



Henvey Inlet First Nation

TO : All Members, Henvey Inlet First Nation
FROM : Chief Wayne McQuabbie
DATE : 20 October 2020
RE : Notice of Draft Land Law Tabled For Enactment by Council
Re: Henvey Inlet First Nation Windfarm Legacy Trust

Band Council has tabled a draft land law which will authorize the establishment of the Henvey Inlet First Nation Windfarm Legacy Trust to manage income from Nigig Power Corporation and unexpended rent from the windfarm project for the benefit of our First Nation.

The land law will give effect to a proposed Trust model which has been developed through community consultation, and which is subject to a Community Approval Vote to be held on Sunday, 13 December 2020. If the proposed Trust model is approved by the members, Council and will enact the enclosed draft land law in an open Council meeting on Tuesday, 15 December 2020.

Attached to this Notice you will find:

- Draft Henvey Inlet First Nation Windfarm Legacy Trust land law with side-by-side plain language guide
- Draft Henvey Inlet First Nation Windfarm Legacy Trust Settlement Deed
- Feedback Form which you can send to the Lands Advisory Committee or Council.

Please note that the community approval vote relates only to the Trust proposal. Under Henvey Inlet First Nation's Land Code, the draft land law does not require a community approval vote. Council not proceed with the land law unless the Trust proposal is not approved by the membership.

I look forward to discussing the Henvey Inlet First Nation Windfarm Legacy Trust model, the draft land law and the draft trust settlement deed with you at the Community Meeting on Monday, 02 November 2020. If you are unable to attend, please review the documentation and use the enclosed Feedback Form to let Council and the Lands Advisory Committee know your views. You can also contact me, Councillor Pat Brennan who is chair of the Lands Advisory Committee, or any other member of Council or the Lands Advisory Committee for further information or to discuss any aspect of the land law.

Miigwetch!

Chief Wayne McQuabbie.



D R A F T

HENVEY INLET FIRST NATION DRAFT LAND LAW & PLAIN LANGUAGE GUIDE

THE HENVEY INLET FIRST NATION WINDFARM LEGACY TRUST AND THE DISTRIBUTION OF WEALTH FROM THE WIND ENERGY CENTRE

HENVEY INLET FIRST NATION LAND LAW

BACKGROUND

1. The Henvey Inlet Wind Energy Centre ("HIWEC") is a 300 MW wind turbine project constructed on Henvey Inlet Reserve No.
2. The project has a contract to supply electrical power to the Independent Electricity System Operator of Ontario at a special fixed price which runs from 2019 until 2039 (the "power purchase agreement"). Henvey Inlet First Nation benefits from the power purchase agreement in two ways:
 - (a) HIFN is the sole owner of Nigig Power Corporation, which is a 50% partner in Henvey Inlet Wind Limited Partnership, the owner and operator of the HIWEC. Nigig is entitled to 50% of HIW LP's net profits from the sale of energy. After deduction of its expenses, Nigig distributes any surplus income to Henvey Inlet First Nation as the corporation's shareholder, usually in the form of dividends. The income HIFN receives from Nigig will vary year to year depending on energy production and Nigig's expenses, but over the 19 remaining years of the power purchase agreement, HIFN's total income from Nigig is projected to be between \$262 million and \$487 million.
 - (b) Henvey Inlet First Nation leases the reserve land on which the HIWEC is constructed to Henvey Inlet Wind, and receives quarterly rent. The rent varies on the basis of actual energy production, but over the 19 years of the power purchase agreement, the projected rental income is likely to be between \$130 million and \$150 million.

PLAIN LANGUAGE GUIDE

BACKGROUND

The Henvey Inlet Wind Energy Centre ("HIWEC") has a contract for the sale of electrical energy to Ontario that began in 2019 and will last until 2039.

HIFN will receive approx. 50% of the windfarm project's profits from energy sales – estimated at \$262-\$487 million over the remaining 19 years of the contract.

HIFN also receives rent from the windfarm project – estimated at \$130-\$150 million over the remaining 19 years of the contract.

2. Henvey Inlet First Nation has established two goals to govern the use and expenditure of the wealth generated from the HIWEC:

- (a) Immediate improvement in the quality of life for the First Nation's membership through regular financial distributions to all individual members and financial support for improved programs, services and facilities; and
- (b) the creation of a legacy fund which will continue providing those benefits to future generations.

3. Council has received legal and financial advice on how to manage the Nigig and rent income streams in order to best achieve these goals. Financial projections and expenditure models have been shared with HIFN members through mail-outs, website postings and a series of five community consultation meetings.

4. Council has developed a financial management and expenditure strategy based on the input from members and the professional advice received. The projections on which the strategy is based show that Henvey Inlet First Nation will be able to provide distributions to its members and to support enhanced community programs, services and facilities throughout the current power purchase agreement and long after – potentially, indefinitely.

5. The Henvey Inlet Windfarm Legacy Trust is the central mechanism of that wealth management strategy. The trust will receive and manage the net profits of Nigig Power Corporation throughout the term of the power purchase agreement and use those funds exclusively for enhancing the quality of life of present and future generations of HIFN's members through per capita distributions and support for enhanced community programs, facilities and services. Prior to 2039, the trust will focus on distributions to members and building its investment portfolio towards a target that will produce investment income to replace the HIWEC income streams after 2039. That income will be used to support both continuing distributions to members and enhancements to community programs, facilities and services.

6. **Schedule "A"** to this land law is a draft settlement agreement for the creation of the Henvey Inlet First Nation Windfarm Legacy Trust, charging it with these purposes and containing

HIFN has two goals for the use of the two windfarm income streams:

- a) improve the quality of life of current HIFN members; and
- b) provide the same benefits to future generations.

Legal and financial experts have been consulted on how best to achieve these goals. The advice received has been shared with HIFN members through community meetings and the HIFN website.

Based on the expert advice and community consultation, Council has developed a long-term strategy to provide member distributions and to improve services, programs and facilities for members for the foreseeable future.

A "trust" will be established to hold and manage the profits from the Windfarm.

2020-2039: The Trust will receive HIFN's energy sales income, make member distributions and build an investment portfolio (projected target is at least \$635 million, but depends on membership growth). Council will improve programs and services using the windfarm rent income.

After 2039: Income from the Trust's investment portfolio will replace the income from windfarm energy sales and rent to allow the continuation of payments to members and support for programs, facilities and services.

This land law includes a draft Trust Settlement Deed – see Schedule "A".

features which have been reviewed with the members through the consultation process.

7. Sections 7.01, 7.02, 20.07 and 20.08 of *Henvey Inlet First Nation's Land Code* as amended empower Council to manage revenues from the First Nation's lands and to enact laws on any matter arising out of or ancillary to the management of the First Nation's lands. Subsection 13.01(g) of the land code authorizes Council to submit a matter to a community approval vote as a condition of the enactment of a land law.
8. The members of Henvey Inlet First Nation mandated this Land Law by a community approval vote pursuant to the land code and as an exercise of the custom and the inherent right of self-government of the First Nation.

INTERPRETATION

9. In this land law:
 - (a) terms used in this land law which are expressly defined in the Henvey Inlet First Nation Land Code, as amended, or the draft Trust Agreement attached as Schedule "A" to this land law, shall have the meaning ascribed therein;
 - (b) "HIWEC Rent" means the rent payable by Henvey Inlet Wind GP Inc. pursuant to the lease granted by the First Nation for the HIWEC project;
 - (c) "member" means a person who has been properly admitted to membership in Henvey Inlet First Nation;
 - (d) "Nigig Income" means all payments received by Henvey Inlet First Nation in its capacity as shareholder of Nigig Power Corporation, including dividends and other receipts, other than repayments of shareholder loans to Nigig Power Corporation;
 - (e) "Nigig Power Corporation" includes any successor whether resulting from re-organization, sale of assets, amalgamation, merger, business combination or otherwise;
 - (f) "Trust" means the Henvey Inlet First nation Windfarm Legacy Trust;

HIFN is authorized to enact this law as a land law under the HIFN Land Code.

Council has decided that this land law should be approved by a community vote before it is enacted.

This land law is being approved under the First Nation's land code, custom and its inherent right to govern its own affairs.

INTERPRETATION

This section sets out how certain words and phrases in this land law should be interpreted.

- (g) “Trustee” means the trustees of the Henvey Inlet First Nation Windfarm Legacy Trust; and
- (h) “Trust Income Distributions” means all distributions of income earned by the Trust on capital or income disbursed to Henvey Inlet First Nation as sole income beneficiary of the Trust.

ESTABLISHMENT OF THE WINDFARM LEGACY TRUST

10. Council is hereby authorized to establish the Henvey Inlet First Nation Windfarm Legacy Trust substantially in accordance with the draft Trust Settlement Agreement attached as Schedule “A” to this land law, for the benefit of the members of Henvey Inlet First Nation from time to time as capital beneficiaries and of Henvey Inlet First Nation as capital and income beneficiary. Pursuant to this authorization, Council shall forthwith proceed to:

- (a) select and appoint qualified trustees and the Windfarm Trust Withdrawals Advisory Committee;
- (b) finalize and execute the Trust Settlement Agreement; and
- (c) settle upon the Trustees the Initial Payment described in the draft Trust Settlement Agreement;

without substantial change to the draft Trust Settlement Agreement except as authorized by further land law enacted subject to a community approval vote, but subject to minor revisions as provided therein.

