

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE
APPLICATION OF DEUEL HARVEST
WIND ENERGY LLC FOR A PERMIT
OF A WIND ENERGY FACILITY AND
A 345-KV TRANSMISSION LINE IN
DEUEL COUNTY**

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* **RESPONSE TO STAFF’S SECOND SET**
* **OF DATA REQUESTS TO JON**
* **HENSLIN**
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* **EL18-053**
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Below, please find Staff’s Second Set of Data Requests to Mr. Jon Henslin. Please submit responses within 10 business days, or promptly contact Staff to discuss an alternative arrangement.

- 2-1) Referring to the response of Jon Henslin to Applicant Data Request 1-11, you state “I am concerned that this project will negatively impact my property.” Are you aware of any market sales that supports the assertion that there is adverse effects on the selling price of rural residential properties in proximity to a wind turbine? If yes, please provide all information you are aware of, including address, of the market transaction.

- 2-2) Referring to the response of Jon Henslin to Applicant Data Request 1-8, you requested the following mitigation measure: “Provide property value guarantees for nonparticipants in the siting area.”
 - a) Can you provide any examples of how a property value guarantee has been implemented for any other wind energy facilities? If yes, please provide supporting documentation.

Yes, the following Property Value Guarantee Agreement was proposed by Invenenergy for its “Pleasant Ridge” project in Livingston County Illinois. I contacted Chuck Schopp with the counties zoning (815-844-7741). He informed me that the Pleasant Ridge project was not approved, however the agreement is a Document of Record.

**PLEASANT RIDGE EXHIBIT
11C**

Property Value Guarantee Agreement

This Property Value Guarantee Agreement (“Agreement”) made and entered into on this _____ day of _____, _____, by and between Pleasant Ridge Energy LLC (“Pleasant Ridge”), having its principal offices at One South Wacker Drive, Suite 1900, Chicago, Illinois 60606 (“Guarantor”) and

_____, residing at _____, _____, Illinois (“Property Owners”).

RECITALS

WHEREAS, Property Owners own certain real property (“Property”), legally described as follows:

[INSERT LEGAL DESCRIPTION OF NON-PARTICIPATING RESIDENTIAL PROPERTY WITH A RESIDENCE WITHIN ½ MILE RADIUS OF ANY WIND TURBINE, AS MEASURED FROM THE POINT OF THE RESIDENCE FOUNDATION CLOSEST TO THE WIND TURBINE TO THE CENTER OF THE WIND TURBINE FOUNDATION]

WHEREAS, “Property” means real property with a permanent dwelling, provided, however that Property shall not include any real property owned by a person that has entered into a wind easement or neighbor agreement with Guarantor for such Property in connection with the Project; and

WHEREAS, Guarantor has been granted a Special Use Permit by Livingston County Ordinance No. _____, for the construction and operation of a wind energy project consisting of up to 136 wind turbines on properties located in unincorporated Pleasant Ridge, Forrest, Fayette, Eppards Point, Indian Grove, Chatsworth, Charlotte, Belle Prairie and Avoca Townships in Livingston County, Illinois (the “Project”); and

WHEREAS, Guarantor desires to alleviate concerns about the preservation of values of residential Property located in proximity to the Project, specifically residences within one-half mile of any wind turbine; and

WHEREAS, Property Owners are desirous of preserving equity in the Property, by ensuring that if the Property described herein is sold at a price less than the ASKING PRICE as a result of proximity to the Project, as determined by the procedures contained herein, the Guarantor will guarantee payment to the Property Owners of such difference

IT IS HEREBY AGREED AS FOLLOWS:

1. EFFECTIVE DATE OF AGREEMENT. This Agreement shall become effective and binding on Guarantor upon the Commercial Operation Date. “Commercial

Operation Date” means the date on which Developer begins selling electrical energy generated by substantially all of the wind turbines to be included in the Project to a third party power purchaser, excluding, however, electric energy delivered to such third party power purchaser in connection with any testing, start-up or commissioning.

2. ELIGIBILITY: EXERCISE OF GUARANTEE. Property containing a permanent dwelling that is within one-half mile of the foundation of any wind turbine that is part of the Project, as measured from the point of the dwelling foundation closest to the wind turbine to the center of the wind turbine foundation, is covered by this Guarantee, to the extent the dwelling was constructed and occupied as a dwelling on _____, 2015, the date Livingston County signed Ordinance No. _____ approving the Project (“Ordinance Date”). Owners of such Property who were owners of record as of the Ordinance Date (“Property Owners”), or their legitimate heirs, are eligible to exercise this Guarantee. In the event that the Property Owners wish to sell their eligible Property, and exercise the Guarantee set out in this Agreement, they shall notify Guarantor of same in writing by certified mail and thereafter they shall make a good faith effort to sell said Property by entering into a listing contract with a licensed real estate broker pursuant to the terms herein. Provided, however, that a person that has entered into a wind easement or a neighbor agreement for such Property in connection with the Wind Project shall not be eligible for a property value pursuant to this Agreement.

