

Franklin County  
Wanda D. Murtagh  
Franklin County Clerk  
Malone, NY 12953

Document# 00005380  
Volume: 1221 Page: 24



00 2007 00005380

Instrument Number: 2007- 00005380

Recorded On: November 02, 2007

As  
Subordination Agreement

Parties: LOBDELL ARNOLD

To

JERICO RISE WIND FARM LLC

Billable Pages: 8

Recorded By: ETNA

Num Of Pages: 9

Comment: TOWN OF BURKE

**\*\* Examined and Charged as Follows: \*\***

Modification Agreement 59.50

Recording Charge: 59.50

**\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\***

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Franklin County,

**File Information:**

Document Number: 2007- 00005380

Receipt Number: 37617

Recorded Date/Time: November 02, 2007 03:46:02P

Book-Vol/Pg: Bk-MT VI-1221 Pg-24

Cashier / Station: C C / Cash Station 2

**Record and Return To:**

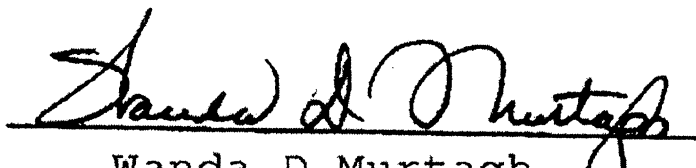
CANTWELL & CANTWELL

14 ELM ST

SUITE 2

MALONE NY 12953



  
Wanda D Murtagh  
Franklin County Clerk

## Subordination, Non-Disturbance and Attornment Agreement

**THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") is made and entered into as of October 24, 2007 by and among **COMMUNITY BANK, N.A.**, its successors and assigns ("Community Bank"), whose address is 210 North Union Street, Olean, New York 14760, and **JERICO RISE WIND FARM LLC** (f/k/a Burke Wind Power, LLC), a Delaware limited liability company, its successors and assigns ("Company"), whose address is 808 Travis, Suite 700, Houston, Texas 77002, Attention: General Counsel, and **ARNOLD LOBDELL, TRUDY LOBDELL and JAMES LOBDELL** (collectively, the "Landowners"), whose address is 5294 State Route 11, Burke, New York 12917.

### WITNESSETH:

**WHEREAS**, Landowners own certain real property located in the Town of Burke, County of Franklin, State of New York, as described in that certain deed recorded in the Franklin County Clerk's Office on January 1, 1986; said property consists of approximately 152.1 acres and is known in 2007 as Tax Map Section 87, Parcel No. 1-16.100.

**WHEREAS**, Landowners and Company entered into that certain Option Agreement, dated August 16, 2006 as evidenced by a Memorandum of Option Agreement, dated August 16, 2006 that was recorded in the Official Records of the Franklin County Clerk, New York (the "Official Records") on January 23, 2007, in Book 937 of Deeds at Page 252 and any amendments thereto, (collectively the "Option," and together with any lease agreement entered into by Landowner and Company as contemplated by the foregoing documents and any amendments thereto, the "Option and Lease"), pursuant to which Landowners granted to Company an option to lease, develop, construct and operate wind-powered electrical generating equipment together with all ancillary easements for transmission and access, on and across certain land in Franklin County, New York, as more fully described in the Option (the "Premises"); and

**WHEREAS**, Landowners are about to execute, acknowledge and deliver to Community Bank a Promissory Note in the original principal amount of **ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000.00)**. Said Promissory Note shall be dated November 2, 2007. Said Promissory Note will be secured by a Collateral Mortgage and Assignment of Rents, both dated November 2, 2007, and said Collateral Mortgage and Assignment of Rents will be recorded in the Franklin County Clerk's Office on the same day, but immediately prior to, this instant Agreement. Said Collateral Mortgage and Assignment of Rents will constitute a first lien on the Premises owned by the Landowners. (Said Landowner's Premises are defined in said Collateral Mortgage and Assignment of Rents and shall be referred to herein as the

"Secured Property".) Said Promissory Note, Collateral Mortgage and Assignment of Rents will sometimes be referred to collectively herein as the "Loan Documents"; and

