

CASE NO. 895-AT-18

SUPPLEMENTAL MEMORANDUM #17

June 28, 2018

Petitioner: Zoning Administrator

Request: Amend the Champaign County Zoning Ordinance to add “Solar Farm” as a new principal use under the category “Industrial Uses: Electric Power Generating Facilities” and indicate that Solar Farm may be authorized by a County Board Special Use Permit in the AG-1 Zoning District and the AG-2 Zoning District; add requirements and fees for “Solar Farm”; add any required definitions; and make certain other revisions are made to the Ordinance as detailed in the full legal description in Attachment A.

Location: Unincorporated Champaign County

Time Schedule for Development: As soon as possible

Prepared by: **Susan Burgstrom**
Senior Planner

John Hall
Zoning Administrator

Brookens Administrative Center
1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708

zoningdept@co.champaign.il.us

www.co.champaign.il.us/zoning

FOLLOW UP REGARDING ESCROW ACCOUNT VS. LETTER OF CREDIT

Revised evidence regarding the issue of escrow account vs. letter of credit is proposed for the Finding of Fact and revised Summary Finding of Fact – see respective sections below.

Included with Supplemental Memorandum #14 was a submittal from Laurel Bergren of ARC Perspectives, Inc., a consultant firm working for BayWa r.e. Ms. Bergren provided some brief information regarding letters of credit. See the attached email that has been repeated from that memorandum. Salient information from that email is the following:

- **A letter of credit is not considered to be an asset of the client** (assume a solar farm developer) and therefore in the event of bankruptcy on the part of the solar farm developer, the letter of credit is not normally enjoined with the bankruptcy. If a letter of credit is from a very financially strong bank, the risk associated with the letter of credit should be very small and perhaps to the point of irrelevancy, if Champaign County is serious about “encouraging” solar farm development.
- **Unlike an escrow account, the courts have determined that a draw against a letter of credit should not be held up if there is some disagreement between the parties to the letter of credit.** This is sometimes referred to as the “pay now, litigate later” approach. This is different from a draw against an escrow account. After discussing this with Ms. Bergren, Mr. Hall compared the letter of credit and the escrow agreement for the California Ridge Wind Farm and found that the escrow agreement does provide for holding a draw if there is a dispute but the letter of credit has no such provision. Mr. Hall forwarded an email to Assistant State’s Attorney Jacob Croegaert, who confirmed the comparison (see attached email with escrow agreement). Unfortunately, Jacob Croegaert only had time to do a preliminary response before leaving employment with the State’s Attorney’s Office at the end of May 2018, and no further legal review has occurred.

The fact that the letter of credit is not subject to any bankruptcy proceedings, coupled with the possibility of complications with making a draw against an escrow account, could possibly justify reliance on only a letter of credit.

REVISED FINDING OF FACT

The following evidence is proposed as a revision to existing items 16.B.(5)c. through i. on pages 26 and 27 of the Revised Draft Finding of Fact 06/14/18 (Attachment J to Supplemental Memo #14). Note that the decision point that was previously item 16.B.(5)i. is now item 16.B.(5)f. and has two alternative recommendations: a recommendation for continued reliance on an escrow account and an alternative recommendation for only a letter of credit, and both recommendations include an explicit acknowledgement from the ZBA that the County Board may choose differently and in that case no remand is anticipated.

Revise item 16.B.(5)c. through i. as follows:

- c. Regarding the amount of required financial assurance:
 - (a) The alternative decommissioning uses the same amount of financial assurance (125% of the decommissioning estimate) as the basic version of the proposed amendment.
 - ~~d.~~ (b) The alternative decommissioning uses an incremental approach in establishing the financial assurance in eleven years, which is the same as Illinois Department of Agriculture's Agriculture Impact Mitigation Agreement except that the first step is at the time of permitting, like the proposed amendment.
 - ~~e.~~ (c) The three increments are 12.5%, 62.5%, and 125%, which are somewhat greater than used in the Illinois Department of Agriculture's Agriculture Impact Mitigation Agreement.
- d. Regarding the type of required financial assurance:
 - (a) The proposed amendment was originally based on the Champaign County requirements for wind farms. Champaign County is the only Illinois county that requires an escrow account for financial assurance for wind farm decommissioning. Champaign County requires an escrow account because it was determined in Zoning Case 634-AT-08 that was adopted on June 24, 2010, that an escrow account posed the least risk for Champaign County.
 - (b) Patrick Brown with BayWa r.e., a solar farm developer, has stated that the cost of an escrow account is much greater than the cost of a letter of credit and will make solar farm development difficult in Champaign County.
 - (c) Objective 9.5 of the Champaign County Land Resource Management Plan calls for encouraging the development and use of renewable energy sources where appropriate and compatible with existing land uses. Onerous decommissioning requirements will have the opposite effect and will discourage solar farm development in Champaign County.