3. QUALIFIED PROFESSIONAL APPRAISER. For the purposes of this Agreement, a “qualified professional appraiser” shall mean a person who is licensed by the State of Illinois, not related to the Property Owners, who has not previously taken a position or testified either for or against a wind energy project, who is not an employee or contractor of Pleasant Ridge or its affiliates and does not otherwise have a business relationship with Pleasant Ridge or its affiliates, and who holds either the MAI, SRA or SRPA designation from the Appraisal Institute. All appraisal reports shall conform to the Code of Professional Ethics and Uniform Standards of Professional Appraisal Practice of the Appraisal Institute.

4. AGREED TO ASKING PRICE. The ASKING PRICE is the fair market value of the Property at the time the Property Owner decides to sell. The ASKING PRICE of the Property may be mutually agreed to in writing by the Property Owners and the Guarantor. The ASKING PRICE may also be amended by mutual written agreement of the Property Owners and Guarantor at any time.

5. DETERMINATION OF ASKING PRICE BY APPRAISAL. If the parties are unable to agree on the ASKING PRICE of the Property prior to the Property Owner listing the Property for sale, then the Guarantor shall hire, at its expense, a qualified professional appraiser, and shall notify Property Owner of such appraiser. If the Property Owner objects to the Guarantor’s choice of appraisers, it shall state those objections, in writing, within thirty (30) days of the notification of the choice of appraiser, to Guarantor. In the event Property Owner reasonably objects, the Guarantor shall retain another qualified professional appraiser, and proceed as described below.

When a qualified professional appraiser is hired pursuant to this Paragraph 5, he or she shall be instructed to determine the fair market value (which will become the ASKING PRICE) of the Property as follows

:

a. Assume that no wind energy project or commercial wind turbine was located within ½ mile of the Property, measured as set forth in paragraph 2 above;

b. Utilize comparable property, developed as the Property was developed as of the Ordinance Date and located a sufficient distance away from the Project so that, in the opinion of the appraiser, the selling price of that property was not influenced by the presence of the Project;

c. Utilize comparable property, located approximately the same distance from major population centers (such as Pontiac) so that in the opinion of the appraiser the selling price of the comparable property was not influenced by its closer proximity to new or existing population centers.

d. Establish a fair market value which is based upon the Property as developed on the Ordinance Date (without considering any development or improvements, including new structures, after the Ordinance Date);

e. Prepare a full appraisal utilizing the form attached hereto as Attachment A, and which conforms to the Code of Professional Ethics and Uniform Standards of Professional Appraisal Practice of the Appraisal Institute;

f. Prepare the appraisal in full compliance with any and all state standards and state regulations which pertain to the preparation of an appraisal of the Property except those standards and regulations which conflict with these instructions; and

If Property Owner and Guarantor accept the appraised value, then such value shall constitute the ASKING PRICE, and the Property Owners shall offer the above described Property for sale at no less than that price.

If either the Property Owner or the Guarantor does not accept the appraised fair market value, the non-accepting party may retain a second qualified professional appraiser, of its choice and at its expense, who shall not be made aware of the first appraised value and who shall determine the fair market value of the Property on the basis of Paragraph 4 (a) through (g) above. If both parties do not accept the original appraisal, they shall agree to the second qualified professional appraiser and split the costs. In the event a second appraised value obtained pursuant to this paragraph is within fifteen percent (15%) of the first appraisal, the ASKING PRICE shall be the arithmetic average of the original appraised value and the second appraised value, unless the Guarantor is unsatisfied with such value.

In such latter event, the first two appraisers shall hire a third qualified professional appraiser, at the sole expense of the Guarantor, who shall not be made aware of either the first or second appraised values, and who shall determine the fair

market value of the above-described Property on the basis of Paragraph 4 (a) through (g) above. The ASKING PRICE will then be the arithmetic average of the three appraised values within fifteen percent (15%) of each other and if none are within fifteen percent (15%) of each other the third appraisal shall conclusively determine the ASKING PRICE for the purpose of this Agreement.

6. LISTING WITH BROKER. Property Owners shall utilize the services of a real estate broker who shall be licensed in Illinois, shall not be related to the Property Owners and, unless waived by the Guarantor, shall be a member of the Board of Realtors Multiple Listing Exchange. Property Owners shall give Guarantor notice of the broker with whom they wish to contract and shall obtain Guarantor's approval of said broker. Guarantor will not unreasonably withhold such approval. If the Guarantor objects to the Property Owners' choice of brokers, it shall state those objections, in writing, to Property Owners. In the event Guarantor reasonably objects, the Property Owners shall choose another broker, and proceed as described above. As sellers of the Property, Property Owners shall be responsible for the broker's fee. Nothing herein shall prevent the Property Owner from marketing the Property at a value higher than the ASKING PRICE as determined herein.

7. TERM OF LISTING. Property Owners shall list the Property, at the ASKING PRICE as determined in Paragraphs 4 or 5 above, or at a higher value. During the listing term, Property Owners shall accept any offer of purchase for the ASKING PRICE, or any offer of purchase otherwise acceptable to the Guarantor. Property Owners shall maintain the Property in good and marketable condition during the listing period.

Said listing contract shall provide: (a) that the broker shall list the Property in the multiple listing exchange; (b) that the Property will be so listed until the occurrence of either the (i) sale of the Property or (ii) expiration of a period of 270 days; (c) that the broker shall hold an open house periodically for the Property; (d) that the broker shall report the marketing efforts undertaken to the Guarantor; and (e) that the broker shall not be entitled to any commission after the expiration of the listing contract.

