

Host Community Agreement

between the

Town of Arkwright

and

Cassadaga Wind LLC

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## HOST COMMUNITY AGREEMENT

This **HOST COMMUNITY AGREEMENT**, is made as of the 31<sup>st</sup> day of October, 2016 (this "**Agreement**") by and between Cassadaga Wind LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, and having its corporate offices at 1251 Waterfront Place, 3<sup>rd</sup> Floor, Pittsburgh, PA 15222 (the "**Company**"), and the Town of Cherry Creek, a municipal corporation duly organized and existing under the laws of the State of New York and having its offices at 9543 Center Road, Fredonia, New York (the "**Town**"). The Company and the Town may sometimes be referred to herein, individually, as a "**Party**" and, collectively, as the "**Parties**".

**WHEREAS**, the Company has filed a Public Scoping Statement pursuant to Public Service Law Article 10 with the Department of Public Service as part of the application process to obtain a Certificate of Environmental Compatibility and Public Need ("**Certificate**") from the New York State Board on Electric Generation Siting and the Environment ("**Article 10 Process**") to construct a 126 megawatt ("**MW**") wind-powered electric generating facility in the Town and the Towns of Cherry Creek, Arkwright and Stockton (the "**Project**") comprised of up to fifty-eight (58) wind turbine generators (each a "**Turbine**"), some of which will be located in the Town, one or more electrical interconnection switchyard and substations ("**Interconnection Facilities**"), and associated appurtenances, equipment, facilities, and improvements including without limitation, land and easement rights, access roads, power collection lines, including overhead transmission lines, operations and maintenance buildings, storage buildings, and meteorological and communication towers and devices ("**Ancillary Facilities**"); and

**WHEREAS**, in connection with the Project, the Company will use certain of the Town's roadways and related Town rights-of-way, which will be identified during the Article 10 Process and will be attached hereto as Exhibit "A" ("**Roads**") to transport materials and equipment to and from the Project sites and for other purposes permitted hereafter; and

**WHEREAS**, the Town has agreed to allow the Company to inspect, repair and reinforce the Roads, and appurtenant structures such as culverts, manholes and other drainage features, guardrails, bridges, utilities, and signage ("**Road Structures**"), in advance of and during Project construction to adequately support the loads necessary for such transportation and operation activities; and

**WHEREAS**, prior to commencement of construction of the Project ("**Commencement of Construction**"), the Company has agreed to inspect the Roads and Road Structures and prepare a pre-construction inspection report ("**Pre-Construction Inspection Report**") establishing the pre-existing condition of the Road and Road Structures, which Pre-Construction Inspection Report is subject to approval by the Town and will be attached hereto as Exhibit "B"; and

**WHEREAS**, following completion of the construction of the Project, the Company has agreed to inspect and repair the Roads and Road Structures to their pre-existing structural condition as established in the Pre-Construction Inspection Report, or to pay a lump sum payment to the Town for repair activities performed by the Town, as provided herein; and

**WHEREAS**, the Parties believe that their mutual interests will be served by the execution of this Agreement which specifies their respective rights, interests, and obligations relative to the construction, operation, and decommissioning of the Project, subject to the conditions, if any, attached to any approvals that may be issued by the Town; and

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

The terms of this Agreement shall have the meanings ascribed to them herein, for all purposes of this Agreement, unless the context clearly indicates some other meaning. Words in singular shall include the plural and words in the plural shall include the singular where the context so requires.

**“Agreement”** means this Host Community Agreement and any and all exhibits or schedules attached hereto.

**“Ancillary Facilities”** shall have the meaning set forth in the first Whereas Clause. **“Article 10 Certificate”** shall mean a certificate of environmental compatibility and public need authorizing the construction and operation of a major electric generating facility issued by the New York State Board on Electric Generation Siting and the Environment pursuant to Article 10 of the Public Service Law.

**“Certificate of Completion”** shall have the meaning set forth in Section 10.4.

**“Certificate of Restoration”** shall have the meaning set forth in Section 5.6.

**“Commencement of Construction”** means when unlimited and continuous construction of the Project has begun and does not include testing or surveying (including geotechnical drilling and meteorological testing) to determine the adequacy of the site for construction or tree clearing activities. Actual tree-clearing activities shall be considered as part of construction

**“Commercial Operation Date”** shall mean January 1 of the calendar year following the Construction Year.

**“Company”** shall mean Cassadaga Wind LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, and its successors and assigns.

**“Company Civil Engineer”** shall have the meaning set forth in Section 5.3.

**“Completion Notice”** shall have the meaning set forth in Section 10.3.

**“Construction Commencement Date”** shall mean the date specified in the Notice of Commencement of Construction as the date after which Project construction activities may commence.

**“Construction Period Payment”** shall have the meaning set forth in Section 4.1.

**“Construction Year”** shall have the meaning set forth in Section 4.2.

**“CPI”** shall mean the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for the Northeast Region, expressed as a percentage, for the last full calendar year for which inflation statistics were published; *provided, however*, that if the CPI percentage is negative, the CPI for purposes of this Agreement shall be zero percent (0%).

**“Decommissioning”** shall have the meaning set forth in Section 11.1.

**“Deficiency Notice”** shall have the meaning set forth in Section 10.3.

**“Effective Date”** shall have the meaning set forth in Section 3.1.

**“Evaluation Period”** shall have the meaning set forth in Section 10.3.

**“Extended Cure Period”** shall have the meaning set forth in Section 16.6.

**“Fees”** shall have the meaning set forth in Section 18.1.

**“First Turbine Completion Year”** shall mean the first year measured from September 30<sup>th</sup> to October 1<sup>st</sup>) in which any individual turbine receives a Certificate of Completion or Temporary Certificate of Completion from the Town. For purposes of clarity, if the first Certificate of Completion or Temporary Certificate of Completion from the Town to an individual turbine is issued on October 15, 2017, the First Turbine Completion Year is 2018, and the first payment under section 4.2(c) shall be due October 31, 2018.

**“Force Majeure”** shall have the meaning set forth in Section 20.12.

**“Haul Routes”** shall have the meaning set forth in Section 5.7.

**“Host Fee”** shall have the meaning set forth in Section 4.2.

**“IDA”** means the Chautauqua County Industrial Development Agency.

**“Interconnection Facilities”** shall have the meaning set forth in the recitals.

**“Lender”** shall have the meaning set forth in Section 20.9.

**“Lender’s Lien”** shall have the meaning set forth in Section 20.9.

**“Local Law”** means Local Law No. 2 of 2007, a Local Law Amendment to the Town of Arkwright Zoning Ordinance entitled Article VI-A Wind Energy Facilities, of the Town of Arkwright, Chautauqua County, as presently written or as it may be subsequently amended.

**“MW”** shall have the meaning set forth in the recitals.

**“Mortgage”** shall have the meaning set forth in Section 16.6.

**“Mortgagee”** shall have the meaning set forth in Section 16.6.

**“Notice of Breach”** shall have the meaning set forth in Section 16.1.

**“Notice of Commencement of Construction”** shall have the meaning set forth in Section 4.1.

**“On-Site Monitor”** shall have the meaning set forth in Section 9.1.

**“Parties”** shall mean the Company and the Town.

**“Payment Rate”** shall have the meaning set forth in Section 4.2.

**“PILOT Agreement”** shall have the meaning set forth in Section 4.6.

**“Pre-Construction Inspection Report”** shall have the meaning set forth in the recitals.

**“Post-Construction Inspection Report”** shall have the meaning set forth in Section 5.6.

**“Project”** shall mean the Cassadaga Wind Farm described in the recitals, including all Interconnection Facilities and Ancillary Facilities.

**“Reinforcement Activities”** shall have the meaning set forth in Section 5.1.

**“Repair Activities”** shall have the meaning set forth in Section 5.1.

**“Repair Estimate”** shall have the meaning set forth in Section 5.6.

**“Replenishment Amount”** shall have the meaning set forth in Section 8.4.

**“Restoration”** shall have the meaning set forth in Section 11.2.

**“Roads”** shall have the meaning set forth in the recitals.

**“Road Structures”** shall have the meaning set forth in the recitals.

**“Scope of Services”** shall have the meaning set forth in Section 9.3, as further defined and limited by Exhibit “J”.

**“State”** means the State of New York.

**“Successor”** shall have the meaning set forth in Section 20.9.

**“Temporary Certificate of Completion”** shall have the meaning set forth in Section 10.5.



“**Town**” shall mean the Town of Arkwright, New York.

“**Town Board**” means the Town Board of the Town.

“**Town CEO**” shall have the meaning set forth in Section 9.1.

“**Town Highway Superintendent**” means the Highway Superintendent of the Town.

“**Town Losses**” shall have the meaning set forth in Section 13.2.

“**Town Supervisor**” means the Town Supervisor of the Town.

“**Turbine**” shall have the meaning set forth in the recitals and is sometimes referred to herein as a WECS.

“**WECS**” means an individual wind energy conversion system or tower and is sometimes referred to herein as a Turbine.