FUNDS TO BE SETTLED ON THE TRUST

11. Forthwith upon the establishment of the Henvey Inlet First Nation Windfarm Legacy Trust, and for the remainder of the term of the power purchase agreement, Council shall remit or cause the following amounts to be remitted the Trustees:

- (a) all Nigig Income during the term of the power purchase agreement, within 10 days of receipt by HIFN; and
- (b) any unexpended annual surplus of HIFN’s HIWEC rent income and Trust Income Distributions received during the budget year, as provided in section 12 of this land law.

ESTABLISHMENT OF THE WINDFARM LEGACY TRUST

This section authorizes Council to setup the Trust according to the draft Trust agreement attached as Schedule “A” and to take certain actions required for implementing the Trust.

The final version of the Trust settlement agreement may include minor revisions but no substantial changes from Schedule “A”.

FUNDS THAT GO INTO THE TRUST

Council is required to pay to the Trust:

- 1) All of the energy sales income received by HIFN from Nigig; and
- 2) Any unused HIWEC Rent and Trust income (see section 12 for details)

Each such remittance to the Trust shall be deemed to be a settlement of capital on the Trustees by Henvey Inlet First Nation. The Trustees shall have legal power to enforce the First Nation's settlement obligations, and Council is authorized to enter into any further agreements and to give any directions to any party which Council deems necessary to give effect to that power.

SURPLUS HIWEC RENT INCOME

12. In each year following the establishment of the Trust and for the remainder of the term of the power purchase agreement, Henvey Inlet First Nation's Council shall establish an annual budget for the use of HIWEC Rent and Trust Income Distributions anticipated to be received during the budget year, such funds to be used solely as a last resort to support unfunded or underfunded First Nation operations, programs, services, capital projects and other expenditures for the benefit of the First Nation. Any surplus remaining at the end of each such budget year, other than reasonable reserves, shall be settled upon the Trust not later than 30 days after the completion of the First Nation's annual audit.

WEALTH DISTRIBUTIONS TO MEMBERS

13. As provided in Schedule "A" and subject to the terms, conditions and adjustments set out therein and to the settlement of sufficient funds on the Trustees, Council and the Trustees shall make quarterly distributions of trust capital to each member of Henvey Inlet First Nation as follows:
- (a) Subject to the availability of capital and commencing with the quarter which begins on 01 January 2021, the amounts of trust capital to be distributed to members shall be as follows:
 - (i) to each member between the ages of eighteen (18) and sixty (60) years of age, \$500.00 per month payable quarterly in arrears;
 - (ii) to each member until the age of eighteen (18) years of age, the sum of \$100.00 per month to be paid to the member at twenty-one (21) years of age or when the member, being at least eighteen (18) years of age, is awarded a high school diploma or the equivalent; and

SURPLUS HIWEC RENT INCOME

Where Council has exhausted all other sources of funding, Council will use HIWEC rent income to support unfunded or underfunded operations, programs and services, in accordance with an annual budget. At the end of each budget year, any unused rental income and any surplus Trust income will be paid into the Trust.

WEALTH DISTRIBUTIONS TO MEMBERS

Payment from the Trust to members will be made quarterly (in three month intervals, four times a year):

Regular payments begin in 2021 (see the Catch-up Payment for the period from October 2019 to December 31 2020 in section 13(b) below.

Adult members up to age 60 will receive \$500/month, paid in 3-month instalments

Minors will receive \$100/month, payable at age 21 or age 18 with a high school diploma or GED.

- (iii) to each member sixty (60) years of age or older, the sum of \$600.00 per month, payable quarterly in arrears;

or the *pro rata* share thereof equal to the part of the quarter during which the recipient was a member or entitled to the stated distribution.

- (b) In addition, the Trust shall make a one-time capital distribution to each person who was a registered member during the period from 01 October 2019 until 31 December 2020, at the rates specified in subsection 13(a) (and held back for minors as provided therein), for the portion of that period during which each such member was registered, less any payment for the same period made by Henvey Inlet First Nation in lieu of the Trust.
- (c) On the fifth anniversary of the establishment of the Trust and every five years thereafter, Council and the Trustees shall review the ability of the Trust to achieve its objectives in view of the amounts settled on the Trust, the Trust's investment performance, increases in HIFN membership and all other relevant criteria, projections and trends, and may request the consent of HIFN's Council, as Settlor of the Trust, to an adjustment in the amount of the capital distributions to members consistent with the achievement of those objectives.

Seniors will receive \$600/month paid in 3-month instalments.

One-time distribution to members for the period from 01 October 2019 to 31 December 2020.

The amounts of member distributions may be adjusted every five years based on how much capital has been settled on the Trust, the performance of the Trust's investment portfolio, increases in the number of HIFN's members, future projections and trends, etc.

SUPPORT FOR COMMUNITY INFRASTRUCTURE, OPERATIONS, PROGRAMS AND SERVICES FOR MEMBERS

- 14. As provided in Schedule "A" and subject to the terms, conditions and adjustments set out therein and to the settlement of sufficient funds on the Trustees, the Trustees may make distributions of income and capital to Henvey Inlet First Nation, as represented by Council, from time to time, in accordance with Trust Withdrawal Proposals submitted to the Trustees as provided in the Trust Settlement Agreement, and in particular subject to the restrictions applicable during the Savings Phase and Full Support Phase of the Trust's operation.

SUPPORT FOR BAND BUDGETS

Council may make proposals to the Trustees for a withdrawal of funds from the Trust to support underfunded community projects, band operations and programs and services for members. The Trustees may approve or refuse Council's proposal based on criteria set out in the Trust agreement.

ACCOUNTABILITY OF THE TRUST

- 15. The Trustees of the Henvey Inlet First Nation Windfarm Legacy Trust shall keep and annually render a full and accurate record and accounting of their trusteeship to HIFN

ACCOUNTABILITY OF THE TRUST

The Trustees will be required to report to HIFN every year.

as provided in the Trust Settlement Deed attached as Schedule "A."

AMENDMENT

16. This land law may be:
- (a) amended or repealed by a majority vote of the electors of Henvey Inlet First Nation, provided not less than a majority of the electors cast ballots; and
 - (b) revised by a resolution of Council where Council deems the revision to be minor in that it will correct an error or defect in the wording of the land law, or will assist in the interpretation or implementation of the land law, without changing the purpose, intent or substance of the land law, upon giving not less than 10 days' notice to Members by posting the proposed revision on Henvey Inlet First Nation's internet website and by any other means which Council may deem appropriate.

EFFECTIVE DATE

8. This land law shall become effective on the date of enactment.

[End]

AMENDMENT

Any amendment that alters the substance of the land law requires a referendum vote.

Council can make minor revisions that do not change the substance of the land law on 10 days' prior notice to members.

SCHEDULE "A" TO DRAFT LAND LAW

HENVEY INLET FIRST NATION WINDFARM LEGACY TRUST

THIS DEED OF SETTLEMENT MADE [NTD: INSERT DATE].

BETWEEN

HENVEY INLET FIRST NATION, as represented by its Council

(the "Settlor")

OF THE FIRST PART

- and -

**[CORPORATE TRUSTEE LTD.], [COMMUNITY TRUSTEE
#1], [COMMUNITY TRUSTEE #2], [EXPERT TRUSTEE #1]
and [EXPERT TRUSTEE #2]**

(collectively, the "Trustees")

OF THE SECOND PART



HENVEY INLET FIRST NATION WINDFARM LEGACY TRUST

THIS DEED OF SETTLEMENT MADE as of the **[NTD: insert date]**

BETWEEN:

**HENVEY INLET FIRST NATION, as represented by its duly
elected Council**

(the "Settlor")

OF THE FIRST PART

- and -

**[CORPORATE TRUSTEE LTD.], [COMMUNITY TRUSTEE #1],
[COMMUNITY TRUSTEE #2], [EXPERT TRUSTEE #1] and
[EXPERT TRUSTEE #2]**

(the "Trustees")

OF THE SECOND PART

- WHEREAS:
 - A. The Henvey Inlet Wind Energy Centre ("HIWEC") is a 300 MW wind turbine project constructed on Henvey Inlet Reserve No. 2. Henvey Inlet Wind LP ("HIWLP"), which is the owner and operator of the HIWEC, has a contract to supply electrical power to the Independent Electricity System Operator of Ontario at a special fixed price which runs from 2019 until 2039 (the "Power Purchase Agreement"). Nigig Power Corporation, which is a 50% limited partner in HIWLP, is solely owned by Henvey Inlet First Nation ("HIFN").
 - B. HIFN benefits from the Power Purchase Agreement in two ways:
 - Nigig is entitled to 50% of HIWLP's net profits from the sale of energy. After deduction of its expenses, Nigig distributes any surplus to HIFN as its sole shareholder, usually in the form of dividends (the "**Nigig Income Stream**").
 - HIFN leases the reserve land on which the HIWEC is constructed to HIWLP, and receives quarterly rent in the form of a royalty on energy sales (the "**Rent Income Stream**").
 - C. Through a membership approval vote, HIFN has established two goals to govern the use and expenditure of the wealth generated from the HIWEC:

- improvements in the First Nation's quality of life through regular capital distributions to all individual members of HIFN and through enhanced financial support for programs, services and facilities that benefit HIFN members; and
- the creation of a legacy fund which will provide similar benefits to future generations of HIFN members after the termination of the Power Purchase Agreement.

