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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

CHEK

Prepared by: Kathleen Law, 700 Walnut, Suite 1600, Des Moines, IA 50309; 515-283-3116
Return to: Stephen F. Dryden, 6205 Mills Civic Parkway, West Des Moines, IA 50266

LENDER NON-DISTURBANCE AGREEMENT

This Non-Disturbance Agreement (this “**Agreement**”), dated as of August 15, 2013 is made and entered into by and between Macksburg Wind Energy LLC, an Iowa limited liability company, and its successors and assigns (“**Macksburg Wind**”) and Farmers & Merchants State Bank (“**Lender**”).

RECITALS

- A. Macksburg Wind and Jimmie D. Smith and Nancy J. Smith, 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 July 2, 2013 (“**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 secured by a mortgage (the “**Mortgage**”) recorded at Book 185, Page 140 in the records of Madison County Recorder that is a lien on all or a portion of the Property;
- C. Macksburg Wind has requested that Lender agree not to disturb any rights of Macksburg Wind under the Easement Agreement with respect to the 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 Macksburg 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, Macksburg 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 Macksburg 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 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 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 State Bank
101 W Jefferson
Winterset, IA 50273
Attention: Sharon Pash

If to Macksburg Wind: Macksburg Wind Energy LLC
Attn: Stephen F. Dryden
6205 Mills Civic Parkway
West Des Moines, Iowa 50266

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 Macksburg 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 State Bank

By: [Signature]

Printed Name: Shane Pashuk

Title: President

STATE OF Iowa, Madison COUNTY) ss:

This record was acknowledged before me on August 15, 20B by Shane

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

of Farmers & Merchants State Bank.

Michelle R. Seifert
Michelle R. Seifert Notarial Officer
My commission expires: 10/8/2014



STAMP

[SIGNATURES CONTINUE ON NEXT PAGE]

MACKSBURG WIND ENERGY LLC, an Iowa limited liability company

By: *James T. Dimond*
James T. Dimond, Authorized Representative

STATE OF IOWA, Madison COUNTY, ss:

This record was acknowledged before me on August 5, 2013 by James T. Dimond as Authorized Representative of Macksburg Wind Energy LLC, an Iowa limited liability company.



STAMP

Michelle R Seifert
Michelle R Seifert, Notarial Officer
My commission expires: 10/8/2014

EXHIBIT A

Legal Description

The East Half ($\frac{1}{2}$) of the Northwest Quarter ($\frac{1}{4}$) and the East Half ($\frac{1}{2}$) of the Southwest Quarter ($\frac{1}{4}$) of Section Thirteen (13), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th Principal Meridian, Madison County, Iowa.