“**Wind Farm Hotline**” shall have the meaning given it in Section 7.1.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

#### SECTION 2.1 TOWN REPRESENTATIONS AND WARRANTIES.

The Town represents, warrants, and agrees as follows:

a. **Existence and Good Standing.** The Town is a validly existing political subdivision of the State of New York.

b. **Approval and Authorization.** The Town has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Town Board has duly authorized the execution and delivery of this Agreement and the Town’s performance of all of its duties and obligations contained herein, and this Agreement constitutes a valid and legally binding obligation of the Town, enforceable in accordance with its terms. A copy of the Town Board’s resolution approving this Agreement and authorizing its execution by the Town supervisor (the “**Town Supervisor**”) is attached hereto as Exhibit “C”.

c. **Signatory.** The Town represents and warrants that the Town Supervisor has executed this Agreement pursuant to a resolution adopted by the Town Board, at a meeting thereof, and the Town Supervisor, whose signature appears hereafter, is both duly authorized and empowered to execute and enter into this Agreement on behalf of the Town.

d. **All Statements True.** No statement, information, representation or warranty of the Town contained in this Agreement or furnished by or on behalf of the

Town in connection with the transactions contemplated contains any untrue statements of a material fact or omits to state a material fact necessary in order to make a statement contained herein not misleading.

## SECTION 2.2 COMPANY REPRESENTATIONS AND WARRANTIES.

The Company represents, warrants, and agrees as follows:

a. **Existence and Good Standing.** The Company is, and will continue to be throughout the term hereof, validly existing as a limited liability company authorized to do business within the State of New York.

b. **Approval, Authorization and Enforcement.** The Company has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Company is duly authorized to execute and deliver this Agreement and perform all of its duties and obligations contained herein.

c. **Signatory.** The Company represents and warrants that its signatory, whose signature appears hereafter, is both duly authorized and empowered to execute and enter into this Agreement on behalf of the Company.

d. **All Statements True.** No statement, information, representation or warranty of the Company contained in this Agreement or furnished by or on behalf of the Company in connection with the transactions contemplated contains any untrue statements of a material fact or omits to state a material fact necessary in order to make a statement contained herein not misleading.

## ARTICLE III

### TERM

#### SECTION 3.1 EFFECTIVE DATE.

This Agreement will become effective (the "**Effective Date**") upon the execution by the Company and the Town Supervisor.

#### SECTION 3.2 TERM.

The term of this Agreement shall commence with the Effective Date and expire upon completion of Decommissioning and Restoration for all Turbines comprising the portion of the Project located within the Town. Notwithstanding the foregoing, the Parties' obligations to defend and indemnify each other as set forth in this Agreement and to maintain liability insurance will continue in full force and effect through Decommissioning and any obligations by either Party to defend and indemnify the other shall survive termination of this Agreement for a period of two (2) years.

## ARTICLE IV

### HOST COMMUNITY PAYMENTS

#### SECTION 4.1 CONSTRUCTION PERIOD PAYMENT.

In consideration of impacts associated with construction of the Project, the Company shall make a one-time payment to the Town (the "**Construction Period Payment**") in the amount of \$1,000 times the total number of Turbines constructed. The Company shall provide the Town written notice of its intent to commence construction of the Project (the "**Notice of Commencement of Construction**") and such notice shall state the date upon which construction activities associated with the Project may commence (the "**Construction Commencement Date**"). The Construction Period Payment shall be due within thirty (30) days after the Construction Commencement Date.

#### SECTION 4.2 ANNUAL HOST FEE.

a. **Payment Rate.** Subject to the possible reduction set forth in Section 4.7, the Company shall annually pay the Town a host community fee (the "**Host Fee**") in an amount of \$3,800 per MW of nameplate rated capacity for each Turbine installed by the Company in the Town as part of the Project (the "**Payment Rate**"), for each year in which a Turbine that is part of the Project maintains the Certificate.

b. **Inflation Adjustment to Payment Rate.** Starting with the sixth annual Host Fee payment, the Host Fee shall be adjusted annually for inflation by a rate equal to the lesser of: (a) two percent (2%), or (b) the CPI for the previous year, measured by the twelve month period ending June 30<sup>th</sup> of the year of the Host Fee payment.

c. **Due Date.** Host Fee payments shall be due on or before October 31 of each year during the term hereof. The first Host Fee payment hereunder shall be due on or before October 31 in the First Turbine Construction Year, for each Turbine installed by the Company in the Town as part of the Project and which maintains the Certificate.

#### SECTION 4.3 TERMINATION OF HOST FEE FOR DECOMMISSIONED TURBINES.

The Company shall pay a Host Fee with respect to each Turbine installed by the Company in the Town as part of the Project and which maintains the Certificate of Environmental Compatibility and Public Need until and including the calendar year in which such Turbine is Decommissioned.

#### SECTION 4.4 LATE PAYMENT.

Any Host Fee not paid as of the date due shall be deemed late without any requirement of notice from the Town. Late fees shall be assessed at a rate of two percent (2%) for the first month or a portion of a month due, and one percent (1 %) for each subsequent month or a portion of a month on the original amount outstanding, until the Host Fee is paid; *provided, however*, such late fee amount shall not exceed the amount permitted by applicable law.

#### SECTION 4.5 NO OFFSET.

Except as provided in Section 4.6 and 4.7 hereof, no payment due under this Agreement shall be offset against any other fee, payment, tax, or payment in-lieu of taxes due under any other agreement, even in the event that any federal, state, county or local law is enacted which would otherwise allow the Company to reduce or otherwise discontinue such payments.

#### SECTION 4.6 CREDIT FOR TOWN TAXES FOLLOWING EXPIRATION OF PILOT AGREEMENT.

The Company has entered into (or will enter into) a payment in-lieu of taxes agreement with respect to the Project concerning the Chautauqua County Industrial Development Agency ("IDA"), the Town, the Towns of Cherry Creek, Arkwright and Stockton, Cassadaga Valley Central School District, Pine Valley School District, and Chautauqua County (the "**PILOT Agreement**"). Following expiration of the term of the PILOT Agreement, or any extended term thereof, the Company shall have the right to claim a credit against the next following Host Fee owed by the Company in an amount equal to the amount by which the general fund and highway fund *ad valorem* taxes levied on the Project by the Town in such year exceed the Town's portion of the final PILOT Payment under the PILOT Agreement. The Town and Company agree to work with each other and the IDA to have the PILOT Agreement payments split in accordance with the shares established by the respective tax rates of all involved tax jurisdictions for the set of fiscal years tied to the last assessment roll occurring prior to the Construction Year.

#### SECTION 4.7 PARITY ADJUSTMENT TO HOST FEE.

The Town acknowledges that the total amount of money available for the Host Fee and PILOT Agreement shall not exceed \$7,800 per MW of nameplate rated capacity for each Turbine. In the event the IDA agrees to a total annual payment in lieu of tax rate under the PILOT Agreement (including any other similar payments) less than \$4,000 per MW of nameplate rated capacity for Project Turbines (as such rate may be adjusted annually for inflation), the Host Fee payments shall be increased by sixteen and one-half percent (16.5%) of the total reduction in the PILOT Agreement payment rate. In the event the IDA agrees to a total annual payment in lieu of tax rate under the PILOT Agreement (including any other similar payments) greater than \$4,000 per MW of nameplate rated capacity for Project Turbines (as such rate may be adjusted annually for inflation), the Host Fee payments shall be decreased by an amount equal to the Pilot Agreement payment that exceeds \$4,000 per MW of nameplate rated capacity for Project Turbines (as such rate may be adjusted annually for inflation).

#### SECTION 4.8 REQUEST TO TOWN ASSESSOR.

The Town and the Company acknowledge that it is difficult to determine the value of the Project for real property tax purposes. Accordingly, the Town and the Company request the Town Assessor to establish full value assessments for the Project based on the full value per MW rates set forth on Exhibit "D". Exhibit "D" shall not be binding on the Town Assessor and nothing herein shall (i) constitute an admission as to value of the Project by either the Town or the Company or (ii) affect the Company's right to challenge any full value assessment on the Project.

### ARTICLE V

#### ROAD USE, REINFORCEMENT AND REPAIR

##### SECTION 5.1 ACCESS AND IMPROVEMENT.

The Town hereby grants the Company and the Company's contractors and subcontractors, and their respective employees, agents, permitted assigns, and contractors, a non-exclusive license to enter upon the Roads and Road Structures during the term of this Agreement for the purposes of (a) making investigations and inspections thereon, including, without limitation, investigations related to the load-bearing and structural characteristics of the Roads and the Road Structures, (b) reinforcing, modifying, improving, and/or expanding the Roads and the Road Structures as the Company deems necessary to support construction, operation, maintenance and decommissioning of the Project, including construction of improved turning radii for oversized vehicles within Road rights-of-way and access road improvements within Road rights-of-way ("**Reinforcement Activities**"), (c) transporting personnel, equipment, and materials to and over the Roads to support construction, operation, maintenance and decommissioning of the Project, and (d) repairing the Roads and the Road Structures to a condition at least as good as existed immediately prior to the Commencement of Construction of the Project, as established in the Pre-Construction Inspection Report, including any designs for planned Reinforcement Activities contained therein and actually constructed. ("**Repair Activities**"). No use or rights herein granted with respect to this Agreement shall create or vest in the Company any easement or any other ownership rights of any nature whatsoever in the Roads or Road Structures, nor does this Agreement grant rights to use any right-of-way or property owned by a private party.