D. HIFN desires to establish and designate this Trust for the purpose of receiving and managing, for the benefit of the First Nation, HIFN's Nigig Income Stream, unused portions of the Rent Income Stream and other capital which HIFN may settle on the Trust from time to time (the "**Settled Property**").

E. The Trustees have agreed to act as trustees under this Trust Deed and to accept and hold the Settled Property and other property forming part of the Trust Fund for the benefit of HIFN, on and subject to the terms of the Trust hereinafter declared.

NOW THEREFORE this Trust Deed witnesses that the Trustees hereby agree, acknowledge and declare that the Settled Property and all other property that from time to time is included in the Trust Fund as defined in this Trust Deed, shall be held by the Trustees upon the following trusts.

ARTICLE 1: INTERPRETATION

1.1 **Definitions.** In this Trust Deed, unless the context requires otherwise, all capitalized terms shall have the meanings set forth below:

- (a) "**Attributable Income**" means any income attributed to Henvey Inlet First Nation pursuant to subsection 75(2) of the *Income Tax Act*;
- (b) "**Auditor**" means the auditor appointed from time to time in accordance with Article 15.;
- (c) "**Authorized Expenses**" means expenses reasonably incurred by the Trustees in each Fiscal Year in carrying out the terms of this Trust Deed including, without limitation, the payment of administrative, accounting, legal and investment costs;
- (d) "**Authorized Investments**" means those investments listed in Schedule "C";
- (e) "**Beneficiaries**" means the Income Beneficiary and the Capital Beneficiaries;
- (f) "**Capital Beneficiaries**" means Henvey Inlet First Nation and its individual Eligible Members from time to time;
- (g) "**Capital**" means, at any point in time:

- (i) amounts settled on the Trust as Trust Capital by Henvey Inlet First Nation;
- (ii) any other property received by the Trustees and accepted as Trust Capital; and
- (iii) accumulated income of the Trust;

but excluding all amounts which have been previously expended therefrom pursuant to the provisions of this Trust Deed;

- (h) "**Community Trustee**" has the meaning set forth in section 10.1(a)) of this Trust Deed
- (i) "**Consent to Act as a Trustee**" means the consent to act as a Trustee in the form attached as Schedule "A" to this Trust Deed;
- (j) "**Corporate Trustee**" has the meaning set forth in section 10.1(c) of this Trust Deed;
- (k) "**Council**" means the duly elected Council from time to time of Henvey Inlet First Nation;
- (l) "**Council Resolution**" means a duly authorized resolution of the Council of Henvey Inlet First Nation
- (m) "**Elector**" means a registered member of Henvey Inlet First Nation to vote in a Council election pursuant to the *Indian Act*;
- (n) "**Eligible Member**" means a person who is or becomes a registered member of Henvey Inlet First Nation on or after 01 October 2019;
- (o) "**Entity**" means a corporation, society or trust;
- (p) "**Expert Trustee**" has the meaning set forth in section 10.1(b)) of this Trust Deed;
- (q) "Financial Institution" means:
 - (i) a bank or trust company that is a member institution for which the Canada Depositary Insurance Corporation has a duty to insure deposits pursuant to the *Canada Deposit Insurance Corporation Act (Canada)*; or
 - (ii) a credit union or Caisse Populaires for which the Deposit Guarantee Corporation of Ontario has a duty to guarantee deposits pursuant to the *Credit Unions and Caisses Populaires Act (Ontario)*;
- (r) "**Fiscal Year**" means the fiscal year of this Trust which shall end on the 31st day of December each year;

- (s) **"Full Support Phase"** has the meaning in section 4.1(b);
- (t) **"Generally Accepted Accounting Principles"** means the accounting principles generally accepted in Canada from time to time and, if the handbook published by the Canadian Institute of Chartered Accountants or its successor includes a statement of a principle or an accounting guideline, that statement will be considered conclusively to be an accounting principle or guideline generally accepted in Canada;
- (u) **"Henvey Inlet First Nation"** and **"HIFN"** mean Henvey Inlet First Nation, a "band" as that term is defined in the *Indian Act*;
- (v) **"HIFN Lands"** includes Henvey Inlet Reserve No. 2 and French River Reserve No. 13;
- (w) **"Income"** means, in a particular year, the income of the Trust for that year as calculated for purposes of the *Income Tax Act* but without reference to subsection 104(6) of that Act, except that:
- (i) the full amount of any capital gain and not just the taxable capital gain will be included in income for this purpose; and
 - (ii) no dividend will be grossed up for this purpose as would otherwise be required under the *Income Tax Act*;
- (x) **"Income Beneficiary"** means Henvey Inlet First Nation
- (y) **"Income Tax Act"** means the *Income Tax Act*, S.C. 1985 (5th Supp.) c. 1, and any regulations to that Act, all as amended or replaced from time to time;
- (z) **"Indian Act"** means the *Indian Act*, R.S.C. 1985, c. 1-5 and the regulations made under that Act as amended or replaced from time to time, and any reference to a section of the *Indian Act* includes that section as amended or replaced, unless otherwise stated;
- (aa) **"Investment Consultant"** means an individual or a firm who or which:
- (i) employs at least one individual who possesses a Chartered Financial Analyst designation;
 - (ii) is engaged in the business of providing independent financial advice including on the management of investment portfolios; and
 - (iii) does not either directly or through an associated or subsidiary entity sell or provide investment products of any kind;

- (bb) **"Investment Manager"** means an individual or a firm who has obtained registration with the Ontario Securities Commission as an advisor in the category of Portfolio Manager in accordance with National Instrument 31-103 7.2(1)(a) as the term is amended from time to time, and whose revenue is derived from the discretionary management of investment portfolios and who has an arm's length relationship with Council, the Trustees, and the Investment Consultant;
- (cc) **"Investment Policy"** means the investment policy statement for the Trust Property, including reasonable investment purposes and risk tolerance approved, from time to time by the Trustees upon receiving advice from the Investment Consultant, which sets out the policy, purposes, and framework for the investment of the Trust Property in Authorized Investments by the Investment Manager pursuant to the terms of this Trust Deed in accordance with Article 13 of this Trust Deed;
- (dd) **"Major Encroachment"** means an encroachment of the capital of the Trust which, cumulatively with all other encroachments in any one Fiscal Year, is greater than five percent (5%) of the Trust Property calculated at December 31st of the preceding Fiscal Year;
- (ee) **"Member Payment"** means a distribution of Capital required to be made to an Eligible Member pursuant to sections 5.2 or 5.3 of this Trust Deed;
- (ff) **"Minor Encroachment"** means an encroachment of the Capital of the Trust which, cumulatively with all other encroachments in any one Fiscal Year, does not exceed five percent (5%) of the Trust Property calculated at December 31st of the preceding Fiscal Year;
- (gg) **"Non-Attributable Income"** means any Income that is not attributed to Henvey Inlet First Nation pursuant to subsection 75(2) of the *Income Tax Act*;
- (hh) **"Notice"** means a writing originated and transmitted in accordance with Article 19;
- (ii) **"Parties"** means the parties to this Trust Deed;
- (jj) **"Person"** includes a corporation, trust or partnership as well as an individual;
- (kk) **"Expert Trustee"** has the meaning set forth in section 10.1(b) of this Trust Deed;
- (ll) **"Purposes"** means the purposes of the Trust set out in Article 4.;
- (mm) **"Registered Member"** means a person registered under the *Indian Act* and whose name validly appears on the list of registered members of Henvey Inlet First Nation;

- (nn) **"Reserve"** means the reserve lands of Henvey Inlet First Nation as that term is defined in the *Indian Act*;
- (oo) **"Savings Phase"** has the meaning set forth in section 4.1(a) of this Trust Deed;
- (pp) **"Service Agreement"** means the agreement for Trustee services between the Trust and the Trustees;
- (qq) **"Settlor"** means Henvey Inlet First Nation;
- (rr) **"Settlor's Initial Contribution"** means the amount of \$100.00 CAD settled on the Trustees by HIFN in accordance with this Trust Deed;
- (ss) **"Termination Date"** means the date that is fifty (50) years after the date on the first page of this Trust Deed;
- (tt) **"Trust"** means the Henvey Inlet First Nation Windfarm Legacy Trust created by this Trust Deed;
- (uu) **"Trust Deed"** means this document, and any revisions or amendments made pursuant to its terms;
- (vv) **"Trust Property"** means all property held by the Trustees pursuant to this Trust, from time to time, including:
- (i) the Settlor's Initial Contribution; and
 - (ii) additions thereto as permitted by this Trust Deed;
- from time to time which has not been disbursed from this Trust; and
- (ww) **"Trustees"** means the Community Trustees, Expert Trustees and Corporate Trustee of this Trust, whether the original, additional or substituted pursuant to this Trust Agreement, acting collectively by majority vote, unless the context otherwise requires; and
- (xx) **"Windfarm Legacy Trust Withdrawals Committee"** means the ad hoc committee of eligible members described in Article 7.

