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LISA SMITH, COUNTY RECORDER  
MADISON COUNTY IOWA

RETURN RECORDED DOCUMENT TO:

Rabo Agrifinance, Inc.  
12443 Olive Boulevard, Suite 50  
P.O. Box 411995  
St. Louis, Missouri 63141

✓ Rpm Access  
6205 mills Civic Pkwy  
WDSM IA 50266

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT  
(WIND LEASES AND EASEMENTS)**

Loans #: 10253800

10249200

10253900

10249100

10263400/djp

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of the 13<sup>th</sup> day of ~~August~~ September, 2013, by RABO AGRIFINANCE, INC. ("Lender") and Macksburg Wind Energy LLC ("Wind Tenant"); to and for the benefit of Owner, Lender and Wind Tenant (each a "Party" and collectively, the "Parties").

**RECITALS**

A. Lender has previously extended financing secured by that certain Mortgage, Assignment of Rents and Security Agreement ("**Mortgage**") granted by JEFFRY R. KIDDOO, a single person ("**Owner**"), dated June 13, 2011, and recorded in the official real property records of Madison County, Iowa (the "**Records**") on June 14, 2011 in Book 2011 Page 1562, encumbering the real property described in Exhibit A attached hereto (the "**Property**").

B. Owner and Wind Tenant are or about to be parties to that certain Macksburg Wind Farm Option Agreement dated April 16, 2013 (the "**Wind Lease**"), notice of which appears in that certain Memorandum of Wind Farm Option Agreement dated April 16, 2013

C. The Wind Lease grants Wind Tenant, and its successors and assigns, certain rights to use the Property for wind energy purposes, and Wind Tenant has expended (or plans to expend) financial and other resources in use of such rights.

D. Either: (i) Wind Tenant has requested, and Lender has agreed, subject to the terms of this Agreement, that Wind Tenant's rights under the Wind Lease will not be disturbed by Lender pursuant to any exercise of Lender's rights under the Mortgage; or (ii) Lender has conditioned the closing of the financing to be secured by the Mortgage on the execution of this Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

**AGREEMENT**

1. **Subordination.** The Wind Lease and each and every term and condition thereof, and any extensions, renewals, replacements or modification thereof, and all of the right, title and interest of Wind Tenant in and to the Property are and shall be subject and subordinate to the Mortgage and to all of the terms and conditions contained therein, all advances made or to be made thereunder, and to any renewals, modifications, supplements, replacements, consolidations increases or extensions thereof.

2. **Non-Disturbance.** Lender covenants and agrees with the Wind Tenant that, provided that the Wind Lease is in full force and effect and no default of the Wind Tenant exists thereunder beyond the grace periods which apply thereto, the

Wind Tenant's right to possession of the Property, and the terms and provisions of the Wind Lease, 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, including, without limitation, foreclosure of the Mortgage or conveyance of the Property in lieu of foreclosure of the Mortgage.

3. **Attornment.** If a Successor Owner (as hereinafter defined) comes into possession or ownership of the Property, then (i) such Successor Owner shall (A) thereby succeed to the position of the Owner under the Wind Lease and (B) not disturb the possession of the Wind Tenant except in accordance with the terms of the Wind Lease, (ii) the Wind Lease shall continue in full force and effect and (iii) Wind Tenant shall attorn to such Successor Owner. "**Successor Owner**" means any person or entity (including, without limitation, Lender or any nominee or designee of Lender) that shall acquire possession or ownership of the 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 conveyance of the Property in lieu of foreclosure of the Mortgage.

4. **Successor Liability.** Notwithstanding anything to the contrary contained in this Agreement or in the Wind Lease, in the event that a Successor Owner acquires title to the Property pursuant to the exercise of any remedy provided for in the Mortgage or under applicable law or as a result of a deed-in-lieu of foreclosure, Successor Owner shall not be:

(i) liable for any act or omission of Owner which occurs prior to the date Successor Owner obtains title to the Property or any obligation of Owner to perform or incur any liability with respect to the completion of improvements to be located on the Property; or

(ii) bound by any payment made by Wind Tenant to Owner for periods extending more than six months beyond the date on which Successor Owner obtains title to the Property or by any security deposit Wind Tenant may have paid to Owner and not received by Lender; or

(iii) bound by any material amendments to the Wind Lease entered into without the written consent of Lender, not to be unreasonably withheld or delayed.

In the event that Lender acquires title to the Property, Lender shall have no obligation nor incur any liability beyond Lender's then equity interest in the Property.

