Recorded: 9/14/2020 at 1:50:06.0 PM
County Recording Fee: $92.00
Iowa E-Filing Fee: $3.00
Combined Fee: $95.00
Revenue Tax:
Delaware County, Iowa
Daneen Schindler RECORDER
BK: 2020 PG: 3148

Subordination, Non-Disturbance and Attornment Agreement

Document Prepared By and
When Recorded Return to:

CED Manchester Wind, LLC
4301 W. 57th St., Suite 131
Sioux Falls, SD 57108
Attn: Sue Hansen
(605)306-6044

FIDELITY NATIONAL TITLE FCHI2000290LI
2 of 2

Legal Description: See page 11

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CED Manchester Wind, LLC
4301 W. 57th St., Ste. 131
Sioux Falls, SD 57108
Attn: Sue Hansen

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** ("Agreement") is made on August 28, 2020 (the "Effective Date"), among Anthony L. Funke and Joan M. Funke, whose address is 2264 130th Avenue, Manchester, IA 52057 ("Landlord"), U.S. Bank National Association, as Custodian/Trustee for Federal Agricultural Mortgage Corporation programs, whose address is 1133 Rankin Street, Suite 100, St. Paul, MN 55116 ("Lender"), and CED Manchester Wind, LLC, a Delaware limited liability company, whose address is 100 Summit Lake Drive, Suite 210, Valhalla, NY 10595 ("Tenant").

RECITALS

WHEREAS, Landlord is the owner in fee simple of the real property legally described on Exhibit A, attached hereto (the "Property");

WHEREAS, Landlord and Tenant entered into that certain Land Lease and Wind Easement, dated as of July 24, 2020 (the "Lease"), the recorded Memorandum of Lease is attached hereto as Exhibit B, which demised certain premises (the "Premises") located on the Property;

WHEREAS, Landlord is the mortgagor and Lender is the mortgagee under a mortgage covering the Property signed and delivered by Landlord to Lender January 23, 2012 and recorded in the County Recorder's office January 24, 2012 as Book 2012, Page 253 as assigned by Assignment of Mortgage, dated January 23, 2012 and recorded in the County Recorder's office January 27, 2012 as Book 2012, Page 318 (the "Mortgage"); and

WHEREAS, Tenant desires that Tenant's possession of the Premises under the Lease should not be disturbed if Lender exercises all or any of its rights under the Mortgage, and Lender agrees not to disturb Tenant's possession of the Premises subject to and upon the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Subordination of the Lease**. Subject to the provisions of this Agreement, Tenant agrees that the Lease is and shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements, and extensions to the full extent of the indebtedness secured by the Mortgage.

2. **Non-Disturbance**. Lender covenants that the leasehold estate granted by the Lease, and Tenant's right to quiet enjoyment, possession, and any other rights under the Lease, shall not be disturbed or terminated by any transfer of Landlord's interest in the Property by foreclosure, deed in lieu of foreclosure, sale, or other action or proceeding initiated to enforce the Mortgage (individually and collectively, an "Enforcement Event"); *provided that*: (a) the Lease is in full force and effect; and (b) there exist no defaults by Tenant that are continuing beyond the expiration of any applicable notice and cure periods under the Lease. Without limiting any of the foregoing, Lender agrees that Tenant shall not be named or joined in any foreclosure, sale, or other proceeding by or on behalf of Lender to enforce the Mortgage unless the joinder is required by law to perfect such a foreclosure, sale, or other proceeding.

3. **Attornment**.

(a) If any Enforcement Event occurs, then Tenant hereby attorns to any transferee, including Lender, and its designees, successors, and assigns (individually and collectively, "Successor"), as the landlord under the Lease. Tenant shall be bound to Successor under all the executory terms, covenants, and conditions of the Lease for the balance of the Lease term with the same force and effect as if Successor had been the original landlord under the Lease. This attornment shall be effective and self-operative without the execution of any further instruments evidencing Successor's succession to the interest of Landlord under the Lease. From and after the occurrence of any Enforcement Event, Tenant shall make all payments under the Lease directly to Successor. Successor shall recognize all rights and options of Tenant under the Lease and the Lease shall continue in full force as a direct lease between Tenant and Successor, and the respective executory rights and obligations of Tenant and Successor, to the extent of the then remaining balance of the term of the Lease and any extensions and renewals thereunder, shall be and are the same as set forth therein, except as modified by this Agreement.