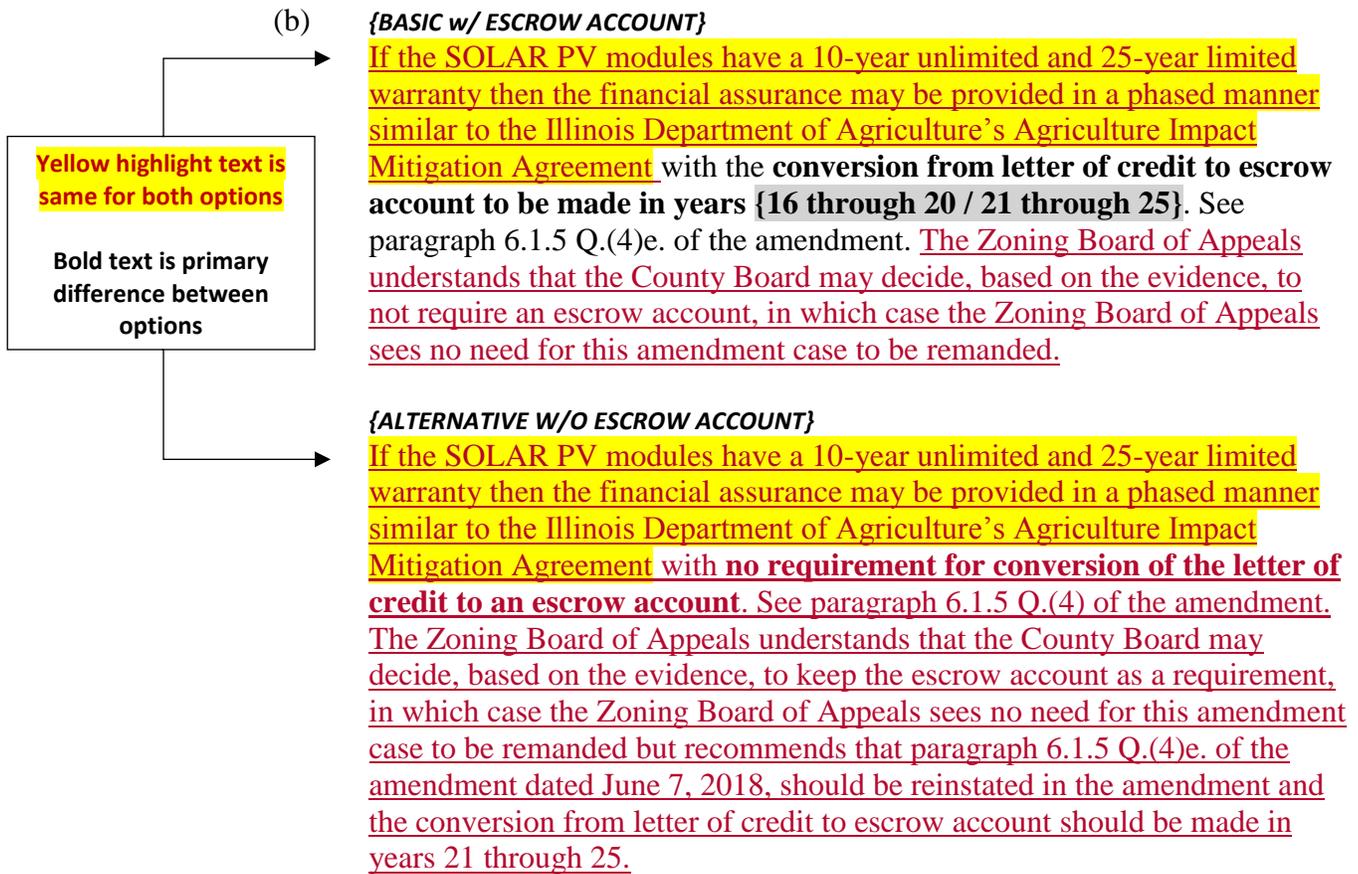
(d) There is not much information regarding the advantages of an escrow account versus letter of credit for financial assurance in either wind farm or solar farm decommissioning. The following table contains a very basic comparison of escrow account versus a letter of credit:

Parameter	Escrow Account	Letter of Credit
Basis of assurance	Solar farm developer deposits cash into escrow account that can only be used for decommissioning costs	A bank provides an irrevocable letter of credit that will provide funds that can only be used for decommissioning
Cost to solar farm developer	More than letter of credit Cash is tied up in escrow and not available for other opportunities. (approx. 10% +/-)	Less than escrow account No cash is tied up, but there is a fee. (approx. 1.5% +/-)
Risk to Champaign County	Essentially no risk provided that the escrow agreement is sound.	Risk is based on the soundness of the issuing bank; the letter of credit is backed by the bank and not by the solar farm developer.*
Ease of making a draw	Use standard form included in escrow agreement.	Use standard form included in decommissioning agreement.
What happens if dispute about a draw by the County?	The disbursing agent may hold funds until dispute is settled. (Note that the California Ride Wind Farm Escrow Agreement has a provision allowing the disbursing agent to refuse withdrawals if a dispute arises.)	General approach (legal precedent) is to allow any draw and then settle the dispute later* (Note that the California Ride Wind Farm Letter of Credit has no provision for dispute settlement.)
Can funds be used for solar farm refurbishment?	Yes, if allowed by agreement and if replaced with new letter of credit for new escrow conversion.	Not applicable
* See Lorman Educational Services Advantages of Letters of Credit, Att. B to Sup. Memo. #14)		

(e) Based on the above comparison of letter of credit to escrow account:

- i. An escrow account is more expensive than a letter of credit.
- ii. A letter of credit issued by a strong bank should be nearly as safe as an escrow agreement considering that draws against a letter of credit cannot be disputed.
- iii. Draws against a letter of credit are unlikely to be challenged but draws against an escrow account can be challenged.
- iv. The greater cost of an escrow account may be somewhat offset by the ability to use the scrow funds for solar farm refurbishment in lieu of decommissioning.

- v. Requiring an escrow account will clearly put Champaign County at a competitive disadvantage for solar farm development compared to other locations in Illinois and is likely to hurt achievement of Objective 9.5 of the LRMP.
- vi. Delaying the conversion of the letter of credit to an escrow account to years {16 through 20 / 21 through 25} based on the warranty of the photovoltaic panels is one way of reducing the financial burden of the escrow account. Note that the Board discussed the value of the warranty at the May 3, 2018 public hearing. Mr. Passalacqua suggested that the warranty should be carefully considered in terms of its value. He noted that many warranties for building materials, and that most often a warranty settlement is almost an insult. He said if that were the case here, there really is not a lot of weight in honoring the warranty instead of an escrow account.
- vii. Requiring only a letter of credit from a financially strong bank in lieu of an escrow account would be more encouraging to solar farm development in Champaign County as opposed to requiring an escrow account for financial assurance.
- ~~f. The conversion to an escrow account is not required until years 20 through 25, so that the escrow account will be in place by the end of the limited power warranty.~~
- ~~(a) The Board discussed the value of the warranty at the May 3, 2018 public hearing. Mr. Passalacqua suggested that the warranty should be carefully considered in terms of its value. He noted that many warranties for building materials, and that most often a warranty settlement is almost an insult. He said if that were the case here, there really is not a lot of weight in honoring the warranty instead of an escrow account.~~
- ~~g. The alternative decommissioning should protect County interests without unduly burdening the solar farm developer with unnecessary costs.~~
- h.e. If the County Board adopts the alternative decommissioning, it should also consider revising the existing decommissioning requirements for a wind farm using a similar approach, although warranties provided for wind farm turbines are nothing like the warranties available for this better class of PV modules.
- i.f. **OPTION 1:** The Zoning Board of Appeals hereby recommends the Alternative Decommissioning standard that was included as Attachment K to Supplemental Memorandum #5 dated March 22, 2018, with the following changes:
- (a) If the SOLAR PV modules have a 10-year unlimited and 25-year limited warranty, then the financial assurance shall cover **{12.5% / 25% / 50%}** of the decommissioning costs in years 1-5 (see paragraph 6.1.5 Q.(4)a.(a) of the amendment); and



Note that if the alternative is selected, it will require:

- 1) The deletion of Section 6.1.5 Q.(4)e. and subsequent renumbering ; and
- 2) Eliminating any reference to “escrow account” in existing sections 6.1.5 Q.(4)f. and h.

