

## ESCROW AGREEMENT

This Escrow Agreement (“**Agreement**”) is entered into and effective as of September [ ], 2020 (the “**Effective Date**”) by and among Deuel Harvest Wind Energy LLC, a Delaware limited liability company (“**Deuel Harvest**”), and U.S. Bank National Association, a national banking association (“**Escrow Agent**”).

### RECITALS

WHEREAS, Deuel Harvest intends to construct the Deuel Harvest North Wind Farm, which consists of approximately three hundred and ten (310.1) megawatts, to be located in Deuel County, South Dakota (the “**Project**”).

WHEREAS, pursuant to Condition Number 36 of the Final Decision and Order Granting Permit to Construct Facilities; Notice of Entry, dated May 30, 2019 (the “**Order**”), of the South Dakota Public Utilities Commission (the “**Commission**”), Deuel Harvest is subject to certain obligations to decommission the Project (the “**Decommissioning Obligations**”).

WHEREAS, Condition Number 36 of the Order requires Deuel Harvest to file a plan with the Commission for Commission approval providing for establishment of a decommissioning escrow account (the “**Escrow Account**”) into which Deuel Harvest will deliver funds (the “**Escrow Funds**”) to meet Deuel Harvest’s Decommissioning Obligations.

WHEREAS, pursuant to Condition Number 36, on [insert date], Deuel Harvest filed a plan with the Commission, including a form of escrow agreement, which included a proposed structure and proposed terms for the Escrow Account (the “**Decommissioning Escrow Account Plan and Agreement**”).

WHEREAS, on [insert date], the Commission issued an [Order Approving Escrow Plan and Agreement] (“**Order Approving Escrow Plan and Agreement**”), in which the Commission approved Deuel Harvest’s Decommissioning Escrow Account Plan and Agreement.

WHEREAS, in accordance with the Order, the Decommissioning Escrow Account Plan and Agreement, and the Order Approving Escrow Plan and Agreement, Deuel Harvest desires to enter into this Agreement to define the terms and conditions pursuant to which the Escrow Funds will be deposited in, held in, and disbursed from the Escrow Account.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

### AGREEMENT

1. Appointment of Escrow Agent. On the terms, and subject to the conditions, set forth in this Agreement, Deuel Harvest hereby appoints Escrow Agent as its agent and custodian to hold, invest and disburse the Escrow Funds and all interest and investment earnings and revenue thereon (the “**Escrow Revenue**”) in accordance with this Agreement, and the

Escrow Agent hereby accepts such appointment and agrees to assume and perform the duties of Escrow Agent pursuant to the terms and conditions of this Agreement.

2. Delivery of Funds to Escrow Agent. Deuel Harvest shall deliver to Escrow Agent and the Escrow Agent agrees to accept delivery of the following deposits:
  - a. Commencing no later than the commercial operation date of the Project (the “**Commercial Operation Date**”), an amount equal to Five Thousand Dollars (\$5,000) per wind turbine that is installed and used in the Project (each, an “**Installed Turbine**”).
  - b. Annually for a period of thirty (30) consecutive years thereafter, and not more than ninety (90) days following each anniversary of the Commercial Operation Date, an amount equal to Five Thousand dollars (\$5,000) per Installed Turbine (the “**Annual Escrow Funding Rate**”); *provided, however*, that if, pursuant to Condition No. 36 of the Order, the Commission issues an order changing the Annual Escrow Funding Rate (a “**Rate Revision Order**”), the Escrow Agent shall accept delivery from Deuel Harvest of an amount equal to the revised rate set forth in the Rate Revision Order for the remainder of the thirty (30) year period as such amount is confirmed to the Escrow Agent by Deuel Harvest in writing.
3. Investment. Escrow Agent shall hold and invest the Escrow Funds and all Escrow Revenue only in accordance with the terms of this Agreement. Escrow Agent shall invest and reinvest the Escrow Funds and all Escrow Revenue in the U.S. Bank National Association Money Market Deposit Account identified in Schedule A. All of the Escrow Funds and all Escrow Revenue shall be held by, or registered in the name of, Escrow Agent or its nominee. Without limiting Escrow Agent’s obligations in this Agreement, Deuel Harvest recognizes and agrees that Escrow Agent will not provide supervision, recommendations or advice relating to either the investment of Escrow Funds or the purchase or disposition of any investment. All Escrow Revenue earned on the Escrow Funds shall be taxable to Deuel Harvest.