##### SECTION 5.2 MUNICIPAL FRANCHISE IN ROADS, ROAD PERMITS AND CURB CUTS.

It is anticipated that power collection and transmission lines associated with the Project will need to be located above, below or within the Roads and that access roads constructed in connection with the Project will intersect the Roads. To the extent permitted by applicable law, the Town hereby grants to the Company (a) all municipal franchises and/or road permits necessary to locate and operate Project facilities above, below or within Roads, and (b) all curb cuts necessary to connect Project access roads to Roads. Lines that cross Roads will be located 5 ft. below the road surface and 4 ft. below the ditch bottom in right-of-ways. Underground lines will be placed at least 18 feet from the center of the Towns' right-of-way except where the Town

Highway Supt. agrees such placement is not possible. A schedule of all Project facilities anticipated to require such municipal franchises, road permits, and curb cuts will be finalized during or after the issuance of the Certificate and will be attached hereto at Exhibit "E". Exhibit "E" may be modified by the Company from time to time with the approval of the Town highway superintendent (the "**Town Highway Superintendent**"), which approval shall not be unreasonably withheld or delayed. Nothing in this section shall grant rights to use any right-of-way or property owned by a private party.

#### SECTION 5.3 PRE-CONSTRUCTION INSPECTION REPORT.

The Company shall, at its sole cost and expense, retain an independent New York licensed professional civil engineer (the "**Company Civil Engineer**") to inspect the Roads and Road Structures, including performance of visual inspections, core testing, or other standard road evaluation practices, prior to the Commencement of Construction of the Project to determine whether the Roads, taking into account road surface, base, sub-base, cross-section, and shoulder, and Road Structures are in a condition sufficient to support the construction activities (the "**Pre-Construction Inspection Report**"). Photographs and/or video for the Pre-Construction Inspection Report will be taken at a maximum interval of two hundred (200) feet, and at substantially lesser intervals in the vicinity of all access road intersections, to document the condition of all Roads and Road Structures that may be impacted by traffic relating to construction of the Project. The results of the Pre-Construction Inspection Report shall be set forth in a written report certified to the Town by the Company Civil Engineer, and such report shall be subject to the approval of the On-Site Monitor. The On-Site Monitor shall approve or disapprove the Pre-Construction Inspection Report within five (5) business days following receipt of same from the Company.

#### SECTION 5.4 DESIGN AND SAFETY.

Except to the extent that the Company may be responsible for safety of the Roads and Road Structures during the Company's performance of Reinforcement Activities or Repair Activities, nothing herein shall give rise to liability or create responsibility on the part of the Company for the adequacy of Road and Road Structure design and Road and Road Structure safety in relation to construction, reinforcement, improvement, reconstruction, repair, and later use of Roads and Road Structures. The Company will prepare designs of planned Road and Road Structure improvements, Reinforcement Activities, Repair Activities, or modifications. The Town agrees that the Town Highway Superintendent, in consultation with the On-Site Monitor, will be responsible for approving such designs, and the Town shall have safety responsibility for improved, modified, reinforced, or repaired Roads and Road Structures following approval. The Town Highway Superintendent, in consultation with the On-Site Monitor, shall approve or disapprove such designs within five (5) business days following receipt of same from the Company.

#### SECTION 5.5 REINFORCEMENT ACTIVITIES.

If the results of the Pre-Construction Inspection Report reveal deficiencies or inadequacies in the Roads and Road Structures relative to planned Project-related construction and transportation activities, the Company shall include within the Pre-Construction Inspection

Report designs of Reinforcement Activities it deems are appropriate to address such deficiencies or inadequacies. Designs for Reinforcement Activities are subject to the approval of the Town Highway Superintendent pursuant to Section 5.4 above. Following approval by the Town Highway Superintendent, the Town authorizes the Company to perform Reinforcement Activities. Reinforcement Activities may be performed at any time during the course of construction of the Project. Reinforcement Activities on the Roads and Road Structures shall be conducted so as to minimize the effects on local transportation and shall be coordinated with the Town with respect to its planned construction (if any) affecting the Roads and Road Structures.

#### SECTION 5.6 REPAIR ACTIVITIES.

a. **Obligation to Repair.** Following completion of construction of the Project, but in no event later than one (1) year (as such period may be extended by the Parties due to delays caused by Force Majeure, including environmental conditions) following receipt by the Company of Certificates of Completion for all Turbines, the Company shall repair any damage to the Roads and Road Structures caused by construction of the Project to at least the condition that existed prior to Commencement of Construction of the Project (as documented in the Pre-Construction Inspection Report and contemplated by the planned Reinforcement Activities identified therein); *provided, however*, that the Company shall not be responsible for the repair of damage to Roads and Road Structures caused by normal wear and tear, weather, or third parties not working on the Project on behalf of the Company. For purposes of this Agreement, "damage" to Roads and Road Structure shall be established where the Post-Construction Inspection Report (as defined below) identifies areas showing evidence of cracking, potholing, rutting, or fatigue (alligator) cracking of Road surfaces or Road Structures, or destruction or crushing of Road Structures (e.g. culverts). To determine what repairs are necessary, the Company shall, following the Company's receipt of Certificates of Completion (as defined below) for all Turbines, conduct a post-construction inspection of the Roads, taking into account the pre-existing road surface, base, sub-base and shoulder, and Road Structures, to identify any damage done to them. The results of the post-construction inspection shall be set forth in a written report certified to the Town by the Company Civil Engineer and detailing items of damage separately from items of normal wear and tear (the "**Post-Construction Inspection Report**"), and such report shall be subject to approval of the On-Site Monitor. If the Post-Construction Inspection Report identifies damage to the Roads and Road Structures, measured against the condition established in the Pre-Construction Inspection Report and contemplated by the planned Reinforcement Activities identified therein, such report shall include plans and designs of Repair Activities the Company deems are appropriate to repair such damage. The Post-Construction Inspection Report shall also include an estimate of the cost of repairing the Roads and Road Structures to the condition established in the Pre-Construction Inspection Report and contemplated by the planned Reinforcement Activities identified therein (the "**Repair Estimate**"). Following performance of the Repair Activities, the Company shall provide the Town with the Company Civil Engineer's certification (or the certification of the Company's road contractor) of such repair as called for by the Post-Construction Inspection Report. The On-Site Monitor shall review such certification and repair work. If the Town Highway Superintendent, in consultation with the On-Site Monitor, is satisfied in his reasonable discretion with such repair work, the Town shall

issue to the Company a certificate of restoration (“**Certificate of Restoration**”) within fifteen (15) business days following the On-Site Monitor’s receipt of the Repair Activities completion notice. Upon issuance by the Town of the Certificate of Restoration, the Company’s obligations with respect to repair of Roads and Road Structures shall be deemed to have been satisfied.

b. Temporary Repair Activities During Construction. During construction, the Company shall perform temporary repairs to Roads (e.g. fill potholes) to address damage to Roads caused by construction vehicles performing work on the Project, provided such damage, in the opinion of the Town Highway Superintendent, impairs the safety of the involved Roads or Road Structures, and the Town provides notice (by e-mail or other written method, unless such damage creates an immediate safety concern, in which case notice shall be provided by telephone and the Town Supervisor may choose to erect temporary warning signs to address the concern) to the Company of such damage. The On-Site Monitor shall meet with the Company on a weekly basis to discuss any issues relating to Roads and Road Structures and any requested temporary repairs.

c. Disputes Regarding Repair Activities and Repair Work. In the event the Company and the On-Site Monitor do not agree regarding the quality or completeness of the repair work, the Company and the Town shall engage an independent engineer with road repair experience to resolve the dispute. The cost of the independent engineer shall be borne equally by the Company and the Town. If the independent engineer agrees with the Company regarding the proposed or completed repair work, the Town and/or the On-Site Monitor shall issue to the Company a Certificate of Restoration. If the independent engineer disagrees with the Company regarding the proposed or completed repair work, the Company shall perform Repair Activities required by the independent engineer but shall not be required to perform Repair Activities beyond what the Town requested of the Company.

d. Option Regarding Repair Activities Performed by Town. In the event the Town and the Company agree in writing: (i) on the proposed Repair Activities, (ii) on the Repair Estimate, and (iii) that the Town will undertake performance of such Repair Activities, the Company shall pay the Town an amount equal to the Repair Estimate. If the Repair Estimate was not calculated using prevailing wages, it shall be recalculated using prevailing wages in the case of the Town undertaking the Repair Activities. Upon the Town’s receipt of such payment, the Company’s obligations for Repair Activities under this Agreement shall be fully satisfied and the Town shall forever release the Company from any obligation to repair any damage to the Roads and Road Structures caused by construction of the Project. Within seven (7) days after its receipt of the Repair Estimate payment, the Town shall issue a written receipt to the Company, the form of which is attached hereto as Exhibit “F”.

#### SECTION 5.7 USE BY OVERSIZED VEHICLES.

The Company agrees that oversized vehicles related to the Project shall be restricted to traveling on the Roads (“**Haul Routes**”) during the hours of 6:00 A.M. and 9:00 P.M. local time; *provided, however*, that the foregoing time restriction may be waived on a case by case basis by



the Town highway Superintendent for oversized vehicles used to deliver Turbine components and Project equipment. A copy of the haul route map for such oversized vehicles will be finalized during or after the issuance of the Certificate and will be attached hereto as Exhibit "G". Such haul route may be modified or supplemented from time to time. The Town waives all posted weight limitations and seasonal limitations on Road use for Project-related vehicles during construction of the Project. In addition, the Company's transportation activities on the Roads shall be conducted so as to minimize the effects on local transportation. Nothing in this Section shall permit the use of Haul Routes at times inconsistent with the Local Law (i.e., delivery schedules will minimize delivery during periods of school bus activity).

