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DEBORAH L PEYTON, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

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

# WIND FARM NEIGHBOR AGREEMENT

(Elk Wind Farm)

## PARTIES

In this Wind Farm Neighbor Agreement ("**Agreement**"), the terms "**you**" and "**your**" refer to Thomas H. Wulfekuhle, single, and your heirs, successors and assigns. Your address for purposes of this Agreement is 1156 Hwy 38, Greeley, IA 52050.

The terms "**we**," "**us**," and "**our**" refer to Elk Wind Energy LLC, and its successors and assigns. Our address for purposes of this Agreement is 4800 Mills Civic Parkway, Suite 207, West Des Moines, Iowa 50265.

## BACKGROUND

We are planning an approximately 41 megawatt wind powered electrical generating facility, commonly known as the Elk Wind Farm, to be built in Delaware County between the towns of Edgewood and Greeley. In this Agreement the term "**Wind Farm**" refers to the Elk Wind Farm. You own the real property legally described on **Exhibit A at Page 7** ("**Your Property**") located in or near the proposed Wind Farm. We would like to involve you and the other neighbors of the Wind Farm in a positive way and propose this Agreement to address the concerns and needs of both parties.

The proposed Wind Farm will include wind turbine generators atop tubular steel towers (each a "**Turbine**"), meteorological towers (each a "**Met Tower**"), an electrical substation ("**Substation**"), electrical and telecommunications collection facilities, access roads, and other facilities and equipment that are used in connection with the Wind Farm (collectively, the "**Wind Energy Facilities**").

The planning and design process, market conditions, availability of components and supplies, and financing are among the many factors that influence the decisions of whether and when to build the Wind Farm. Because some of these decisions are yet to be made, we cannot finalize the exact number, model and locations of the Turbines until several months before construction on the Wind Farm begins. However, we currently expect to complete design and financing of the Wind Farm in late 2010 or early 2011 and, soon after, to acquire the proper Turbines and build the Wind Farm before the end of 2011.

Delaware County Ordinance #32 prescribes noise limits, set backs from houses and roads, and other conditions to protect the peace and safety of wind farm neighbors. We expect the wind farm will comply with the ordinance in all respects. Based on our preliminary plan, no Wind Energy Facilities will be located on Your Property; however, Your Property may be affected by the Wind Farm in other ways, and what you do on Your Property may affect the operation of the Turbines and Met Towers. For example:

- You may experience extra noise, dust and traffic for several months during construction of the Wind Farm.
- After construction, during normal operation of the Wind Farm you may notice some or all of the following on Your Property:
  - Turbine sounds;
  - shadow flicker from sunlight passing through rotating blades on the Turbines;
  - light from Federal Aviation Administration required lighting on Turbines and Met Towers and other lights related to the Wind Energy Facilities; and,
  - increased difficulty and additional costs for aerial spraying depending on the orientation of Your Property to Turbines in the Wind Farm.
- A utility scale wind turbine or tall structure on Your Property might interfere with the operation of our Turbines and Met Towers by obstructing the free flow of wind needed for them to work properly and most efficiently.

## TERMS AND CONDITIONS

The parties enter into this Agreement to set out their rights, understandings and duties to each other with regard to the Wind Farm and Your Property, to summarize the payments we will make to you, and to document our commitments to you with regard to the Wind Farm in return for you granting us the rights and easements set forth below.

**1. WIND NON-OBSTRUCTION EASEMENT.** You grant us an irrevocable, exclusive wind non-obstruction easement for us to use, maintain and capture the free and unobstructed flow of wind currents over and across Your Property and agree that you will not do the following:

a) grant any rights to any third party to develop, construct or operate utility scale wind turbines on Your Property;
b) interfere with wind speed or direction at any Turbine or Met Tower;
c) engage in any activity on Your Property that might cause a decrease in the output or efficiency of any Turbine or accuracy of any meteorological equipment; or
d) otherwise interfere with operation of the Wind Farm.

You reserve the right to put (i) structures for residential and farm use, and (ii) residential or farm scale wind turbines less than 125 feet high at their highest point on Your Property if permitted by applicable laws and ordinances. We have the right to approve any other structures or wind turbines you want to build on Your Property and will base our decision on whether, in our sole judgment, informed by appropriate engineering, meteorological and professional opinions, the proposed structures or wind turbines at the proposed location are likely to interfere with our rights under this easement. We also have the right to enter on any part of Your Property and, after consulting with you, to remove structures and wind turbines (except structures and wind turbines existing or under construction when this Agreement is signed) built in violation of the terms of this Agreement.

