



Document 2013 3199

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INDX ✓  
ANNO ✓  
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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 October 18, 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 Iowa State Savings Bank ("Lender").

#### RECITALS

- A. Macksburg Wind and Gary L. Kauffman and Sharon M. Kauffman, 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 September 14, 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 2013, Page 426 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: Iowa State Savings Bank  
401 West Adams  
Creston, Iowa 50801  
Attention: William Kunert

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]

Iowa State Savings Bank

By: William Kunert

Printed Name: William Kunert

Title: Sr. Vice President

STATE OF Iowa, Union \_\_\_\_\_ COUNTY) ss:

This record was acknowledged before me on October 18, 2013 by William Kunert as Sr. Vice President of Iowa State Savings 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, Union COUNTY, ss:

This record was acknowledged before me on October 18, 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

Parcel 1: The Northwest Quarter of the Southwest Fractional Quarter (NW1/4 SW Fr1 1/4) of Section Thirty (30), Township Seventy-four (74) North, Range Twenty-eight (28) West of the 5th P.M., Madison County, Iowa and

Parcel 2: The East Half of the Southeast Quarter (E1/2 SE1/4) of Section Twenty-five (25), Township Seventy-four (74) North, Range Twenty-nine (29) West of the 5th P.M., Madison County, Iowa, including Parcel "A" located in the Southeast Quarter of the Southeast Quarter as shown on Plat of Survey recorded July 2, 1997, in Book 3 of Plat Records, Page 45, and more particularly described as follows: Beginning at the Southeast corner of Section 25, Township 74 North, Range 29 West of the 5th P.M., Madison County, Iowa; thence North 0 degrees 14 minutes 21 seconds West along the East line of the Southeast Quarter of said Section 25, 685.90 feet; thence South 88 degrees 39 minutes 04 seconds West, 164.08 feet; thence North 33 degrees 50 minutes 55 seconds West, 215.79 feet; thence South 43 degrees 18 minutes 44 seconds West, 410.05 feet; thence South 56 degrees 02 minutes 48 seconds East, 155.95 feet; thence South 0 degrees 17 minutes 29 seconds East, 475.80 feet to a point on the South line of said Section 25; thence North 90 degrees 00 minutes 00 seconds East along the South line of said Section 25, 436.60 feet to the point of beginning.