REVISED SUMMARY FINDING OF FACT

Item 2.A.(5) in the Summary FOF has also been revised to reflect this new evidence. The revised item is as follows:

- (5) Section 6.1.5 Q. requires a Decommissioning Plan and Site Reclamation Plan to ensure that if the PV SOLAR FARM ever stops being a solar farm, the land will be reclaimed for agriculture (see item 16.B.(4) in the Finding of Fact). Regarding decommissioning:
 - a. A Decommissioning Plan and Site Reclamation Plan are essential to prevent a non-functional PV SOLAR FARM from becoming a blight on the community.
 - b. The decommissioning requirements recommended by the ZBA are much improved from the Zoning Ordinance decommissioning requirements for wind farms ~~but still require the letter of credit to be converted to an escrow account for the financial assurance. Some solar farm advocates believe that a letter of credit should be adequate financial assurance and that requiring~~

an escrow account is an unnecessary cost for solar farm developers, and can be summarized as follows:

- (a) Total financial assurance is required in the amount of 125% of the decommissioning costs (after deduction of any salvage value) but not less than \$1,000 per acre. See paragraph 6.1.5 Q.(4)a. of the amendment.
- (b) If the SOLAR PV modules have a 10-year unlimited and 25-year limited warranty then the financial assurance may be provided in a phased manner similar to the Illinois Department of Agriculture's Agriculture Impact Mitigation Agreement as follows:
 - i. In years 1-5 the financial assurance must cover {12.5% / 25% / 50%} of the decommissioning costs (see paragraph 6.1.5 Q.(4)a.(a) of the amendment); and
 - ii. On or before the sixth anniversary of the Commercial Operation Date the financial assurance shall cover 62.5% of the decommissioning costs (see paragraph 6.1.5 Q.(4)a.(b) of the amendment); and
 - iii. On or before the eleventh anniversary of the Commercial Operation Date the financial assurance shall cover 125% of the decommissioning costs (see paragraph 6.1.5 Q.(4)a.(c) of the amendment).

- (c) **{BASIC}**
If the SOLAR PV modules have a 10-year unlimited and 25-year limited warranty then the conversion from letter of credit to escrow account shall be made in years **{16 through 20 / 21 through 25}**. See paragraph 6.1.5Q.(4)e. of the amendment. The Zoning Board of Appeals understands that the County Board may decide, based on the evidence, to not require an escrow account, in which case the Zoning Board of Appeals sees no need for this amendment case to be remanded.

{ALTERNATIVE}

No escrow account is required because based on the evidence, an escrow account provides no significant benefit to Champaign County. See paragraph 6.1.5Q.(4) of the amendment and item 16.B.(5) of the FOF. However, the Zoning Board of Appeals understands that the County Board may decide differently based on the evidence, and may decide to keep the escrow account as a requirement, in which case the Zoning Board of Appeals sees no need for this amendment case to be remanded but recommends that paragraph 6.1.5Q.(4)e. of the amendment dated June 7, 2018, should be reinstated in the amendment and the conversion from letter of credit to escrow account should be made in years 21 through 25.

MISCELLANEOUS REVISIONS REGARDING DECOMMISSIONING AND SITE RECLAMATION

- Change the name of Section 6.1.1 A. to (new text is underlined) “Decommissioning and Site Reclamation Plan for NON-ADAPTABLE STRUCTURES”
- In Section 6.1.1 A. replace all instances of “reclamation agreement” with “decommissioning and site reclamation plan”. The one instance of “agreement” (see Sec. 6.1.1 A.9.b.) can stay the way it is.
- Add as new items 6.1.1 A.12. and 13., and renumber as necessary:
 - 12. No dispute as to the necessity or reasonableness of any costs of performing the site reclamation work identified in Section 6.1.1A.11. shall impair the ability of Champaign County to draw on the Financial Assurance.
 - 13. In accordance with the provisions of the Illinois Mechanic's Lien Act, 770 ILCS 60/1 and 60/7, Applicant or successors in interest agree that any contractor retained by Champaign County to perform the decommissioning and site reclamation work in Section 6.1.1A.11. shall have a lien upon the Project to the full extent of all costs of performing the decommissioning and site reclamation work identified in Section 6.1.1A.11., and that such lien shall be superior to any claim or lien of any other creditor, incumbrancer or purchaser.
- Change the name of proposed Section 6.1.5 Q. (deletion indicated by strike out) to “Standard Condition for Decommissioning ~~Plan~~ and Site Reclamation Plan”.
- In Section 6.1.5 Q. (and anywhere else in Section 6.1.5 where the phrase is used) change all instances of “site reclamation plan” and “reclamation plan” and “decommissioning plan and site reclamation plan” to “decommissioning and site reclamation plan”.

ATTACHMENTS

- A Legal advertisement
- B Email from Laurel Bergren received May 7, 2018, with attachment: Advantages of Letters of Credit dated April 8, 2015 by Carter H. Klein, retrieved from Lorman Educational Services on May 3, 2018 (originally distributed in Supplemental Memo #14 dated June 7, 2018)
- C Email dated May 3, 2018, from John Hall to Jacob Croegaert, Assistant State's Attorney, Champaign County State's Attorney's Office

LEGAL PUBLICATION: WEDNESDAY, FEBRUARY 14, 2018

CASE: 895-AT-18

**NOTICE OF PUBLIC HEARING REGARDING A PROPOSED AMENDMENT TO THE
CHAMPAIGN COUNTY ZONING ORDINANCE.**

CASE: 895-AT-18

The Champaign County Zoning Administrator, 1776 East Washington Street, Urbana, has filed a petition to change the text of the Champaign County Zoning Ordinance. The petition is on file in the office of the Champaign County Department of Planning and Zoning, 1776 East Washington Street, Urbana, IL.

A public hearing will be held **Thursday, March 1, 2018, at 6:30 p.m.** prevailing time in the Lyle Shields Meeting Room, Brookens Administrative Center, 1776 East Washington Street, Urbana, IL, at which time and place the Champaign County Zoning Board of Appeals will consider a petition to:

Amend the Champaign County Zoning Ordinance as follows:

Part A. Amend Section 3 by adding definitions including but not limited to “NOXIOUS WEEDS” and “SOLAR FARM”.