The Escrow Agent may elect, but shall not be obligated, to credit the Escrow Account with funds representing income or principal payments due on, or sales proceeds due in respect of, assets in the Escrow Account, or to credit to the Escrow Account assets intended to be purchased with such funds, in each case before actually receiving the requisite funds from the payment source, or to otherwise advance funds for Escrow Account transactions. Notwithstanding anything else in this Agreement, (i) any such crediting of funds or assets shall be provisional in nature, and the Escrow Agent shall be authorized to reverse or offset any such transactions or advances of funds in the event that it does not receive good funds with respect thereto, and (ii) nothing in this Agreement shall constitute a waiver of any of U.S. Bank National Association’s rights as a securities intermediary under Uniform Commercial Code §9-206. The Escrow Agent may also set-off and deduct funds in the Escrow Account with respect to checks or other deposits that have been credited to the Escrow Account but are subsequently returned unpaid or reversed.

4. Disbursements of Escrow Funds and Escrow Revenue by Escrow Agent. Escrow Agent shall hold the Escrow Funds and all Escrow Revenue until instructed or otherwise required to disburse the same or any portion thereof in accordance with Section 5 of this Agreement.
5. Disbursements.
  - a. Escrow Revenue. To the extent any Escrow Revenue accrues during the term of this Agreement, such Escrow Revenue shall be added to the Escrow Funds, credited to the Escrow Account, and invested as set forth in Section 3 hereof until released pursuant this Section 5.
  - b. Escrow Claims by the Commission for Deuel Harvest Decommissioning Expenses or Payment of Taxes on Escrow Revenue. Upon the issuance of an order by the Commission that Escrow Funds shall be disbursed to Deuel Harvest in connection with: (i) Deuel Harvest's partial or full completion of its Decommissioning Obligations or (ii) Deuel Harvest's payment of taxes on Escrow Revenue, pursuant to Commission order, the Commission shall provide the Escrow Agent with written instructions substantially in the form of Exhibit A hereto (the "**Deuel Harvest Claim Certificate**") setting forth the precise amounts of Escrow Funds to be released to Deuel Harvest. Escrow Agent shall, in accordance with the Deuel Harvest Claim Certificate, pay to the Deuel Harvest account set forth in Exhibit B hereto, the amount of Escrow Funds set forth in the Deuel Harvest Claim Certificate by the third business day after the Escrow Agent's receipt of the Deuel Harvest Claim Certificate.
  - c. Escrow Claims by the Commission Due to Deuel Harvest Default. Upon the issuance of an order by the Commission that Escrow Funds shall be disbursed to a landowner who owns property upon which a Project facility subject to applicable state and local decommissioning laws is located in connection with such landowner's incurrence of decommissioning costs resulting from Deuel Harvest's default on its Decommissioning Obligations, the Commission shall provide the Escrow Agent with written instructions substantially in the form of Exhibit C hereto (the "**Landowner Claim Certificate**") setting forth the precise amounts of Escrow Funds to be released to the landowner or landowners. Escrow Agent shall, in accordance with the Landowner Claim Certificate, pay to the account set forth in the Landowner Claim Certificate, the amount of Escrow Funds set forth in the Landowner Claim Certificate by the tenth business day after the Escrow Agent's receipt of the Landowner Claim Certificate.
  - d. Release at End of Term; Substitution of Security. Upon either: (i) the full and final satisfaction of all of Deuel Harvest's Decommissioning Obligations or (ii) Deuel Harvest's provision of a letter of credit, bond or other security in form and substance satisfactory to the Commission to secure Deuel Harvest's Decommissioning Obligations prior to the full and final satisfaction thereof, each as reflected in an order issued by the Commission, and payment to Escrow Agent of all amounts owed to Escrow Agent by Deuel Harvest under the terms of this Agreement, any Escrow Funds and Escrow Revenue remaining in the Escrow

Account shall be released to Deuel Harvest upon written instruction by the Commission substantially in the form of Exhibit D hereto (the “**End of Term Certificate**”) by the third business day after the later of the following dates: (y) the date on which the Escrow Agent receives the End of Term Certificate or (z) the date on which payment to Escrow Agent of all amounts owed to Escrow Agent by Deuel Harvest under the terms of this Agreement has occurred.

