

TOWN OF ALLEGANY TOWN BOARD

RESOLUTION AUTHORIZING THE EXECUTION OF A HOST COMMUNITY AGREEMENT AND RELATED AGREEMENTS RELATIVE TO THE ALLEGANY WIND LLC WIND FARM PROJECT

WHEREAS, the Town Board of the Town of Allegany (herein the “Town Board”) has received an application from Allegany Wind LLC for a rezoning to create a Wind Energy Overlay District in which Allegany Wind proposes to construct a wind energy facility, including wind energy generating turbines and related infrastructure (collectively the “Project”); and

WHEREAS, the Town Board has received and reviewed a proposed Host Community Agreement and related agreements with Allegany Wind LLC relative to the Project; and

WHEREAS, the Planning Board of the Town of Allegany (the “Planning Board”) was designated to act as “Lead Agency” with respect to the Project; and

WHEREAS, with respect to the Project, the Lead Agency issued an environmental impact statement (the “FEIS”) prepared with respect to the Project and the members of the Town Board have received and reviewed a copy of the FEIS; and

WHEREAS, the members of the Town Board received a copy of a statement of findings and decision relative to the FEIS (the “Findings Statement”), which was adopted by the Planning Board (Lead Agency), and the members of the Town Board have reviewed the Findings Statement; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43 B of the Consolidated Laws of New York, as amended (“SEQR Act”), and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), the Town Board, an Involved Agency, conducted the requisite environmental review and issued a Findings Statement for the Project pursuant to SEQRA; and

WHEREAS, the Host Community Agreement and the related agreements provide a mechanism to confirm and fund Allegany Wind LLC’s commitments under SEQRA and the Town permits.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF TOWN BOARD OF THE TOWN OF ALLEGANY AS FOLLOWS:

1. The Host Community Agreement, attached as Exhibit A and incorporated herein, is hereby approved, and the Town Supervisor is directed to execute the Host Community Agreement.

2. The Road Bond amount is hereby set at \$638,074.76.
3. The Escrow Agreement, attached as Exhibit B and incorporated herein, for the payment of the initial \$500,000 payment is hereby approved, and the Town Supervisor is directed to execute the Escrow Agreement.
4. The Town accepts the \$10,000 amount for the mitigation of impacts to historic and cultural properties in accordance with the Planning Board condition.
5. This Resolution shall take effect immediately.

Passed and Adopted by the Town Board of the Town of Allegany on the 29th day of August, 2011

Exhibit A

Host Community Agreement

Community Agreement

Between the

Town of Allegany

and

Allegany Wind LLC

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List of Exhibits

- Exhibit “A” Schedule of Roads
- Exhibit “B” Town Approving Resolution
- Exhibit “C” Instructions to Town Assessor
- Exhibit “D” Schedule of Project Facilities Requiring Municipal Franchises, Road Permits and Curb Cuts
- Exhibit “E” Material and Equipment Delivery Route Assessment
- Exhibit “F” Decommissioning and Site Restoration Plan
- Exhibit “G” Form of Notice of Assignment and Assumption of Host Community Agreement

HOST COMMUNITY AGREEMENT

This **HOST COMMUNITY AGREEMENT**, is made as of the 29th day of August (this “**Agreement**”) by and between Allegany Wind LLC, a limited liability company duly organized and existing under the laws of the State of New York, and having its offices at 44 East 30th Street, 10th Floor, New York, NY 10016 (the “**Company**”), and the Town of Allegany, a municipal corporation duly organized and existing under the laws of the State of New York and having its offices at Town of Allegany Town Hall, 52 West Main Street, Allegany, New York 14706 (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 submitted to the Town and other involved agencies permit applications to construct an up to 72.5 megawatt (“**MW**”) wind-powered electric generating facility in the Town of Allegany, the Allegany Wind Project (the “**Project**”), comprised of up to twenty nine (29) wind turbine generators (each a “**Turbine**”), each Turbine having a nameplate rated generating capacity of up to 2.5 MW, one or more electrical interconnection switchyard and substations (“**Interconnection Facilities**”), and other Project improvements including without limitation land and easement rights, access roads, power collection lines, transmission lines, operations and maintenance buildings, and meteorological and communication towers and devices (“**Ancillary Facilities**”); and