**2. NOISE LIMITS AND EASEMENT.** If there are any occupied residences existing on Your Property on the date the Delaware County Board of Supervisors approves any permit issued under Delaware County Ordinance #32 (the "**Permitting Date**") we will limit audible noise due to Wind Farm operations measured at each of those residences to the following:

a) 50 dB(A) if the audible noise due to Wind Farm operations contains a steady pure tone.
b) 55 dB(A) if the audible noise due to Wind Farm operations does not contain a steady pure tone.
c) the ambient noise level exclusive of noise from the Wind Farm if the ambient noise level exceeds the applicable standard in (a) and (b) above.

You grant us a noise easement to allow Wind Farm operations to generate and maintain audible noise levels greater than 55 dB(A) at any or all times of the day or night on and above all of Your Property, except at any occupied residence existing on Your Property on the Permitting Date where noise will be limited as provided above in this section. This noise easement includes the right to measure sound levels on Your Property before and after construction of the Wind Farm.

If you believe noise levels caused by the operation of the Wind Farm exceed the limits provided above in this section at any occupied residence existing on Your Property on the Permitting Date, you agree to notify us so we can investigate your concerns and work with you to resolve them. If we do not promptly investigate and resolve your concerns to your reasonable satisfaction, at your request (but not more often than once every three years) we will have the noise levels at the occupied residence existing on Your Property on the Permitting Date measured by a qualified independent professional applying commonly accepted measurement instruments and standards to determine whether noise levels due to Wind Farm operations exceed those allowed by this Agreement.

If noise levels caused by Wind Farm operations exceed those allowed by this Agreement, we will correct the problem, or obtain your written consent to maintain a higher noise level, but only if the higher noise level is permitted by Delaware County Ordinance #32 or other then applicable law. The noise level limitations in this Agreement and our obligations under the preceding sentence do not apply to any residence, school, hospital, church, or public library constructed or reoccupied on Your Property after the Permitting Date.

**3. LIGHT AND SHADOW EASEMENT.** You grant us a light and shadow easement to allow us to cast (i) light from Federal Aviation Administration required lighting, safety and security lighting, and other lighting as may be required by applicable laws and permits, from the Wind Energy Facilities, wherever located, onto Your Property and (ii) shadows and flicker from the Turbine towers and rotors and Met Towers, wherever located, onto Your Property. If the shadows and flicker cast at any occupied residence on Your Property existing on the Permitting Date substantially interfere with your use and enjoyment of the residence, and after you notify us of the problem, we will promptly investigate your concerns and work with you to resolve them. After consulting with you, we will determine reasonable measures to take to reduce the effects of the offending shadow or flicker to acceptable levels and propose such measures to you. The measures we propose may include planting trees at agreed locations on or off Your Property, operational controls, installing awnings, draperies or other window treatments, or other appropriate measures. Upon agreement by you and us on the measures to be taken, we will take the agreed measures at our cost and expense. Our obligations under this section do not apply to any residence, school, hospital, church, or public library constructed or reoccupied on Your Property after the Permitting Date.

**4. PLAN EXHIBITS.** **Exhibit B** is an aerial photograph of Your Property and surrounding lands. Exhibit B shows the distance from any currently occupied residence on Your Property to any preliminary

planned Turbine location within approximately one-half mile of that residence. After construction of the Wind Farm we will prepare and provide to you a drawing of the Wind Energy Facilities showing the distance from any occupied residences existing on Your Property on the Permitting Date to any Turbines built within one-half mile of that residence (**Exhibit C**). Exhibit C will replace Exhibit B. Exhibits B and C will not be recorded.

**5. CONSIDERATION.** **Exhibit D** shows the amounts we will pay you, how those amounts were calculated, and when and under what conditions the payments will be made. Exhibit D will not be recorded.

**6. MORTGAGES, TRANSFERS AND ASSIGNMENTS.** This Agreement and the easements and other rights granted to us in this Agreement

a) benefit the parties, their heirs, successors and assigns and bind them to the terms of this Agreement, and
b) run with the title to Your Property and are binding on you and all others who may claim an interest in Your Property at any time while this Agreement is in force.

**6.1 Transfers by Us.** Without obtaining your consent or approval we may (i) mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of our interest in this Agreement, the easements and other rights you grant us in this Agreement and (ii) assign or otherwise convey away to third parties, including parties that provide equity financing for us or the Wind Farm, all or any part of our interest in this Agreement, the easements and other rights you grant us in this Agreement. If these transactions change or add to the names and addresses of the persons to whom you must send notices under this Agreement, we will notify you of those changes.