The Property Owners shall cooperate with the broker in obtaining a purchaser pursuant to the terms set forth in the listing agreement and shall make, in good faith, all reasonable efforts necessary to conclude a sale pursuant to the said terms.

8. OFFERS TO PURCHASE. The Property Owners shall accept any offer of purchase for the ASKING PRICE and, in such event, Guarantor will have no liability to Property Owners. Property Owners shall provide the Guarantor with written notification of every Offer to Purchase that they receive for the Property and agree, for a period of 270 days, not to accept any offer below the ASKING PRICE without the express written approval of the Guarantor. In no event shall the Property Owners entertain anything other than good faith, bona fide offers of purchase.

9. GUARANTOR'S CONSENT TO PURCHASE. Guarantor shall have the right to make counter offers on any offers of purchase which are below the ASKING PRICE. In the event the purchaser accepts any such counter offer made or requested by the Guarantor, or in the event the Guarantor otherwise consents to a sale of the Property below the ASKING PRICE, the Guarantor shall pay the Property Owners, at

closing, the difference between the ASKING PRICE and the gross sales price (without deduction of any broker's commission) so established.

10. SALE WITHOUT GUARANTOR'S CONSENT. If the Property Owners have not received an offer of purchase at the ASKING PRICE within 270 days of listing the Property for sale, or the Guarantor has not consented to the sale of the Property below the ASKING PRICE, the Property Owners may sell the Property at the highest offer of purchase still pending or at the next good faith bona fide offer to purchase. It shall notify the Guarantor, in writing, of its intention to accept such offer.

11. PROPERTY OWNER'S CLAIM. After closing, if the Property has sold for less than the ASKING PRICE, as determined herein, and Property Owner reasonably believes that the reason for such lowered value is because of the Property's proximity to the Project, it shall make a claim to the Guarantor, requesting payment for the difference between the ASKING PRICE and the gross sales price (without deduction of any broker's commission). Within thirty days of such request, Guarantor shall pay the Property Owner the difference unless Guarantor, within that time, has invoked the procedures set forth in Paragraph 12.

12. GUARANTOR APPEAL. Within thirty (30) days of receipt of any claim from Property Owner pursuant to Paragraph 11 above, if Guarantor has a reasonable good faith belief that the difference in value between the ASKING PRICE and purchase price was not attributable to the Property's proximity to the Project, it shall notify the Property Owners, by certified letter. Within thirty days of the Property Owner's receipt of such notice, the Guarantor shall initiate mediation via an independent third-party neutral, at Guarantor's expense, for the purpose of making a determination of whether (and to what extent) the difference in value between the ASKING PRICE and the actual sales price is caused by factors other than the Project, which determination shall be binding. To the extent the difference in value is determined to be caused by other than the Project, the difference between the ASKING PRICE and the sales price which is guaranteed shall be reduced.

13. TERMINATION OF GUARANTOR'S OBLIGATIONS. This Agreement shall terminate and Guarantor shall have no obligations hereunder from and after the fifth anniversary of the Project's Commercial Operation Date.

14. ASSIGNMENT OR TRANSFER. Neither this Agreement nor the rights under it may be assigned, conveyed, or otherwise transferred by Property Owners. This Agreement shall only apply to a "first sale" by the Property Owners, and not to any second or subsequent sales of the Property. The guarantee given by Guarantor to guarantee the Property value and to purchase the Property is personal, and does not run with the land; however, said Agreement shall inure to the benefit of the Property Owners, their personal representatives, trustees, guardians, custodians or their heirs; but, in all events, shall terminate as described in Paragraph 13.

15. APPLICATION OF LAW; DISPUTES. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois. Disputes concerning the application or terms of this Agreement shall be subject to the jurisdiction of the Circuit Court of Livingston County.

GUARANTOR:

ATTEST:

Pleasant Ridge Energy LLC

By

Its:

DATE:

Its:

PROPERTY OWNERS:

DATE:

WITNESS:

- b) In response to a request for a property value guarantee condition for the Prevailing Wind Park permit (Docket EL18-026), Commission Staff witness David Lawrence stated the following:

“While I understand the goal of a property value guarantee, I have concerns about how to properly manage the valuation process for consistent results before the project and after the installation of the wind project. Many variables can influence the criteria to establish value or to reestablish value at a later date. For example, who is qualified to provide a value opinion? What will be the scope of work for establishing the market value before, and the market value after the installation of the wind project? How will changes in a property’s condition such as a well-maintained property versus a poorly maintained property be measured for value differences in contrast to the operational date of the wind project? I would be more supportive of the idea of a property value guarantee if there were a way to consistently define and measure the valuation process for a property’s market value in proximity to a wind project.”

Please provide responses to the questions and concerns posed by David Lawrence in Docket EL18-026 regarding a property value guarantee.

I spoke with David Lawrence on March 14th 2019. We discussed Property Value Guarantee Agreements. He told me had not seen an actual proposed agreement. Would you please forward the Pleasant ridge Exhibit to David Lawrence for his review. It should answer most if not all of his questions and concerns.

The following is another example of a property value guarantee.