#### SECTION 5.8 OPERATING, MAINTAINING AND DECOMMISSIONING THE PROJECT.

In the event operating, maintaining or decommissioning of the Project requires use by the Company of oversized or overweight vehicles, prior to entry upon Roads with such vehicles the Company shall inspect the affected Roads, and document the condition of the Roads to the Town Highway Superintendent in a manner set forth in Section 5.3 hereof. In the event of subsequent damage caused by operating, maintaining or decommissioning of the Project (measured against the condition of the impacted Roads immediately prior to such use) the Company shall repair such damage in a manner consistent with Section 5.6 hereof.

#### SECTION 5.9 ROAD CONSTRUCTION CONTRACTORS.

The Company may contract with bonded and insured third party contractors to perform work covered by this Agreement in relation to the Reinforcement Activities and Repair Activities. Nothing in this Agreement shall make the Company or said third party contractors agents or employees of the Town.

#### SECTION 5.10 INDEMNITY AND INSURANCE.

The Company's indemnification and insurance obligations set forth in this Agreement shall cover all work performed by the Company and its agents, employees, and contractors pursuant to this Article. If the Town performs Repair Activities, the Company shall have no obligation relative to indemnity and insurance for the Town and the Town shall be responsible for its own insurance protection.

#### SECTION 5.11 SECURITY.

The Town may require the Company or its BOP Contractor to post a bond, irrevocable letter of credit, or other mutually acceptable cash equivalent in the amount of the Company's actual construction contract price for Reinforcement Activities or Repair Activities (the "**Construction Security**"), except that, in recognition of the costs the Town would incur if required to perform the work, said security shall reflect prevailing wages if the Company's actual construction contract does not use prevailing wages. Upon issuance by the Town of the Certificate of Restoration, the Company's obligation to maintain Construction Security shall terminate and the Town shall return the Construction Security to the Company forthwith. A

partial certificate of restoration may be issued with an authorization for proportional partial release of the Security.

## **ARTICLE VI**

### **COMPLIANCE WITH LAW**

#### **SECTION 6.1 COMPLIANCE WITH LAWS.**

The Company agrees that the Project shall be constructed and operated in compliance with all applicable State and federal laws, rules, and regulations, and in compliance with the Article 10 Certificate and any conditions provided therein.

## **ARTICLE VII**

### **COMPLAINT RESOLUTION PROGRAM**

#### **SECTION 7.1 COMPLAINT RESOLUTION PROGRAM**

A Complaint Resolution Program will be developed and included in the Article 10 Application and compliance with the Complaint Management Program will be a condition of the Article 10 Certificate.

## **ARTICLE VIII**

### **NOISE MONITORING PROGRAM**

#### **SECTION 8.1 NOISE MONITORING PROGRAM.**

A Noise Monitoring Program will be developed and included in the Article 10 Application and compliance with the Noise Monitoring Program will be a condition of the Article 10 Certificate.

## **ARTICLE IX**

### **ON-SITE MONITOR, MONITORING AND REPORTING REQUIREMENTS**

#### **SECTION 9.1 ON-SITE MONITOR.**

Pursuant to 16 NYCRR 1001.31(c), the Company is obligated to pay for consultant services for the review, approval, inspection and compliance certification for work required to comply with the New York State Uniform Fire Prevention and Building Code, and the Energy Conservation Code of New York State, which the Town agrees supersedes any substantive provisions of the Town's local electrical, plumbing and building codes. The Town will engage the services of a qualified independent engineer or engineering firm (the "**On-Site Monitor**")

who shall be responsible for: (a) review of the Company's building plans, (b) recommending approval of building plans to the Company, (c) assisting the Town codes enforcement officer ("Town CEO") or any of the representatives of the Town CEO with inspecting the Company's compliance with the New York State Uniform Fire Prevention and Building Code, (d) certifying such compliance which shall be evidenced by the issuance of Certificates of Completion and Temporary Certificates of Completion. In addition to the Company's obligations under 16 1001.31, the Company also agrees that the On-Site Monitor's duties shall include assisting the Town Highway Superintendent with Roads and Road Structures and Repair Activities review pursuant to Article V of this Agreement (or any other Road Use Agreement entered into between the Town and the Company) (The building code review duties and road inspection duties shall collectively, be referred to as the "Scope of Services"). The Scope of Services shall be further defined and limited by Exhibit "J" attached hereto.

#### SECTION 9.2 TOWN ENGAGEMENT OF ON-SITE MONITOR.

The Town has engaged GHD Services, Inc. ("GHD") to serve as the On-Site Monitor for the Project. The Company has no objection to the Town's engagement of GHD. In the event the Town decides to replace GHD as the On-Site Monitor, the Town shall provide advance written notice to the Company of such decision and the Town's selected replacement firm. Such selected firm must be a qualified independent engineering firm with wind farm and road construction experience. The Company shall have five (5) days after its receipt of the Town's notice to advise the Town in writing of any objection to the engagement of such replacement firm. If the Company raises an objection, the Town and the Company agree to meet within three (3) days of the Town's receipt of the Company's notice to discuss the Company's concerns with the selected replacement firm and potential substitute firms.

#### SECTION 9.3 REPORTS.

The On-Site Monitor shall provide copies of his or her reports to the Company at the same time such reports are provided to the Town Supervisor, Town Highway Superintendent, Town CEO, Town Board, or other Town representative. Such disclosure shall not include any materials prepared for litigation subject to the Attorney-Client privilege. To the extent the Company disputes the findings of any reports of the On-Site Monitor, such disputes shall be resolved pursuant to the processes set forth in Sections 5.6 and 10.7 hereof, and to the extent disputes remain, pursuant to Article XIV.

#### SECTION 9.4 EMERGENCY NOTIFICATIONS.

In the event of an emergency which requires the Company to notify the New York State Department of Public Service, New York State Department of Environmental Conservation, the New York State Department of Health, the Chautauqua County Department of Health or any federal, county or local emergency service or agency, the Company will immediately thereafter notify the Town Supervisor of the circumstances and events requiring the initial reporting to the previously-referenced entities. All written reports and documents regarding such notifications will be made available to the Town Board, along with any responses or further written directions received from the entities to which the Company initially reported.

## ARTICLE X

### BUILDING PLAN APPROVALS, CONSTRUCTION OVERSIGHT, AND CERTIFICATES OF COMPLETION

#### SECTION 10.1 ON-SITE MONITOR AND CONSTRUCTION OVERSIGHT.

In conformity with and as limited by the Scope of Services, the On-Site Monitor, working with the Town CEO or the Town Highway Superintendent, as the case may be, shall be responsible for the Town's (a) review and approval of the Company's building plans, (b) inspection of the construction work and certification of compliance with the New York State Uniform Fire Prevention Code, and the Energy Conservation Code of New York State, (c) issuance to the Company of Certificates of Completion, and (d) issuance to the Company of Temporary Certificates of Completion. The On-Site Monitor shall perform the Town's duties pursuant to this Article and any written notice given to the On-Site Monitor shall be deemed duly received by the Town for the purposes of this Agreement. Notwithstanding the foregoing, it is agreed that the Town shall at all times have the responsibility to formally approve building plans, Certificates of Completion, and Temporary Certificates of Completion in connection with the Project; *provided, however*, that the Town shall accept the recommendation of the On-Site Monitor with respect to such plans and certificates and immediately issue approvals or the certificates.

#### SECTION 10.2 PROMPT REVIEW AND APPROVAL OF BUILDING PLANS.

The Town will review and approve the Company's building plans within ten (10) days of the Company's submission.

#### SECTION 10.3 COMPLETION NOTICE AND EVALUATION PERIOD.

When the Company has completed installation of a foundation associated with a Turbine in accordance with the New York State Fire Prevention and Building Code, it shall certify to the Town that it has done so and request that a certificate of completion be issued (the "**Completion Notice**"). The Town will by the end of the next business day following its receipt of a Completion Notice (the "**Evaluation Period**") issue either a Certificate of Completion or a Temporary Certificate of Completion as outlined in Sections 10.4 and 10.5 hereof. If the Town does not issue a Certificate of Completion or a Temporary Certificate of Completion for any Turbine foundation for which a Completion Notice was provided to the Town, the Town shall deliver to the Company a written list of all alleged deficiencies for any such Turbine foundation ("**Deficiency Notice**") by the expiration of the Evaluation Period. If the Company agrees with the Deficiency Notice (in part or in whole), it shall address the identified deficiencies it agrees with and deliver a new Completion Notice to the Town. To the extent of any Company disagreement with respect to items covered by a Deficiency Notice, the procedures of Section 10.7 shall apply.

#### SECTION 10.4 CERTIFICATE OF COMPLETION.

In the event the Town finds that a Turbine foundation has been constructed in accordance with the New York State Fire Prevention and Building Code, the Town will issue to the Company a certificate of completion confirming that the Turbine foundation has been constructed in accordance with the New York State Fire Prevention and Building Code (a "**Certificate of Completion**"). The Town agrees that the scope of its review is limited to construction of Turbine foundations and does not extend to erection, installation, or assembly of Turbines, Turbine components, or Turbine towers, provided the Company presents to the Town a certification of an independent engineer that such erection, installation, and assembly were performed to the specifications of the Turbine manufacturer.

