

Recorded: 2/12/2024 at 12:46:34.0 PM  
County Recording Fee: \$37.00  
Iowa E-Filing Fee: \$3.00  
Combined Fee: \$40.00  
Revenue Tax: \$0.00  
Delaware County, Iowa  
Daneen Schindler RECORDER  
BK: 2024 PG: 330

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Prepared by: Caitlin Stachon, 666 Grand Ave., Suite 2000, Des Moines, Iowa 50309 515.242.2400  
FORM 5147 (7-2019)

Return to: Renae Brandt, Farm Credit Services of America, PO Box 1576, North Platte, NE 69103  
308-532-2717

## **NON-DISTURBANCE, SUBORDINATION AND ATTORNMENT AGREEMENT**

This Non-Disturbance, Subordination and Attornment Agreement (this “**Agreement**”), dated as of December 28 , 2023, is made and entered into by and between, Elk Wind Energy, LLC, a Iowa limited liability company, and its successors and assigns (“**Grantee**”) and Farm Credit Services of America, FLCA (“**Lender**”) pertaining to certain property owned by James F. Funke, a married person, and Michael J. Funke Revocable Trust, (the “**Property Owner**”).

### **RECITALS**

**In support of this Agreement, the parties hereby recite and state as follows:**

- A. Property Owner (as successor in interest to James C. Funke and Kathleen E. Funke, as husband and wife) and Grantee are the parties to two Wind Farm Easement Agreement, each dated as of December 22, 2010, as evidenced by a certain Memorandum of Wind Farm Easement Agreement recorded in the Office of the Recorder of Delaware County, Iowa, on February 10, 2011 at Book 2011, Page 552, and on February 10, 2011 at Book 2011, Page 555, respectively, and as amended by a certain Supplemental Exhibit recorded in the Recorder’s Office on November 15, 2011 at Book 2011, Page 3663 and on November 15, 2011 at Book 2011, Page 3664, respectively, and as further amended by (i) the First Amendment to Wind Farm Easement Agreement, each dated September 16, 2022 and (ii) the Second Amendment to Wind Farm Easement Agreement, each dated October 25, 2023, as evidenced by a certain Second Amendment to Wind Farm Easement Agreement recorded in the Recorder’s Office on November 13, 2023, at Book 2023, Page 2859 and on November 22, 2023, at Book 2023, Page 2944, respectively.

- B. Property Owner and Lender have entered into agreements and/or Property Owner has given to Lender promissory notes (the "Loans") secured by a Mortgage or Trust Deed, or other security instrument (the "Mortgage/Trust Deed") recorded at 2022/1738 on June 3, 2022 in the records of Delaware County, Iowa that is a lien on the Property;
- C. Grantee has requested that Lender agree not to disturb any rights of Grantee under the Facility Agreement with respect to the Property if Lender forecloses or exercises their rights under a power of sale of the Mortgage/Trust Deed; and
- D. Lender is willing to agree to Grantees request on the terms and conditions set forth in this Agreement, which include a subordination of interests by Grantee.

### **AGREEMENT**

NOW, THEREFORE, 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 Grantee that, provided (i) the Facility Agreement is in full force and effect and (ii) no default exists under the Facility Agreement beyond the applicable grace period, Grantee's right to possession of the Property, and the terms and provisions of the Facility Agreement, shall not be affected or disturbed by Lender in the exercise of any of its rights under the Mortgage/Trust Deed or of any rights otherwise available to Lender at law or in equity. Lender will not join Grantee as a defendant in any action or proceeding foreclosing the Mortgage/Trust Deed unless so required to do so by governing law or regulation to protect Lender's ability to foreclose against the Property Owner.
2. Whenever and upon Grantee's receipt of written notice from Lender that a default exists under the terms of the Loans that are secured by the Mortgage/Trust Deed, Grantee agrees to pay to Lender all rent and other obligations owing to Property Owner under the Facility Agreement after Lender's written demand is made, together with all rent and other obligations owing to Property Owner under the Facility Agreement then unpaid by Grantee at the date of Lender's written demand.
3. If a Successor Owner comes into possession or ownership of the Property, then such Successor Owner shall (i) thereby succeed to the position of the Property Owner under the Facility Agreement and (ii) not disturb the possession of Grantee except in accordance with the terms of the Facility Agreement or this Agreement, and the Facility Agreement shall continue in full force and effect and Grantee does hereby attorn to and agree to attorn to the Successor Owner, as its landlord or other possessor or owner of the Property, said attornment to be effective and self-operative without the necessity for execution of any further instruments. "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/Trust Deed, any other exercise by Lender of rights and remedies available to Lender as holder of the Mortgage/Trust Deed or delivery of a deed to the Property in lieu of foreclosure. Notwithstanding the foregoing, a Successor Owner will not be:

- a. Liable for any act, omission or default of the Property Owner under the Facility Agreement occurring prior to the Successor Owner's possession or ownership;
  - b. Subject to any offsets or defenses which Grantee might have against the Property Owner attributable to actions occurring prior to Successor Owner's possession or ownership; or
  - c. Bound by any amendment, modification, waiver or forbearance of the Facility Agreement to the extent such amendment, modification, waiver or forbearance would (i) have a material adverse effect upon any Successor Owner without Successor Owner's written consent, which consent shall not be unreasonably withheld, conditioned or delayed or (ii) would require any additional notices, procedures, delays, limitations or requirements of any kind related to Lender's exercise of any of its rights under the Mortgage/Trust Deed or of any rights otherwise available to Lender at law or in equity, including, but not limited to, any actions in foreclosure or any power of sale process under a trust deed.
4. 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: PO Box 2409, Omaha, NE 68103-2409

If to Grantee: BrownWinick Law Firm, Attn: Kelli Orton, 666 Grand Ave.,  
Suite 2000, Des Moines, IA 50309

All such notices, requests and other communications will (i) if delivered personally or by nationally recognized courier to the addresses as provided above, be deemed given upon delivery, and (ii) if delivered by first class postage prepaid mail to the addresses provided above, 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.

