

Recorded: 2/16/2024 at 1:51:34.0 PM
County Recording Fee: \$32.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$35.00
Revenue Tax: \$0.00
Delaware County, Iowa
Daneen Schindler RECORDER
BK: 2024 PG: 366

Prepared by/Return to: Kelli J. Orton, 666 Grand Avenue, Suite 2000, Des Moines, Iowa 50309, 515.242.2400
Previously Recorded Instruments: Book 2011, at Page 555; Book 2011, at Page 3664; Book 2023, at Page 2944;
Book 2022, at Page 1925

NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS NONDISTURBANCE AND ATTORNMENT AGREEMENT (this “**Agreement**”), is made and entered into as of this 13th day of February, 2024, (the “**Effective Date**”), by and between Pacific Life Insurance Company, a Nebraska corporation (“**Mortgagee**”), and Elk Wind Energy, LLC, an Iowa limited liability company (“**Elk Wind**”). Mortgagee and Elk Wind are collectively referred to herein as the “**Parties**”.

A. James F. Funke, a married person, and Michael J. Funke Revocable Trust (collectively, “**Owner**”), are the owners of fee simple title to the real property located in Delaware County, Iowa, legally described in the attached Exhibit A, attached hereto and incorporated herein by this reference (the “**Property**”).

B. Owner (as successor in interest to James Funke aka James C. Funke) and Elk Wind are the parties to that certain Wind Farm Easement Agreement, 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 (the “**Recorder’s Office**”), on February 10, 2011 at Book 2011, Page 555, and as amended by a certain Supplemental Exhibit recorded in the Recorder’s Office on November 15, 2011 at Book 2011, Page 3664 (collectively, the “**Agreement**”), and as further amended by (i) the First Amendment to Wind Farm Easement Agreement dated September 16, 2022 and (ii) the Second Amendment to Wind Farm Easement Agreement dated October 25, 2023 (the “**Second Amendment**”), as evidenced by a certain Second Amendment to Wind Farm Easement Agreement recorded in the Recorder’s Office on November 22, 2023, at Book 2023, Page 2944 (collectively, the “**Easement**”).

C. Owner granted a mortgage to Mortgagee against the Property (the “**Mortgage**”), which was recorded in the Recorder’s Office on June 23, 2022, at Book 2022, Page 1925.

D. The Parties desire to enter into this Nondisturbance and Attornment Agreement (this “**Agreement**”) to address Elk Wind’s rights under the Second Amendment, which was entered into and recorded after the date of the Mortgage.

AGREEMENT

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

1. **Consent.** Mortgagee hereby consents to the terms and provisions of the Second Amendment.

2. **Elk Wind Not to be Disturbed.** So long as there is no condition or event of default under, and as defined in, the Easement, Mortgagee agrees that (a) Elk Wind's use and occupancy of the Property, or any extension or renewal rights therefor in the Easement (including, without limitation, the extension set forth in the Second Amendment), shall not be diminished or interfered with by Mortgagee during the term of the Easement or any such extensions or renewals thereof, (b) Mortgagee will not join Elk Wind, its assigns and successors, as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Easement, and (c) the Easement shall survive any foreclosure of, or forfeiture under, the Mortgage.

3. **Post-Termination Relationship.** If the interest of Owner in the Property shall be transferred by reason of any foreclosure, trustee's sale or other proceeding for enforcement of the Mortgage or by deed in lieu thereof, Mortgagee shall promptly notify Elk Wind and Mortgagee shall recognize Elk Wind's right to occupy and operate the Property under the Easement for the balance of the term thereof, and any extensions or renewals thereof; provided that Elk Wind is not in default beyond any applicable cure period. Elk Wind does hereby agree to attorn to Mortgagee, said attornment to be effective and self-operative without the execution of any further instruments upon Mortgagee succeeding to the interest of the Owners and notification of any such transfer to Elk Wind; provided, however, that Mortgagee shall not be obligated to fulfill any of Owner's obligations under any provision of the Easement, which obligations shall be the responsibility of Elk Wind for so long as Mortgagee is in possession, control, or ownership of the Property. Elk Wind shall have no right to sue in or otherwise use Mortgagee's name for any purpose without Mortgagee's prior written consent. No provision contained in the Easement shall operate to restrict or prevent Mortgagee or Mortgagee's successor in interest from selling, leasing, or otherwise disposing of the Property, including without limitation complying with any applicable federal and/or state right of first refusal laws, for any lawful purpose, including without limitation agricultural purposes. Neither Mortgagee nor Mortgagee's successor in interest shall be subject to any restriction on use or improvement of the Property contained in the Easement (provided, however, that such use or improvement must not result in a material adverse effect on Elk Wind's use and occupancy of the Property). Elk Wind agrees to indemnify and hold Mortgagee harmless from any and all claims, actions, demands, causes of action or any governmental or regulatory proceeding arising out of or in any way related to Elk Wind's occupancy of the Property. Mortgagee and Elk Wind shall execute any additional documentation evidencing such attornment as reasonably requested by the other party, provided that the terms of such documentation are acceptable to both parties. Nothing herein shall be construed as a waiver of any contractual claim that Elk Wind may have against Owner, or as a release of Owner from liability to Elk Wind, on account of the non-performance of any obligation of Owner under the Easement.

4. **Recitals Adopted and Incorporated.** The Parties hereby adopt and incorporate into this Agreement fully, the Recitals set forth above.

5. **Successors and Assigns.** This Agreement shall run with the land and shall be binding upon and inure to the benefit of the Parties and the respective heirs, administrators, executors, legal representatives, successors and assigns of the Parties.

6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa.

7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument.

8. **Entire Agreement Between the Parties.** This Agreement shall be the whole, entire and only agreement between the Parties with regard to the attainment of the Mortgage and non-disturbance of the Easement. This Agreement shall not be further amended, supplemented or revised only in writing, signed by the Parties.

[Signature pages follow]

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

Mortgagee: **PACIFIC LIFE INSURANCE COMPANY, a
Nebraska corporation**

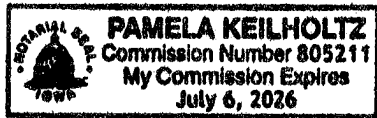
**By: Equitable AgriFinance, LLC, its authorized
signatory**

By: *Michael Mercure*
Michael Mercure, Senior Vice President

STATE OF IOWA)
) SS:
COUNTY OF LINN)

On this 1st day of February, 2024, before me, the undersigned notary public in and for said county and state, personally appeared Michael Mercure, Senior Vice President, to me personally known, who, being by me duly sworn, did say that he is an officer of the corporation that executed the within instrument; that he signed said instrument on behalf of said corporation by authority of its board of directors; and that he acknowledged the execution of said instrument to be the voluntary act and deed of said corporation.

(SEAL)



Pamela Keilholtz
Notary Public

My commission expires: 7/6/2026

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

Mortgagee:

PACIFIC LIFE INSURANCE COMPANY

By: _____
Name: _____
Title: _____

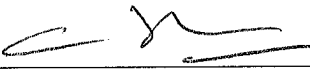
STATE OF _____)
) SS:
COUNTY OF _____)

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

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

EXHIBIT A
[Legal Description]

The East one-half (E $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twelve (12) and the North one-half (N $\frac{1}{2}$) of the Northeast Quarter (NE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section Thirteen (13), Township Ninety (90) North, Range Five (5), West of the Fifth P.M., except the railroad right of way, Delaware County, Iowa.