WHEREAS, under the Town’s Zoning Ordinance, as amended, the Town is authorized to regulate the proposed Project by the approval, approval with conditions, or denial of the Project; and

WHEREAS, in connection with the Project, the Company will use certain of the Town’s roadways (identified in the attached Exhibit “A” and referred to as the “**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 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 Project construction to adequately support the loads necessary for such transportation and operation activities; and

WHEREAS, following completion of construction of the Project, the Company has agreed to inspect, repair and reconstruct the Roads and Road Structures to at least the condition for each that existed immediately prior to the commencement of construction of the Project; and

WHEREAS, in consideration of, and to offset, certain impacts the Project may have on the Town, the parties believe that their mutual best interests will be served by the execution of this Agreement which specifies their respective rights, interests, obligations, and certain mitigation measures 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.

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 amendments, exhibits, or schedules attached hereto.

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

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

“**Certificate of Restoration**” shall have the meaning set forth in Section 5.5.

“**Commercial Operation Date**” shall have the meaning set forth in Section 4.2.

“**Company**” shall mean Allegany Wind LLC, a limited liability company duly organized and existing under the laws of the State of New York.

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

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

“**Construction Security**” shall have the meaning set forth in Section 5.11.

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

“**CRA**” shall mean Conestoga Rovers & Associates, an independent engineering firm with wind project experience.

“**Decommissioning**” shall have the meaning set forth in Section 11.5.

“**Decommissioning Amount**” shall have the meaning set forth in Section 11.5.

“**Decommissioning Notice**” shall have the meaning set forth in Section 11.3.

“**Decommissioning Security**” shall have the meaning set forth in Section 11.5.

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

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

“Expiration Date” shall have the meaning set forth in Section 3.2.

“Extended Cure Period” shall have the meaning set forth in Section 16.7.

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

“Fee Escrow Account” shall have the meaning set forth in Section 18.2.

“FEIS” shall mean the Project’s Final Environmental Impact Statement, all exhibits thereto, and all materials incorporated by reference therein, filed by the Town Planning Board on April 27, 2011.

“Financing Parties” shall have the meaning set forth in Section 20.10.

“Findings Statement” means the determination and findings issued by the Town Planning Board pursuant to SEQRA on July 11, 2011.

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

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

“Local Law” means the Town of Allegany Wind Energy Regulations adopted on August 28, 2007, as amended

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

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

“Mortgage” shall have the meaning set forth in Section 16.7.

“Mortgagee” shall have the meaning set forth in Section 16.7.

“Noise Complaint Screening” shall have the meaning set forth in Section 8.1.

“Noise Meter” means a SPER Scientific Direct, Model #840015, certified Type 1 Sound Meter, or similarly sophisticated noise meter.

“Noise Setback” shall have the meaning set forth in Section 8.1.

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

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

“PILOT Agreement” shall have the meaning set forth in Section 4.2.

“PILOT Payments” shall have the meaning set forth in Section 4.2.

“Post-Construction Inspection Report” shall have the meaning set forth in Section 5.5.

“Post-Reinforcement Report” shall have the meaning set forth in Section 5.4.

“Pre-Construction Inspection Report” shall have the meaning set forth in Section 5.3.

“Project” shall have the meaning set forth in the recitals.

“Reinforcement Activities” shall have the meaning set forth in Section 5.4.

“Repair Activities” shall have the meaning set forth in Section 5.5.

“Repair Estimate” shall have the meaning set forth in Section 5.5.

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

“Resale Salvage Value” shall be the resale value of the component parts of the Project as such value is calculated by an independent expert who is selected by the Town.

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

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

“SEQRA” means the New York State Environmental Quality Review Act and its implementing regulations.

“Special District Taxes” shall have the meaning set forth in Section 4.6.

“Special District Tax Cap” shall have the meaning set forth in Section 4.6.

“State” means the State of New York.

“Successor” shall have the meaning set forth in Section 20.10.

“Tax Jurisdictions” shall have the meaning set forth in Section 4.2.

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

“Town” shall mean the Town of Allegany, New York.

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

“Town Comptroller” means the public officer charged with certain duties in relation to the fiscal affairs of the Town Allegany.

“Town Engineer” means a civil engineer licensed in the State of New York and retained or employed on a full or part-time basis by the Town.

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

“**Town Noise Consultant**” shall have the meaning set forth in Section 8.1.