Part B. Add paragraph 4.2.1 C.5. to indicate that SOLAR FARM may be authorized by County Board SPECIAL USE permit as a second PRINCIPAL USE on a LOT in the AG-1 DISTRICT or the AG-2 DISTRICT.

Part C. Amend Section 4.3.1 to exempt SOLAR FARM from the height regulations except as height regulations are required as a standard condition in new Section 6.1.5.

Part D. Amend subsection 4.3.4 A. to exempt WIND FARM LOT and SOLAR FARM LOT from the minimum LOT requirements of Section 5.3 and paragraph 4.3.4 B. except as minimum LOT requirements are required as a standard condition in Section 6.1.4 and new Section 6.1.5.

Part E. Amend subsection 4.3.4 H.4. to exempt SOLAR FARM from the Pipeline Impact Radius regulations except as Pipeline Impact Radius regulations are required as a standard condition in new Section 6.1.5.

Part F. Amend Section 5.2 by adding “SOLAR FARM” as a new PRINCIPAL USE under the category “Industrial Uses: Electric Power Generating Facilities” and indicate that SOLAR FARM may be authorized by a County Board SPECIAL USE Permit in the AG-1 Zoning DISTRICT and the AG-2 Zoning DISTRICT and add new footnote 15. to exempt a SOLAR FARM LOT from the minimum LOT requirements of Section 5.3 and paragraph 4.3.4 B. except as minimum LOT requirements are required as a standard condition in new Section 6.1.5.

Part G. Add new paragraph 5.4.3 F. that prohibits the Rural Residential OVERLAY DISTRICT from being established inside a SOLAR FARM County Board SPECIAL USE Permit.

Part H. Amend Subsection 6.1.1 A. as follows:

1. Add SOLAR FARM as a NON-ADAPTABLE STRUCTURE and add references to the new Section 6.1.5 where there are existing references to existing Section 6.1.4.
2. Revise subparagraph 6.1.1 A.11.c. by deleting reference to Section 6.1.1A. and add reference to Section 6.1.1A.2.

Part I. Add new subsection 6.1.5 SOLAR FARM County Board SPECIAL USE Permit with new standard conditions for SOLAR FARM.

Part J. Add new subsection 9.3.1 J. to add application fees for a SOLAR FARM zoning use permit.

Part K. Add new subparagraph 9.3.3 B.8. to add application fees for a SOLAR FARM County Board SPECIAL USE permit.

All persons interested are invited to attend said hearing and be heard. The hearing may be continued and reconvened at a later time.

Catherine Capel, Chair
Champaign County Zoning Board of Appeals

TO BE PUBLISHED: WEDNESDAY, FEBRUARY 14, 2018 ONLY

Send bill and one copy to: Champaign County Planning and Zoning Dept.
Brookens Administrative Center
1776 E. Washington Street
Urbana, IL 61802
Phone: 384-3708

Susan Burgstrom

From: John Hall
Sent: Monday, May 07, 2018 8:38 AM
To: Susan Burgstrom
Subject: FW: The advantages of LOCs
Attachments: Letters of Credit - Lorman resource.docx

RECEIVED

MAY 07 2018

Follow Up Flag: Follow up
Due By: Friday, June 01, 2018 8:00 AM
Flag Status: Flagged

CHAMPAIGN CO. P & Z DEPARTMENT

I had also forwarded this to Jacob

From: Laurel Bergren [mailto:laurel@arcperspectives.com]
Sent: Thursday, May 3, 2018 12:26 PM
To: John Hall <jhall@co.champaign.il.us>
Cc: 'Patrick Brown' <Patrick.Brown@baywa-re.com>; 'Patrick T. Fitzgerald' <pfitzgerald@MeyerCapel.com>
Subject: The advantages of LOCs

Hello John,

It was a pleasure speaking with you this morning. I have attached a document from Lorman Educational Services which covers most of my Letters of Credit conversation with US Bank Market President – Gary Quinn. Gary is based in Freeport, Illinois. I've also highlighted a couple of items in the text including the fact that a Letter of Credit is generally not considered an asset in the event of a bankruptcy.

Thank you so much for the time you have invested in the ordinance!

Laurel Bergren

Laurel Bergren
ARC Perspectives, Inc.
Vice President

(815) 244-1091 Work
(815) 291-6489 Mobile
laurel@arcperspectives.com
arcperspectives.com

Retrieved from Lorman Educational Services 5/3/18

<http://www.lorman.com/resources/letters-of-credit-advantages-and-disadvantages-16041>

Advantages of Letters of Credit

April 08, 2015

Author: Carter H. Klein

RECEIVED

MAY 07 2018

CHAMPAIGN COUNTY CLERK DEPARTMENT

Instant liquidity

- The terms of a letter of credit can specify that fax presentments are allowed and that the draw must be honored (or notice of dishonor given) within a few days or less.
- In some cases where letters of credit secure bonds, commercial paper or secure clearing obligations owed to commodities or security exchanges, the letter of credit will be payable on the same day presentation is made. – Payment is usually via wire transfer of funds by the issuer to the beneficiary's account.

Credit of a the Issuer Is Added

- By use of a letter of credit, the beneficiary is assured that the payment obligation is backed by credit of a bank which is substituted for or added to the credit of a corporate or individual applicant.

Independence of issuer

- Except for material fraud, the issuer's obligation to honor is independent of the obligations of the parties (applicant and beneficiary) and their disputes over the underlying contract which the letter of credit supports.
- The issuer only looks to see if the documents presented are timely and conform to the documentary conditions specified in the letter of credit.
- The issuer does not and should not involve itself in issues or investigations of whether the underlying contract has been properly performed.

Automatic Stay and Preferences

- A draw on a letter of credit to pay for an obligation of a bankrupt applicant is not normally regarded as transfer of the bankrupt's assets; rather the proceeds transferred are regarded as funds of the issuing bank. – As a result, courts will not normally enjoin a draw on a letter of credit even though the applicant has filed for bankruptcy.
- Because the draw on the letter of credit is of funds of the issuing bank, a court will not normally set aside as preferential a paydown of a debt from a draw on a letter of credit. Exception: Indirect preferences when a collateralized LC is issued for an already existing debt.

Pay now, litigate later

- Courts have taken the view that if there is a problem with the underlying contract or its performance while a draw is being made or about to be made on a letter of credit, the beneficiary should be entitled to draw and hold or use the proceeds until the dispute or litigation is resolved.