- e. Regulations of the Comptroller of the Currency. Deuel Harvest acknowledges that regulations of the Comptroller of the Currency grant Deuel Harvest the right to receive brokerage confirmations of any security transactions as they occur. Deuel Harvest specifically waives such notifications to the extent permitted by law, and Deuel Harvest will receive monthly cash transaction statements that will detail all investment transactions.

6. Unencumbered Funds. Deuel Harvest warrants that:

- a. Deuel Harvest will not use the Escrow Funds as security for any transaction, nor will Deuel Harvest pledge the Escrow Funds or list the Escrow Account as an asset on any application to obtain credit or to obtain real or personal property;
- b. Any rights that Deuel Harvest or any other party has to the Escrow Funds and any associated Escrow Revenue are contingent rights and receipt of any Escrow Funds or Escrow Revenue is subject to the satisfaction or waiver of such contingencies; and
- c. in the event of a bankruptcy filing or other insolvency proceeding commenced by or against Deuel Harvest prior to the satisfaction or waiver of such contingencies, the Escrow Funds will not constitute property of the bankruptcy estate or otherwise be reachable by Deuel Harvest’s creditors.

7. Rights and Obligations of Escrow Agent.

a. Duties.

- i. Escrow Agent hereby accepts its obligations under this Agreement and represents that it has the legal power and authority to enter into this Agreement and to perform its obligations hereunder. Escrow Agent agrees that all Escrow Funds and any Escrow Revenue held by Escrow Agent under this Agreement shall be segregated from all other property held by Escrow Agent and shall be identified as being held in connection with this Agreement. Segregation may be accomplished by appropriate identification on the books and records of Escrow Agent. Escrow Agent's documents and records with respect to the transactions contemplated by this Agreement shall be available for examination by authorized representatives of Deuel Harvest and/or the Commission. Annual account statements summarizing any activity with respect to the Escrow Funds (including the amount of Escrow Revenue) and detailing the balance of the Escrow Account shall be

provided to Deuel Harvest and the Commission<sup>1</sup> not more than 90 days following each calendar year. In addition, the Escrow Agent will provide to Deuel Harvest such reports, in such detail, as Deuel Harvest reasonably deems necessary to enable Deuel Harvest to satisfy all applicable regulatory and accounting requirements. On request, the Escrow Agent will provide confirmation to Deuel Harvest of the deposit of money in the Escrow Account.

- ii. This Agreement may be terminated only as described herein or by an order of the Commission.
  
- b. No Other Duties. Without limiting Escrow Agent's obligations set forth in his agreement, Escrow Agent shall not have any duties or responsibilities under this Agreement except as expressly set forth herein. Escrow Agent has no fiduciary or discretionary duties of any kind. Escrow Agent's permissive rights will not be construed as duties. Escrow Agent has no liability under and no duty to inquire as to the provisions of the Order, the Decommissioning Escrow Account Plan and Agreement, and the Order Approving Escrow Plan and Agreement or any document other than this Agreement, including without limitation any other agreement between Deuel Harvest or any other persons even though reference thereto may be made herein and whether or not a copy of such document has been provided to Escrow Agent.
  
- c. Escrow Fee. Escrow Agent shall be entitled to receive solely from Deuel Harvest: (i) compensation for its regular services as Escrow Agent under this Agreement; and (ii) reimbursement for all documented, reasonable and necessary out-of-pocket expenses incurred by Escrow Agent in fulfilling its obligations under this Agreement, including, without limitation, reasonable fees and disbursements of legal counsel and in accordance with Schedule B. Such compensation and reimbursement obligations shall be paid from time to time by Deuel Harvest within 30 days following receipt of invoice. In no circumstance will the Commission have any obligation to pay any amount to Escrow Agent arising out of or under this Agreement.<sup>2</sup>
  
- d. Resignation of Escrow Agent. Escrow Agent may at any time resign by giving sixty (60) days advance written notice of such resignation to the Commission and Deuel Harvest and, after the date of such resignation notice, notwithstanding any other provision of this Agreement, Escrow Agent's sole obligation will be to hold the Escrow Funds and Escrow Revenue pending appointment of a successor Escrow Agent. Upon such resignation, Escrow Agent shall not be discharged from its obligations under this Agreement until (i) a successor escrow agent, as approved in

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<sup>1</sup> Note: Added requirement to send to Commission per Condition 36d.