“**Town Permit**” means any permit, approval or legislative action issued by the Town Board or the Town Planning Board to the Company which is necessary to construct and operate the Project, but not including Building Permits for the Project.

“**Town Supervisor**” means the Chief Executive Officer of the Town of Allegany.

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

“**Updated Post-Construction Report**” shall have the meaning set forth in Section 5.8.

“**WECS**” means an individual wind energy conversion system or tower as such term is defined by the Town of Allegany Wind Energy Regulations and is sometimes referred to herein as a Turbine.

“**Windpower Complaint 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 is attached hereto as Exhibit “B”.

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 duly organized and existing under the laws of the State of New York and authorized to do business in 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. Neither the Company nor any successor, transferee, or other party acting through rights acquired through or from the Company will bring a claim challenging, nor raise as a defense in litigation, the legal validity or enforceability of this Agreement.

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 (a) its execution by the Company and the Town, and (b) the approval by the Town Board and the Town Planning Board of all Town Permits necessary to construct and operate the Project as set forth in the applications submitted to the Town and the Town Planning Board.

SECTION 3.2 TERM. The term of this Agreement shall commence with the Effective Date and expire upon the date of Decommissioning all Turbines comprising the portion of the Project located within the Town (the “**Expiration Date**”). Notwithstanding the foregoing, the parties’ obligations to defend and indemnify each other as set forth above and to maintain liability insurance pursuant to Article XIII hereof will continue in full force and effect through Decommissioning and the parties obligation to defend and indemnify the other shall also survive this Agreement or any extension thereof for a period of two (2) years.

ARTICLE IV

HOST COMMUNITY PAYMENTS

SECTION 4.1 CONSTRUCTION PERIOD PAYMENTS. In consideration of potential impacts associated with construction of the Project, the Company shall make payments to the Town (the “**Construction Period Payments**”) in the following amounts:

a. Within five (5) days after the Effective Date, \$1,000 times the total number of Turbines permitted by a Town Permit. For example, based on the number of Turbines anticipated to comprise the portion of the Project located in the Town, the Construction Period Payment would be TWENTY-NINE THOUSAND DOLLARS (\$29,000.00).

SECTION 4.2 ANNUAL HOST FEE.

a. Host Fee. Beginning on the Commercial Operation Date, but no later than October 15, 2012, and on every anniversary of the Commercial Operation Date thereafter, the Company shall pay the Town a host community fee (the “**Host Fee**”) in the amount of \$285,000, based on the installed nameplate rated capacity of the Project, for every year in which the Project Turbines have valid Town Permits. (“**Commercial Operation Date**”) occurs when (a) all Project Certificates of Completion have been issued by the Town, and (b) electricity generated from Project Turbines is delivered for sale to a utility customer or power purchaser. If a reduction of installed nameplate rated capacity occurs during the Term as a result of Decommissioning (including partial Decommissioning) or repowering, the Host Fee amounts shall be reduced by the percentage reduction in the actual installed nameplate rated capacity of the Project (pro-rated for any partial year, with a credit if necessary against future Host Fees). If an increase in the MW of the Project occurs during the Term, the Host Fee amounts shall be increased by the percentage increase in the actual installed nameplate rated capacity of the Project (pro-rated for any partial year). Starting with the fifth payment of the Host Fee under this Agreement, the Host Fee shall be adjusted for inflation by the greater of: (a) two percent (2%), or (b) Bureau of Labor Statistics Consumer Price Index (“**CPI**”) for the Northeast Region (expressed as a percentage), but no greater than four percent (4%) for the last full year for which inflation statistics were published (*e.g.*, 2015 CPI to adjust the 2016 Host Fee payment). For the avoidance of doubt, the first four payments will be \$285,000, and adjustment for inflation will begin with the fifth payment.

b. Credit Against Host Fee for PILOT Payments. The Company has entered into (or will enter into) an agreement (the “**PILOT Agreement**”) with the Cattaraugus County Industrial Development Agency, the Town, the Town of Olean, the Allegany-Limestone School District, the Olean City School District, and Cattaraugus County (excluding the Cattaraugus County Industrial Development Agency, the “**Tax Jurisdictions**”) pursuant to which the Company is obligated to make payments in-lieu of taxes to the Tax Jurisdictions with respect to the Project (“**PILOT Payments**”). The Company shall receive a credit against the Host Fee in any year in which the Company is obligated to make a PILOT Payment to the Tax Jurisdictions. Such credit shall equal the portion of the total PILOT Payment actually paid to the Town for the involved year. For example, if the Company makes PILOT Payments to the Tax Jurisdictions for the 2013-2014 school district tax year and the 2014 town and county tax year in the amount of \$362,500 (72.5 MW times \$5,000/MW), the Company would receive a credit against the Host Fee due in calendar year 2014 equal to the amount of the PILOT Payment actually paid to the Town in calendar year 2014.