It is for properties located within a two-mile radius of a wind tower.

**RESIDENTIAL PROPERTY VALUE GUARANTEE AGREEMENT
TO BE INCLUDED IN ANY INDUSTRIAL WIND TURBINE
PERMIT ISSUED BY THE TOWN OF HAMMOND AND SHALL
BECOME A PART OF THE TOWN OF HAMMOND WIND LAW.**

This Residential Property Value Guarantee Agreement (“Agreement”) made and entered into on this ___ day of _____, 20___, by and between _____ State of New York and any successors in interest or ownership in part or in whole to any Industrial Wind Turbine Project within the Town of Hammond, hereinafter referred to as the (“Guarantor”) and _____ and _____ residing at _____, Hammond, New York, (“Property Owner/Owners”).

RECITALS

WHEREAS, Property Owners own eligible Property as described herein (“Property”). That property having a legal description located in the Town of Hammond, St. Lawrence County, New York, and being described as follows:

SAID PROPERTY BEING LOCATED WITHIN A TWO (2) MILE RADIUS OF ANY WIND TOWER, AS MEASURED FROM THE BASE OF THE WIND TOWER AT GROUND LEVEL TO THE NEAREST PROPERTY LINE OF THE RESIDENCE EXISTING AT THE TIME THIS PROPERTY VALUE GUARANTEE AGREEMENT IS ENTERED INTO.

WHEREAS, Guarantor has been granted a Permit by the Town of Hammond, St. Lawrence County, for the construction and operation of the _____, consisting of Wind Turbines on properties located in the Town of Hammond, St. Lawrence County, State of New York.

WHEREAS, Guarantor agrees to alleviate any concerns to the Citizens of Hammond, regarding the preservation of Property Values in the Town of Hammond, and in consideration of the Town of Hammond granting to the Guarantor the right to construct and operate the _____ with Industrial Wind Turbines within the Guidelines of the Hammond Wind Law, and

WHEREAS, Property Owners are desirous of preserving the equity that they have in their Residential Properties prior to the construction and operation of the _____ Wind Farm that if the Property described herein is sold at a price less than the Asking Price as a result of proximity to the Wind Turbine, as determined by the Procedures contained herein, and the Guarantor will guarantee payment to the Property Owner/Owners of such difference.

IT IS AGREED AS FOLLOWS:

1. EFFECTIVE DATE OF THE AGREEMENT: This agreement shall become effective and binding on the Guarantor when signed by both parties, which must be entered into within **ONE HUNDRED EIGHTY (180) DAYS** from the Town of Hammond issuing a permit to a Wind Development Company referred to above as the Guarantor. A list of all potential Lease Agreements have been made known between the Land Owner and the Guarantor, however, the actual placement has not been determined by the Guarantor. If any new Lease Agreements are entered into by the Guarantor with any new property owner, then the neighboring property owner within a **TWO (2) MILE** radius of that landowner, will be notified by Certified Mail by the Guarantor. The Property Owner shall have **NINETY (90) DAYS** after receipt of said letter, to give notice to the Guarantor of their intent to enter into a Property Value Guarantee Agreement.

2. ELIGIBILITY: EXERCISE OF GUARANTEE: Any Individual, Sole Proprietorship, Corporation, Partnership, or Limited Liability Company, owning property that is within a **TWO (2) mile** radius of the base of any wind tower that is part of the Hammond Wind Project is covered by this Guarantee and described in Paragraph one above. This Guarantee is limited only to Real Property owners that own property in the Town of Hammond at the time that the Town of Hammond issues a Permit to any Wind Developer. A further definition of Property Owners shall include heirs and immediate family members of the Property Owner on the effective date above stated.

3. QUALIFIED PROFESSIONAL APPRAISER and PROPERTIES TO BE USED AS COMPARABLES: For the purpose of this Agreement, a Qualified Professional Appraiser shall mean a person who is licensed by the State of New York, not related to the Property Owner, who is not an employee or contractor of the Property Owner or Guarantor, and does not have a business relationship with the Property Owner or the Guarantor, and who is a member of at least one National Appraisal Association. All appraisal reports shall conform to the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institutes. All Real Estate Comparables used in any Appraisal shall not be from the Town of Hammond, but shall be from the neighboring Town of Alexandria, where there are no Wind Farms due to the proximity of the local Maxon Air Field. Sales of like or similar properties sold up to 3 years prior to the date of the Appraisal can be used after taking into consideration an inflationary factor. If there are no Comparable Values in the Town of Alexandria, then the Appraiser can use land transfers from within a 50 mile radius of the Town of Hammond.

4. AGREED TO ASKING PRICE: The Asking Price is the value of the Property at the time that the Property Owner decides to sell, however, the listing of the real property, must take place within a **FIVE (5) YEAR PERIOD** from the entering into this Property Value Guarantee Agreement. The Asking Price of the property may be mutually agreed to by the Property Owners and the Guarantor. The Asking Price can be mutually amended by

the Property Owners and the Guarantor at any time, subject to their mutual agreement.