(b) Notwithstanding the foregoing, Successor shall not be: (i) liable for any act or omission of Landlord; (ii) subject to any offsets or defenses that Tenant might have against Landlord; (iii) bound by any rent or additional rent in excess of the rent due for the current month that Tenant might have paid to Landlord; (iv) bound by any amendment or modification made subsequent to the date of this Agreement without the consent of Lender; or (v) liable for any security deposit Tenant has given to Landlord, unless Successor actually receives the security deposit from Landlord (and Tenant agrees that if it seeks or is entitled to a return of a security deposit on the expiration of the Lease or otherwise, it will look only to Landlord and not to

Successor for the return of the security deposit and will not assert any offset against obligations owed to Successor, as provided in this Agreement, for any security deposit, unless Successor received the security deposit from Landlord).

4. **Default by Landlord**.

(a) If Landlord defaults under the Mortgage, then Landlord authorizes and directs Tenant to, and Tenant agrees to, pay to Lender as assignee all rents due under the Lease, starting on the date of Tenant's receipt of written notice from Lender that Landlord is in default under the Mortgage. Rent payments made by Tenant to Lender pursuant to this Agreement shall continue until one of the following occurs: (i) no further rent is due or payable under the Lease; (ii) Lender gives Tenant notice that Landlord's default under the Mortgage has been cured and instructs Tenant that the rents shall thereafter be payable to Landlord; or (iii) Lender sends Tenant notice that an Enforcement Event has occurred. Subject to Section 3 above, upon such notice, Successor shall succeed to Landlord's interest as the landlord under the Lease, after which all rent and other income due under the Lease shall become payable to Successor.

(b) If Landlord defaults under the Lease, then Tenant agrees to deliver a copy of any notice of such default to Lender. If the default by Landlord gives rise to the right of termination by Tenant, then Tenant agrees to give Lender the right to cure the default in accordance with the terms and conditions contained in Section 6 below.

5. **Limitation on Lender's Performance**. Nothing in this Agreement shall be deemed or construed to be an agreement by Lender to perform any obligation of Landlord as the landlord under the Lease unless and until Lender or any Successor obtains title or possession to the Property, whichever is earlier.

6. **Lender's Right to Cure**.

(a) Tenant shall not terminate the Lease, nor exercise any other right or remedy granted to Tenant under the Lease or applicable law, including, without limitation, any setoff rights because of a default of Landlord under the Lease or the occurrence of any other event, without first giving Lender prior written notice of such default or event. Thereafter, Tenant shall take no action to terminate the Lease, nor exercise any other right or remedy if: (i) within ten (10) days following the end of the period in which Landlord is entitled to cure the default, Lender cures such default or event, if the same can be cured by the payment of money; or (ii) Lender diligently starts either: (A) to cure the default or event if the same cannot, with diligence, be cured within said ten (10) days, and thereafter diligently pursues the cure; or (B) an action to obtain possession of the Premises (including possession by receiver) and to cure such default or event which cannot be cured by Lender without Lender having obtained possession.

(b) Nothing in this Agreement shall be construed as a promise or undertaking by Lender to cure any default on the part of Landlord under the Lease.

7. **Tenant's Covenants**. Tenant agrees for the benefit of Lender that, so long as the lien of the Mortgage continues to encumber the Property, Tenant shall not without Lender's prior written

consent, which consent shall not be unreasonably withheld, conditioned, or delayed: (a) pay any rent or additional rent to Landlord, or any other landlord under the Lease, by more than thirty (30) days in advance, except for prepayments of additional rent made in accordance with the terms of the Lease; (b) terminate or surrender the Lease, except as expressly provided under this Agreement; or (c) enter into any amendment or other agreement relating to the Lease, except with Lender's prior written consent, which consent shall not be unreasonably, withheld, conditioned, or delayed.

8. **Notices**. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand, with written confirmation of receipt; (b) when received by the addressee, if sent by a nationally recognized overnight courier; (c) on the date sent if by email (with confirmation of transmission) if sent during normal business hours or on the next business day if sent after normal business hours; or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth below (or at such other address for a party as shall be specified in a notice given in accordance with this Section 8):

To Lessor:	**Anthony L. & Joan M. Funke** **2264 130th Avenue** **Manchester, IA 52057**
To Lendor:	**U.S. Bank National Association** **Custodian/Trustee for Federal Agricultural Mortgage Corp.** **1133 Rankin Street, Suite 100** **St. Paul, MN 55116**
If to Lessee:	**CED Manchester Wind, LLC** **c/o Con Edison Clean Energy Businesses, Inc.** **100 Summit Lake Drive, Suite 210** **Valhalla, New York 10595** **Attn: Office of the President** **CED Manchester Wind, LLC** **c/o Con Edison Clean Energy Businesses, Inc.** **100 Summit Lake Drive, Suite 210** **Valhalla, New York 10595** **Attn: Vice President, Utility Scale Assets** **CED Manchester Wind, LLC** **c/o Con Edison Clean Energy Businesses, Inc.** **100 Summit Lake Drive, Suite 210** **Valhalla, New York 10595** **Attn: Asset Management**
Copy to:	**(which does not constitute notice)** **Con Edison Clean Energy Businesses, Inc.** **100 Summit Lake Drive, Suite 210** **Valhalla, New York 10595** **Attn: General Counsel**

CED Manchester Wind, LLC
c/o ConEdison Development
Attention: Manager of Project Development
4301 W 57th ST STE 131
Sioux Falls, SD 57108

9. **Costs and Fees of the Prevailing Party**. In the event that any party institutes any legal suit, action, or proceeding, including arbitration, against any other party, arising out of this Agreement, then the prevailing party in the suit, action, or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such Party in conducting the suit, action, or proceeding, including reasonable attorneys' fees, expenses, and court costs.