SECTION 4.3 TERMINATION OF HOST FEE FOR DECOMMISSIONED TURBINES.

The Host Fee set forth in Section 4.2 shall be terminated for any Turbine or Turbines that are Decommissioned. However, for the year in which any such Turbine is Decommissioned, the Host Fee payment shall be pro-rated on a per diem basis (for

just the involved Turbines) to pay the Town for each day the prior to the issuance of a Decommissioning Order, or notice from the Company to the Town that it is decommissioning a turbine. Because payment of the Host Fee is in advance, pro-rata reductions in the Host Fee shall be applied as a credit against the next Host Fee payment (if not all Turbines are Decommissioned). If all Turbines are Decommissioned, the Town will refund the pro rata portion of the Host Fee attributable to the portion of the year (covered by the most recent Host Fee payment) that follows Decommissioning. If all Turbines are Decommissioned, no further Host Fee shall be owed by the Company.

SECTION 4.4 LATE PAYMENT. Any Host Fee not paid as of the date due shall be deemed late and a breach of this Agreement without any requirement of notice from the Town. Late fees shall be assessed at a rate of two percent (5%) for the first month or a portion of a month due, and one half of one percent (1%) for each subsequent month or a portion of a month on the original amount outstanding, until the Host Fee is paid. Late fees shall be due within ten (10) days of receipt of written notice from the Town. Late payment of Late fees shall be subject to the same charges as late payment of Host Fees.

SECTION 4.5 CREDIT FOR TOWN TAXES FOLLOWING EXPIRATION OF 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.

SECTION 4.6 SPECIAL DISTRICT TAX. In the event special *ad valorem taxes*, excluding the fire districts, are charged to the Project ("**Special District Taxes**"), and the total amount of Special District Taxes in a calendar year exceed \$60,000 (the "**Special District Tax Cap**"), the Host Fee for such calendar year shall be reduced by an amount equal to the amount by which Special District Taxes paid by the Company exceed the Special District Tax Cap for such year. The Special District Tax Cap shall increase two percent (2%) per year starting at the end of the first full calendar year following the Commercial Operation Date.

SECTION 4.7 ADVICE 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 the full value assessments for the project as set forth on Exhibit "C". Nothing herein shall constitute an admission as to value of the Project by either the Town or the Company.

ARTICLE V

ROAD USE, REINFORCEMENT AND REPAIR

SECTION 5.1 ACCESS AND IMPROVEMENT. The Town hereby grants the Company, and its employees, agents, 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 characteristics of the Roads and Road Structures, (b) reinforcing and

modifying the Roads and Road Structures as the Company deems necessary to support construction, operation, maintenance and decommissioning of the Project, (c) transporting personnel, equipment, and materials over the Roads to support construction, operation, maintenance and decommissioning of the Project, and (d) repairing and reconstructing the Roads and Road Structures to a condition at least as good as existed immediately prior to the commencement of construction of the Project. 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.

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 Roads and that access roads constructed in connection with the Project will intersect Roads. To the extent permitted by 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. A schedule of all Project facilities anticipated to require such municipal franchises, road permits, and curb cuts is attached hereto at Exhibit "D". The Town agrees to expeditiously grant any application to modify the Project facilities set forth on Exhibit "D" provided that the involved facilities are located in a manner generally consistent with the locations specified in the FEIS and/or the Town Permits.

SECTION 5.3 PRE-CONSTRUCTION INSPECTION. The Company shall inspect the Roads and Road Structures prior to the commencement of construction of the Project to determine whether the Roads, taking into account road surface, base, sub-base and shoulder, and Road Structures are in a condition sufficient to support the construction activities. The results of such inspections shall be set forth in a written report certified to the Town by a licensed engineer (the "**Pre-Construction Inspection Report**"), and such report shall be subject to the approval of the Town Designated Engineer.