5. **Assignment of Rents.** Owner and Wind Tenant hereby agree that any and all amounts payable to Owner pursuant to the terms of the Wind Lease or any other document related thereto, including but not limited to any evaluation fee, disturbance fee, turbine site rent, signing fee, initial operating fee, operating fee, initial wind lease payment, extension payment, acreage allowance, base rent, royalty rent, minimum rent, contract rate, construction bonus, or any rents, royalties, or monies of all similar kinds or nature are "rents, issues, royalties, income and/or profits" as described in the Mortgage and have been pledged to Lender pursuant to the terms of the Mortgage ("**Rents**"). Owner hereby irrevocably authorizes and directs Wind Tenant, upon receipt from Lender of written notice to do so, to pay all Rents payable by Wind Tenant to or as directed by Lender. Owner irrevocably releases Wind Tenant from any liability to Owner for all payments so made. Wind Tenant agrees that upon receipt of such notice it will pay all Rents then due and becoming due from Wind Tenant to or as directed by Lender, notwithstanding any provision of the Wind Lease to the contrary.

6. **Covenants of Wind Tenant.** Wind Tenant covenants and agrees as follows:

(i) Wind Tenant shall send a copy of any default notice under the Wind Lease to Lender at the same time Wind Tenant sends such default notice to Owner.

(ii) Wind Tenant has no right or option of any nature to purchase the Property or any portion of the Property or any interest in the Owner. To the extent Wind Tenant has or acquires any such right or option, those rights or options are acknowledged to be subject and subordinate to the Mortgage and are of no force and effect as to Lender and any Successor Owner or with regard to any conveyance by Lender or any Successor Owner..

7. **Conflicting Terms.** To the extent the terms of this Agreement are inconsistent with the terms of the Wind Lease, the conflicting terms of the Wind Lease shall be deemed amended hereby to incorporate the terms contained herein.

8. **Mechanics' Liens.** Wind Tenant shall promptly remove, whether by bonding or other permitted method, any mechanic's liens filed against the Property as a result of Wind Tenant's use of the Property. If Wind Tenant wishes to contest

any such lien, Wind Tenant shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security as Lender may reasonably request, or remove such lien from the Property pursuant to applicable law.

9. **Enforcement.** The Parties intend that this Agreement be specifically enforceable. If any action is brought to interpret or enforce the provisions of this Agreement, the substantially prevailing party therein shall be entitled to recover from the losing party all of its costs and reasonable attorneys' fees incurred in connection therewith.

10. **Notices.** Any notices given in connection with this Agreement shall be sent by certified mail, return receipt requested, with postage prepaid and addressed to the recipient at the address stated below its signature herein.

11. **Successors.** The terms and provisions of this Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, legal representatives, successors and assigns and, without limiting the generality of the foregoing, are specifically intended to be relied upon and be enforceable by any successor and assign of Wind Tenant, and any person holding a lien against any estate or interest in or under the Wind Lease or any part thereof.

12. **Entire Agreement.** This Agreement supersedes all previous oral and written understandings and agreements between the Parties with respect to the priority of the Mortgage and the Wind Lease and the effect of a foreclosure or trustee's sale of the Mortgage (or conveyance in lieu thereof) on the Wind Lease, and comprises the entire agreement of the Parties with respect thereto. No provisions of this Agreement may be modified or waived except through the execution and recordation of a subsequent written agreement by the Party to be charged therewith.

13. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

14. **Execution in Counterparts.** This Agreement may be executed in counterparts, all of which shall constitute one and the same contract.

15. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located, without regard to those governing conflicts of law.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year first above written.

Address: 6205 Mills Civic Pkway  
West Des Moines, IA 50266

WIND TENANT:

MACKSBURG WIND ENERGY LLC

By: [Signature]  
Name: James T. Diamond  
Title: Authorized Representative

STATE OF Iowa )  
COUNTY OF Madison ) SS.

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of September, 2013 by James T. Diamond Authorized Representative of Macksburg Wind Energy LLC.

Michelle A Seifert  
Notary Public Michelle R. Seifert  
My commission expires: 10/8/2014  
Commission No.: 186924



IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year first above written.

Address:

12443 Olive Boulevard, Suite 50  
PO Box 411995  
St. Louis, Missouri 63141

LENDER:

RABO AGRIFINANCE, INC., a Delaware corporation

By: *Susan L. Harrison*  
Name: SUSAN L. HARRISON  
Title: Assistant Vice President

STATE OF MISSOURI     )  
  ) SS.  
COUNTY OF ST. LOUIS    )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of September, 2013 by SUSAN L, HARRISON, Assistant Vice President of RABO AGRIFINANCE, INC.



RENEE E. STRUCKEL  
My Commission Expires  
September 23, 2013  
St. Louis County  
Commission #09469412

*Renee E. Struckel*  
Notary Public  
My commission expires: September 23, 2013  
Commission No.: 09469412

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year first above written.

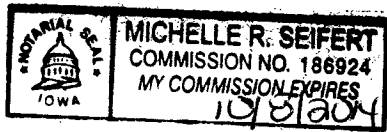
Address: 3210 Fawn Ave.  
Lonmor, IA 50149

OWNER:

By: Jeffrey R. Kiddoo  
Name: JEFFREY R. KIDDOO, Individual

STATE OF Iowa )  
 ) SS.  
COUNTY OF Madison )

This instrument was acknowledged before me on September 10th, 2013 by JEFFREY R. KIDDOO.