<sup>2</sup> Note: Deleted first priority lien in Escrow Funds and Escrow Revenue. PUC and PUC Staff have been very concerned about persevering the escrow funds from third party creditors which resulted in Condition 36h. Deuel Harvest does not believe the PUC or PUC Staff would find this acceptable.

writing by each of Deuel Harvest and the Commission, shall have been appointed, (ii) the successor escrow agent shall have executed and delivered an Escrow Agreement in substantially the form of this Agreement or a form acceptable to Deuel Harvest and the successor escrow agent, and approved by the Commission and (iii) all Escrow Funds and Escrow Revenue then held by Escrow Agent under this Agreement shall have been delivered to such successor escrow agent.<sup>3</sup>

- e. Liability of Escrow Agent. Escrow Agent shall not be liable for any action taken in accordance and compliant with the terms of this Agreement, including, without limitation, any disbursement of the Escrow Funds in accordance with Section 5, as long as the action was taken in good faith. Escrow Agent shall not be liable for any other act or failure to act under or in connection with this Agreement, except for its own gross negligence or willful misconduct. Escrow Agent may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent believes to be valid and to have been signed or presented by a person authorized to do so and shall have no responsibility or duty to make inquiry as to or to determine the truth, accuracy or validity thereof (or any signature appearing thereon), or of the authority of the person signing or presenting the same. In no event will Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties of any kind (including, but not limited to lost profits), even if Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. Escrow Agent will not be responsible for delays or failures in performance resulting from acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, attacks or intrusions, power failures, earthquakes or any other circumstance beyond its control.
- f. Indemnity. Deuel Harvest shall indemnify and hold harmless Escrow Agent and each director, officer, employee and affiliate of Escrow Agent (each, an “**Indemnified Party**”) upon demand against any and all claims, actions and proceedings (whether asserted or commenced by Deuel Harvest, the Commission or any other person or entity and whether or not valid), losses, damages, liabilities, penalties, costs and expenses of any kind or nature (including without limitation reasonable attorneys’ fees, costs and expenses) (collectively, “**Losses**”) arising from this Agreement or Escrow Agent’s performance of duties or enforcement of rights hereunder, except to the extent such Losses are finally determined by a court of competent jurisdiction, which determination is not subject to appeal, to have been directly caused solely by the gross negligence or willful misconduct of such Indemnified Party in connection with Escrow Agent’s material breach of this Agreement.
- g. Reliance on Documentary Evidence. Escrow Agent shall be entitled to rely on any written notice, certificate, affidavit, letter, document or other communication that is believed by Escrow Agent in good faith to be genuine and to have been signed

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<sup>3</sup> Note: The removal of the standard of care provision may prompt questions from PUC Staff.

or sent by the proper party or parties, and on statements contained therein, without further inquiry or investigation. Notwithstanding anything to the contrary in this Agreement, Escrow Agent may act on any written instructions given either solely by the Commission or jointly by the Commission and Deuel Harvest.