5. Except as specifically provided herein, Grantee further states and agrees that any right it may have under the Facility Agreement or to the Property are subordinate to the interests of Lender arising under the Mortgage/Trust Deed referenced herein including, but not limited to, any and all claims and expenses by Grantee arising from the Facility Agreement or for Property Owner's liability for any act, omission or default under the Facility Agreement, occurring prior to a Successor Owner's possession or ownership.

6. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of parties.
7. 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.]*

FARM CREDIT SERVICES OF AMERICA, FLCA

By: Kelly Anderegg

Printed Name: Kelly Anderegg

Title: Financial Officer

ELK WIND ENERGY, LLC

By: \_\_\_\_\_

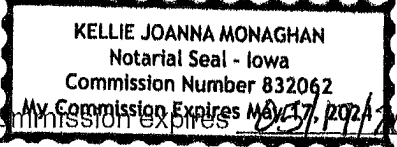
Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGMENTS

STATE OF Iowa )  
 ) ss  
COUNTY OF Delaware )

On this 28<sup>th</sup> day of December, 2023, before me, a Notary Public, personally appeared Kelly Anderegg to me known to be the person named in and who executed the foregoing instrument, who did say that he/she is Financial Officer of Farm Credit Services of America, FLCA; that the instrument was signed on behalf of the corporation by authority of its board of directors; and acknowledged the execution of the instrument to be the voluntary act and deed of the corporation by it and by him/her voluntarily executed.



Kellie Joanna Monaghan  
[Notary's Name] Kellie Joanna Monaghan  
Notary Public in and for said County and State

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, a Notary Public, personally appeared \_\_\_\_\_ to me known to be the person named in and who executed the foregoing instrument, who did say that he/she is \_\_\_\_\_ of Elk Wind Energy, LLC; that the instrument was signed on behalf of the corporation by authority of its board of directors; and acknowledged the execution of the instrument to be the voluntary act and deed of the corporation by it and by him/her voluntarily executed.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
[Notary's Name]  
Notary Public in and for said County and State

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Mortgagee: **FARM CREDIT SERVICES OF AMERICA, FLCA**


By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
 COUNTY OF \_\_\_\_\_ )

This record was acknowledged before me on \_\_\_\_\_, 2023 by \_\_\_\_\_,  
 as \_\_\_\_\_ of Farm Credit Services of America, FLCA

\_\_\_\_\_  
 NOTARY PUBLIC IN AND FOR SAID STATE

Elk Wind: **ELK WIND ENERGY, LLC, an Iowa limited liability company**

By:   
 Name: Claude Vuillieme  
 Title: Authorized Person

STATE OF NEW YORK )  
 ) SS:  
 COUNTY OF NEW YORK )

This record was acknowledged before me on December 26, 2023 by Claude Vuillieme, as Authorized Person of Elk Wind Energy, LLC.

  
 \_\_\_\_\_  
 NOTARY PUBLIC IN AND FOR SAID STATE

**Mandy Yang**  
**NOTARY PUBLIC, STATE OF NEW YORK**  
 Registration No. 01YA6426324  
 Qualified in Queens County  
 Commission Expires December 6, 2025

**EXHIBIT A**  
**NON-DISTURBANCE, SUBORDINATION AND ATTORNMENT AGREEMENT**

*Lot 3 in the Northwest Quarter of the Northwest Quarter (NW 1/4 NW 1/4) of Section Seven (7), Township Ninety (90) North, Range Four (4) West of the 5th P.M., in Delaware County, Iowa, as shown on the Plat of Survey recorded June 7, 1988, in Book 6 of Plat Records, page 9, Excepting therefrom the following described parcel of land; Parcel B as shown on the Plat of Survey recorded June 12, 2002, in Book 2002, page 2185.*

AND

*The North One-half of the Southwest Quarter (N 1/2 SW 1/4) and the South One-half of the Northwest Quarter (S 1/2 NW 1/4), of Section Seven (7), Township Ninety (90) North, Range Four (4) West of the 5th P.M., in Delaware County, Iowa; Excepting therefrom the following described parcel of land: Parcel C, as shown on the Plat of Survey recorded June 12, 2002, in Book 2002, page 2185.*

AND

*Parcel 1: The South One-half of the Southwest Quarter (S 1/2 SW 1/4) of Section Seven (7), Township Ninety (90) North, Range Four (4) West of the 5th P.M., Delaware County, Iowa; Except the railroad right of way, AND Parcel 2: The East One-half of the Southeast Quarter (E 1/2 SE 1/4) of Section Twelve (12) EXCEPT that portion thereof lying North of 120th Street; AND The North One-half of the Northeast Quarter of the Northeast Quarter (N 1/2 NE 1/4 NE 1/4) of Section Thirteen (13), Except the railroad right of way, all in Township Ninety (90) North, Range Five (5) West of the 5th P.M., in Delaware County, Iowa, AND Parcel 3: All of Chicago, Milwaukee, St. Paul and Pacific Railroad Company's 100 foot wide right-of-way across the SE 1/4 SE 1/4, Section 12, and NE 1/4 NE 1/4, Section 13, Township 90 North, Range 5 West, Delaware County, Iowa.*