Michelle R Seifert  
Notary Public Michelle R Seifert  
My commission expires: 10/3/2014  
Commission No.: 186924

## **Attachment 1**

Legal Description included in NDA

### ***EXHIBIT A*** ***Legal Description***

#### **Parcel 010:**

*The South Half of the Southeast Quarter (S1/2 of SE1/4) of Section Two (2), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa;*

*Except Parcel "A", as shown on Plat of Survey recorded August 11, 2000, in Book 3, Page 616, and being more particularly described as follows:*

*Beginning at a 5/8 inch iron pin on the Southeast corner of said Section 2; thence South 90 degrees 00 minutes 00 seconds West along the South line of the Southeast Quarter of said Section 2 a distance of 208.75 feet to a 1/2 inch iron pin; thence North 00 degrees 26 minutes 50 seconds East a distance of 208.75 feet to a 5/8 inch iron pin; thence North 90 degrees 00 minutes 00 seconds East a distance of 208.75 feet to a 1/2 inch iron pin on the East line of the Southeast Quarter of said Section 2; thence South 00 degrees 26 minutes 50 seconds West along the East line of the Southeast Quarter of said Section 2 a distance of 208.75 feet to the point of beginning.*

*Also Excepting therefrom Parcel "C" as shown on Plat of Survey recorded September 17, 2012, in Book 2012, Page 2756, and being more particularly described as follows:*

*A parcel of land located in part of the Southeast Quarter of the Southeast Quarter of Section 2, Township 74 North, Range 29 West of the 5th P.M., Madison County, Iowa, said parcel being more fully described as follows:*

*Commencing at the Southwest corner of said Southeast Quarter of the Southeast Quarter; thence North 89 degrees 55 minutes 39 seconds East along the South line of said Southeast Quarter of the Southeast Quarter a distance of 449.65 feet; thence North 00 degrees 00 minutes 00 seconds East a distance of 357.53 feet to the point of beginning; thence continuing North 00 degrees 00 minutes 00 seconds East a distance of 544.80 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 239.85 feet; thence South 00 degrees 00 minutes 00 seconds East a distance of 545.11 feet; thence North 89 degrees 55 minutes 36 seconds East a distance of 239.85 feet to the point of beginning.*

#### **Parcel 011:**

*The Northwest Quarter (NW<sup>1</sup>/<sub>4</sub>) of Section One (1), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa.*

#### **Parcel 017:**

*The Northeast Quarter of the Northwest Quarter (NE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>) of Section Eleven (11), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa;*

*and*

*The Northwest Quarter of the Northeast Quarter (NW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>) of Section Eleven (11), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa;*

*and*

*The West 8 3/4 acres of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter (NW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>) of Section Eleven (11), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa.*

Parcel 048:

*The South Half of the Southeast Quarter (S1/2 of SE1/4); the Northwest Quarter of the Southeast Quarter (NW1/4 of SE1/4); and the South Half of the Northeast Quarter of the Southeast Quarter (S1/2 of NE1/4 of SE1/4), all in Section Twenty-two (22), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa.*

Parcel 050:

*The Southwest Quarter (SW1/4) of Section Twenty-three (23), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa, Except the North 4 rods of the West 27 rods thereof.*

*Also Excepting therefrom Parcel A as shown on Plat of Survey recorded September 17, 2012, in Book 2012, Page 2757 and more particularly described as follows:*

*Commencing at the Northwest corner of said Southwest Quarter of the Southwest Quarter and the point of beginning; thence North 00 degrees 28 minutes 27 seconds East along the West line of said Northwest Quarter of the Southwest Quarter a distance of 39.35 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 517.29 feet; thence South 00 degrees 28 minutes 27 seconds West 364.60 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 517.29 feet to the West line of said Southwest Quarter of the Southwest Quarter; thence North 00 degrees 28 minutes 27 seconds East along said West line a distance of 325.24 feet to the point of beginning.*

Parcel 057:

*The North Half of the Northeast Quarter (N1/2 NE1/4) and the North 76 rods of the East 10 1/2 rods of the Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) of Section Twenty-seven (27), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa.*

Parcel 059:

*The North Half (N1/2) of Section Twenty-six (26), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa, Except Parcel "A" as shown in the Plat of Survey recorded May 14, 1999, in Book 3 of Plat Records, Page 438, more particularly described as follows: Commencing at the East Quarter of Section 26, Township 74 North, Range 29 West of the 5th P.M., Madison County, Iowa; thence North 0 degrees 00 minutes 00 seconds East, 449.43 feet along the East line of the Northeast Quarter of said Section 28 to the point of beginning; thence North 0 degrees 00 minutes 00 seconds East, 676.62 feet along the East line of the Northeast Quarter of said Section 26; thence South 88 degrees 07 minutes 36 seconds West, 322.07 feet; thence South 0 degrees 00 minutes 00 seconds West 676.62 feet; thence North 88 degrees 07 minutes 38 seconds East, 322.08 feet to the point of beginning.*

Parcel 060:

*The Northwest Quarter (NW1/4) of Section Twenty-five (25), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa.*