

Recorded: 2/12/2024 at 12:55:08.0 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: 332

Prepared by: Caitlin Stachon, 666 Grand Avenue, 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 ATTORNMENMENT 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 Robert E. Beswick and Therese H. Beswick, as Co-Trustees of the Robert E. Beswick Revocable Trust dated February 28, 2020, and Robert E. Beswick and Therese H. Beswick, as Co-Trustees of the Therese H. Beswick Revocable Trust dated February 28, 2020, (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 Joseph G. Engelken and Viola M. Engelken, husband and wife) and Grantee are the parties to two Wind Farm Easement Agreement, each dated as of January 14, 2011, as evidenced by a certain Memorandum of Wind Farm Easement Agreement recorded in the Office of the Recorder of Delaware County, Iowa, on January 31, 2011 at Book 2011, Page 423 as amended by a certain Supplemental Exhibit recorded in the Recorder’s Office on November 15, 2011 at Book 2011, Page 3682 and as further amended by First Amendment to Wind Farm Easement Agreement, dated June 12, 2023, as evidenced by Memorandum of First Amendment to Wind Farm Easement Agreement, recorded December 28, 2023, in Book 2023, Page 3256.

- 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 2023/1050 on May 15, 2023 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: Mark Engelbrecht

Printed Name: Mark Engelbrecht

Title: Financial Officer

ELK WIND ENERGY, LLC

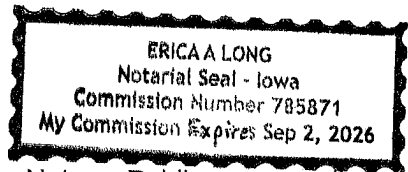
By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF Iowa)
COUNTY OF Delaware) ss



On this 29th day of December, 2023, before me, a Notary Public, personally appeared Mark Engelbrecht 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.

Erica A. Long
[Notary's Name] Erica A. Long
Notary Public in and for said County and State

My commission expires 09/02/2026.

STATE OF _____)
COUNTY OF _____) ss

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.

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

My commission expires _____.

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

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

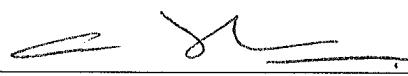
By: _____
Name: _____
Title: _____

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

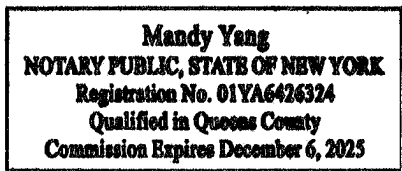


EXHIBIT A

NON-DISTURBANCE, SUBORDINATION AND ATTORNMENT AGREEMENT

The Southwest fractional Quarter (SWfr $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Thirty (30), Township Ninety (90) North, Range Four (4), West of the Fifth P.M.; and the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$), and the East one-half (E $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twenty-Five (25), Township Ninety (90) North, Range Five (5), West of the Fifth P.M., Delaware County, Iowa.