iowa law. **EACH OF THE PARTIES WAIVES ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY MATTER ARISING OUT OF THIS AGREEMENT.**

IN WITNESS OF THIS AGREEMENT Seller and Buyer have executed this instrument under date of MAY 2nd, 2011.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

"**Buyer**"

Elk Wind Energy LLC, an Iowa limited liability company

By: _____
Stephen F. Dryden, Authorized Representative

STATE OF IOWA, Polk COUNTY) SS:

This instrument was acknowledged before me on May 2, 2011 by Stephen F. Dryden as an Authorized Representative of Elk Wind Energy LLC, an Iowa limited liability company, who further stated that Elk Wind Energy LLC is a member-managed LLC, that this Fence Agreement is in the ordinary course of the LLC's business and affairs, and that he has authority to act on behalf of the LLC.

SEAL

_____
Notarial Officer

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

NOTARIAL SEAL IOWA
MATTHEW C. GARWOOD
COMMISSION NO. 762085
MY COMMISSION EXPIRES
March 8, 2013

"SELLER"

John W. Wiley

John W. Wiley

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

This instrument was acknowledged before me on April 27th, 2011, by John W. Wiley, a single person.

SEAL



Aaron Theisen Notarial Officer

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

Beth Ellen Wiley, Single, Individually and as Attorney-in-Fact for Barbara Ann Bockenstedt a/k/a Barbra Ann Bockenstedt and George Bockenstedt, wife and husband, Karen Lynn Wielert and Alan Wielert, wife and husband, Donna Mae Phipps and Brian Phipps, wife and husband, Jill Renee Wiley n/k/a Jill Renee Olson and Sean Olson, wife and husband, Mark Patrick Wiley and Linda Wiley, husband and wife, and Nicholas John Wiley and Lori Wiley, husband and wife

STATE OF Iowa, Dubuque **COUNTY, ss:**

This instrument was acknowledged before me on April 4th, 2011, by Beth Ellen Wiley, Single, Individually and as Attorney-in-Fact for Barbara Ann Bockenstedt a/k/a Barbra Ann Bockenstedt and George Bockenstedt, wife and husband, Karen Lynn Wielert and Alan Wielert, wife and husband, Donna Mae Phipps and Brian Phipps, wife and husband, Jill Renee Wiley n/k/a Jill Renee Olson and Sean Olson, wife and husband, Mark Patrick Wiley and Linda Wiley, husband and wife, and Nicholas John Wiley and Lori Wiley, husband and wife.

NOTARIAL SEAL IOWA
JAMES J. WAGNER
Commission Number 751695
My Commission Expires
March 11, 2014

James Wagner Notarial Officer

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

David Douglas Wiley

Barbara Wiley

STATE OF OHIO, Greene **COUNTY, ss:**

This instrument was acknowledged before me on April 12, 2011, by David Douglas Wiley and Barbara Wiley, husband and wife.

DEBRA SCHLOSSER, Notary Public
SEAL and for the State of Ohio
My Commission Expires Dec. 20, 2011

Debra Schlosser
Notarial Officer

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Wayne E. McGlaughlin 4/26/11

Wayne E. McGlaughlin, as conservator for Nathan McGlaughlin, a single minor and as conservator for Hope McGlaughlin, a single minor

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

This instrument was acknowledged before me on April 26, 2011, by Wayne E. McGlaughlin as conservator for Nathan McGlaughlin, a single minor and as conservator for Hope McGlaughlin, a single minor.

Steven E Carr

SEAL Notarial Officer