- h. Interpleader. If the Commission and/or Deuel Harvest shall disagree about the interpretation of this Agreement, or about the rights and obligations or the propriety of any act contemplated by Escrow Agent hereunder, or if any other person or entity claims an interest in the Escrow Funds or Escrow Revenue, then Escrow Agent may, in its discretion, file an action of interpleader at Deuel Harvest's cost in the appropriate court of competent jurisdiction and deposit all of the applicable Escrow Funds with such court.
8. Term and Termination of Agreement. This Agreement shall continue through the date on which the Escrow Funds and Escrow Revenue have been fully disbursed, or, if earlier, until otherwise terminated pursuant to the terms of this Agreement.
9. Taxes. Escrow Agent shall have no responsibility for the tax consequences of this Agreement and Deuel Harvest shall consult with independent counsel concerning any and all tax matters.<sup>4</sup> Deuel Harvest shall prepare and file all required tax filings with the IRS and any other applicable taxing authority; provided that the parties further agree that (a) Deuel Harvest shall accurately provide the Escrow Agent with all information requested by the Escrow Agent in connection with the preparation of all applicable Form 1099 and Form 1042-S documents with respect to all distributions and (b) except as otherwise agreed by Escrow Agent in writing, Escrow Agent has no tax reporting or withholding obligation except to the IRS with respect to IRS Form 1099-B reporting on payments of gross proceeds under Internal Revenue Code Section 6045.
10. Notices. All notices and other communications (including all certificates delivered pursuant to Section 5) (each, a "**Notice**") under this Agreement by the Commission or Deuel Harvest to Escrow Agent (Escrow Agent, together with the Commission and Deuel Harvest, the "**Notice Parties**" and each a "**Notice Party**") shall be delivered contemporaneously to the other Notice Parties in the same manner as provided to Escrow Agent. All Notices shall be given in writing and shall be personally delivered, by email (in a pdf attached thereto) transmission, or sent to the applicable Notice Parties at their respective addresses indicated in this Section 10 by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service, as follows:

If to Deuel Harvest, to:

Deuel Harvest Wind Energy LLC  
c/o Invenenergy LLC  
One South Wacker Drive, Suite 1800

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<sup>4</sup> Note: Removed obligation of Deuel Harvest to provide W-9 and W-8s for payees. Revised Exhibit C to include W-8 or W-9 for landowner claims.

Chicago, IL 60606  
Attention: Deuel Harvest Asset Manager  
Phone: 312-224-1400

If to Commission, to:

Executive Director  
Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501

If to Escrow Agent, to:

U.S. Bank National Association, as Escrow Agent  
ATTN: Leye Fadahunsi  
Global Corporate Trust  
60 Livingston Avenue, EP-MN-WS3C  
Saint Paul, MN 55107  
Telephone: 651-466-6305  
Facsimile: 651-466-7429  
E-mail: olaleye.fadahunsi@usbank.com

and to:

U.S. Bank National Association  
ATTN: Lien Nguyen  
Trust Finance Management  
60 Livingston Avenue, EP-MN-WS3T  
Saint Paul, MN 55107  
Telephone: 651-466-6103  
Facsimile: 651-312-2599  
E-mail: lien.nguyen2@usbank.com

or to such other person or address as any Notice Party shall have specified by notice in writing to the other Notice Parties. Escrow Agent shall not have any duty to confirm that the person sending any Notice by electronic transmission (including by e-mail, facsimile transmission, web portal or other electronic methods) is, in fact, a person authorized to do so. Electronic signatures believed by Escrow Agent to comply with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to Escrow Agent) shall be deemed original signatures for all purposes. Deuel Harvest assumes all risks arising out of the use of electronic signatures and electronic methods to send Notices to Escrow Agent, including without limitation the risk of Escrow Agent acting on an unauthorized Notice, and the risk of interception or misuse by third parties. Notwithstanding the foregoing, Escrow Agent may in any instance and in its sole discretion require that an original document bearing a manual signature be delivered to



Escrow Agent in lieu of, or in addition to, any such electronic Notice. If personally delivered, such Notice shall be deemed delivered upon actual receipt; if sent by telecopier, facsimile, or email transmission, such Notice shall be deemed delivered the day of the transmission, or if the transmission is not made on a business day, the first business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this Section 10, such Notice shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this Section 10, such Notice shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Escrow Agent agrees that the delivery by Deuel Harvest of a Notice confirmed by Deuel Harvest to be from the Commission pursuant to one of the methods set forth in this Section 10 shall be deemed to be a Notice from the Commission.