– Courts have used the phrase – “pay now, litigate later” to describe the beneficiary’s rights against the obligation of the issuer and applicant to allow the beneficiary to draw on the letter of credit.

– See Eakin v. Continental Illinois Nat. Bank & Trust Co., 875 F.2d 114 (7th Cir. 1989); In re Sabratek, Corp., 257 B.R. 732 (Bankr. Del. 2000).

Adaptability.

As is shown from the variety of uses for letters of credit enumerated above, a letter of credit can be tailored to secure almost any type of obligation. The draw conditions can require elaborate or simple certifications identifying the obligation secured and the events justifying the draw.

Statute of Limitations

Some courts have held that even though an underlying obligation which a letter of credit supports is no longer enforceable under a statute of limitations, the LC can still be drawn upon by the beneficiary to pay the debt owed. See Williams Service Group v. National Union Fire Ins. Co., 2012 WL 5233558 (11th Cir. Oct. 23, 2012).

Payment against right to receive goods

– Documentary credits used in international trade provide that the beneficiary must present to the issuer shipping documents, including bills of lading, to receive payment.

These documents are passed along to the applicant to enable it to receive the goods shipped which are being paid from a draw on the letter of credit.

– UCC §5-118 gives issuing, negotiating and confirming banks an automatic perfected and in most cases prior security interest in documents presented when they honor a draw on a letter of credit until they are reimbursed.

Disadvantages of Letters of Credit:

- Standby LC's are treated by issuers like loans – the applicant must be credit approved, set aside credit lines and frequently has to set aside collateral to secure its duty to reimburse the issuer if there is a draw on the LC.
- Other forms of credit support may be less costly, such as a bond, export credit insurance, documentary collection, open account sales, a security interest in collateral, or a corporate guaranty.
- For commercial letters of credit, the rules are complex, the documentary requirements exacting and subject to differing applications at the issuing bank level and as a result, discrepancy rates are very high – over 50% of all presentments are nonconforming (discrepant), although in 99% of the cases the discrepancies are waived or corrected.
- LC's have expiration dates to which attention must be paid.
- LC's sometimes require presentation of the original LC and all amendments.
- LC's must be amended each time there is a change in amount or terms.
- Rules and practice governing LC's, especially commercial LC's, can be complex.
- LC's can be misused to take advantage of applicants. E.g., Lloyds cases.
- LC's are only as good as the banks that issue them.
- LC's are sometimes difficult to terminate or cancel.

RECEIVED

MAY 07 2018

CHAMPAIGN CO. P & Z DEPARTMENT

John Hall

From: John Hall
Sent: Thursday, May 3, 2018 12:31 PM
To: Jacob Croegaert
Subject: Wind farm & Solar farm letters of credit vs. escrow accounts
Attachments: California Ridge Wind Farm Escrow Agreement.pdf; Case 686-S-11 Calif. Ridge WF Final Draft Reclamation Agreement Nov 2 2011.pdf

In the process of trying to amend the Zoning Ordinance to add requirements for “solar farm” one of the solar farm developers who has a pending application (BayWa r.e.) is trying to convince Champaign County that an escrow account should not be required for the financial assurance for the site reclamation for a solar farm. This is an important issue to Champaign County because we are the only Illinois county to require an escrow account instead of a letter of credit or some alternative means of financial assurance. This is an important issue to the solar farm developer because they have proposed a large (150 MW, 1299 acre) solar farm and have suggested that the cost of the escrow account is \$2 million.

My understanding is that Champaign County requires the letter of credit to be converted to an escrow account because an escrow account is the only means of having guaranteed financial assurance that does not rely on the wind farm owner or the wind farm owner’s bank or, in the case of some kind of performance bond, a bonding company to be financially sound.

BayWa r.e. has hired a pr consultant (ARC Perspectives, Laurel Bergren) to assist with the solar farm project and the pr consultant has discussed this issue with a friend who works for US Bank in a regional office. The friend is of the opinion that a letter of credit can be drawn against without challenge whereas a draw against an escrow account may be challenged, assuming that the draw is a valid draw.

And so my question is whether you agree with that assertion? I would appreciate any info you can provide. The text amendment case may go to ELUC next Thursday or it may not go until June.

The following salient information is provided regarding the Letter of Credit and Escrow Account for California Ridge Wind Farm, as follows:

Section (9)(b) of the California Ridge Wind Farm Reclamation Agreement states as follows:

Champaign County may draw the Decommissioning Expenses and all accrued Associated Costs from the Financial Assurance. No dispute as to the necessity of reasonableness of Associated Costs or costs of performing the Reclamation Work will impair the ability of Champaign County to draw on the Financial Assurance.

I don’t see any other language in the Reclamation Agreement that is material to this question. An unsigned copy of the Reclamation Agreement is attached.

The third paragraph of the California Ridge Wind Farm Letter of Credit states in part as follows:

WE ENGAGE WITH YOU THAT DOCUMENTS DRAWN UNDER AND IN CONFORMITY WITH THE TERMS AND CONDITIONS OF THIS CREDIT WILL BE DULY HONORED ON PRESENTATION...”

There is no other language in the Letter of Credit that is material to this question.

Section 9 of the California Ridge Escrow Agreement goes into some detail regarding disputes. The entire Agreement is attached.

REDACTED
ESCROW AGREEMENT

Pursuant to this escrow agreement dated APRIL 24, 2014 (the "Escrow Agreement"), the undersigned escrow parties (the "Parties") hereby establish escrow account number [REDACTED] (the "Account") with U.S. Bank National Association, a national banking association which conducts business in Moline, Illinois (the "Agent"), to be maintained and administered for the purposes described in Schedule I attached hereto in accordance with the following terms and conditions:

The funds and/or property described on Schedule I attached hereto and incorporated herein (the "Assets") will be deposited in the Account upon delivery thereof to the Agent, in the manner and at the time(s) specified in the said Schedule I. The Agent is hereby authorized and directed by each of the Parties, as their escrow agent, to hold, deal with and dispose of the Assets as provided in the instructions set forth in Schedule II attached hereto and incorporated herein. In the event of a conflict between this Escrow Agreement and Schedules I and II, the terms and conditions of Schedules I and II shall control.