The Pre-Construction inspection shall include coring of the subject roads every ¼ mile in alternating lanes to determine depth of in place materials and shall be used as a basis for the reinforcement design. Any road shall have a minimum of two cores taken should the road be less than a ¼ mile. Pre-Construction inspection shall also include pictures at every 200 feet or a video taping of the complete road section(s).

At the Company's option, Falling Weight Densometer testing can be substituted for road boring. If the Company chooses such option the testing will be performed in accordance with Federal Highway specifications.

SECTION 5.4 REINFORCEMENT. If the Pre-Construction Inspection Report reveals deficiencies or inadequacies in the Roads and Road Structures relative to planned construction activities, the Company shall undertake construction to reinforce and improve the Roads and Road Structures as necessary to correct such deficiencies or inadequacies ("**Reinforcement Activities**"). The Company shall perform the Reinforcement Activities only after the Town approves the Reinforcement Activities. 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. Following the performance of Reinforcement Activities, the Pre-Construction Inspection Report will be updated and pre-construction photographs of all Roads (whether reinforced or not) shall be taken prior to the commencement of construction of the Project (collectively, the updated Pre-Construction Inspection Report, as applicable, and the photo record are herein referred to as the “Post-Reinforcement Report”). Photographs 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 (or a video taping of the roads may be used in lieu of such photographs), to document the condition of all roadways and road shoulder areas that may be impacted by traffic relating to the construction of the Project.

SECTION 5.5 REPAIR AND RECONSTRUCTION.

a. **Obligation to Repair.** The Company shall, following construction of the Project (but in no event later than eight (8) months following installation of all Turbines), repair any damage to the Roads and Road Structures caused by construction of the Project; 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. To determine what repairs and/or reconstruction are necessary, the Company shall, following completion of construction, 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 a licensed engineer (the “**Post-Construction Inspection Report**”), and such report shall be subject to the approval of the Town Designated Engineer based on commonly accepted standards of road construction and condition. If the Post-Construction Report reveals degradation in the Roads and Road Structures, measured against the results of the Post-Reinforcement Report, it shall also estimate the cost of repairing or reconstructing the Roads and Road Structures to the condition that existed immediately prior to construction of the Project (the “**Repair Estimate**”). The Company shall undertake construction to correct and repair the identified degradation (“**Repair Activities**”). The Company shall perform the Repair Activities only after the Town approves the Repair Activities. The Company agrees to repair and reconstruct the Roads and Road Structures to at least the condition that existed prior to commencement of construction of the Project (as documented in the Post-Reinforcement Report), provided, however, that the Company shall not be required to restore Roads and Road Structures to the condition that existed prior to Reinforcement Activities to the extent the improvements resulting from Reinforcement Activities do not impair the functionality of the Roads and Road Structures. Following performance of Repair Activities, the Company shall provide the Town with a licensed engineer’s certification of such repair and reconstruction as called for by the Post-Construction Inspection Report. The Town shall engage a qualified engineer to review such certification and repair and restoration work. If the Town is satisfied in its reasonable discretion with such repair and restoration work, it shall issue to the Company a certificate of restoration (“**Certificate of Restoration**”). Upon issuance by the Town of the Certificate of Restoration, the Company obligations under this Agreement 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

impairs the safety of the involved Road and the Town provides a written notice (by email or other written method) to the Company of such damage.

c. Disputes Regarding Repair and Restoration Work. If the Company and the Town's Designated engineers do not agree regarding the quality or completeness of the repair or restoration work, the Company and the Town shall engage an independent engineer with road repair experience to review the Company certification and inspect the repair and restoration work. The cost of the independent engineer shall be borne equally by the Company and the Town. If the independent engineer is satisfied with the quality and completeness of the repair or restoration work, the Town shall issue to the Company a Certificate of Restoration. If the independent engineer is not satisfied with the quality and completeness of the repair or restoration 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. Standard of Repair. Unless agreed to the contrary in writing by the Town's Highway Superintendent, the Town requires that any repair or reconstruction undertaken under this Agreement shall be consistent with road construction specifications of a) a two (2) percent roadway cross slope, b) binder with a minimum of two (2) inches of hot mix or three (4) inches of cold mix, four (4) feet or more of shoulder, if the involved road originally had such a shoulder, on each side with crushed or screened gravel, and d) all culvert pipes that are impacted by the Company road use, as identified in the Post-Construction Inspection Report, shall be replaced.

e. Town roads built with gravel shall be repaired with a surface layer of 4" to 6" of gravel or gravel material. All soft spots shall be boxed out and backfilled with gravel as appropriate for the site and vehicle loading conditions.