1.2 **Interpretation.** In this Trust Deed:

- (a) unless it is otherwise clear from the context, "including" means "including, but not limited to", and "includes" means "includes, but not limited to";

- (b) headings are for convenience only, do not form part of this Trust Deed and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Trust Deed;
- (c) unless it is otherwise clear from the context, the use of the singular includes the plural and the use of the plural includes the singular;
- (d) all accounting terms have the meanings assigned to them under Generally Accepted Accounting Principles; and
- (e) reference to any one gender includes all other genders.

ARTICLE 2: CREATION OF THE TRUST

- 2.1 **Name of Trust.** The Trust created by this indenture shall be known as the Henvey Inlet First Nation Windfarm Legacy Trust.
- 2.2 **Settlement of the Trust.** The Trustees acknowledges that the Settlor has settled upon it the Settlor's Initial Contribution in the amount of \$100.00 CAD.
- 2.3 **Indenture under Seal.** By signing this Trust Deed under seal, the Trustees signify their acceptance of this Trust and the Trustees' duties contained in it and the Settlor signifies its acceptance of this Trust and the Settlor's settlement obligations contained in it. Both the Settlor and the Trustees acknowledge that this Trust Deed shall be enforceable without proof of consideration.
- 2.4 **Trust Irrevocable.** The Trust herein set forth shall be irrevocable by the Settlor.
- 2.5 **Term of this Trust.** This Trust will remain in force and effect from the date noted on the first page of this Deed until the Termination Date.
- 2.6 **Residency.** This Trust shall be resident in Canada.

ARTICLE 3: ADDITIONS TO TRUST PROPERTY

- 3.1 **Additional Trust Property.** The Trustees may at any time and from time to time accept as additions to the Trust Property such further or additional property which the Settlor, or any person or Entity, with the consent of the Trustees and the Council, may donate or otherwise transfer or cause to be transferred to, or vest or cause to be vested in the Trustees.

ARTICLE 4: PURPOSES OF THE TRUST

4.1 **Purposes of this Trust.** The Trust shall have two phases of operation with phase-specific purposes:

- (a) **Savings Phase.** The Savings Phase of the Trust shall extend from the date of creation of the Trust until the later of the termination of Feed In Tariff Contract F-001556-WIN-130-601 dated 25 February 2011 between the Independent Electricity System Operator (as successor to the Ontario Power Authority) and Henvey Inlet Wind LP (as assignee of Nigig Power Corporation), as amended, including any extensions thereof.

During the Savings Phase, the Purposes of the Trust shall be:

- (i) to receive settlements of capital from Henvey Inlet First Nation, and to invest that capital for the purpose of generating income from the capital;
- (ii) to benefit the individual members of Henvey Inlet First Nation, as capital beneficiaries, through distributions of capital as provided in sections 5.2 and 5.3; and
- (iii) to benefit Henvey Inlet First Nation, as capital and income beneficiary, through
 - (A) distributions of Trust income; and
 - (B) disbursements of Trust Property for the Permitted Uses listed in subsections 4.2(d)(i) and 4.2(d)(ii), and subject to the Trust Withdrawal Proposals procedure in section 8.2

- (b) **Full Support Phase.** The Full Support Phase of the Trust shall extend from the termination of the Savings Phase until the Trust is wound up.

During the Full Support Phase, the Purposes of the Trust shall be:

- (i) to receive settlements of capital from Henvey Inlet First Nation, and to invest that capital for the purpose of generating income from the capital;
- (ii) to benefit Eligible members of Henvey Inlet First Nation, as capital beneficiaries, through distributions as provided in sections 5.2 and 5.3; and
- (iii) to benefit Henvey Inlet First Nation, as capital and income beneficiary, through
 - (A) distributions of income earned on the capital and income earned on income as provided in Article 8;

- (B) disbursements of Trust Property for any Permitted Use listed in subsection 4.2(d), in accordance with the Trust Withdrawal Proposal procedure in section 8.2.

4.2 **Permitted Uses.** Disbursements of Trust Property must be for the benefit of the Beneficiaries and fall within one or more of the Permitted Uses listed below:

- (a) the creation, general administration and governance of this Trust, including the indemnification of the Trustees;
- (b) distributions of Capital to Eligible Members;
- (c) distributions of Trust Income to Henvey Inlet First Nation, as sole Income Beneficiary, and
- (d) distributions of Trust Property to Henvey Inlet First Nation, in accordance with the Trust Withdrawals Procedure in for:
 - (i) land acquisition for addition to Henvey Inlet First Nation reserves;
 - (ii) recovery from uninsured losses due to natural disasters including earthquakes, floods, forest fires, hurricanes and tornados, and human-made disasters such as a riot or terrorist attack and fires or environmental contamination affecting Henvey Inlet First Nation property;
 - (iii) culture, heritage and language;
 - (iv) governance and programs;
 - (v) health and wellness;
 - (vi) social development;
 - (vii) economic development;
 - (viii) environment and natural resources;
 - (ix) education, training, bursaries, and scholarships;
 - (x) community infrastructure and housing;
 - (xi) sport and recreation; and
 - (xii) advancement of Aboriginal and treaty rights.

- 4.3 **Prohibited Uses.** No disbursements of Trust Property may be made for the purpose of making loans to Eligible Members or any party other than Henvey Inlet First Nation.

ARTICLE 5: MEMBER PAYMENTS

- 5.1 **Eligible Members.** Every person who is or becomes a registered Member of Henvey Inlet First Nation on or after 01 October 2019 is an Eligible Member, and each distribution of the capital of the Trust required to be made by the Trustees to an Eligible Member pursuant to this Trust Deed is a Member Payment.

- 5.2 **Member Payments.** Subject to the availability of Capital and commencing with the quarter which begins on 01 January 2021, the Trustees shall make quarterly distributions of capital and not income to each minor, adult and senior Eligible Member as follows:

- (a) **MINORS:** To each Eligible Member until the age of eighteen (18) years, the sum of \$100.00 per month to be paid to the Member at twenty-one (21) years of age or when the member, being at least eighteen (18) years of age, is awarded a high school diploma or the equivalent or as soon as practical thereafter;
- (b) **ADULTS:** To each Eligible Member between eighteen (18) years and sixty (60) years of age, \$500.00 per month, payable at the end of each calendar quarter, in arrears; and
- (c) **ELDERS:** To each Eligible Member sixty (60) years of age or older, the sum of \$600.00 per month, payable at the end of each calendar quarter, in arrears;

or the pro rata share thereof equal to the part of the quarter during which the person was an Eligible Member.

- 5.3 **Catch-up Capital Distribution.** In addition to capital distributions pursuant to section 5.2, and subject to the availability of Capital, the Trust shall make a one-time capital distribution to each person who was an Eligible Member during the period from 01 October 2019 until 31 December 2020, at the rates specified in section 5.2 (and held back for minors as provided therein), less any amount paid to the Eligible Member by Council expressly in lieu of the Trust's Catch-up Capital Distribution for that period.

- 5.4 **Responsibility of Eligible Members to provide method of payment information.** Every Eligible Member shall be responsible to provide a current, verifiable delivery address or direct deposit information to the Trustees. The Trustees shall have no responsibility for Member Payments which are made but not received by an Eligible Member for whom a valid current address or direct deposit information has not been received.

- 5.5 **Unclaimed Member Payments.** Where an Eligible Member has not claimed a Member Payment or provided the Trustees with a valid delivery address or direct deposit instructions within one year of the Member Payment becoming due, the Member Payment shall be forfeited.
- 5.6 **Disability or death of Eligible Member.** Where an Eligible Member is under a disability or dies before receiving a Member Payment, and providing the entitlement to the Member Payment has not been forfeited as provided in section 5.5, the Trustees may pay the Member Payment to the Eligible Member's personal representative or estate. If the Eligible Member died intestate, the Member Payment will be paid in accordance with the provisions of the Indian Act or other applicable law dealing with the distribution of property on intestacy. The Trustees may request whatever documentation they deem appropriate to establish entitlement to the Member Payment and to release and indemnify the Trustees and the Settlor.
- 5.7 **Member Payments to be paid from Capital.** All Member Payments shall be paid from and charged to the Capital of the Trust. For greater certainty, only the Income Beneficiary and not the Eligible Members shall be entitled to receive distributions of Income of the Trust.

ARTICLE 6: ADJUSTMENTS TO MEMBER PAYMENTS

- 6.1 **Review of Distributions to Eligible Members.** On the fifth anniversary of the establishment of the Trust and every five years thereafter, the Trustees shall review the ability of the Trust to achieve its Purposes, taking into account the amounts settled on the Trust, the Trust's investment performance and its capital and income distributions, increases in the number of Eligible Members and other relevant criteria, projections and trends, and may request that the Settlor revise the Trust Deed to increase or decrease the capital distributions to Eligible Members for a limited or indefinite period. Where the Settlor revises the Trust Deed to decrease the amount of capital distributions, the Trustees shall conduct an annual review on the same grounds as a five year review and advise the Settlor whether the amount of the capital distributions to Eligible Members immediately prior to the decrease can be restored or increased without prejudice to the ability of the Trust to achieve its Purposes.
- 6.2 **Temporary Shortage of Capital.** If the Trustees are unable to make a distribution of capital to all Eligible Members when due because of a shortage of Capital, the Trustees may, for all Eligible Members equally, delay the distribution or make such distribution in multiple parts spread over such period of time as the Trustees deem appropriate.