1. **Agent's Duties.** Agent's duties and responsibilities shall be limited to those expressly set forth in this Escrow Agreement, and Agent shall not be subject to, or obligated to recognize, any other agreement between any or all of the Parties or any other persons even though reference thereto may be made herein; provided, however, this Escrow Agreement may be amended at any time or times by an instrument in writing signed by all the Parties hereto. Agent shall not be subject to or obligated to recognize any notice, direction, or instruction of any or all of the Parties hereto or of any other person, except as expressly provided for and authorized in Schedule II and in performing any duties under this Escrow Agreement, Agent shall not be liable to any Party for consequential damages even if Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action.

2. **Court Orders or Process.** If any controversy arises between the Parties to this Escrow Agreement, or with any other Party, concerning the subject matter of this Escrow Agreement, its terms or conditions, Agent will not be required to determine the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Agent's discretion, Agent may require. In such event, Agent will not be liable for interest or damage. Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Account, the Assets, or this Escrow Agreement, without determination by the Agent of such court's jurisdiction in the matter. If any Assets are at any time attached, garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance, or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment, or decree shall be made or entered by any court

PAGE 2

affecting such property or any part thereof, then in any such events Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment, or decree which it is advised by legal counsel of its own choosing is binding upon it; and if Agent complies with any such order, writ, judgment, or decree, it shall not be liable to any of the Parties or to any person, firm, or corporation by reason of such compliance even though such order, writ, judgment, or decree may be subsequently reversed, modified, annulled, set aside, or vacated.

3. Agent's Actions and Reliance. Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the sole cause of any loss to either of the Parties. Agent shall also be fully protected in relying upon any written notice, instruction, direction, certificate, or document which it believes to be genuine.

4. Collections. Agent shall follow its usual collection procedures in its efforts to collect any checks, interest due, matured principal, or other collection items with respect to Assets at any time deposited in the Account unless Agent is not registered as record owner thereof or otherwise is not entitled to request or receive payment thereof as a matter of legal or contractual right. All collection payments shall be deposited to the Account, except as otherwise provided in Schedule II. Agent shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument, security, or obligation deposited in the Account, nor to take any legal action to enforce payment of any check, instrument, or other security deposited in the Account. The Account is a safekeeping escrow account, and no interest shall be paid by Agent on any money deposited or held therein, except as provided in Section 6 hereof.

5. Agent Responsibility. Agent undertakes to perform such duties as are specifically set forth in this Agreement and shall have no duty under any other agreement or document, and no implied covenants or obligations shall be read into this Agreement against the Agent. The Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Agreement. Agent shall not be responsible or liable for the sufficiency or accuracy of the form, execution, validity, or genuineness of documents, instruments, or securities now or hereafter deposited in the Account, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein. Registered ownership of or other legal title to Assets deposited in the Account shall be maintained in the name of Agent, or its nominee, only if expressly provided in Schedule II. Agent may maintain qualifying Assets in a Federal Reserve Bank or in any registered clearing agency (including without limitation, the Depository Trust Company) as Agent may select, and may register such deposited Assets in the name of Agent or its agent or nominee on the records of such Federal Reserve Bank or such registered clearing agency or a nominee of either. Agent shall not be responsible or liable in any respect on account of the identity, authority, or right of the persons executing or delivering or

PAGE 3

purporting to execute or deliver any such document, security, or endorsement or this Escrow Agreement. Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. Escrow Agent may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving any party hereto, and shall incur no liability and shall be fully indemnified by the Parties from any liability whatsoever in acting in accordance with the advice of such counsel.

6. **Investments.** All monies held in the Account shall be invested by Agent in its name or its nominee's name, in such instruments or securities and at the written direction of such Party or other person, as expressly authorized in Schedule II. Such Party shall furnish the Agent with written instructions to sell securities (including shares or units in any money market mutual funds) to make any payments from the Account as provided hereunder. If no such instructions are received, Agent is authorized to sell any such securities held in the Account as necessary pursuant to the purpose set forth on Schedule I. All accrued interest shall become part of the Assets. Agent shall not be responsible for the selection, quality, or maturity of such investments, or for the timely reinvestment of interest or maturity proceeds thereof except as provided in the immediately following paragraph. Agent shall not be liable or responsible for loss in the value of any investment made pursuant to this Escrow Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of the Assets.

In the absence of duly authorized and complete directions regarding investment of cash held in the Account, Agent shall automatically invest and reinvest the same in units of the money market mutual funds identified on Schedule III attached hereto and incorporated herein, which funds may be managed by an affiliate of the Agent.

The Parties acknowledge and agree that the Agent is authorized to invest from or through its trust department or U.S. Bank National Association or any other bank affiliated with Agent through common control by U.S. Bancorp.

7. **Notices/Directions to Agent.** Notices and directions to Agent from the Parties, or from other persons authorized to give such notice or directions as expressly set forth in Schedule II, shall be in writing and signed by an authorized representative as identified pursuant to Schedule II, and shall not be deemed to be given until actually received by Agent's employee or officer who administers the Account. Agent shall not be responsible or liable for the authenticity or accuracy of notices or directions properly given hereunder if the written form and execution thereof on its face purports to satisfy the requirements applicable thereto as set forth in Schedule II, as determined by Agent in good faith without additional confirmation or investigation.

PAGE 4

8. **Books and Records.** Agent shall maintain books and records regarding its administration of the Account, and the deposit, investment, collections, and disbursement or transfer of Assets, shall retain copies of all written notices and directions sent or received by it in the performance of its duties hereunder, and shall afford each Party reasonable access, during regular business hours, to review and make photocopies (at the Party's cost) of the same.

9. **Disputes among Parties and/or Third Parties.** In the event Agent is notified of any dispute, disagreement, or legal action between or among any of the Parties, and/or any third parties, relating to or arising in connection with the Account, the Assets, or the performance the Agent's duties under this Escrow Agreement, or in the event that the Agent is in doubt as to what action it should take hereunder the Agent shall be authorized and entitled to suspend further performance hereunder, to retain and hold the Assets then in the Account and take no further action with respect thereto until the matter has been fully resolved, as evidenced by written notification signed by all Parties and any other parties to such dispute, disagreement, or legal action. Alternatively, the Agent may petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction, in any venue convenient to Escrow Agent, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all Assets in the Account, after deduction and payment to Agent of all fees, expenses and indemnity (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by Agent in connection with the performance of its duties and the exercise of its rights hereunder. Agent shall have no liability to any party hereto, their respective owners, shareholders or members or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the Account or any delay in or with respect to any other action required or requested of Agent.