#### SECTION 10.5 TEMPORARY CERTIFICATE OF COMPLETION.

a. If during the Evaluation Period the Town determines that a Turbine foundation has been constructed in accordance with the New York State Fire Prevention and Building Code, except for certain outstanding conditions such as landscaping, restoration, or other items that cannot be completed due to weather or similar reasons, the Town will issue to the Company a temporary certificate of completion confirming that the Turbine has been constructed in accordance with the New York State Fire Prevention and Building Code (a "**Temporary Certificate of Completion**"). A Temporary Certificate of Completion may be issued by the Town for a six-month period, and renewed by the Town Board for up to six months at a time, as long as efforts are being made to complete compliance with all conditions.

b. When the Company has satisfied all outstanding conditions in accordance with the New York State Fire Prevention and Building Code relative to a Turbine foundation for which the Town has issued a Temporary Certificate of Completion, the Company shall submit a Completion Notice to the Town. In the event the Town finds that the Company has satisfied such conditions, the Town will issue to the Company, within seven (7) days of its receipt of the Completion Notice, a Certificate of Completion confirming that the involved Turbine foundation has been constructed in accordance with the New York State Fire Prevention and Building Code.

#### SECTION 10.6 COMMERCIAL OPERATION.

No power shall be sold from any Turbine for commercial purposes except in the context of construction-period testing, until a Certificate of Completion or a Temporary Certificate of Completion has been issued by the Town for that Turbine foundation; *provided, however*, that power may be generated and sold from any Turbine for which (a) the Evaluation Period has expired and the Town has not issued a Certificate of Completion, a Temporary Certificate of Completion or Deficiency Notice, (b) the Town has issued a Deficiency Notice that the Company agrees with, and the Company has addressed the deficiencies and delivered a new Notice of Completion to the Town, or (c) the Town has issued a Deficiency Notice and the Company disputes some or all of the Deficiency Notice by written notice to the Town (in which

case power may be sold until the independent engineer completes its analysis pursuant to Section 10.7 hereof as to any disputed items).

#### SECTION 10.7 DENIAL OF PERMITS OR DISPUTES REGARDING CERTIFICATES OF COMPLETION.

a. If the Company and the On-site Monitor do not agree that either a Certificate of Completion or Temporary Certificate of Completion should be issued for a Turbine foundation, at the Company's election the Company and the Town shall engage a third party independent engineer with wind project experience to review the Company's Completion Notice pursuant to Section 10.3 and inspect the Turbine foundation(s) in question. The cost of the independent engineer shall be borne equally by the Company and the Town. The independent engineer shall have seven (7) days to complete its analysis. If the independent engineer is satisfied with the completeness of the Turbine foundation installation, the Town shall immediately issue a Certificate of Completion. If the independent engineer is not satisfied with the completeness of the installation, the Town shall either issue a Temporary Certificate of Completion or the Company shall cure the indicated deficiencies as required by the independent engineer as quickly as reasonably practicable.

b. Any denial, disapproval or approval with conditions of building plans, Certificate of Completion or a Temporary Certificate of Completion, shall be in writing and shall be issued prior to expiration of the Evaluation Period. The Company will have up to thirty (30) days to cure the indicated deficiency, and upon effecting the cure must submit a Completion Notice to the Town pursuant to Section 10.3, following which the Evaluation Period will begin. Notwithstanding any remedy otherwise available, the Parties agree that the denial, disapproval or approval with conditions of building plans, Certificate of Completion or a Temporary Certificate of Completion, may be appealed to the Town Board, which shall issue a final determination of the appeal within thirty (30) days from the application of appeal, and if the Town Board upholds the denial or approval with conditions the Company finds unacceptable, the Company will have satisfied its administrative remedies and may commence an Article 78 proceeding against the Town to review such denial or approval action, provided however, any such action by the Town Board shall not constitute a breach of this Agreement with the Town.

c. The parties acknowledge the issuance of a Certificate of Completion or a Temporary Certificate of Completion is a government function, and this Section is intended to agree upon a dispute resolution procedure, but in no way waives the rights of either party under law.

#### SECTION 10.8 LIMITATION OF SECTION.

Nothing in this Article shall be read as making the On-site Monitor the engineer for the Company or the engineer of record for the Project, nor in anyway limit the Company's obligation under New York law to use a licensed engineer where required.

## **ARTICLE XI**

### **DECOMMISSIONING PLAN**

#### **SECTION 11.1 DECOMMISSIONING.**

A Decommissioning and Site Restoration Program will be developed and included in the Article 10 Application and compliance with the Decommissioning and Site Restoration Program will be a condition of the Article 10 Certificate.

## **ARTICLE XII**

### **FIRE PROTECTION CONTROL AND SAFETY**

#### **SECTION 12.1 ANNUAL MEETINGS WITH FIRE CHIEF.**

The Company will meet, on at least an annual basis, or as mutually agreed by the Parties, with the fire chiefs of the fire companies within the fire protection district where Turbines are located, to review current access, fire suppression, water supply placement, training needs, and other related issues. The initial meeting with the fire district will take place within ninety (90) days of the Construction Commencement Date.

#### **SECTION 12.2 FIRE PROTECTION PLAN.**

Within ninety (90) days after the initial meeting with the fire chief, the Company will submit to the fire chief and to the Town a fire protection plan which identifies and addresses any reasonable and necessary concerns raised by the fire chief. If necessary, such plan shall be updated within thirty (30) days after each subsequent meeting. The Company must take commercially reasonable steps to mitigate any reasonable and necessary concerns raised by a fire chief.

## **ARTICLE XIII**

### **LIABILITY COVERAGE AND INDEMNIFICATION**

#### **SECTION 13.1 INSURANCE.**

The Company will maintain insurance for claims arising out of injury to persons or property, relative to either sudden and accidental occurrences or non-sudden and accidental occurrences, resulting from operation of the Project. The Company shall maintain or cause to be maintained insurance against such risks and for such amounts (but not less than \$1,000,000) as are customarily insured against by businesses of like size and type. The Town shall be named as an additional insured to the extent of the liabilities assumed under this Agreement by the Company and only up to the minimum required insurance limit under such policy. The Company will provide proof of such insurance in the form of a certificate of insurance or proof of self-insurance upon request of the Town.

## SECTION 13.2 INDEMNIFICATION OF TOWN.

a. Indemnification. Except to the extent caused by the, negligence, illegal or willful misconduct of the Town or its officers, agents, employees or subcontractors, and except with respect to special or consequential damages, the Company agrees that it will indemnify and hold harmless the Town and its officers and employees from and against any and all liability, actions, damages, claims, demands, judgments, losses, cost, reasonable expenses and fees, including reasonable attorneys' fees, to the extent such losses relate to injury or death to persons or for loss or damage to property (collectively, "**Town Losses**"), and will defend the Town and its officers and employees in any court action, administrative proceeding or appeal in connection with such Town Losses, whether or not finally adjudicated and including any settlement thereof, provided such Town Losses result from or arise out of any act, omission, negligence or other fault of the Company or its officers, agents or employees; and further provided such Town Losses arise out of or occur in connection with this Agreement or the construction and operation of the Project. In the event a claim, action, demand, suit or proceeding is instituted against the Town by any third party for a money judgment only, pursuant to which the Town is entitled to be indemnified hereunder, the Town shall immediately notify the Company in writing and contemporaneously provide the Company with a copy of the written documents presented by such third party.

b. Hold Harmless and Defense Against Actions Concerning the Project. Without limiting the foregoing, in the event a claim, action, demand, suit or proceeding is instituted against the Town by any third party challenging the exercise of the Town's municipal powers or obligations in connection with this Agreement or the Project, pursuant to which the Town is entitled to be indemnified hereunder, the Town shall immediately notify the Company in writing and contemporaneously provide the Company with a copy of such written documents presented by such third party.

c. Cooperation in Defense Against Litigation. Should any third party bring a federal or state suit or proceeding, including a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules, regarding this Agreement, the Company and the Town shall cooperate in the defense of said action. The Town shall have the right to select its counsel. The Company agrees to fund reasonable attorneys' and experts' fees and costs incurred by the Town in defense of any such action.

d. Exclusion. Notwithstanding anything in this Agreement to the contrary, the Company shall have no obligation to indemnify the Town for costs and fees associated with any action, demand, suit or proceeding initiated by the Town against the Company or in which the Town takes a position adverse to the Company's interests.

## SECTION 13.3 INDEMNIFICATION OF COMPANY.

The Town shall indemnify, hold harmless and defend the Company and its owners, affiliates, officers, directors, employees, subcontractors, successors and assigns, and agents from and against any and all liability, actions, damages, penalties, costs, claims, demands, suits, judgments, losses, and reasonable expenses and fees, including, without limitation, reasonable



attorneys' fees, caused by, arising out of or incurred as a result and to the extent of: (a) the acts or omissions or willful misconduct of the Town, (b) breach of any obligation, covenant or undertaking of the Town contained herein, or (c) any misrepresentation or breach of warranty on the part of the Town pursuant to this Agreement, except to the extent caused by the negligence, illegal or willful misconduct of the Company or its officers, directors, agents, employees or subcontractors, and except with respect to special or consequential damages.

## **ARTICLE XIV**

### **DISPUTE RESOLUTION**

#### **SECTION 14.1 DISPUTE RESOLUTION.**

Except for disputes covered by Sections 5.6 and 10.7 hereof, in the event of a dispute concerning compliance with this Agreement, the Company and the Town agree that they will engage in alternative dispute resolution in the form of non-binding mediation with a mutually agreed mediator. The Parties recognize that certain disputes are not amenable to mediation. In the event that either Party determines to proceed with resolution of the dispute through judicial litigation, this agreement to submit disputes to mediation will not be used against any Party in the judicial forum. In the event the dispute concerns the Host Fee payment amount owed, the Company shall pay the Town the Host Fee amount not in dispute and shall deposit the disputed amount with an escrow agent mutually agreeable to both Parties, pending the outcome of the alternative dispute resolution.