5. DETERMINATION OF ASKING PRICE BY APPRAISAL: If the Parties are unable to agree upon the Asking Price of the Property prior to the Property Owner listing the Property for sale, then the Guarantor shall hire, at their expense a qualified professional appraiser presently doing business in Jefferson or Onondaga County, and shall notified the Property Owner of such appraiser. If the Property Owner objects to the Guarantor's choice of appraisers, it shall so state those objections, in writing, within THIRTY (30) DAYS of the notification of the choice of the appraisal, to Guarantor. In the event Property Owner reasonably objects, the Guarantor shall select an Appraiser with MAI Certifications and all selected Appraisers shall adhere to the following guidelines:

When a qualified professional appraiser is selected pursuant to Paragraph 5 above, he or she shall be instructed to determine the fair market value, which will become the ASKING PRICE, of the Property as follows:

- a. Assume that no wind energy center or commercial wind tower was located within a FIVE (5) mile radius.
- b. Utilize comparable properties, developed as the Property was developed as of the date of this Guarantee and located sufficient distance away from the Hammond Wind Project, within the Town of Alexandria, so that in the opinion of the appraiser, the selling price of that property was not influenced by the presence of the Hammond Wind Farm.
- c. Use both the Comparable Sale Method and the Cost Replacement Method in determining a Fair Market Value. If there is wide difference between the Fair Market Value at the time of listing and the Cost Replacement Method, then the Cost Replacement Method shall be the controlling method, and shall be used as an Asking Price. The Standard Depreciation rates established by the Standards of Professional Appraisals Practice of the Appraisal Institute shall be used.
- d. Establish a fair market value, which is based upon the Property as developed on the date that the Town of Hammond issues a permit for a Hammond Wind Farm.
- e. Prepare a full narrative appraisal, which conforms to the Code of Professional Ethics and Standards of Professional Appraisals Practice of the Appraisal Institute.
- f. Prepare the Appraisal in full compliance with any and all state standards and state regulations which pertain to the preparation of an appraisal of the Property except those standards and

regulations which conflict with these instructions, and

g. The Appraiser shall note the condition of the premises, both interior and exterior, at the time of the appraisal.

If the Property Owner and the Guarantor accept the appraisal value, then such appraisal shall constitute the ASKING PRICE, and the Property Owners shall offer the above defined property for sale at no less than the agreed upon price.

If either the Property Owner or the Guarantor does not accept the appraisal value, then the non-accepting party may retain a second qualified professional appraiser, of its choice, to be paid for by the Guarantor. The second appraiser shall be given a copy of the first appraisal, and check said appraisal for accuracy, and then shall submit their appraisal for consideration by the parties. If the second appraiser shall be within 5 percent of the first appraiser, then the higher appraisal shall be the agreed upon ASKING PRICE. If the Guarantor or the Property Owner is unsatisfied with the value, then the party who is still unsatisfied with the ASKING PRICE, shall hire at its own expense, an MAI certified Appraiser to establish a value. In the event that the other party shall hire his or her own MAI certified Appraiser to establish a value, then the ASKING PRICE shall be the average between the two (2) Appraisals and the MAI certified appraisal. There shall be NO APPEAL from the value determined by the MAI Appraisals. There shall be no requirement for Discovery or Interrogatories by either party. There shall be no requirement for cost receipts by the Property Owner. The Property Owner shall give open inspection of the property within reasonable time periods, for any appraiser to inspect the property. Any request for inspections must be complied within 72 hours of the requested time period.

TIME LIMITS: The first and second appraisals shall be completed within 30 days of the property owner notifying the Guarantor of their intent to list their property for sale. The MAI appraisal must be completed within 75 days of the property owner notifying the Guarantor or Guarantor notifying the Property Owner of their dissatisfaction with the first two appraisals. The second appraisal can be eliminated if a MAI Appraiser is used for the second appraisal, at which time the ASKING PRICE shall be the average between the first appraisal and the MAI Appraisal.

6. LISTING WITH BROKER: Property Owners shall utilize the services of a New York State certified Real Estate Broker, with membership with the St. Lawrence County and Jefferson County Board of Realtors with access to the Multiple Listing Service for the St. Lawrence and Jefferson Counties. The selection of the Realtor shall be at the sole discretion of the Property Owner for the first SIX (6) months. If the property has not sold within that period, then the Guarantor shall have the option of selecting a Realtor for the balance of the time period, which shall be for THREE (3) MONTHS. The total number of days that a property shall be listed for prior to the Guarantor being obligated under this Property Value Guarantee Agreement shall be **270 DAYS**. The Realtor shall be paid the normal rate as established within St. Lawrence County and the commission rate shall not exceed 6% for residential properties. All commissions shall be paid by the Property Owner.

7. TERM OF LISTING: The Property Owner shall list the Property, at the ASKING PRICE, as determined in Paragraphs 4 or 5, or at a higher value.

During the listing term, the Property Owners shall accept any offer of purchase for the ASKING PRICE, or any offer of purchase otherwise acceptable to the Guarantor. If the accepted price includes any concessions to the Buyer, i.e.: Payment of up to \$8,000.00 for Buyers costs for securing a mortgage or closing costs, then those costs shall be added to the ASKING PRICE and shall be reimbursed by the then Guarantor. (In this current market, it is a common procedure to add the Buyers costs to a contract so as to allow the Buyer to purchase the property with no money down.) If the \$8,000 is added to the ASKING PRICE, then the Guarantor shall not be responsible for the Buyers costs.