10. **Entire Agreement**. This Agreement constitutes the entire agreement between the parties regarding the subject matter contained herein. This Agreement supersedes and cancels all oral negotiations and prior and other writings with respect to the subject matter hereof. If there is any conflict between the provisions of this Agreement and those of the Lease, then the provisions of this Agreement shall prevail.

11. **Amendments and Termination**. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. Upon full payment of the Mortgage and discharge of any liens related thereto, this Agreement shall be null and void and be of no further force and effect.

12. **Waiver**. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13. **Governing Law**. This Agreement shall be governed by and construed in accordance with the law of the State of Iowa, without regard to the choice of law rules of that state.

14. **Severability**. In the event any one or more of the provisions in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision was not contained herein.

15. **Successors and Assigns**. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

16. **Counterparts and Original Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Notwithstanding the foregoing, each party hereto shall deliver original counterpart signatures to the other parties no later than five (5) days after the date of delivery by email.

[*SIGNATURE PAGES FOLLOW*]

IN WITNESS WHEREOF, the said U.S. Bank National Association, assignee has caused these presents to be executed in its corporate name by its proper officer this 28th day of August, 20 20.

U.S. Bank National Association
Custodian/Trustee

By: _____

Printed Name: Gary A. Guy

Title:
Senior Vice President of Zions Bancorporation, N.A. dba Zions First National Bank, its Attorney-in fact

STATE OF IOWA)
(SS.
COUNTY OF STORY)

On this 28th day of August, A.D. 2020, before me a Notary Public in and for said State, personally appeared GARY A. GUY, to me personally known, who being by me duly sworn, did say that he is VICE PRESIDENT of **ZIONS BANCORPORATION, N.A. dba ZIONS FIRST NATIONAL BANK,** the Attorney-In-Fact of U.S. BANK NATIONAL ASSOCIATION, AS CUSTODIAN/TRUSTEE, named in the foregoing instrument; that no seal has been procured by said national banking association, and that by authority of its Board of Directors said instrument was signed by said national banking association in its capacity as Attorney-In-Fact of U.S. Bank National Association, as Custodian/Trustee, and the said GARY A. GUY acknowledged the execution of said instrument to be the voluntary act and deed of said national banking association in its capacity as the Attorney-In-Fact of U.S. Bank National Association, as Custodian/Trustee.

WITNESS my signature and official seal the day and year aforesaid, at Ames, Iowa.

NOTARIAL SEAL IOWA
PATTILEE R. FREI
Commission Number 148511
My Commission Expires
June 15, 2022

Pattilee R. Frei

Pattilee R. Frei
Notary Public in and for the State of Iowa
My commission expires June 15, 2022

TENANT:

CED Manchester Wind, LLC, a Delaware Limited Liability Company

By: _____

Name: Akshaya Bhargava

Title: Vice President

STATE OF NEW YORK)
) ss
COUNTY OF WESTCHESTER)

The foregoing instrument was acknowledged before me this 20th day of July, 2020 by Akshaya Bhargava.

_____
Notary Public

PAUL FARRELL MAPELLI
Notary Public, State of New York
No. 02MA4967056
Qualified in Rockland County
Commission Expires May 21, 2022

LANDLORD (if an individual):

Anthony L. Funke

Name: Anthony L Funke

LANDLORD'S SPOUSE (if any):

Joan M. Funke

Name: Joan M. Funke

STATE OF Iowa)
) ss
COUNTY OF Delaware)

The foregoing instrument was acknowledged before me this 24 day of July, 2020 by Anthony L. and Joan M. Funke.

Kelsey A Casey
Notary Public

KELSEY A. CASEY
Commission Number 825784
My Commission Expires
June 16, 2020

Exhibit A

Parcel ID: 270-03-00-008-00

The South one hundred thirty eight and one-fourth (138 1/4) acres of the Southwest Quarter (SW 1/4) of Section Three (3), Township Eighty Eight (88) North, Range Six (6), West of the Fifth P.M. in Delaware County, Iowa.