**6.2 Transfers by You.** Without obtaining our consent or approval, you may sell, mortgage, assign or convey away subject to the terms of this Agreement all or a part of your interest in Your Property. However, assignments or conveyances by you that would separate the right to receive payments under this Agreement from ownership of Your Property are subject to approval by us. We will not unreasonably withhold or delay that approval.

If there is a change in ownership of all or part of Your Property, you agree to promptly notify us of the name and mailing address of the new owner to be used for notice purposes and send us a copy of the deed, contract or other conveyance. Your notice must include joint written instructions to us by you and the new owner as to how to divide future payments between you and the new owner of Your Property or the portion of Your Property you transferred.

We are not responsible for making payments under this Agreement to a new or changed owner until we receive (i) the notice containing the above information, (ii) an IRS Form W-9 or other tax information we reasonably require and (iii) any other information we reasonably may require for us to be certain that we are making payments to the proper person(s).

**7. NOTICES.** All notices or other communications required by this Agreement must be in writing addressed to the parties at the addresses set forth above (or as changed or added to from time to time by the means provided in this Agreement) and will be deemed given when

a) personally delivered; or
b) five days after deposit in the United States mail, first class, postage prepaid, certified; or

c) one business day after dispatch by a reputable overnight delivery service of national scope.

A party may change its notice address, or add additional persons to be notified, by notifying the other parties in the manner provided in this section.

## 8. TERM AND TERMINATION.

**8.1 Term and Expiration Date.** The term of this Agreement and of the easements begins upon the signing of this Agreement by the parties, and will end on the "expiration date," which is the earlier of (i) January 1, 2017 if we have not begun construction of the Turbines in the Wind Farm before that date, or (ii) 30 years after the Commercial Operation Date of the Wind Farm. "**Commercial Operation Date**" for purposes of this Agreement means the date the Wind Energy Facilities are constructed, tested, interconnected with the transmission provider's transmission and distribution system, staffed and operational as determined by us. We will notify you of the Commercial Operation Date after it is determined.

**8.2 Termination by You.** You cannot terminate this Agreement, the easements and other rights granted to us in this Agreement under any circumstance unless we fail to make a payment due in accordance with this Agreement and such failure continues for more than 30 days after you have given us (and other persons entitled to notice under section 6.1) a written notice specifying the payment we have failed to make to you.

**8.3 Termination by Us.** We may terminate this Agreement if and when

a) we decide not to build the Wind Farm;
b) the Wind Farm is removed;
c) there is no occupied residence on Your Property and the nearest Turbine or Met Tower in the Wind Farm is more than one-quarter mile from your nearest property line; or
d) there is an occupied residence on Your Property and the nearest Turbine or Met Tower is more than one-half mile from the occupied residence.

We may partially terminate this Agreement as to 40 acre or larger tracts of Your Property where the nearest property line of the tract(s) is one-half mile or more from the nearest Turbine or Met Tower in the Wind Farm.

**8.4 Notice of Termination in the Public Records.** When this Agreement expires or is terminated as permitted in this Agreement, we will file a termination of this Agreement, the easements and other rights granted to us in this Agreement in the public records. If, when obligated to do so, we fail to file a notice of termination, then you may file your affidavit of termination of this Agreement together with proof that you served a copy of the affidavit on us in the manner provided in section 7 of this Agreement. Unless we file in the public records a written objection or denial of termination within 30 days after service of the affidavit on us, the affidavit will have the same effect as a notice of termination by us.

**ELK WIND ENERGY LLC**
an Iowa limited liability company

By: Stephen F Dryden

Stephen F. Dryden, Authorized Representative

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

This document was acknowledged before me on January 27th, 2011 by Stephen F. Dryden as an Authorized Representative of Elk Wind Energy LLC, an Iowa limited liability company.

C T

Signature of Notarial Officer

Seal

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

Thomas H. Wulfekuhle

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

This document was acknowledged before me on January 14th, 2011 by Thomas H. Wulfekuhle.

C T

Signature of Notarial Officer

Seal

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

# EXHIBIT A
# LEGAL DESCRIPTION OF YOUR PROPERTY

East one hundred thirty (130) feet of the North five hundred forty five (545) feet of the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section Seven (7), Township Ninety (90) North, Range Four (4), West of the Fifth P.M.

**Net Acreage of Your Property as determined by the County Assessor's records (or if net acreage cannot be determined from the County Assessor's records, net acreage shall be determined by accurate survey or agreement of the parties):** 0.95