**WHEREAS**, Community Bank desires that the aforementioned Option and Lease be subordinated to the Loan Documents with respect to the Secured Property, and Company agrees to provide such subordination, subject to the further terms and conditions hereof. Now, therefore the Parties agree as follows:

1. **Subordination.** The parties hereby agree that the Option and Lease granted by Landowners to the Company shall be subordinate to the aforementioned \$180,000 Collateral Mortgage and Assignment of Rents about to be granted by Landowners to Community Bank. Said \$180,000 Collateral Mortgage and Assignment of Rents are both dated November 2, 2007 and shall be recorded in the Franklin County Clerk's Office on the same day, but immediately prior to, this Agreement.

2. **Non-Disturbance.** As long as this Agreement is in full force and effect, then Community Bank shall not disturb the following:

2.1. An exclusive easement for the free and unobstructed flow of wind, wind resource evaluation, using the wind, wind energy development, energy collection, distribution and transmission, and related wind energy development uses, including the installation and replacement, and the use, maintenance, repair and operation, of the following, as Company determines: anemometers; wind and weather monitoring facilities; wind power generating turbines and their associated towers and foundations (each such turbine being referred to herein as a "WTG"); power generation facilities to be operated in conjunction with WTG installations; Transmission Facilities (as defined below); utility lines and installations; roads, bridges, culverts and erosion control facilities; staging and laydown areas; signs; fences; gates; other safety and protection facilities; and any other improvements, fixtures, and equipment, whether temporary or permanent, that are related thereto or associated therewith (all of the foregoing, collectively, "Wind Power Facilities"); and Company shall be entitled to determine the size, type, manufacturer and location of the Wind Power Facilities within the property described in Exhibit A in its sole discretion.

2.2. A non-exclusive easement for the installation and replacement, and the use, maintenance, repair and operation of, underground and aboveground facilities for the collection, step-up, step-down, distribution and sale of electricity and for communications in connection with the WTGs, including the following, at such locations as Company shall determine: transmission lines; telecommunications equipment; energy storage facilities; interconnection and/or switching facilities; and any related or associated improvements, fixtures and equipment (all of the foregoing, collectively, "Transmission Facilities").

2.3. A non-exclusive easement (the "Access Easement") for vehicular and pedestrian access to, from and over the Property, at such locations as Company shall determine, for purposes related to or associated with Wind Power Facilities installed or to be installed on the Property, which, without limiting the generality of the foregoing, shall entitle Company to use and improve any existing and future roads and access routes (a) from time to time located on or providing access to the Property, (b) across any other property owned by Owner and (c) across any access routes over which Owner has the right to travel.

2.4 An exclusive easement to permit the Wind Power Facilities located on the Property, including without limitation visual and non-visual and audible and non-audible effect.

2.5. The right of possession by Company to the property and any or all of Company's rights under the Option and Lease shall not be affected in any way or disturbed by Community Bank (or by anyone claiming by, through or under Community Bank) in the exercise of any of Community Bank's rights under any loan documents, the mortgage, or otherwise. Company shall not be named as a party defendant to any foreclosure of the lien of any mortgage for the purpose of terminating the Option and Lease, and Company shall not, by any such foreclosure, be in any other way foreclosed from its rights under the Option and Lease.

2.6. If Community Bank or its successors or assigns comes into possession of the property (through receivership, as a mortgagee in possession, or otherwise) or acquires rights under this Option and Lease, an interest of Landowners by foreclosure of the mortgage, or by proceedings under the loan documents, deed-in-lieu-of-foreclosure, or otherwise, the Option and Lease shall not be terminated by any such foreclosure or proceedings and the Option and Lease shall continue in full force and effect upon Company's attornment, as set forth below, as a direct agreement between Company and Community Bank or its successors or assigns upon all the terms, covenants, conditions and agreements set forth in Option and Lease.