## **ARTICLE XV**

### **TERMINATION**

#### **SECTION 15.1 TERMINATION.**

In the event that the Town, in accordance with applicable law, modifies its regulations governing the operation of the Project, to the extent applicable, in a manner which could materially interfere with the operation of the Project, or which could require the Company to change its operations to the detriment of it or the Project, or the New York State Board on Electric Generation Siting and the Environment modifies the terms and conditions of the Certificate which materially interferes with the operation of the Project or which requires the Company to change its operations to the detriment of it or the Project, the Company may elect, in its sole and absolute discretion, to suspend any and all payments hereunder and/or terminate the Agreement. The Company reserves its rights to initiate a judicial challenge to the Town action in question, which challenge shall not serve as a waiver of its right to terminate the Agreement. In the event that the Company elects to terminate this Agreement, and either the Town or the Company seeks a judgment in a court of competent jurisdiction to declare the rights of the Parties under this Agreement, any Host Fee otherwise due under this Agreement as of the date of Termination, the payment of which is at dispute in the litigation, shall be deposited with the court or an escrow agent mutually agreeable to both Parties, pending the outcome of the litigation.

## ARTICLE XVI

### BREACH AND REMEDIES

#### SECTION 16.1 NOTICE OF BREACH.

In any case where either Party breaches this Agreement, the non-breaching Party shall provide written notice to the breaching Party within ten (10) days of such breach ("**Notice of Breach**"). Each monetary Notice of Breach given by the Town to the Company or any Mortgagee will state the amounts, to the extent known, of any payments herein provided that are then claimed to be in Default.

#### SECTION 16.2 COMPANY RIGHT TO CURE.

The Company shall have the right to cure any breach and must cure such breach within ninety (90) days of its receipt of a Notice of Breach, unless such breach is not capable of cure within ninety (90) days, in which event the Company may request an extension of the ninety (90) day period for up to a total one hundred eighty (180) days, which extension shall be granted by the Town Board. In the event the breach continues to remain uncured, the time may be enlarged by the Town to the lesser of the: (a) extension period allowed by the Local Law, or (b) a time period established by the Town Board.

#### SECTION 16.3 REMEDIES.

The Company acknowledges that the Town has no adequate remedy by way of damages in the event that the Company materially breaches the obligations and restrictions contained within this Agreement, and therefore the Company agrees that, in such event, the Town may apply to a court of competent jurisdiction for equitable relief directing the Company to comply with this Agreement and/or enjoining or restraining the Company from any material breach hereof.

#### SECTION 16.4 REMEDIES CUMULATIVE.

No remedy herein conferred upon or reserved to the Town is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any breach shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

#### SECTION 16.5 TOWN BREACH AND RIGHT TO CURE.

The Town shall cure all breaches within thirty (30) days of its receipt of the notice unless such breach is not capable of cure within thirty (30) days, in which event the Company shall give the Town an additional sixty (60) days to cure provided the Town has commenced a cure and proceeded diligently to affect such cure. If the Town fails to cure such breach within the time

allowed, the Company's payment obligations under this Agreement shall be suspended until such breach is cured.

#### SECTION 16.6 MORTGAGEE RIGHT TO CURE.

The Town agrees, notwithstanding any other provision herein, whenever any breach hereof shall have occurred and be continuing with respect to this Agreement, the Mortgagees (as defined below) shall have the same right as the Company to cure any such breach as set forth below.

a. Mortgagee. For the purposes of this Agreement, the terms "**Mortgage**" or "**Mortgages**" shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments secured by the Project and used in the jurisdiction in which the Project is located, such as, without limitation, mortgages, deeds of trust, financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a lender may require, and the term "**Mortgagee**" shall mean the secured party under any of the foregoing instruments. With respect to any such Mortgage, so long as such Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Mortgagee to the Town, the following provisions shall apply.

b. Service of Notices on Mortgagee. The Town shall simultaneously serve a copy of any Notice of Breach upon the Mortgagee, and no such notice or other communication to the Company shall be deemed received unless a copy is so served upon the Mortgagee in the manner provided in this Agreement for the giving of notice. This subparagraph shall only apply to any Mortgagee that the Company has identified in writing to the Town in the manner provided in this Agreement for the giving of notice.

c. In the event of any breach by the Company under this Agreement, the Mortgagee shall have thirty (30) days following the Company's cure period for a monetary breach, and ninety (90) days following the Company's cure period for any other breach, after Notice of Breach is received by the Mortgagee, to cure or to cause to be cured the breach complained of. Each Notice of Breach given by the Town with respect to a monetary breach will state the amounts of any payments that are then claimed to be in Default.

d. If, before the expiration of Mortgagee's cure period as provided above, Mortgagee shall have notified the Town in writing of its agreement to pay or cause to be paid to the Town, within thirty (30) days after the expiration of Mortgagee's cure period, in the case of a monetary breach, all payments in this Agreement provided for and then in default, and/or in the case of non-monetary breach, shall have agreed within forty five (45) days to commence or cause to be commenced the cure of such non-monetary breaches, if any are then in breach (other than breaches which by their nature cannot be cured), and shall prosecute or cause the prosecution of same to completion with reasonable diligence (respectively, the "**Extended Cure Period(s)**"), then the Town shall not exercise any of its rights and remedies under this Agreement until expiration of the applicable Extended Cure Period.

e. The Company (and not the Town) shall give the Mortgagee notice of any arbitration or other proceeding or dispute by or between the Parties hereto, and the Mortgagee shall have the right to intervene therein and be made a party to any such arbitration or other proceeding.

f. Nothing in this Section shall toll the running of interest or late fees while either the Company or the Mortgagee is attempting to cure a monetary breach.

## **ARTICLE XVII**

### **SEVERABILITY**

#### **SECTION 17.1 SEVERABILITY.**

If any clause, provision, section or article of this Agreement, or a portion thereof, is held invalid, inoperative or unenforceable by any court or regulatory authority of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by applicable law.

#### **SECTION 17.2 REFORMATION.**

Notwithstanding the foregoing, if any clause, provision, section or article of this Agreement, or a portion thereof, is held invalid, inoperative or unenforceable by any court or regulatory authority of competent jurisdiction, the Parties shall:

a. Promptly meet and negotiate a substitute for such clause, provision, section or article, which will to the greatest extent legally permissible, effect the original intent of the Parties therein.

b. Negotiate such changes in, substitutions for, or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with Section 17.2(a) hereof to effect the original intent of the Parties in the clause, provision, section or article declared invalid.

## **ARTICLE XVIII**

### **REIMBURSEMENT OF TOWN EXPENSES**

#### **SECTION 18.1 REIMBURSEMENT OF TOWN EXPENSES.**

The Company is entering into three separate Host Community Agreements with the Towns of Arkwright, Cherry Creek and Charlotte. The Towns have hired the same special legal counsel and On-Site Monitor. The total maximum amount of reimbursement expenses under this section for all three Towns shall be \$425,000.00. Rather than allocate that total by Town, the Company has agreed to fund one account maintained by the Town of Charlotte for a maximum total expense of \$425,000.00 for the On-Site Monitor and special legal counsel funds provided for in the Host Community Agreements. The obligations as set forth in this section are applicable

to all three Towns as described below The Towns of Cherry Creek and Charlotte acknowledge the agreement as set forth in this section.

The Company shall reimburse the Towns for all reasonable costs, fees and expenses paid to special legal counsel and the On-Site Monitor (the "Fees") incurred in connection with the Scope of Services; *provided, however*, that the Company's total obligation to reimburse the Towns of Cherry Creek, Charlotte and Arkwright for Fees of the On-Site Monitor shall be no greater than \$400,000, for all work performed by the On-Site Monitor within the Scope of Services and provided further, that the Fees of the On-Site Monitor shall be based on a per turbine model of \$6,900 per turbine and the final Fees for the On-site Monitor shall be limited to the actual number of turbines constructed. The Company's obligation to reimburse the Towns of Cherry Creek, Charlotte and Arkwright for Fees of the Towns' special legal counsel shall be limited to the sum of \$25,000 for all work performed by the Towns' special legal counsel in connection with the Scope of Services. To the extent the Fees of the On-Site Monitor are less than the per turbine costs, the savings shall be paid to the Towns as agreed to between the Towns. To the extent the Fees of the Town's special legal counsel are less than \$25,000, the savings shall be paid to the Towns as agreed to between the Towns. Fees shall be reimbursed through the Fee Escrow Account described below.