10. **Notice by Agent.** Any notices which Agent is required or desires to give hereunder to any of the Parties shall be in writing and may be given by mailing the same to the address indicated below for such Party (or to such other address as said Party may have theretofore substituted therefore by written notification to Agent), by United States certified or registered mail, postage prepaid. For all purposes hereof any notice so mailed shall be as effectual as though served upon the person of the Party to whom it was mailed at the time it is deposited in the United States mail by Agent whether or not such undersigned thereafter actually receives such notice. Whenever under the terms hereof the time for Agent's giving a notice or performing an act falls upon a Saturday, Sunday, or holiday, such time shall be extended to the next business day.

PAGE 5

11. Indemnification. From and at all times after the date of this Escrow Agreement, the Parties, jointly and severally, shall, to the fullest extent permitted by law, indemnify and hold harmless Agent and each director, officer, employee, attorney, agent and affiliate of Agent (collectively, the "Indemnified Parties") against any and all actions, claims (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) incurred by or asserted against any of the Indemnified Parties, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, including without limitation either of the Parties, whether threatened or initiated, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, including, but not limited to, any federal or state securities laws, or under any common law or equitable cause or otherwise, arising from or in connection with the negotiation, preparation, execution, performance or failure of performance in connection with this Escrow Agreement or any transactions contemplated herein, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; provided, however, that no Indemnified Party shall have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party. The Parties further agree, jointly and severally, to indemnify each Indemnified Party for all costs, including without limitation reasonable attorney's fees, incurred by such Indemnified Party in connection with the enforcement of the Parties' indemnification obligations hereunder. The obligations of the Parties under this Section 11 shall survive any termination of this Escrow Agreement and the resignation or removal of Agent.

12. Agent Compensation. Agent shall be paid a fee for its services by the Developer as set forth on Schedule IV attached hereto and incorporated herein. If Agent's fees, or reasonable out-of-pocket costs or expense, provided for herein, are not promptly paid, Agent shall have the right to sell such portion of the Assets held in the Account as necessary and reimburse itself therefor from the proceeds of such sale or from the cash held in the Account. In the event that the conditions of this Escrow Agreement are not promptly fulfilled, or if Agent, upon request of the Parties, renders any service not provided for in this Escrow Agreement, or if the Parties request a substantial modification of its terms, or if any controversy arises that is not caused by Agent, or if Agent is made a party to, or intervenes in any litigation pertaining to this escrow or its subject matter and the litigation is not related to the Agent's actions, Agent shall be reasonably compensated for such reasonable and extraordinary services and reimbursed for all reasonable out-of-pocket costs, attorney's fees, and expenses occasioned by such default, delay, controversy, or litigation and Agent shall have the right to retain all documents and/or other things of value at any time held by Agent in this escrow until such compensation, fees, costs, and

expenses are paid, which payment may be made from the Assets if not paid within forty-five (45) days after billing. Agent shall have a first lien on the Assets and papers held under this Escrow Agreement for such compensation and expenses. This Section shall survive notwithstanding any termination of this Agreement or the resignation or removal of Agent.

13. **Agent Resignation.** It is understood that Agent reserves the right to resign at any time by giving written notice of its resignation, specifying the effective date thereof (not to be less than thirty (30) days), to the Parties. Within thirty (30) days after receiving the aforesaid notice, the Parties agree to appoint a successor escrow agent to which Agent may transfer the Assets then held in the Account, less its unpaid fees, costs, and expenses. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of thirty-day (30 day) period, Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the reasonable out-of-pocket costs, expense, and reasonable attorney's fees which Agent incurs in connection with such a proceeding shall be paid from the Assets if not paid within forty-five (45) days after billing.

14. **Escrow Termination.** If, as provided in Schedule II, the Escrow Agreement shall not have previously terminated, then it shall terminate upon completion of all decommissioning and reclamation requirements of the Wind Farm Reclamation Agreement as confirmed by the County of Champaign in writing, unless further extended by written modification to this Escrow Agreement by the Parties, at which time the Assets then held in the Account including interest, if any, less Agent's unpaid fees, costs, expenses and indemnity, shall be distributed to: California Ridge Wind Energy LLC, a Delaware limited liability company with its offices at 1 South Wacker Drive, Suite 1900, Chicago, IL 60606 or its successors in interest.

15. **Governing Law.** This Escrow Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Illinois.

16. **Automatic Succession.** Any company into which the Agent may be merged or with which it may be consolidated, or any company to whom Agent may transfer a substantial amount of its escrow business shall be the successor to the Agent without the execution or filing of any paper or any further act of the Parties, save notice by the Agent, anything herein to the contrary notwithstanding.

17. **Tax Reporting.** The Agent shall have no responsibility for the tax consequences of the Escrow Agreement. The Agent hereby advises each party to this escrow to consult with independent legal counsel concerning the tax ramifications of this transaction.

18. **Facsimile.** The Escrow Agreement may be executed in any number of counterparts, each of which shall be deemed to be one and the same instrument. The exchange

PAGE 7

of copies of this Escrow Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Escrow Agreement as to the parties and may be used in lieu of the original Escrow Agreement for all purposes. Signature of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

19. Patriot Act. 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 Agent will ask for documentation to verify its formation and existence as a legal entity. 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.

20. Security Advice Waiver Language. The Parties hereto acknowledge that, in accordance with regulation of the Comptroller of the Currency, they have the right to receive brokerage confirmations of security transactions as they occur. The Parties hereto specifically waive such notification to the extent permitted by law and acknowledge that California Ridge Wind Energy LLC will receive periodic cash transactions statements, which will detail all investment transactions.

21. Security Interest in Escrow Agreement. The Parties agree that Champaign County shall have security interest in the Escrow Account and the funds deposited therein, subject to Agent's rights thereto. California Ridge Wind Energy, LLC, acknowledges value is given in the form of reduction in the amount of a letter of credit necessary for it to post to comply with the terms of its Reclamation Agreement with Champaign County. The Parties agree that the Agent will comply with written instruction originated by Champaign County directing disposition of funds in the deposit account pursuant to Schedule II without consent from California Ridge Wind Energy, LLC. The Parties agree the Agent will take possession of the Assets for the benefit of Champaign County. Nothing in the paragraph shall create in California Ridge Wind Energy, LLC, a right to the funds in escrow which does not otherwise exist.

22. Other Terms.

California Ridge Wind Energy LLC warrants that:

- A. There are no other agreements relating to this account.
- B. This Escrow Account was established solely for purposes of meeting the obligations of California Ridge Wind Energy, LLC, under the Reclamation Agreement entered between it and Champaign County in Champaign County Zoning Case 696-S-11.
- C. Except as expressly stated herein, the funds in the Escrow Account will only be used for the purposes described in (B).