ARTICLE 7: WINDFARM LEGACY TRUST ADVISORY COMMITTEE

- 7.1 **Council to Appoint Windfarm Trust Advisory Committee.** Council shall constitute, appoint an ad hoc Windfarm Legacy Trust Advisory Committee, when necessary, consisting of not less

than three (3) and not more than five (5) registered members of HIFN, preferably including registered members who reside on HIFN Lands and registered members who reside outside HIFN Lands, none of whom may be a member of Council or a Trustee of the Trust or an employee of the Council or the Trust.

7.2 Role and Responsibilities. The Windfarm Legacy Trust Advisory Committee shall be responsible to:

- (a) review and advise Council with respect to Trust Withdrawal Proposals pursuant to section 8.2 of this Trust Deed; and
- (b) prepare, in consultation with any Trustees then serving, a slate of candidates from which Council may select and appoint replacement Trustees including at least two candidates for each available Trustee position, fully qualified as provided in Article 10, to be delivered to Council by a deadline date selected by Council.

ARTICLE 8: PAYMENTS TO HIFN AS INCOME AND CAPITAL BENEFICIARY

8.1 Payment of Trust Income. In any Fiscal Year, the Trustees may at Council's request, without the requirement of a Trust Withdrawal Proposal, transfer an unlimited amount of Trust Income to HIFN as sole Income Beneficiary.

8.2 Trust Withdrawal Proposals. In addition to its receipt of Trust Income, Council may from time to time submit Trust Withdrawal Proposals to the Trustees requesting a disbursements of Trust Property for Permitted Uses specified therein, provided:

- (a) during the **Savings Phase** of the Trust, Trust Withdrawal Proposals shall be limited to the Permitted Uses listed in subsections 4.2(d)(i) and 4.2(d)(ii);
- (b) during the **Full Support Phase** of the Trust, Trust Withdrawal Proposals may specify any of the Permitted Uses listed in subsection 4.2(d);
- (c) a Trust Withdrawal Proposal which involves a **Minor Encroachment** shall include either the endorsement of the Windfarm Legacy Trust Withdrawals Committee or a certificate of Council stating that the Trust Withdrawal Proposal was presented to HIFN's membership in a Community Meeting convened in accordance with Henvey Inlet First Nation's Land Code; and
- (d) a Trust Withdrawal Proposal which involves a **Major Encroachment** shall include a certificate of Council stating that the Trust Withdrawal Proposal has been approved

unanimously by Council and by a majority vote of the Electors of HIFN in which a majority of the Electors cast ballots.

8.3 **Trustee Review.** Upon receipt of a Trust Withdrawal Proposal compliant with section 8.2, the Trustees, upon obtaining the advice of the Investment Consultant and determining that the Trust will remain able to achieve the Purposes of the Trust in section 4.1 of this Trust Deed, may

- (a) grant to HIFN some or all of the requested Trust Property; or
- (b) upon obtaining advice from the Investment Consultant as to the financial implications to the Trust of a pledge of Trust Property for security, the Trustees may pledge Trust Property for security for a loan and pay the proceeds thereof to HIFN on such terms as the Trustees deem appropriate.

ARTICLE 9: PAYMENT OF EXPENSES

9.1 **Expenses of the Trust.** The Trustees shall pay or cause to be paid out of the Trust Property all expenses related to the creation and administration of this Trust.

9.2 **Payment Procedure.** The payment of the expenses of the Trust will be made when:

- (a) the expense is detailed by an invoice in writing and submitted to the Trustees; and
- (b) the expense has been included in a budget prepared and approved by the Trustees; or
- (c) the expense is an obligation under an agreement that the Trustees have entered into.

9.3 **Expenses to be Paid in Priority Order.** All expenses of the Trust shall be paid in priority order from the following Trust Property:

- (a) firstly, from Non-Attributable Income;
- (b) secondly, from any Attributable Income; and
- (c) thirdly, from Capital.

9.4 **Income can be made Payable.** The Trustees may make payable any Income of this Trust for that year that is not tax exempt or Attributable Income, to Henvey Inlet First Nation and that has not been paid out in the year to the Henvey Inlet First Nation as at the 31st day of December of that year. For greater certainty, it is the intent of the Settlor and the Trustees that all Income of the Trust that is not Attributable Income in each Fiscal Year shall be paid or made payable on or before 31 December in each Fiscal Year to HIFN such that the Trust will not be subject to tax

under the *Income Tax Act*. The Trustees may issue an unrestricted promissory note, payable on demand, for such purpose, which shall be accepted by HIFN as absolute payment.

ARTICLE 10: APPOINTMENT AND REPLACEMENT OF TRUSTEE

10.1 **Board of Five Trustees.** The Trust shall be governed by a board of five (5) Trustees as follows:

- (a) **Two (2) Community Trustees**, selected from among the registered members of Henvey Inlet First Nation who have obtained a high school diploma or GED, preferably with experience in finance or band governance, and preferably one Community Trustee who resides on HIFN Lands and one Community Trustee who resides outside HIFN Lands;
- (b) **Two (2) Expert Trustees**, selected from among chartered professional accountants or holders of a masters of business administration degree or a degree in law and certified as trust, fiduciary or financial advisors by an accredited Canadian institution, with extensive banking or trust management experience; and
- (c) **One (1) Corporate Trustee**, being a trust company organized and doing business under the laws of Canada or any province of Canada, authorized to exercise corporate trustee powers, and having experience with portfolios of marketable securities, having a combined capital and surplus of at least ten million dollars (\$10,000,000.00 CAD) and subject to supervision or examination by federal or provincial authority; and which shall be responsible for administering this Trust;

10.2 **Disqualifications.** No person who is a member of Council or the Windfarm Trust Advisory Committee, who is an employee of Henvey Inlet First Nation or the Trust or who has been convicted of a serious criminal offence, may be appointed or serve as a Trustee.

10.3 **Original Trustees.** Council shall select and appoint the original Trustees from fully qualified candidates as follows:

- (a) One (1) Community Trustee shall be appointed for a term of two (2) years and the other appointed for a term of three (3) years;
- (b) One (1) Expert Trustee shall be appointed for a term of two (2) years and the other appointed for a term of three (3) years;
- (c) One Corporate Trustee shall be appointed to serve for a term of three (3) years.

10.4 **Selection and Term of Replacement Trustees.** All Trustees other than the original Trustees shall be appointed for three (3) year terms and shall be selected by Council from a slate of

candidates, fully qualified as provided in section 10.1, which shall be prepared or endorsed by the Windfarm Legacy Trust Advisory Committee, provided that, if the Windfarm Legacy Trust Advisory Committee fails to deliver to Council a slate of fully qualified candidates as provided in section 7.2(b), Council may appoint such fully qualified replacement Trustees as it deems appropriate.

10.5 **Selection of Corporate Trustee.** Both the original and any replacement Corporate Trustee shall be selected and appointed by Council, in accordance with the following:

- (a) Council shall organize a Request for Proposal process for the appointment of a Corporate Trustee and will select the Corporate Trustee from the proposals received;
- (b) Council will not be required to select the least expensive proponent as Corporate Trustee;
- (c) The Corporate Trustee will hold that position until such time as it is terminated pursuant to the terms of this Trust Deed or in accordance with the service agreement between Council and the Trustees;
- (d) Council may terminate the services of the Trustees by serving sixty (60) days written notice to the Trustees or upon such earlier date as may be agreed between Council and the Corporate Trustee. No such termination shall be effective until a new Corporate Trustee has been appointed by Council; and
- (e) The Corporate Trustee may cease to act under this Trust Deed by serving ninety (90) days written notice to Council or upon such earlier date as may be agreed between Council and the Corporate Trustee. No such resignation shall be effective until a new Corporate Trustee has been appointed by the Council; and
- (f) Within sixty (60) days of receiving the Corporate Trustee resignation, Council shall appoint a new Corporate Trustee in accordance with the provisions of this Article and Council will provide written directions to the resigning Corporate Trustee instructing it to transfer the Trust Property to the newly appointed qualified Corporate Trustee. If no Corporate Trustee has been appointed following the ninety (90) days' notice, then the resigning Corporate Trustee may apply to a Court of competent jurisdiction to approve the resignation.

10.6 **Remuneration Agreements.** All Trustees shall enter into a written agreement with the Trust setting out their remuneration and expenses approved by Council.

10.7 **Obligations of Trustees.** From the time of appointment, each Trustee shall:

- (a) accept the obligations and duties as a Trustee;
- (b) maintain any necessary Trustee qualifications throughout the Trustee's term of office; and
- (c) observe and carry out the obligations and duties of a Trustee in accordance with this Trust Deed.