11. Representations and Warranties. Deuel Harvest makes the following representations and warranties to Escrow Agent:

- a. it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and this Agreement has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms; and
- b. each of the applicable persons designated on Schedule C attached hereto have been duly appointed to act as authorized representatives hereunder and individually have full power and authority to execute and deliver any direction, to amend, modify or waive any provision of this Escrow Agreement and to take any and all other actions as authorized representatives under this Escrow Agreement, all without further consent or direction from, or notice to, it or any other party, provided that any change in designation of such authorized representatives shall be provided by written notice delivered to each party to this Escrow Agreement.

12. Identifying Information. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, Escrow Agent requires documentation to verify its formation and existence as a legal entity. Escrow Agent may ask to see financial statements, licenses, and identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. A portion of the identifying information set forth herein is being requested by Escrow Agent in connection with the USA Patriot Act, Pub.L.107-56 (the "Act"), and Deuel Harvest agrees to provide any additional information requested by the Escrow Agent in connection with the Act or any other legislation or regulation to which Escrow Agent is subject, in a timely manner.

13. Miscellaneous.

- a. Captions. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be all

inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.

- b. Third-Party Beneficiary. Except with respect to the Indemnified Party and the Commission as provided below, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or other third party, so as to constitute any such person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. Notwithstanding the foregoing, the Commission is a third-party beneficiary and may enforce this Agreement according to its terms.
- c. Integration; Amendment. This Agreement constitutes the entire agreement among the parties relating to the transactions described herein and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding on the parties, and no party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the parties hereto and has been approved in writing by the Commission.
- d. Assignment. Except as expressly provided herein, neither Deuel Harvest nor the Escrow Agent shall assign or transfer this Agreement without the prior written consent of the other party, which written consent shall not be unreasonably withheld, and the prior written approval of the Commission, provided that if the Escrow Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including the escrow contemplated by this Escrow Agreement) to another corporation, the successor or transferee corporation without any further act shall be the successor Escrow Agent.
- e. Governing Law and Venue. This Agreement is made in the State of South Dakota, and shall be interpreted and governed by the laws of such State, excluding South Dakota's conflicts of law principles, or the laws of the United States, as applicable. Any action shall be venued in the state of South Dakota, in state or federal court as applicable, unless otherwise agreed upon by Deuel Harvest, Escrow Agent, and Commission.
- f. Successors, Transferees and Assigns. This Agreement shall bind the successors, transferees and <sup>5</sup>assigns of Deuel Harvest and the Escrow Agent.
- g. Severability. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in force. The parties will,

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<sup>5</sup> Note: Deleted "permitted" as ambiguous. Reinstated transferees per requirement of Condition 36e ("The escrow account obligations will be those of Deuel Harvest and the escrow agreement shall include terms providing that the agreement binds Deuel Harvest's successors, transferees, and assigns.")

however, use their reasonable best endeavors to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

- h. Execution in Counterparts and Facsimile Transmission. This Agreement may be executed in two (2) or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile or email (in a pdf attached thereto) transmission, and the parties agree that such execution and delivery by facsimile or email transmittal shall have the same force and effect as delivery of an original document with original signatures.
  
- i. WAIVER OF TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR (2) IN ANY WAY IN CONNECTION WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES TO THIS AGREEMENT.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed as of the Effective Date.

Dated: \_\_\_\_\_

**DEUEL HARVEST WIND ENERGY LLC**

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

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION**

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

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

Its: \_\_\_\_\_

**EXHIBIT A TO ESCROW AGREEMENT**

**DEUEL HARVEST CLAIM CERTIFICATE**

U.S. Bank National Association, as Escrow Agent  
ATTN: Leye Fadahunsi  
Global Corporate Trust  
60 Livingston Avenue, EP-MN-WS3C  
Saint Paul, MN 55106

This Certificate is issued pursuant to that certain Escrow Agreement, dated as of [\_\_\_\_\_, 20\_\_], by and among Deuel Harvest Wind Energy LLC (“Deuel Harvest”) and you, as Escrow Agent (the “Escrow Agreement”). Capitalized terms used but not otherwise defined in this Certificate shall have the meaning ascribed to them in the Escrow Agreement.

The undersigned representative of Commission hereby certifies that Deuel Harvest is entitled to receive Escrow Funds in the amount of [\$\_\_\_\_\_], pursuant to the terms of the Escrow Agreement.