Said listing contract shall include: (a) that the Broker shall list the Property in the multiple listing exchange; (b) that the property will be so listed until the occurrence of either the (i) sale of the Property or (ii) expiration of a period of 270 days; (c) that the Broker shall not be entitled to any commission after the expiration of the listing contract, unless a Buyer that the Broker showed the property to, shall enter into a Contract with the Property Owner, within 180 days after the expiration of said listing.

The Property Owner shall cooperate with the Broker in obtaining a purchase offer pursuant to the terms set forth in the listing agreement and shall make, in good faith, all reasonable efforts necessary to conclude a sale pursuant to the said terms. **UNDER NO CIRCUMSTANCES SHALL THERE BE ANY VERBAL COMMUNICATION BETWEEN THE PROPERTY OWNER AND THE POTENTIAL PURCHASER.** There will be no anti-wind signs on the property listed for sale. Any requests for information regarding Wind shall be referred to the Guarantor for release of information.

8. OFFERS TO PURCHASE: If the Property Owner accepts any offer of Purchase for the ASKING PRICE then in that event, Guarantor will have no financial liability to the Property Owner. No Furniture or items at the property shall be included in the Sales Contract other than appliances, drapes, and items attached to the dwelling. The Guarantor may be notified by telephone of any and all offers so that they will be able to make counter offers as listed in paragraph 9 below. The Guarantor shall also be notified in writing within 48 hours confirming any telephone communications with the Realtor or Property Owner.

9. GUARANTOR'S CONSENT TO PURCHASE: Guarantor shall have the right to make counter offers on any offers of purchase which are below the ASKING PRICE, said counter offer being made within 48 hours of the submitted original offer or counter offers. In the event the purchaser accepts any such counter offer, or counter offers, made or requested by the Guarantor, or in the event the Guarantor otherwise consents to the sale of the Property below the ASKING PRICE, the Guarantor shall pay to the Property Owners, at closing, the difference between the ASKING PRICE and the sales price so established.

10. SALE WITH OR WITHOUT GUARANTOR'S CONSENT: If the Property Owners have not received an offer of purchase at the ASKING

PRICE within 270 days of listing the property for sale, or the Guarantor has not consented to the sale of the Property below the ASKING PRICE, the Property Owner may sell the Property at the highest offer of Purchase still pending or at the next good faith bona fide offer to purchase. The Property Owner shall notify the Guarantor, in writing of its intention to accept such offer. The Guarantor has 72 hours to notify the Property Owner of their intent to either accept the terms of the offer or to Purchase the Property at the ASKING PRICE. If the Guarantor elects to purchase the property, then said closing must take place within 30 days with the presentment of a Warranty Deed with lien covenant. If there should be a title defect, then the Guarantor shall give the Property Owner sufficient time to cure the defect or to Purchase Title Insurance, with said Title Insurance cost paid for by the Property Owner.

11. PROPERTY OWNER'S CLAIM: If the property has sold for less than the ASKING PRICE, as determined herein, it shall make a claim to the Guarantor, requesting payment for the difference between the ASKING PRICE and the SALES PRICE, after deducting Real Estate Commissions and normal costs associated with sale of real estate in St. Lawrence County. If the Guarantor does not make payment within 10 days of the sale, then the PROPERTY OWNER is shall be paid interest on said monies owed by the Guarantor at the rate of ONE (1) PERCENT PER MONTH, and shall be liable to the Property Owner for all costs incurred in collection, plus normal Attorney Fees incurred by the Property Owner. There is **NO APPEAL FROM THIS PROPERTY VALUE GUARANTEE AGREEMENT BY EITHER PARTY.**

12. GOOD NEIGHBOR AGREEMENT: If any Property Owner should enter into a so-called Good Neighbor Agreement, wherein they allow the placement of a Wind Turbine closer than 2 miles and/or if they should receive any compensation from the Wind Turbine Company, then they shall be excluded from this PROPERTY VALUE GUARANTEE PROGRAM unless the Guarantor waives this provision and allows the neighbor to enter into this Guarantee binding the Guarantor.

13. EXCLUSIVE OPTION OF ANY RESIDENTIAL PROPERTY OWNER LIVING WITHIN ANY CLOSE PROXIMITY TO A WIND TURBINE: If any Property Owner lives within TWO (2) MILES of any Wind Turbine Leaseholder or under consideration for a Wind Turbine Lease, now or in the future, and if that Property Owner desires to move from the Town of Hammond because a Wind Turbine is to be located within TWO (2) miles of his or her residence, measured from the corner of the Property Owner's residence to the wind turbine measured from the base of the turbine, then that Property Owner has a once in a lifetime right to be reimbursed for his real property and 5 acres surrounding that residence, at the then Appraised Value under the below described procedures, HOWEVER, this option cannot be used in conjunction with any future Guarantee of the Sale of a Residence:

a. The Property Owner must notify the Guarantor within 90 days of the issuance of a permit for an Industrial Wind Farm, that they do not wish to live in the Town of Hammond with the existence of a Wind Turbine

located on an existing leaseholder's property within a TWO MILE RADIUS of their dwelling.