Exhibit B

(Recorded Memorandum of Lease)

Recorded: 9/14/2020 at 12:52:42.0 PM
County Recording Fee: $32.00
Iowa E-Filing Fee: $3.00
Combined Fee: $35.00
Revenue Tax:
Delaware County, Iowa
Daneen Schindler RECORDER
BK: 2020 PG: 3146

Memorandum of Lease Agreement

Document Prepared By and
When Recorded Return to:

CED Manchester Wind, LLC
4301 W. 57th St., Suite 131
Sioux Falls, SD 57108
Attn: Sue Hansen
(605)306-6044

FIDELITY NATIONAL TITLE FCHI20002902I

1 of 1

Legal Description: See page 6

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CED Manchester Wind, LLC
4301 W. 57th St., Suite 131
Sioux Falls, SD 57108
Attn: Sue Hansen
(605) 306-6044

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement ("**Agreement**") is made on July 24th, 20 20 (the "**Effective Date**") between Anthony L. Funke and Joan M. Funke, husband and wife, ("**Lessor**"), and CED Manchester Wind, LLC, ("**Lessee**").

RECITALS

A. Lessor and Lessee (the "Parties") agree as follows:

B. On the date hereof, the Parties have entered into a certain Land Lease and Wind Easement Agreement dated July 24th, 2020 (the "Agreement"), whereby Lessor grants to Lessee wind rights to develop, construct, and install the Project on certain land described in Exhibit A – Premises attached hereto and incorporated herein by this reference (the "**Premises**").

C. The parties wish to give notice of the existence of such Agreement.

IN CONSIDERATION of the good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The term of the Agreement commences on the date hereof and continues for a period of at least twenty-five (25) years in accordance with the terms of the Agreement, unless otherwise terminated as provided in the Agreement.

2. The Parties desire to enter into this Memorandum, which is to be recorded in order that any third parties may have notice of the interests of the Lessee in the Premises and the existence of the Agreement and of certain rights granted to the Lessee in the Premises as part of the Agreement. Lessor has granted and hereby grants to Lessee:

    a. an exclusive right on, over, under and across the Premises for the term hereof for wind resource evaluation, wind energy development, the installation, construction, maintenance, repair, replacement and removal of wind turbine generators and other wind-energy producing facilities and related wind energy uses, all as described in the Agreement;

    b. a non-exclusive right on, over, under and across the Premises for above-ground and/or underground electrical transmission lines, conduit and related equipment, collection and transmission grid, power conditioning equipment, transformers,

telecommunications equipment and other related facilities, equipment and improvements; and

c. a non-exclusive right on, over and across any and all access routes to and from the Premises for purposes of ingress and egress to and from the Premises including road access and the right to install, maintain and repair roads and roadways on the Premises.

3. The Agreement and the easements and rights granted Lessee therein shall burden the Premises and shall run with the land. The Agreement shall inure to the benefit of and be binding upon the Lessor and Lessee and, to the extent provided in any assignment or other transfer under the Agreement, any assignee of Lessor and Lessee and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

4. This Memorandum of Lease has been executed and delivered by the parties for the purpose of recording and giving notice of the lease and easement rights in accordance with the terms, covenants and conditions of the Agreement.

5. All of the terms, conditions, provisions and covenants of the Agreement are hereby incorporated into this Memorandum by reference as though fully set forth herein, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document. Should there be any inconsistency between the terms of this Memorandum and the Agreement; the terms of the Agreement shall prevail. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the 24th day of July, 2020

LESSOR: Anthony L. & Joan M. Funke

By: Anthony L Funke
Anthony L. Funke

By: Joan Funke
Joan M. Funke

STATE OF Iowa)
) ss
COUNTY OF Delaware)

The foregoing instrument was acknowledged before me this 24 day of July, 2020 by Anthony L. & Joan M. Funke.

Kelsey A Casey
Notary Public

KELSEY A. CASEY
Commission Number 825784
My Commission Expires
June 16, 2023

LESSEE:

CED Manchester Wind, LLC
a Delaware limited liability company

By: _____

Its: Vice President

STATE OF New York)
) ss
COUNTY OF Westchester)

The foregoing instrument was acknowledged before this 20th day of July, 2020 by Akshaya Bhatjava, the Vice President of CED Manchester Wind, LLC, a Delaware limited liability company, on behalf of the company.

_____
Notary Public

PAUL FARRELL MAPELLI
Notary Public, State of New York
No. 02MA4967056
Qualified In Rockland County
Commission Expires May 21, 2022

EXHIBIT A

DESCRIPTION OF THE LESSOR PROPERTY

Parcel ID: 270-03-00-008-00

The South one hundred thirty eight and one-fourth (138 1/4) acres of the Southwest Quarter (SW 1/4) of Section Three (3), Township Eighty Eight (88) North, Range Six (6), West of the Fifth P.M. in Delaware County, Iowa.