Accordingly, subject to the terms of the Escrow Agreement, you are hereby instructed to disburse, the sum of [\$\_\_\_\_\_] from the Escrow Account to Deuel Harvest Park by wire transfer to the account set forth in Exhibit B to the Escrow Agreement.

Dated: [\_\_\_\_\_, 20\_\_]

**South Dakota Public Utilities Commission**

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

**EXHIBIT B TO ESCROW AGREEMENT**

DEUEL HARVEST ACCOUNT INFORMATION

[Bank: \_\_\_\_\_

Account: \_\_\_\_\_

Routing Number: \_\_\_\_\_]

**EXHIBIT C TO ESCROW AGREEMENT**

LANDOWNER CLAIM CERTIFICATE

U.S. Bank National Association, as Escrow Agent  
ATTN: Leye Fadahunsi  
Global Corporate Trust  
60 Livingston Avenue, EP-MN-WS3C  
Saint Paul, MN 55106

This Certificate is issued pursuant to that certain Escrow Agreement, dated as of [\_\_\_\_\_, 20\_\_], by and among Deuel Harvest, LLC (“Deuel Harvest”) and you, as Escrow Agent (the “Escrow Agreement”). Capitalized terms used but not otherwise defined in this Certificate shall have the meaning ascribed to them in the Escrow Agreement.

The undersigned representative of Commission hereby certifies that:

Individual/Entity Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Affected Parcel(s) Identification Number(s): \_\_\_\_\_

As set forth in the attached order issued by the South Dakota Public Utilities Commission, is entitled to receive Escrow Funds in the amount of [\$\_\_\_\_\_\_], due to the following (generally) [ \_\_\_\_\_ ] pursuant to the terms of the Escrow Agreement. A copy of the individual’s or entity’s Form W-9 or Form W-8 is attached hereto.

Accordingly, subject to the terms of the Escrow Agreement, you are hereby instructed to disburse, on the tenth business day after your receipt of this Certificate, the sum of [\$\_\_\_\_\_\_] from the Escrow Account to the individual or entity identified above by wire transfer to the following account:

Bank: [ \_\_\_\_\_ ]  
Account: [ \_\_\_\_\_ ]  
Routing Number: [ \_\_\_\_\_ ]

Dated: [ \_\_\_\_\_, 20\_\_ ]

**South Dakota Public Utilities Commission**

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

**EXHIBIT D TO ESCROW AGREEMENT**

END OF TERM CERTIFICATE

U.S. Bank National Association, as Escrow Agent  
ATTN: Leye Fadahunsi  
Global Corporate Trust  
60 Livingston Avenue, EP-MN-WS3C  
Saint Paul, MN 55106

This Certificate is issued pursuant to that certain Escrow Agreement, dated as of [\_\_\_\_\_, 20\_\_], by and among Deuel Harvest Wind Energy LLC (“Deuel Harvest”) and you, as Escrow Agent (the “Escrow Agreement”). Capitalized terms used but not otherwise defined in this Certificate shall have the meaning ascribed to them in the Escrow Agreement.

The undersigned representative of Commission hereby certifies that Deuel Harvest is entitled to receive Escrow Funds in the amount of [\$\_\_\_\_\_] and Escrow Revenue in the amount of [\$\_\_\_\_\_], pursuant to the terms of the Escrow Agreement.

Accordingly, subject to the terms of the Escrow Agreement, you are hereby instructed to disburse to Deuel Harvest all Escrow Funds and Escrow Revenue remaining in the Escrow Account by wire transfer to the account set forth in Exhibit B to the Escrow Agreement.

Dated: [\_\_\_\_\_, 20\_\_]

**South Dakota Public Utilities Commission**

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



## **SCHEDULE A**

### **U.S. BANK NATIONAL ASSOCIATION Investment Authorization Form**

#### **U.S. BANK MONEY MARKET DEPOSIT ACCOUNT**

##### **Description and Terms**

The U.S. Bank Money Market Deposit Account is a U.S. Bank National Association (“U.S. Bank”) interest-bearing money market deposit account designed to meet the needs of U.S. Bank’s Corporate Trust Services Escrow Group and other corporate trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank’s discretion, and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank as agent for its corporate trust customers. U.S. Bank’s Corporate Trust Services Escrow Group performs all account deposits and withdrawals. Deposit accounts are FDIC insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

U.S. BANK IS NOT REQUIRED TO REGISTER AS A MUNICIPAL ADVISOR WITH THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF COMPLYING WITH THE DODD-FRANK WALL STREET REFORM & CONSUMER PROTECTION ACT. INVESTMENT ADVICE, IF NEEDED, SHOULD BE OBTAINED FROM YOUR FINANCIAL ADVISOR.