10.8 **Trust Officer Training.** Prior to or within six (6) months following appointment, each Community Trustee shall enrol in and complete the National Aboriginal Trust Officer Association's Indigenous trust management training program, or an equivalent training program selected by the Corporate Trustee, and such additional training as the Corporate Trustee or Council may specify.

10.9 **Limit on Number of Consecutive Terms.** No Trustee other than the Corporate Trustee may be appointed to serve for more than two (2) consecutive terms.

10.10 **Trustee required to Transfer Property.** On termination of the office of a Trustee, the Trustee shall transfer all Trust Property to the replacement Trustee.

10.13 **Not required to Examine Books.** A new Trustee is not required to examine, question, verify or audit the books, records or accounts of this Trust prior to the date of appointment as a Trustee.

ARTICLE 11: DUTIES OF THE TRUSTEES

11.1 **General Duties.** Subject to the express provisions hereof, the Trustees shall observe and adhere to the duties and standards of care imposed upon the trustee by the general law. Without limitation, such duties and standards of care shall include the following:

- (a) **Honesty, Good Faith and Standard of Care.** The Trustees shall exercise their powers and discharge their duties honestly, in good faith and in the best interests of the Beneficiaries.
- (b) **Carry Out the Terms of the Trust.** The Trustees shall make themselves familiar with the terms of the Trust as set out in this Trust Deed and carry out such terms exercising to the extent necessary their power to retain advisors. The Trustees shall ensure that they keep themselves informed as to the affairs of the Trust at all times.
- (c) **Independence/Delegation.** The Trustees are appointed to exercise their best, and in the case of the Corporate Trustee and Expert Trustees, their professional judgment and are not required to follow the direction of the Beneficiaries or Council. The Trustees are

responsible for carrying out their duties although they may use agents and employees to do so if care is used in appointing and supervising such agents and employees.

11.2 **Specific Duties.** In addition to carrying out their obligations elsewhere in this Trust Deed, the Trustees shall take reasonable steps to:

- (a) register or otherwise record the ownership, right, interest or title to any asset forming part of the Trust Property in the name of the Trustees;
- (b) take all reasonable steps to collect and receive all income, principal, dividends and other payments when due in respect of any assets of the Trust Property and promptly credit to the Trust Property all such receipts received by them;
- (c) retain custody of all or any accounts pertaining to all or any part of the Trust Property, maintain books of account, and receive and disburse monies and perform any clerical duties in connection with all or any part thereof;
- (d) keep accurate and detailed accounts of all assets, investments, receipts, disbursements and other transactions hereunder, and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by an auditor appointed by the Trustees under Article 16;
- (e) within one hundred and twenty (120) days following the close of each Fiscal Year of the Trust deliver to Council audited financial statements prepared by a qualified auditor appointed in accordance with Article 16Article 15:, at the expense of the Trust Property, setting forth all investments, receipts, disbursements and other transactions effected by them during such fiscal year;
- (f) meet, at least semi-annually with Council and at request to report on the performance of the Trust;
- (g) provide Council with financial statements and records affecting the Trust Property as and when requested by Council from time to time;
- (h) deliver to Council copies of financial statements audited by the Auditors, at the expense of this Trust, setting forth all investments, receipts, disbursements and other transactions effected by them during such Fiscal Year within one hundred and fifty (150) days following the close of each Fiscal Year of this Trust;
- (i) pay reasonable compensation to the Trustees or compensation in accordance with any compensation agreement for services provided by the Trustees, and the reimbursement

of expenses reasonably incurred by Trustee and Council in carrying out the terms of this Trust Deed;

- (j) calculate applicable taxes as may apply to the Trust Property, file any required tax returns or other filings and withhold from any payments from the Trust Property and remit therefrom all taxes and other assessments required by any applicable law to be so withheld and remitted;
- (k) have an annual budget prepared showing an estimate of revenues and expenditures for the next fiscal year;
- (l) retain the services of an Investment Consultant and one or more Investment Managers to advise the Trustees with respect to the investment of all or any part of the Trust Property;
- (m) have an annual report prepared by the Investment Consultant detailing the performance of the investment portfolio;
- (n) make, and amend from time to time, such rules as it may reasonably deem appropriate to govern its procedures, provided that such rules shall not be inconsistent with this Trust Deed or any laws which govern the Trustees generally;
- (o) in each Fiscal Year, determine and report to HIFN, for income tax purposes, the amount of the Income that is Attributable Income of HIFN under subsection 75(2) of the *Income Tax Act*, and such portion of the Income that has been paid made payable to HIFN; and
- (p) from time to time, with the advice of the Investment Consultant, prepare an Investment Policy for the Trust.

11.3 Disclosure of Potential Conflict. A Trustee who:

- (a) is a party to a contract or proposed contract of the Trustees entered into or to be entered into in accordance with the terms and conditions of this Trust Deed;
- (b) is a director or an officer of, or has an interest in any Entity which is, a party to a contract or proposed contract of the Trustees entered into or to be entered into in accordance with the terms and conditions of this Trust Deed; or
- (c) otherwise stands to benefit from a contract or proposed contract of the Trustees entered into or to be entered into in accordance with the terms and conditions of this Trust Deed,

will disclose in writing to Council the nature and extent of such Trustee's relationship and the extent of such Trustee's interest.

- 11.4 Timing of Disclosure.** The disclosure required of a Trustee by section 11.3 will be made immediately when this Trustee becomes aware of a conflict or potential of a conflict and, at that time, gives written notice of the conflict to Council.
- 11.5 Trustee not to Participate.** A Trustee described in section 11.3 will not take part in, and shall not be present at, discussions or deliberations concerning any such material contract and will not vote on any resolution regarding said contract. Where a majority of the Trustees have a conflict of interest, any required decision shall be made by Council.
- 11.6 Extent of Disclosure.** For the purposes of section 11.3, a Notice to Council by a Trustee declaring that the Trustees are a director or officer of, or has a material interest in, an entity and is to be regarded as interested in any material contract made with that entity, is a sufficient declaration of interest in relation to any material contract so made.
- 11.7 Effect of Disclosure.** A material contract is neither void nor voidable by reason of a relationship contemplated in section 11.3 if the Trustee disclosed his or her interest in accordance with section 11.3, and the material contract was approved by Council.
- 11.8 Annual Conflict Disclosure from Service Providers.** The Trustees shall require that all professional advisors retained by the Trust shall complete a Conflict of Interest Disclosure Statement, in the form attached hereto as Schedule "B", annually. The Trustees shall make all reasonable efforts to include this requirement in every contract entered into by or on behalf of this Trust for the provision of professional services to the Trust.

ARTICLE 12: POWERS OF TRUSTEES

- 12.1 General Authority of Trustees.** Subject to any restriction expressly contained in this Trust Deed, the Trustees shall have all the powers of a natural person acting as the beneficial owner in relation to the Trust Property and such powers shall, to the extent permitted by law, not be restricted by any principle of construction or rule or requirement of the proper law of this Trust but shall be interpreted in their widest sense notwithstanding that certain powers are hereinafter more particularly set forth.
- 12.2 General and Specific Powers.** In addition to all other powers given to them by this Trust Deed and the general rules of law, the Trustees shall have the following power and authority to:
- (a) open one or more accounts for this Trust in the name of the Trustees, in trust, at a Canadian chartered bank or Financial Institution for the deposit of all funds to be received by the Trustees under the terms of this Trust;
 - (b) establish arrangements governing banking procedures for this Trust;

- (c) consider the advice of the Investment Managers in accordance with the applicable Investment Policy for this Trust; and
- (d) obtain reports, satisfactory to the Trustees, from HIFN the Beneficiaries on an annual basis, confirming that monies disbursed to HIFN were spent in accordance with the Permitted Uses set out in section 4.2.

12.3 Professional Assistance and Agents. The Trustees:

- (a) need not act personally but may retain and rely upon the advice of, and, to the extent permitted by law, delegate the Trustees' powers to, lawyers, accountants, agents and other professionals or advisors as the Trustees decide will assist them in the discharge of their duties;
- (b) without limitation, may from time to time:
 - (i) retain accountants in matters relating to the preparation of tax returns, Trustee's accounts and valuation of assets;
 - (ii) retain a trust company to act as the custodian of all or any part of the Trust Property; and
 - (iii) terminate any of those arrangements;
- (c) permit any person to have possession or control of all or any part of the Trust Property;
- (d) place assets in the custody of a trust company and transfer assets to the name of that trust company or its nominee; and
- (e) pay the reasonable compensation of those professionals, agents or advisors retained to provide services to the Trust.

12.4 Trustees not Liable for Professionals. The Trustees will not be liable for any neglect, omission, misconduct or default of any of those professionals, agents or advisors nor for any loss or damage resulting from any delegation to a professional, agent or advisor or any action taken relying on the advice of a professional, agent or advisor notwithstanding that the retainer of that professional, agent or advisor was not strictly necessary, provided that the professional, agent or advisor was selected and retained with reasonable care.