2.7. If the property or Landowner's interest under the Option and Lease therein is sold or otherwise disposed of pursuant to any right or power contained in the loan documents or the mortgage or as a result of proceedings thereon, the Option and Lease shall not be terminated or affected thereby, and the foreclosure purchaser of the property or any person acquiring title thereto shall so acquire the property or such interest, subject to the Option and Lease; and the Option and Lease shall continue in full force and effect upon Company's attornment, as hereinafter provided, as a direct agreement between Company and any party acquiring title to the property, subject to all the terms, covenants, conditions and agreements set forth in the Option and Lease.

2.8 Landowners hereby irrevocably authorize and direct Company, upon receipt from Community Bank of written notice to do so, to pay all rents and other monies payable by Company under the Option and Lease to or as directed by Community Bank. Landowners irrevocably release Company from any liability to Landowners for all payments so made. Company agrees that upon receipt of such notice it will pay all monies due and becoming due from Company under the Option and Lease to or as directed by Community Bank, notwithstanding any provision of the Option and Lease to the contrary. Such payments shall continue until Community Bank directs Company otherwise in writing.

3. **Attornment.** If Community Bank or any foreclosure purchaser shall succeed to the rights of Landowners under the Option and Lease, then Company shall attorn to and recognize Community Bank or such foreclosure purchaser as Company's landlord under the Option and Lease and Community Bank or such foreclosure purchaser shall be conclusively deemed to have accepted such attornment. Such attornment shall be self-operative and effective without execution and delivery of any further instrument, immediately upon Community Bank's or any foreclosure purchaser's succession to the interest of Landowners under the Option and Lease. Upon such attornment the Option and Lease shall continue in full force and effect as a direct agreement between Community Bank or such foreclosure purchaser and Company except that Community Bank or such foreclosure purchaser shall not be bound by any amendment or modification of the Option and Lease made without Community Bank's written consent and except that Community Bank or such foreclosure purchaser shall not be liable to Company:

3.1. For any past act, default or omission on the part of Landowners under the Option and Lease. Company shall have no right to assert the same or any damages arising therefrom as a defense against Community Bank or such foreclosure purchaser.

3.2. For any prepayment of royalties or any other sums deposited with Landowners under the Option and Lease and not delivered to Community Bank or such foreclosure purchaser.

4. **Proceeds of the Transaction.** The Landowners and the Company hereby agree that Community Bank, at its option, may apply any of the proceeds from this transaction to taxes, assessments, ground rents, insurance, costs of improvements or restoration, or to such other items as it may deem proper or to the Landowner's mortgage balance. Landowners further agree that no rights or remedies of Community Bank under the mortgage are or shall be waived, limited, or impaired in any way by any action taken on this Agreement.

Document# 00005380  
Volume: 1921 Page: 30

LANDOWNERS:

Arnold Lobdell

Buddy Lobdell

James Lobdell

Franklin County  
Wanda D. Murtagh  
Franklin County Clerk  
Malone, NY 12953

Document# 00000299  
Volume: 937 Page: 129



60 2007 00000299

Instrument Number: 2007- 00000299

As  
Easement

Recorded On: January 19, 2007

Parties: VINCENT SILAS M JR

To

NOBLE CHATEAUGAY WINDPARK LLC

Billable Pages: 13

Recorded By: HUGHES, STEWART &amp; RACE

Num Of Pages: 14

Comment:

\*\* Examined and Charged as Follows:

Easement	75.00	TP-584	5.00		
Recording Charge:	80.00				
	Amount	Consideration Amount	RS# /CS#		
Tax Transfer	110.00	27,090.00	TT 1091	Basic	0.00
BURKE				Additional	0.00
				Special Additional	0.00
				Transfer	110.00
Tax Charge:	110.00				

\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Franklin County,

## File Information:

Document Number: 2007- 00000299  
Receipt Number: 23268  
Recorded Date/Time: January 19, 2007 03:49:01P  
Book-Vol/Pg: Bk-DE VI-937 Pg-129  
Cashier / Station: K C / Cash Station 1

## Record and Return To:

HUGHES, STEWART & RACE, P.C.  
31 ELM ST  
P O BOX 788  
MALONE NY 12953



*Wanda D Murtagh*  
Wanda D Murtagh  
Franklin County Clerk

Document# 00000299  
Volume: 937 Page: 130

Exhibit B

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Hughes Stewart & Race, P.C.  
31 Elm Street, P.O. Box 788  
Malone, New York 12953  
Attn: Nathan N. Race, Esq.