b. If the Guarantor should at any time later, decide to enter into any additional leases with neighboring landowners and to place a Wind Turbine closer than TWO (2) MILES to any Property Owners Residence, then this Property Owner shall have the same absolute right to claim under this Paragraph 13, regardless of whether they gave a previous notice to the Guarantor. The Guarantor is required to serve notice by Certified Mail to all Property Owners residing within a TWO (2) MILE RADIUS of any new Potential Leaseholders. The Property Owner must give notice by Certified Mail to the Guarantor within 90 days of receipt of their Certified Letter, stating that they desired to exercise this Exclusive Option.

c. The Property Owner must have been the legal owner of the real property at the time that the Town of Hammond issued a permit to an Industrial Wind Turbine Developer.

d. Prior to this **EXCLUSIVE OPTION TAKING PLACE**, the Property Owner and the Guarantor shall enter into 30 day cooling off period wherein the property owner is obligated to meet with the Guarantor, to discuss the entering into a Good Neighbor Program wherein the property owner would receive a monthly/annual payment and/or share in the revenue that the landowner with the industrial wind turbine would receive, making the adjoining landowner a recipient of the financial rewards of the industrial wind turbine program. If an agreement cannot be reached within this 30 day period, then the Property Owner and the Guarantor shall proceed to sub-paragraph e below.

e. The Guarantor shall then consider the relocating of the proposed Wind Turbine so as not to be within a TWO (2) mile radius of the Property Owners residence. If the Turbine is moved so that it is not within a TWO (2) mile radius of the Property Owners Residence, then the Property Owner would no longer qualify under the Residential Property Value Guarantee Agreement. The Guarantor shall have 30 days in which to make this decision.

f. If the Property Owner and the Guarantor are still unable to reach a mutually satisfactory resolution within 60 days of the Property Owner serving a Certified Letter to the Guarantor, then the Property Owner, at his sole expense, shall order ONE (1) MAI Appraisal from a Qualified Appraisal Company certified to prepare Trial Ready Appraisals within the State of New York to be completed within 90 days after the Property Owner and the Guarantor are unable to reach a resolution. The Value determined by the Appraisal Company shall be the cost replacement value after taking into consideration any depreciation under standard guidelines for Appraisals.

g. If the Guarantor should not agree with the value, then the Guarantor has the right to order a second MAI Appraisal to be completed within 45 days of receiving the Property Owner's MAI Appraisal. These 2 Appraisals are to be added together, to be divided by 2, to determine an average value. If the Property Owner is not satisfied with the Guarantor's Appraisal, then he has the right to order a Third MAI Appraisal, at which time all THREE (3) Appraisals are to be added together, divided by 3, for an average value. The cost of the third appraisal shall be shared between the Property Owner and the Guarantor. This is the final value, and shall be the controlling value. There is no Appeal from this value. The Property Owner is to then present the Guarantor with a Warranty Deed with Lien Covenant, 40-Year Abstract and 10-year Tax Search. If there should be any defect in Title, then the Property Owner has the option of curing the defect under normal New York State Bar Association standards or to provide Title Insurance against said defect. A closing date is to be set 30 days after the title is cured. The Property Owner is to vacate the property at closing and to leave the property in a broom clean condition. The Payment shall be made in Certified Funds at closing. If the Guarantor refuses to make this payment, then the Property Owner is entitled to interest at the rate of ONE (1) PERCENT per month from the date that the closing is scheduled, and to all reasonable Attorney Fees to enforce collection. There is **NO APPEAL FROM THIS PROVISION BY EITHER THE PROPERTY OWNER OR THE GUARANTOR.**

14. ASSIGNMENT OR TRANSFER: Neither this Agreement nor the rights under it may be assigned, conveyed, or otherwise transferred by the Property Owner. The Guarantee given by the Guarantor to guarantee the Property Value and to purchase the Property, is personal, and does not run with the land, however, said Agreement shall inure to the benefit of the Property Owners, their personal representatives, trustees, guardians, custodians or their heirs, but in all events, shall terminate after an arms length sale to a 3rd party. The Guarantee given by the Guarantor, shall continue and obligate any future transferee, assignee, purchaser or successor in interest or Bankruptcy.

15. APPLICATION OF LAW DISPUTES: This Agreement shall be construed consistent with the Law of New York. Disputes concerning the application or terms of this Agreement, include enforceability and collection, shall be subject to the Supreme Court of the State of New York.

Signed this ____ day of _____, 2011, between:

GUARANTOR:

By: _____

PROPERTY OWNER:

Property Address:

STATE OF NEW YORK)
COUNTY OF ST. LAWRENCE) SS:

On this _____ day of _____, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ST. LAWRENCE) SS

On this _____ day of _____, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, husband and wife, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledge to me that they executed the same in their capacity, and that their signatures on this instrument, the individual or individuals, or the persons upon behalf of which the individuals acted, executed the instrument.

Notary Public

- 2-3) Referring to the response of Jon Henslin to Applicant Data Request 1-8, you requested the following mitigation measure: "Provide two-mile radius safety zone for all bald eagle nests, including the nest identified at the PUC public hearing held in Clear Lake on this project."
- a) Please explain the basis for the two-mile radius safety zone for all bald eagle nests, and provide documentation to support the recommendation.