The Parties agree the Agent shall provide to Champaign County:

- A. Immediate notice of any and all agreements in place relating to the Escrow Account other than this one, together with a copy of said agreements.
- B. Immediate notice of any non-payment or other breach of the Escrow Agreement by California Ridge Wind Energy, LLC.

Agent shall provide the Parties monthly account statements showing all deposits to and debits from the Account.

23. **Entire Agreement, No Third Party Beneficiaries.** This Escrow Agreement constitutes the entire agreement between the Escrow Agent and the remaining Escrow Parties relating to the holding, investment and disbursement of the Escrow Funds and sets forth in their entirety the obligations and duties of Escrow Agent with respect to the Escrow Funds. Nothing in this Escrow Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Escrow Agreement. Nothing in this Escrow Agreement shall be construed to limit any remedies the Company and Champaign County may have against each other under the terms of the Wind Farm Reclamation Agreement or the associated special use permit.

24. **Dealings.** Nothing herein shall preclude the Agent from acting in any other capacity for either of the Parties or for any other person or entity.

PAGE 9

IN WITNESS WHEREOF, the undersigned Escrow Parties have affixed their signatures and hereby adopt as part of this instrument Schedules I, II, III, and IV which are incorporated by reference.

ESCROW PARTIES

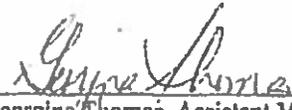
The County of Champaign:



By: Jonathan Schroeder, Vice-Chair
Champaign County Board

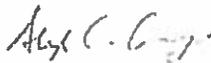
Agent:

U.S. Bank National Association:

By:  5-13-14
Georgina Thomas, Assistant Vice
President

The Company:

California Ridge Wind Energy LLC


ALEX GEORGE, its Vice President



SCHEDULE I

Purpose of the Account: The Account is being set up to hold funds as collateral for the obligations of California Ridge Wind Energy LLC, a Delaware limited liability company pursuant to that certain Reclamation Agreement (the "Reclamation Agreement") dated March 12, 2012 by and among Champaign County (the "County") and California Ridge Wind Energy LLC (the "Developer").

Assets: One hundred fifty-seven thousand two hundred ninety-nine dollars (\$157,299.00) deposited with the Agent by California Ridge Wind Energy LLC, a Delaware limited liability company ("California Ridge Wind Energy"). As set forth in the Reclamation Agreement, California Ridge Wind Energy shall continue to make additional deposits annually by an amount specified in the Reclamation Agreement. Additional deposits to the account shall be sent to the Agent's wiring instructions as set forth in Schedule II and Agent shall be notified when such deposit is sent.

PAGE 11

REDACTED
SCHEDULE II

The funds shall be paid into the Account by California Ridge Wind Energy LLC to the Agent according to the wiring instructions below:

U.S. Bank, N.A.
ABA# [REDACTED]
Acct# [REDACTED]
Ref: Champaign County/California Ridge Escrow 2014
Attn: Georgina Thomas/Maria Bui

Draw Requests: Champaign County may submit to the Agent at any time and from time to time draw requests substantially in the form attached hereto as Exhibit A to Schedule II for any or all of the Assets then held by Agent in the Account, which request shall be simultaneously delivered to California Ridge Wind Energy LLC at the address provided herein (the "Draw Request"). Agent shall deliver Assets pursuant to any Draw Request received by Agent without inquiry of any kind or notice to California Ridge Wind Energy LLC.

Notice Addresses

If to County of Champaign:
Brookens Administrative Center
1776 East Washington Street
Urbana, Illinois 61802
ATTN: John Hall
Telephone: (217)384-3708
Facsimile: (217)819-4021
E-mail: jhall@co.champaign.il.us

If to California Ridge Wind Energy LLC:
1 South Wacker Drive, Suite 1900
Chicago, Illinois 60606
ATTN: General Counsel
Telephone: 312-224-1400
Facsimile: 312-224-1444
E-mail: jcondo@invenenergyllc.com

PAGE 12

If to the Agent:
U.S. Bank National Association
633 W. 5th Street, 24th floor
Los Angeles, CA 90071
ATTN: Georgina Thomas
Telephone: (213)615-6001
Facsimile: (213)615-6199
Email: georgina.thomas@usbank.com

PAGE 13

Exhibit A to Schedule II
Form of Draw Request

Attn: Georgina Thomas
US Bank, National Association
633 W. 5th St., 24th Floor
Los Angeles, CA 90071

California Ridge Wind Energy LLC
c/o Invenergy LLC
Attention: Asset Manager
1 S Wacker Dr., Suite 1900
Chicago, IL 60606

Ladies and Gentlemen:

I/We hereby certify the following statements in this letter and hereby submit a request for a draw on the funds (the "Assets") held in that certain Escrow Agreement dated [[April 1, 2014] with U.S. Bank National Association (the "Escrow Agreement") in the amount of U.S. \$ • ("this Disbursement") pursuant to my/our rights set forth in that certain Reclamation Agreement dated March 12, 2012 (the "Reclamation Agreement") by and among Champaign County (the "County") and California Ridge Wind Energy LLC (the "Developer"). Any capitalized term used but not defined herein shall have the meaning given to such term in the Reclamation Agreement.

In connection with this Disbursement, by signing below, I/we hereby certify, represent and warrant that:

The conditions set forth in Paragraph 9(a) of the Reclamation Agreement between Champaign County and California Ridge Wind Energy, LLC, for the Zoning Administrator to draw upon the Financial Assurance have been met.

THE ABOVE IS ATTESTED TO BY ME/US AS OF THIS ____ DAY OF _____, 20[___].

Signature of Champaign County

SCHEDULE III

U.S. BANK NATIONAL ASSOCIATION MONEY MARKET ACCOUNT AUTHORIZATION FORM DESCRIPTION AND TERMS

The U.S. Bank Money Market 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 trust customers. U.S. Bank's trust department performs all account deposits and withdrawals. Deposit accounts are FDIC Insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

AUTOMATIC AUTHORIZATION

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account. The U.S. Bank Money Market 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 alternate instructions

PAGE 15

Schedule IV
Escrow Agent Fees

Acceptance Fee	\$1000
Annual Administration Fee	\$1200

Agent's fees are payable by the Developer upon execution of the Escrow Agreement and receipt of the amount to be deposited in escrow.