#### SECTION 18.2 FEE ESCROW ACCOUNT.

a. Initial Funding of Fee Escrow Account. Prior to the commencement of the Scope of Services as outlined in Exhibit J the Company shall deposit the sum of \$45,000 in an interest-bearing escrow account to be established by the Town of Charlotte at a local banking institution (the "Fee Escrow Account"), with any interest accruing to the Town's benefit.

b. Replenishment of Fee Escrow Account. Whenever the balance of the Fee Escrow Account falls below \$10,000, the Company shall be notified, through notice to the Company and its attorney, as set forth in Section 19.1 hereof, of the amount remaining in the Fee Escrow Account and, within fifteen (15) business days of such notification, the Company shall deposit an additional \$10,000, or such other amount as the Town and the Company shall mutually agree, into the Fee Escrow Account; *provided, however*, that the Company shall have no further obligation to replenish the Fee Escrow Account after it has deposited the total as described in Section 18.1 into such account. In the event the Company fails to replenish the Fee Escrow Account within fifteen (15) business days of notification, the Town Board or its authorized representatives may direct the engineers and attorneys to cease all work on the Project until such payment is received from the Company.

c. Invoices and Withdrawals. The Invoices for the work performed pursuant to the Scope of Services will be submitted to the Town Board, which will review the invoices. Upon approval by the Town Board, the Town Clerk will thereafter be directed to disburse funds from the Fee Escrow Account to pay the invoices. Copies of all invoices shall be provided prior to approval by the Town Board to the Company through its attorney, except for any privileged portions of legal billings.

d. Return of Fee Escrow Account Balance. Upon completion of all of the On-Site Monitor and special legal counsel's responsibilities with respect to the Project, but in no event later than one (1) year following the Commercial Operation Date, any monies remaining in the Fee Escrow Account, after paying all outstanding costs, fees and expenses, shall be paid to the Town.

e. Annual Statements. The Town shall provide annual Fee Escrow Account statements to the Company, together with an itemized accounting of monies disbursed from the Fee Escrow Account, if applicable.

f. Disputes. In the event the Company disputes or objects to any item set forth in the accounting, the Company shall identify the disputed item and the basis for the dispute, in writing, within thirty (30) days of the receipt of such accounting. The Company and the Town agree to communicate expeditiously and in good faith with each other to resolve any such billing dispute as promptly as possible. In the event the Parties are unable to resolve their dispute, the Parties shall proceed with mediation in accordance with Section 14.1 hereof.

#### SECTION 18.3 NO FIDUCIARY RELATIONSHIP.

The On-Site Monitor and the Towns' special legal counsel are retained pursuant to separate agreement with the Town and do not have any obligation to or fiduciary or employment relationship with the Company.

#### SECTION 18.4 INTERVENOR FUNDS

Upon commencement of construction, the Company agrees to pay to the Towns any funds that have not been disbursed from the Application intervenor account by pro rata share based on the number of turbines in each Town.

### ARTICLE XIX

#### NOTICES

#### SECTION 19.1 NOTICES.

All notices, demands, requests, consents, or other communications provided for or permitted to be given pursuant to this Agreement shall be in writing and shall be mailed, communicated by electronic mail, or delivered to the Parties at the respective address set forth below:

a. Notices to the Town:

Town of Arkwright  
9543 Center Road  
Fredonia, New York 14063

With a copy to:

Town of Arkwright  
Attn: Town Supervisor  
9543 Center Road  
Fredonia, New York 14063

With a copy to:

Daniel A. Spitzer, Esq.  
Hodgson Russ, LLP  
140 Pearl Street  
Buffalo, New York 14202

b. Notices to the Company:

Cassadaga Wind LLC  
1251 Waterfront Place, 3<sup>rd</sup> Floor  
Pittsburgh, PA 15222

With a copy to:

Young/Sommer LLC  
5 Palisades Drive  
Albany, New York 12205  
Attn: James A. Muscato

All such notices, demands, requests, consents, or other communications shall be deemed to have been duly given when transmitted by electronic copy or personally delivered or, in the case of a mailed notice, upon receipt, in each case addressed as aforesaid. Each of the Parties may from time to time change its address for notices by providing notice of such change to the other Parties given in accordance with this Section.

## **ARTICLE XX**

### **MISCELLANEOUS**

#### **SECTION 20.1 NO WAIVER.**

The failure of any Party to insist on the strict performance of any term or provision hereof will not be deemed a waiver of the right to insist on strict performance of any other term or provision, nor will it be deemed a waiver of any subsequent breach. Unless specifically stated, the selection of any specific remedy hereunder or under the Local Law by either Party shall not be deemed an election of remedies limiting either Party's right to seek any other remedy otherwise allowed by this Agreement or the Local Law.

SECTION 20.2 APPLICABLE LAW AND VENUE.

This Agreement will be governed by the laws of the State of New York. Venue for any dispute arising under this Agreement and not settled by mediation shall be solely in the New York State Supreme Court for Chautauqua County.

SECTION 20.3 NO RECOURSE.

All obligations of the Parties contained in this Agreement shall be deemed to be the corporate obligations of the respective Parties and not obligations of any member, officer, director, official, agent, servant, employee, or affiliate of the Parties. No recourse upon any obligation contained in this Agreement, or otherwise based on or in respect of this Agreement, shall be had against any past, present, or future member, officer, director, official, agent, servant, employee, or affiliate of the Parties.

SECTION 20.4 ENTIRE AGREEMENT.

Unless supplemented or otherwise amended in writing by the Town and the Company in accordance with the laws of the State, this Agreement constitutes the Parties' entire agreement with respect to the subject set forth herein, and no other agreements, written or unwritten, implied or express, will be deemed effective.

SECTION 20.5 AMENDMENT.

No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in a writing that specifically references this Agreement and that is duly executed by the Parties.

SECTION 20.6 BINDING EFFECT.

This Agreement shall inure to the benefit of and shall be binding upon each of the Parties and, as permitted by this Agreement, their respective successors and permitted assigns.

SECTION 20.7 HEADINGS.

The headings of sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or to affect the construction hereof.

SECTION 20.8 ASSIGNMENT BY TOWN.

Except in the context of financing or securitizing revenues from the Project under this Agreement, the Town may not transfer or assign any of its rights or obligations under this Agreement without the prior written consent of the Company and any such transfer or assignment shall be null and void and of no force and effect. The Company shall cooperate with the Town from time to time, including, without limitation, by entering into a consent and assignment or other agreements with the Town and the financing parties involved with any such



financing or securitization in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by the involved financing parties.

#### SECTION 20.9 ASSIGNMENT BY COMPANY.

The Company may, without the consent of the Town: (a) assign this Agreement to any (x) purchaser or successor in and to the Project, (y) affiliate or subsidiary of the Company that is controlled by, controlling or under common control with the Company, or (z) persons or entities providing financing for the Project (“**Lender**”, and such purchaser, affiliate, and Lender are collectively defined as a “**Successor**”), provided such Successor assumes and agrees to be bound by this Agreement by executing and submitting to the Town a notice of assignment and assumption of this Agreement, a form of which is attached hereto as Exhibit “L”, and (b) pledge, encumber, hypothecate, mortgage, grant a security interest in and collaterally assign this Agreement to any to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation whether or not such obligation is related to any indebtedness (a “**Lender's Lien**”). A Lender shall have the absolute right to: (a) assign its Lender’s Lien; (b) take possession of and operate the Property or any portion thereof in accordance with this Agreement and perform any obligations to be performed by Company or a Successor hereunder; or (c) exercise any rights of Company hereunder. The Town shall cooperate with the Company, its affiliates, any Successor from time to time, including, without limitation, by entering into a consent and assignment or other agreements with such Successor and the Company in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by such Successor, including execution of a consent to the assignment of this Agreement in the form attached hereto as Exhibit “M”. In the event this Agreement is assigned to a Successor, the Company shall have no further obligations hereunder, except for any obligations outstanding on the date of the transfer. Nothing herein shall limit in any way the right of the owners of the Company to sell or otherwise transfer (including by merger or consolidation with any other entity) all or a portion of their ownership interests in the Company. Notwithstanding any provision in this Section, the Company acknowledges that any permit for the Project is governed by the Local Law and nothing herein changes the Local Law as to requirements for transferring any permit.

#### SECTION 20.10 COUNTERPARTS.

This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

#### SECTION 20.11 FILING WITH TOWN CLERK.

The Town shall file and maintain a copy of this Agreement in the office of the Town Clerk.

#### SECTION 20.12 FORCE MAJEURE.

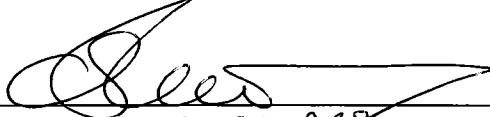
Notwithstanding any other provision of this Agreement, if a Party’s performance of this Agreement or of any obligation hereunder is interfered with, delayed, restricted or prevented, in

whole or in part, by reason of an event of Force Majeure (as defined below), then that Party, upon giving notice to other Party, shall be excused from such performance (but not from its financial obligations due prior to such Force Majeure event, or said financial obligations for that portion of the Project continuing to operate, if any, after the Force Majeure event) to the extent and for the duration of such interference, delay, restriction or prevention, and the term and any other time periods set forth herein shall continue and be extended for a like period of time. **“Force Majeure”** means any act or condition beyond the reasonable control of either Party, whether or not similar to the matters or conditions herein specifically enumerated, and includes: acts of God or the elements (including fire, earthquake, explosion, flood, high winds, ice, epidemic or any other casualty or accident related to weather conditions), strikes, lock-outs or other labor disputes, delays in transportation, inability to secure labor or materials in the open market, transmission system power failure or power surge, war, terrorism, sabotage, civil strife or other violence, the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after an application for the same has been submitted, the effect of any law, proclamation, action, demand or requirement of any government agency or utility, or litigation contesting all or any portion of the right, title and interest of the Town in the Roads and/or the Road Structures, and/or of the Company in the Project or the Certificate for the Project.