##### **Automatic Authorization**

In the absence of specific written direction to the contrary to the extent and as authorized in the applicable escrow agreement, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Deposit Account. The customer(s) confirm that the U.S. Bank Money Market Deposit Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of permissible alternate instructions.

## SCHEDULE B

### Schedule of Fees for Services as Escrow Agent

**I. Acceptance Fee, One-Time: \$1,500**

The Acceptance Fee includes the administrative review of the documents, initial set-up of the account, and other reasonably required services up to and including the closing. This is a one-time, non-refundable fee, payable at closing. Does not include legal fees.

**II. Annual Administrative Fee: \$1,000**

Annual fee for the standard escrow agent depository services associated with the administration of the account. Administrative fees are payable in advance.

**III. Out-of-Pocket Expenses (if any): At Cost**

Reimbursement of expenses associated with Escrow Agent's acceptance, administration of, or performance under the Agreement, including without limitation fees and expenses of legal counsel, accountants and other agents, tax preparation, reporting and filing, and filing fees, will be billed at cost.

**IV. Extraordinary Fees (if any):**

**Extraordinary Administration Services.** Extraordinary Administration Services ("EAS") are duties, responsibilities or activities not expected to be provided by the trustee or agent at the outset of the transaction, not routine or customary, and/or not incurred in the ordinary course of business and may require analysis or interpretation. Billing for fees and expenses related to EAS is appropriate in instances where particular inquiries, events or developments are unexpected, even if the possibility of such circumstances could have been identified at the inception of the transaction, or as changes in law, procedures, or the cost of doing business demand. At our option, EAS may be charged on an hourly (time expended multiplied by current hourly rate), flat or special fee basis at such rates or in such amounts in effect at the time of such services, which may be modified by us in our sole and reasonable discretion from time to time. In addition, all fees and expenses incurred by the trustee or agent, in connection with the trustee's or agent's EAS and ordinary administration services and including without limitation the fees and expenses of legal counsel, financial advisors and other professionals, charges for wire transfers, checks, internal transfers and securities transactions, travel expenses, communication costs, postage (including express mail and overnight delivery charges), copying charges and the like will be payable, at cost, to the trustee or agent. EAS fees are due and payable in addition to annual or ordinary administration fees. Failure to pay for EAS owed to U.S. Bank when due may result in interest being charged on amounts owed to U.S. Bank for extraordinary administration services fees and expenses at the prevailing market rate.

**General.** Your obligation to pay under this Fee Schedule shall govern the matters described herein and shall not be superseded or modified by the terms of the governing documents and survive any termination of the transaction or governing documents and the resignation or removal of the trustee or agent. This Fee Schedule shall be construed and interpreted in

accordance with the laws of the state identified in the governing documents without giving effect to the conflict of laws principles thereof. You agree to the sole and exclusive jurisdiction of the state and federal courts of the state identified in the governing documents over any proceeding relating to or arising regarding the matters described herein. Payment of fees constitutes acceptance of the terms and conditions described herein.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. Escrow Agent may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

**SCHEDULE C**

Each of the following person(s) is a **Deuel Harvest representative** authorized to execute documents and direct Escrow Agent as to all matters, including fund transfers, address changes and contact information changes, on Deuel Harvest's behalf (only one representative required):

_____ Name	_____ Specimen signature	_____ Telephone No.
_____ Name	_____ Specimen signature	_____ Telephone No.
_____ Name	_____ Specimen signature	_____ Telephone No.

*(Note: if only one person is identified above, please add the following language:)*  
The following person not listed above is authorized for call-back confirmations:

[_____] Name	_____ Telephone Number
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