(Space above this line for Recorder's use only)

Silas M. Vincent, Jr., Sandra C. Vincent, David Vincent ("Owner")  
and

Noble Chateaugay Windpark, LLC, a Limited Liability Company ("Developer")

**MEMORANDUM OF WINDPARK EASEMENT AGREEMENT**

December 29, 2006

This instrument affects real and personal property situated, lying, and being in the Town of Chateaugay, State of New York, known as follows:

<b>Town:</b>	Burke	Burke	Burke	Burke	
<b>Map No:</b>	59	59	59	73	
<b>Block(s):</b>	1	1	1	1	
<b>Lot(s):</b>	21	22.100	23.100	2.100	
<b>Town:</b>	Burke	Burke	Burke	Burke	
<b>Map No:</b>	86	86	86	86	
<b>Block(s):</b>	2	2	2	2	
<b>Lot(s):</b>	5	16	17.100	17.200	
<b>Town:</b>	Burke	Burke	Burke	Burke	
<b>Map No:</b>	86	86	86	100	
<b>Block(s):</b>	3	3	3	2	
<b>Lot(s):</b>	3	7	8.100	1.200	
<b>Town:</b>	Burke	Burke	Burke	Burke	Burke
<b>Map No:</b>	100	100	100	100	100
<b>Block(s):</b>	2	2	2	1	2
<b>Lot(s):</b>	2.100	5	1.100	12.500	2.200

NY962163.2

25  
50  
110  
5  
190-



## MEMORANDUM OF WINDPARK EASEMENT AGREEMENT

THIS MEMORANDUM OF WINDPARK EASEMENT AGREEMENT is made and entered into as of December 29, 2006, by and between Silas M. Vincent, Jr., Sandra C. Vincent, David Vincent of 22 Panunzio Road, Burke, New York and Vincent Road, Burke, New York ("Owner"), and Noble Chateaugay Windpark, LLC, a Limited liability Company formed under the laws of Delaware, of 8 Railroad Avenue, Essex, CT 06412 ("Developer").

## WHEREAS:

A. On the date hereof, the Parties have entered into a Windpark Easement Agreement (the "Agreement") which by its terms grants to Developer certain easements for wind energy development on, over, under and across that certain land described in Exhibit B-1 attached hereto and incorporated herein by this reference (the "Property").

B. The term of the Agreement commences on the date hereof and may continue for a period of up to fifty-four (54) years in accordance with the terms of the Agreement, unless earlier terminated as provided in the Agreement.

C. The Parties desire to enter into this Memorandum of Windpark Easement Agreement, which is to be recorded in order that third parties may have notice of the interests of Developer in the Property and of the existence of the Agreement and of certain easements and rights granted to Developer in the Property as part of the Agreement.

NOW, THEREFORE, in consideration of the payments and covenants provided in the Agreement to be paid and performed by Developer, Owner hereby grants to Developer the Easements (as that term is defined in the Agreement) on, over, under and across the Property, all on the terms and conditions set forth in the Agreement. All of the terms, conditions, provisions and covenants of the Agreement are hereby incorporated into this Memorandum by reference as though fully set forth herein, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document. Should there be any inconsistency between the terms of this Memorandum and the Agreement, the terms of the Agreement shall prevail. The Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and any prior or contemporaneous agreements, discussions or understandings, written or oral (including without limitation any options or agreements for easements previously entered into by the Parties with respect to the Property), are superseded by the Agreement and shall be and hereby are released, revoked and terminated.

*[signature page follows]*

Document# 00000299  
Volume: 937 Page: 132

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Windpark Easement Agreement as of the date set forth above.

OWNER

Silas M. Vincent Jr.  
Silas M. Vincent, Jr.

OWNER

Sandra C. Vincent  
Sandra C. Vincent

OWNER

David Vincent  
David Vincent

Spousal Consent

Mary R. Vincent  
Name: Mary R. Vincent

DEVELOPER

By: D. P. Boyd

Name: Daniel P. Boyd

Title: Associate