**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date and year above written.

**CASSADAGA WIND LLC**

By:   
Name: CHRIS SHORTES  
Title: CPO

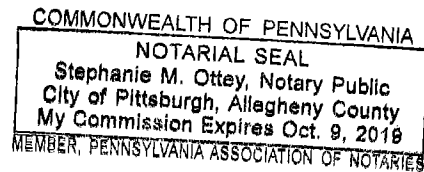
**TOWN OF ARKWRIGHT**

By:   
Name: Frederic P. Norton  
Title: Supervisor

STATE OF Pennsylvania )  
COUNTY OF Allegheny ) ss:

On the 6<sup>th</sup> day of October, in the year 2016, before me, the undersigned, a Notary Public in and for said state, personally appeared Chris Shears, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Stephanie M. Ottey  
Notary Public



STATE OF New York )  
COUNTY OF Chautauqua ) ss:

On the 31 day of October, in the year 2016, before me, the undersigned, a Notary Public in and for said state, personally appeared Frederic P. Norton, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Janice N. Rundell  
Notary Public

JANICE N. RUNDELL #4883755  
NOTARY PUBLIC, State of New York  
Qualified In Chautauqua County  
My commission Expires January 20, 2020

### List of Exhibits

- Exhibit "A" Schedule of Roads
- Exhibit "B" Pre-Construction Inspection Report
- Exhibit "C" Town Approving Resolution
- Exhibit "D" Request to Town Assessor
- Exhibit "E" Schedule of Project Facilities Requiring Municipal Franchises, Road Permits and Curb Cuts
- Exhibit "F" Receipt of Repair Estimate Payment and Release from Road Repair Obligations
- Exhibit "G" Haul Route Map for Oversized Vehicles
- Exhibit "H" Reserved
- Exhibit "I" Reserved
- Exhibit "J" Scope of Services of On-Site Monitor
- Exhibit "K" Reserved
- Exhibit "L" Form of Notice of Assignment and Assumption of Host Community Agreement
- Exhibit "M" Form of Consent to Assignment

**Exhibit "A"**

**Schedule of Roads**

**To be attached after Effective Date**

**Exhibit "B"**

**Pre-Construction Inspection Report**

**To be attached after Effective Date**

**Exhibit "C"**

**Town Approving Resolution**



## Exhibit "D"

### Request to Town Assessor

The Town and the Company acknowledge that it is difficult to determine the value of the Project for real property tax purposes. Accordingly, the Town and the Company request the Town Assessor to establish full value assessments for the Project based on the full value per MW rates set forth below, which rates are based on the New York State Office of Real Property Services-established valuation rate per MW of \$1,266,667 for wind power projects and straight-line depreciation for the anticipated 20-year service life of the Turbines. This exhibit shall not be binding on the Town Assessor and nothing herein shall (i) constitute an admission as to value of the Project by either the Town or the Company or (ii) affect the Company's right to challenge any full value assessment on the Project. The Parties acknowledge that inflation, legal changes, technological changes, or other factors may impact values and nothing in this Exhibit limits their proper consideration by either Party.

<u>Assessment Year</u>	<u>Full Value Assessment Per MW (\$)</u>
2017	1,266,667
2018	1,203,333
2019	1,140,000
2020	1,076,667
2021	1,013,333
2022	950,000
2023	886,667
2024	823,333
2025	760,000
2026	696,667
2027	633,333
2028	570,000
2029	506,667
2030	443,333
2031	380,000
2032	316,667
2033	253,333
2034	190,000
2035	126,667
2036 – Decommissioning	126,667 (10% Floor)

**Exhibit "E"**

**Schedule of Project Facilities Requiring Municipal Franchises,  
Road Permits and Curb Cuts**

**To be attached after Effective Date**

**Exhibit "F"**

**RECEIPT OF REPAIR ESTIMATE PAYMENT AND  
RELEASE FROM ROAD REPAIR OBLIGATIONS**

**TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN  
KNOW THAT** the **TOWN OF ARKWRIGHT**, a municipal corporation duly organized and existing under the laws of the State of New York, as **RELEASOR**, in consideration of the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), and other good and valuable consideration, received from **CASSADAGA WIND LLC**, a limited liability company organized under the State of Delaware and authorized to do business in the State of New York, as **RELEASEE**, receipt of which is hereby acknowledged, forever releases and discharges **RELEASEE**, its successors and assigns, of any and all obligations and claims for damages or otherwise for repair of roads or road structures in the Town of Arkwright relating to, or arising out of, in any way, the construction of the Cassadaga Wind Project and to hold **RELEASEE** harmless without responsibility for any damages incurred by the Town of Arkwright as a result.

**RELEASOR** hereby covenants to **RELEASEE**, and its principals, officers, directors, affiliates, subsidiaries, employees, contractors, agents, members, and/or managers, that **RELEASOR** will not sue or otherwise assert a claim of any nature or description whatsoever against **RELEASEE** with regard to, or associated with, any claims for or arising out of repair of roads or road structures in the Town of Arkwright.

This Release may not be changed orally.

**IN WITNESS WHEREOF**, the **RELEASOR** has executed this Release on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**TOWN OF ARKWRIGHT**

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

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

STATE OF \_\_\_\_\_ ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**Exhibit "G"**

**Haul Route Map for Oversized Vehicles**

**To be attached after Effective Date**

**Exhibit "H"**

**Reserved**

**Exhibit "I"**

**Reserved**

## **Exhibit "J"**

### **Scope of Services of On-Site Monitor**

The services provided by the On-Site Monitor that are subject to reimbursement by the Company shall be limited to those services reasonably necessary to assist the Town in connection with the Project and specifically identified as follows in this Exhibit.

1. Review of construction plans and building plans, as they relate to Turbine foundations, for compliance with New York State Fire Prevention and Building Code, and if appropriate, in cooperation with Town officials, issuance of required Certificates of Completion and Temporary Certificates of Completion.
2. Attendance at weekly Project progress meetings as needed or requested by the Company.
3. Assist the Town Highway Superintendent with Roads and Road Structures and Repair Activities review.
4. Observation of site construction work, as it relates to Turbine foundations, for conformance and/or compliance with New York State Fire Prevention and Building Code.
5. Attendance at meetings with the Town and/or State or federal agencies to review and discuss Project's status and Turbine foundation construction conformance issues as needed or requested by the Company.
6. Provision of witness and field testing of Turbine foundations relative to building plans if/as applicable.
7. Acting as the Town's representative with respect to dispute resolution between non-participating property owners (i.e. property owners who do not have lease or easement agreements with the Company) and the Company and/or its subcontractors.
8. Preparation and submission of any required reports to the relevant local, state or federal agency summarizing the Project's status. The On-Site Monitor agrees to provide a copy of any reports sent to any local, State or federal agency with jurisdiction if requested by the Company, but such disclosure shall not include any materials prepared for litigation subject to the Attorney-Client privilege.

9. Home-office supervision of environmental monitor staff, and/or periodic site visits by supervisory personnel; any necessary support (e.g., clerical) of field staff.
10. Review of pre- and post-construction road surveys provided by the Company pursuant to the Agreement.
11. Review and approve Repair Activities proposed and performed by the Company.
12. Conduct any inspections required by the Company's use of Town rights-of-way pursuant to the Agreement.

The following conditions are understood to govern the On-Site Monitor's involvement in the construction phases of the Project:

1. Neither the On-Site Monitor nor its representatives will be responsible for construction means, methods or techniques, or choice of or source of supply for construction or landscaping materials.
2. Neither the On-Site Monitor nor its representatives will be responsible for construction site safety.
3. The On-Site Monitor and its representatives shall have no approval authority over the Project work and/or immediate comment participation unless the observation deals with public safety or building code or other compliance issues.
4. The On-Site Monitor and its representatives shall have no approval authority over the Company's choice of labor or responsibility for monitoring Project labor.
5. The On-Site Monitor agrees to work within Project scheduling parameters established by the Company to the maximum extent possible, provided that reasonable advance schedule notification is received, and shall provide adequate staffing to enable review and approval of multiple site and contemporary Turbine foundation construction.
6. The On-site Monitor is not the engineer for the Company or the engineer of record for the Project, nor does the retention of the On-Site Monitor in any way limit the Company's obligation under New York law to use a licensed engineer where required.



**Exhibit "K"**

**Reserved**

**Exhibit "L"**

**Form Notice of Assignment and Assumption of  
Host Community Agreement**

NOTICE OF ASSIGNMENT

To: Town of Arkwright  
Attn: Town Supervisor

From: [\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

Date: [\_\_\_\_\_]

Re: Assignment and Assumption of Host Community Agreement for Cassadaga Wind LLC  
Project

[\_\_\_\_\_] a limited liability company duly organized and existing under the laws of the State of [\_\_\_\_\_] and having an office at [\_\_\_\_\_] hereby provides notice to the Town of Arkwright that as of [\_\_\_\_\_] it purchased or otherwise acquired all or substantially all of the assets of Cassadaga Wind LLC, a limited liability company duly organized and existing under the laws of the State of Delaware and having an address at [\_\_\_\_\_]. [\_\_\_\_\_] hereby assumes all obligations under the Host Community Agreement by and between Cassadaga Wind LLC and the Town of Arkwright dated as of [\_\_\_\_\_] and agrees to be bound by its provisions and waives all claims regarding its validity.

[\_\_\_\_\_] a [\_\_\_\_\_] limited liability company

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

**Exhibit "M"**

**Form of Consent to Assignment**