ARTICLE 13: INVESTMENT

13.1 Investment Policy. Subject to the terms of this Trust Deed and with the assistance of the Investment Consultant, the Trustees shall develop, and if necessary, amend from time to time,

one or more Investment Policy Statements outlining the policy, purposes and framework for the investments of the Trust Property in Authorized Investments.

- 13.2 Investments prior to Development of Investment Policy Statement.** Until such time as an Investment Policy is developed, the Trustees shall be permitted to purchase only those investments listed in Part One of Schedule "C".
- 13.3 Direction to Investment Manager(s).** The Trustees shall direct the Investment Manager(s) to invest the Trust Property into such investments in accordance with this Part and, if applicable, in accordance with the Investment Policy Statement.
- 13.4 Appointment of Investment Manager.** Upon receiving advice from the Investment Consultant, the Trustees shall appoint one or more Investment Managers to manage the investment of the whole or any portion or portions of the Trust Property. Any Investment Manager, however appointed, shall be retained by the Trustees.
- 13.5 Investment Manager must Exercise Care.** In investing Trust Property, an Investment Manager must exercise the care, skill, diligence and judgment that a careful, prudent and diligent investment manager would exercise in making investments and comply with the limitations in this Trust Deed, all applicable Investment Policies and all applicable laws.
- 13.6 Investment Manager must comply with Trust Deed.** It shall be a term of the appointment of any Investment Manager that the Investment Manager will comply with the investment requirements contained within this Trust Deed and any related investment policies.
- 13.7 Termination of Appointment.** Upon receiving advice from the Investment Consultant, the Trustees may terminate the appointment of any Investment Manager in accordance with the terms of the contract for investment management services.
- 13.8 Arm's Length.** The Investment Manager shall be a person or firm who deals at arm's length with Henvey Inlet First Nation, the Investment Consultant and the Trustees.

ARTICLE 14: LIABILITY AND INDEMNITY OF TRUSTEES

- 14.1 Standard of Care.** Notwithstanding any other provision hereof, the Trustees shall exercise their powers and carry out their functions hereunder as Trustees honestly, in good faith and in the best interests of the Beneficiaries and, in connection therewith, shall exercise such degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

- 14.2 **General Power to Bind Trust Without Liability.** When the Trustees bind this Trust, the Trustees do so without rendering themselves personally liable provided that the Trustees act honestly and in good faith. Provided the Trustees have acted in accordance with their duties, the Trustees will not be personally liable for any monies due from, or other claims against, this Trust Property or with respect to any instrument executed by the Trustees under the provisions of this Trust Deed.
- 14.3 **General Scope of Trustee's Liability.** No Trustee will be liable for any loss or damage to this Trust Property resulting from any investment, act or omission made in good faith, by any Trustee, unless that loss or damage arises from gross negligence or actual fraud on the part of this Trustee who is sought to be made liable.
- 14.4 **Additional Limitations on Liability of Trustees.** Except as provided in Article 13.5, the Trustees shall not be liable to any Beneficiaries or any other person, in tort, contract or otherwise, in connection with any matter pertaining to this Trust or this Trust Property, arising from the exercise by the Trustees of any powers, authorities or discretion conferred under this Trust Deed, including, without limitation:
- (a) any action taken or not taken in good faith in reliance on any documents that are *prima facie* properly executed;
 - (b) any depreciation of, or loss to, the Trust Property incurred by reason of the sale of any asset;
 - (c) any claim against the Trust arising from the payment of funds by the Trustees to Henvey Inlet First Nation provided that the payment is made in accordance with this Trust Deed; or
 - (d) any inaccuracy in any evaluation provided by any appropriately qualified person or any reliance on any such evaluation.
- 14.5 **Liability of Trustees.** The Trustees shall be responsible for any liabilities arising principally and directly out of the gross negligence, wilful default or fraud of the Trustees.
- 14.6 **Liability for Reporting.** Nothing herein shall be construed or interpreted to require or authorize the Trust to pay or indemnify a Trustee for any fines, costs, penalties, forfeitures or assessments arising from the Trustees' personal obligations to report to any entity to which the Trustees are obliged to report under the laws of Canada or any other jurisdiction to which the Trustees are subject.
- 14.7 **Validity of Acts.** Any act of a Trustee is valid notwithstanding any irregularity in the appointment of the Trustees or a defect in the qualifications of the Trustees.

- 14.8 Litigation Indemnity.** The Trustees may pay out of the Trust Property and indemnify and hold the Trustees harmless from and against all reasonable and necessary costs and fees in connection with the prosecution, defence, compromise or settlement of any claim, demand, law suit or other proceeding brought by or against the Trustees, or the Trust or an application to a Court by the Trustees for relief from personal liability. If it is finally adjudged in any such action, suit or proceeding that a Trustee breached the standard of care in Article 14.1, acted in bad faith or was guilty of willful misconduct in the performance of its duties under the Trust and the Court has declined to relieve the Trustees from personal liability, that Trustee will repay to the Trust an amount equal to all amounts authorized by the Trustees to be paid under this section.
- 14.9 Trustee Remuneration.** The Trustees will be entitled to be paid reasonable remuneration or remuneration in accordance with a Service Agreement between the Trust and any Trustee.
- 14.10 Approval of Accounts and Discharge of Trustee.** The continuing and successor Trustees are empowered to approve the accounts of a Trustee who ceases to act without requiring the Trustee who ceases to act to pass any accounts before the Court, and if such approval is given it will constitute a full and sufficient discharge to such Trustee who has ceased to act.
- 14.11 Survival of Indemnities.** All indemnities, all limitations of liability and all other provisions for the protection of the Trustees provided for in this Trust Deed shall survive the termination of this Trust Deed and the removal or replacement of a Trustee pursuant to this Trust Deed.

ARTICLE 15: DURATION AND TERMINATION OF THE TRUST

- 15.1 Termination.** The trust created by this Trust Deed shall terminate fifty (50) years after the date of this Trust Deed; at which time the Settlor may direct that the Trust Property shall be:
- (a) invested in a new Trust for the benefit of Henvey Inlet First Nation;
 - (b) paid to the Settlor for the benefit of Henvey Inlet First Nation; or,
 - (c) partially paid to the Settlor with the balance paid to a new Trust, in all cases for the benefit of Henvey Inlet First Nation, in proportions approved by the Settlor.

ARTICLE 16: AUDITORS

- 16.1 Annual Audited Financial Statements.** The Trustees will have the accounts of the Trust for each year prepared and audited by a qualified auditor appointed by the Trustees in consultation with Council. The accountant will prepare and submit the following statements to Council:

- (a) a balance sheet;
- (b) an income statement;
- (c) a statement of retained earnings; and
- (d) a statement of changes in financial position,

each setting forth, in comparative form, figures for the current year and for the corresponding period in the preceding year, presenting fairly the financial position, results of operations, or changes in financial position and prepared on a consistent basis in accordance with Generally Accepted Accounting Principles.

16.2 **Qualifications of Auditors.** The Auditors shall be an independent, professionally recognized firm of accountants qualified to perform public audits in accordance with the laws of the province of Ontario.

16.3 **Appointment of Auditors.** The Trustees shall appoint the Auditors of the Trust and shall set such remuneration as may be approved by the Trustees from time to time.

16.4 **Removal of Auditors.** The Auditors may at any time be removed by the Trustees and, upon the resignation or the removal of Auditors as aforesaid, new auditors shall be appointed by the Trustees.

16.5 **Reports of Auditors.** The Auditors shall provide an auditors' report together with the annual audited financial statements of the Trust to the Trustees who shall be responsible for disbursing those financial reports to the Council.

ARTICLE 17: ACCOUNTS, RECORDS AND FINANCIAL STATEMENTS

17.1 **Records to be Kept.** The Trustees will keep or cause to be kept, such books, records and accounts as are necessary and appropriate to document the Trust Property and each transaction of this Trust.

17.2 **Financial Statements.** The audited financial statements of the Trust will be available for post audit inspection by Members at such times as the Trustees may, acting reasonably, determine.

17.3 **Maintenance of Records.** The Trustees will maintain a minute book for the Trust, which will include the following:

- (a) constating documents:

- (i) an original executed copy of this Trust Deed;
 - (ii) an original executed copy of all amendments to this Trust Deed; and
 - (iii) an original executed copy of any restatement of this Trust Deed;
- (b) settlement records:
 - (i) a copy of the final executed Settlement Contract;
 - (ii) a receipt for the Settlor's Initial Contribution; and
 - (iii) receipts for any future contributions of property to the Trust;
- (c) Trustee's records:
 - (i) an original executed or notarially certified true copy of all Consents to Act as Trustee;
- (d) contractual obligations:
 - (i) a copy of all written agreements entered into by the Trustees;
- (e) financial records:
 - (i) a copy of the financial statements of the Trust.

17.4 **Location Of, and Responsibility for, Records.** The records required to be kept under this section will be kept at the office of the Trustees or such other location as the Trustees may decide from time to time.

17.5 **Information Available to Beneficiaries.** Each of the Beneficiaries shall have the right to obtain, on demand and on payment of reasonable reproduction costs, a copy of the Trust Deed and any trust deed supplemental hereto.