Note: In my earlier response I should have used buffer instead of safety zone).

Initially the basis for the 2-mile buffer was Figure A-3 found in the Application. This figure entitled "Environmental Constraints Map" identified bald eagle nests and

provided a 2-mile buffer. A buffer by definition is an area of land designated for environmental protection. See part b) for information related to this recommendation.

- b) In the Applicant Supplemental Testimony of Andrea Giampoli, Ms. Giampoli stated Deuel Harvest will voluntarily apply an 800-meter (2,625 feet) setback from the nest to the nearest turbine based on the South Dakota Bald Eagle Management Plan. Do you believe this setback is unreasonable? If yes, please explain and provide support.

I believe it is unreasonable.

Invernergy's application included an Environmental Constraint Map (Figure A-3). The map showed two bald eagle nests.

At the January 24th 2019 PUC hearing an additional bald eagle nest was identified north of Lake Alice (Garry Ehlebracht's presentation of article prepared by Jon Henslin). The additional nest was documented in SDGFP's Bald Eagle Nest Survey Forms for 2016, 2017 and 2018. Note: There are only three active bald eagle nests identified in Deuel County.

Ms Giampoli's Supplemental Testimony (February 24th, 2019) provided a substantial change to the Environmental Constraint Map (Figure A-3). The 2-mile bald eagle buffer was removed. It was explained that the 2-mile buffer was not a buffer but an illustration to show "the distance between the nests known at the time and the Project Area". Using a labeled "buffer zone" in such a manner is deceiving or at least confusing to the public.

The 2-mile buffer was removed and a 2,625 ft. "setback" was added for the bald eagle nest north of Lake Alice. Note: If you compare a 2-mile buffer with a 2,625 ft. buffer/setback, it will show that the 2,625 ft. buffer/setback contains only 6.2 % of the area contained in the 2-mile buffer.

The Supplemental Testimony discussed recommended disturbance setbacks. The Supplemental Testimony stated: "The National Bald Eagle Management Guidelines (USFWS – 2007) recommend that human activities visible from bald eagle nests be kept at least 201 meters (660 feet) away to minimize disturbance to nesting eagles. That recommendation is found under the section titled "Temporary Impacts", such as constructing a 1 or more story building. They apply only to the actual construction event. The recommendations are irrelevant to large wind turbines, with motion, noise and flashing lights. However, the guidelines do state: "To avoid collisions, site wind turbines, communication towers, and high voltage transmission power lines away from nests, foraging areas, and communal roost sites."

The Supplemental Testimony also identified the South Dakota Bald Eagle Management Plan. The plan recommended that a ½-mile mile buffer zone around active bald eagle nests during the nesting season on SDGFP managed land (February-August). The Buffers and Use Restrictions in this document were for SDGFP managed lands and are seasonal in nature.

I was unable to locate information that recommended acceptable turbine setbacks distances from bald eagle nests, forage areas and communal roost sites. This may be due to a lack of research or the numerous variables (size and type of turbine, terrain, surrounding land use etc.).

Without further information the guidance is: “To avoid collisions, site wind turbines, communication towers, and high voltage transmission power lines away from nests, foraging areas, and communal roost sites.”

The problem:

A bald eagle nest has been identified north of Lake Alice near the proposed project. To further identify the problem, there are approximately 18 turbines within a 2-mile radius of the nest. The foraging area associated with this nest is unknown.

The solution:

The solution is proper siting of the wind turbines.

Applicant recommends minor adjustment to two turbines to provide 2,625 ft. setback from nest. This still results in 18 turbines within a 2-mile radius of the nest. The 2,625 ft setback has already been addressed.

Other options:

Provide a 1-mile buffer.

If the applicant would relocate 5 turbines on this project a 1-mile buffer would be provided for the nest. Considering that the applicant will have to remove about three turbines in order to not exceed their Deuel County Special Exception Permit, only two turbines would have to be relocated. The removal/relocation of five sites will also reduce a line of turbines that extend across the north end of Lake Alice. The removal of those 5 turbines will improve the north migration flight path to the lake.

Provide a 1 ½ -mile buffer.

Relocating another 4 turbines would provide a 1 ½- mile buffer and eliminate the line of turbines, that extended across the north end of Lake Alice (refer to the 1-mile buffer discussion). In their application for a special exception permit, Invenergy provided Deuel County three different layouts that showed possible turbine locations. Layout 1 (Exhibit 1) shows turbine locations, in the northeast corner of the project footprint, where the removed turbines could be relocated. In fact, using those locations and some other minor adjustment the 2-mile eagle nest buffer could be provided a 2-mile (refer to the 1 1/2-mile buffer discussion).

Conclusion:

There are only 3 documented active eagle nests in Deuel County.

The applicant was made aware of the possible presence of this nest over a year ago and failed to adequately investigate.

There are numerous options for moving turbine locations. Since these options do exist the applicant should strive to utilize these options to increase the buffer provided to the eagle nest and foraging area. The slight adjustment of two turbines is unacceptable solution to this situation.

My recommendation is still that the applicant should provide a 2-mile buffer around the eagle nests. I also recommend that the PUC staff discuss these recommendations with SDGFP.

Layout 1

Possible area to relocate turbines