ARTICLE 18: AMENDMENTS AND REVISIONS

18.1 **Revision by Agreement.** The Trustees and Council may at any time and from time to time, by written agreement, make revisions to this Trust Deed for clarification or to correct an error or defect in the wording of the Trust Deed, or to assist in the interpretation or implementation of the Trust Deed, without changing the purpose, intent or substance of the Trust Deed.

18.2 **Amendment.** The Trustees and Council may at any time and from time to time amend the provisions of this Trust Deed provided that the amendment is approved by a unanimous vote of Council and a majority vote of the Electors of HIFN in which a majority of the Electors cast ballots.

18.3 **Amendments and Revisions Evidenced in Writing.** Any amendment or revision shall be made in writing, dated as of the date of the written agreement between Council and the Trustees, and attached as a Schedule to this Trust Deed.

ARTICLE 19: – GENERAL

19.1 **Applicable Law.** This Trust Deed will be interpreted in accordance with Ontario law and applicable Canadian law. The Ontario Superior Court of Justice will have exclusive jurisdiction in all matters respecting this Trust Deed.

19.2 **Authority.** Where any action by Council is required or provided for hereunder, the Trustees may rely, for the purposes of determining whether the action has been taken, upon a Council Resolution expressed to have been passed at a meeting of Council and held in accordance with its procedures.

19.3 **Severability.** If any provision or part of this Trust Deed is invalid or unenforceable for any reason, this will not affect the validity or enforceability of any other provision or part. Each and every provision and part of this Trust Deed is severable from each and every other provision or part and will be valid and enforceable and will be given effect to the extent permitted by law.

19.4 **Notices.** Unless otherwise provided, a Notice required or permitted to be given or made under this Trust Deed may be given or made in one or more of the following ways:

- (a) delivered personally or by courier;
- (b) transmitted by facsimile transmission;
- (c) mailed by regular post in Canada or otherwise deposited in the recipient's mailbox; or
- (d) sent by e-mail.

19.5 **Delivery and Receipt.** A notice or other communication will be considered to have been delivered and received:

- (a) if delivered personally or by courier, on the commencement of business on the business day next following the business day on which it was received by the addressee or a responsible representative of the addressee;

(b) if sent by facsimile transmission or e-mail and if the sender receives confirmation of the transmission, then at the start of business on the business day next following the business day on which it was transmitted; or

(c) if mailed by regular post in Canada, five (5) business days following the date of mailing.

19.6 **Addresses for Notice.** A notice or other must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

(a) For: Henvey Inlet First Nation

[NTD: insert]

(b) For: Trustee

[NTD: insert]

19.7 **Change of Address.** A Party may change the Party's postal address, facsimile number, or e-mail address, by giving a notice to the other Parties in the manner set out above.

19.8 **Countersigning.** This Trust Deed may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one and the same Trust Deed, provided that after this Trust Deed has been so executed and for purposes of formal presentation, each party shall re-sign a final, formal copy of this Trust Deed whenever possible to do so after the fact.

SIGNED by the SETTLOR, HENVEY INLET FIRST NATION,
in the presence of:

)	
)	
)	
	)	Per:
<hr/>	)	<hr/>Chief M. Wayne McQuabbie
)	
Print Name: <hr/>)	
	)	Per:
Address: <hr/>	)	<hr/>Councillor Carl Ashawasagai
<hr/>)	
<hr/>)	
	)	Per:
	)	<hr/>Councillor Patrick Bennan
Occupation: <hr/>)	
)	
	)	<hr/>Councillor Brenda Contin
)	
	)	Per:
	)	<hr/>Councillor Lionel Fox
)	
	)	Per:
	)	<hr/>Councillor Maureen Kagagins
)	

in the presence of:

Occupation: _____

Title: _____

Title: _____

I/we have authority to bind the
Corporation

in the presence of:

Occupation: _____

Title: _____

Title: _____

I/we have authority to bind the Corporation

SIGNED by the EXPERT TRUSTEE,
in the presence of:

Witness Signature

Print Name: _____

Address: _____

Occupation: _____

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

I/we have authority to bind the
Corporation

SIGNED by the COMMUNITY TRUSTEE,
in the presence of:

Witness Signature

Print Name: _____

Address: _____

Occupation: _____

Per: _____

Name: _____

Title: _____

D

R

A

F

T

[illegible]

Per:

Name: _____

Witness Signature

Print Name: _____

Address: _____

Occupation: _____

CONSENT TO ACT AS A TRUSTEE

Name of Witness

SCHEDULE "B"

CONFLICT OF INTEREST DISCLOSURE STATEMENT

Per Article 11.8 this disclosure is to be completed by the Investment Consultant, Investment Manager(s) and all other advisors and consultants who provide advice to the Trust.

Name of Advisor: _____

Contact Name and Information: _____

Tel/Cell: _____

Fax: _____

Email: _____

1. I/we acknowledge that per Article 11.8 of the Henvey Inlet First Nation Windfarm Legacy Trust that as an advisor, I/we must provide a written statement to the Trustees within sixty (60) days of the start of each Fiscal Year outlining any conflict of interest or potential conflict of interest that has or might arise due to other services I/we offer or are offered by any of my/our related companies or entities.
2. This written statement shall be kept in the records maintained by the Trustees.
3. I/we acknowledge that as an advisor to the Trust that I/we will report an actual or potential conflict of interest which arises and of which the Trustees was not previously informed.
4. The nature and extent of any actual or potential conflict of interest with my/our duties as an advisor to the Windfarm Legacy Trust as defined both in the Trust Deed and as outlined above is as follows:

Attestation: I/we have read the above information and understand the request for disclosure. I/we hereby certify that the information set forth in this document is true, complete and accurate to the best of my/our knowledge.

If, at any time following the signing of this Conflict of Interest Disclosure Statement, there occurs any material change to the information given herein regarding conflict of interest, either by way of addition or deletion, I/we shall forthwith file a supplementary disclosure statement to the Henvey Inlet First Nation Windfarm Legacy Trust describing such change.

Signature (Required)

Date (mm/dd/year)

SCHEDULE "C"
AUTHORIZED INVESTMENTS

PART ONE

1. Debt instruments issued or guaranteed by the Government of Canada, a Province of Canada, or a Municipality of Canada, or mutual, exchange traded or pooled funds investing in these debt instruments, all of which shall have a term not exceeding three years.
2. Debt instruments issued or guaranteed by any Canadian Schedule 1 Chartered Bank or Canadian Trust Company including bankers' acceptances including mutual or pooled funds thereof investing in these debt instruments, all of which shall have a term not exceeding two years.
3. Mortgage backed securities guaranteed by the Government of Canada, an agency of the government of Canada, or one of the chartered banks or trust companies, including mutual or pooled funds thereof investing in these securities, all of which shall have a term not exceeding two years.
4. Commercial paper issued by corporations rated R-1 or A-1 by the Dominion Bond Rating Services or Standard and Poor's Bond Rating Services including mutual or pooled funds thereof investing in commercial paper, all of which shall have a term not exceeding two years.
5. Corporate Bonds rated A or better by the Dominion Bond Rating Services or Standard and Poor's Bond Rating Services including mutual or pooled funds thereof investing in these corporate bonds, all of which shall have a term not exceeding two years.
6. Should the Trustees deem it in the best interests of HIFN or the Trust to purchase or retain Authorized Investments issued or managed by a financial institution or its affiliates, the purchase or retention of such Authorized Investments shall be authorized notwithstanding any connection between the financial institution or its affiliates and the Corporate Trustee. The Corporate Trustee, its successors and assigns are hereby released, discharged and indemnified, from any liability to which the Corporate Trustee may become subject to as a result of the purchase or retention of such Authorized Investments. It is acknowledged that the Corporate Trustee shall not be held responsible for any loss resulting from such Authorized Investments and neither the Corporate Trustee, the financial institution nor the affiliate shall be accountable for any profit. The Trustees are authorized to charge fees as agreed in respect of these Authorized Investments.

PART TWO

Upon the development and implementation of an Investment Policy, any investment that complies with the Prudent Investor / Prudent Portfolio Standard but not limited to common or preferred shares and any

or all other debt or equity-like instruments, including derivatives, which take into consideration the following factors:

1. General economic conditions;
2. The possible effect of inflation or deflation on the investment;
3. The expected tax consequences of investment decisions or strategies;
4. The role that each investment or course of action plays within the overall trust portfolio;
5. The expected total return from income and appreciation of capital;
6. The needs for liquidity, regularity of income, and preservation or appreciation of capital;
7. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and
8. Should the Trustees deem it in the best interests of HIFN or the Trust to purchase or retain Authorized Investments issued or managed by a financial institution or its affiliates, the purchase or retention of such Authorized Investments shall be authorized notwithstanding any connection between the financial institution or its affiliates and the Corporate Trustee. The Corporate Trustee, its successors and assigns are hereby released, discharged and indemnified, from any liability to which the Corporate Trustee may become subject to as a result of the purchase or retention of such Authorized Investments. It is acknowledged that the Corporate Trustee shall not be held responsible for any loss resulting from such Authorized Investments and neither the Corporate Trustee, the financial institution nor the affiliate shall be accountable for any profit. The Trustees are authorized to charge fees as agreed in respect of these Authorized Investments.