SECTION 5.6 USE OF OVERSIZED VEHICLES. The Company agrees that over-sized vehicles related to the Project shall be restricted to traveling on the Roads during the hours of 7:00 A.M. and 7:00 P.M. local time. A copy of the haul route for such over-sized vehicles is included in the Material and Equipment Delivery Route Assessment attached hereto as Exhibit "E". In addition, Allegany Wind LLC transportation activities on the Roads shall be conducted so as to minimize the effects on local transportation.

SECTION 5.7 USE OF CONCRETE AND AGGREGATE TRUCKS. Access routes for concrete and aggregates shall be addressed on the designated haul route in Exhibit "A".

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 over-sized or overweight vehicles, prior to entry upon Roads with such vehicles the Company shall inspect the affected Roads and produce to the Town an updated Post-Construction Report (the "**Updated Post-Construction Report**"). In the event of subsequent damage caused by operating, maintaining or decommissioning of the Project (measured against the Updated Post-Construction Report), the Company shall repair such damage in a manner consistent with Section 5.5 hereof.

SECTION 5.9 ROAD CONSTRUCTION CONTRACTORS. The Company may contract with adequately bonded and insured third party contractors to perform work covered by this Agreement in relation to the Reinforcement Activities and Repair Activities.

SECTION 5.10 INDEMNITY AND INSURANCE. The Company indemnification and insurance obligations set forth in this Agreement shall cover all work performed by the Company pursuant to this Section. 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. Prior to the issuance of building permits, the Company or its Contractor shall post a bond, irrevocable letter of credit, in the amount of the Company's actual construction contract price for Reinforcement Activities or Repair and Reconstruction Activities (the "**Construction Security**"). Such Construction Security may be provided by the Financing Parties. Upon submission 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.

SECTION 5.12 SECURITY AMOUNT. Construction Security will be required for each designated haul route in an amount to be determined by the Town Board subsequent to the designation of haul routes, and the bond posting dates must be for no later than the commencement of construction date.

SECTION 5.13 ADDITIONAL ROAD USE REQUIREMENTS.

a. Haul routes will be established before use. Town roads will not be used until surveyed and bonded. Town roads may be used to perform all pre-construction inspection activities.

b. All construction vehicles must stay on Haul Routes-no short cuts on other town roads hauling in or out. Low volume delivery trucks (ie. – porta johns, dumpsters, etc.) and pickup trucks providing services to the project and construction personnel purchasing goods and services within the Town are allowed on all Town Roads.

c. Roads that are widened will need ditching plus culverts, or ditches cleaned where filled in by the Company.

d. All shoulders that are damaged by Project activities must be repaired by the Company.

e. Confer with Highway Superintendent about proper size pipes before installation.

f. Proper traffic control signage must be in place during construction.

g. During construction, all roads with pot holes or rutting in excess of 4" must be fixed everyday or as directed by the Highway Superintendent or designated Town representative. Asphalt roads need to be fixed with asphalt.

h. Entrances on each access road on asphalt roads, must also have asphalt. The asphalt shall be extended 18 feet into the entrance of such access road. Access roads located within town rights-of-way shall be properly graded to provide positive drainage.

SECTION 5.14 OTHER.

a. The haul routes and access by heavy or over-sized vehicles indentified or described in this Agreement shall take precedence over any Town posting of the roads restricting use by heavy or over-sized vehicles once the Construction Security is in place with the Town.

b. The Company shall be allowed access to the designated haul road (route) during winter months providing the roads are “frozen” and the use does not pose a serious safety risk to the traveling public.

c. “One Time Use” of a road that is not a Designated Haul Route. In the event the Company determines it is necessary for the Project to use a Town road not identified in Exhibit “A” as a Designated Haul Road, then the Company shall notify the Town Highway Superintendent, describing in detail such use and the reasons therefore. If the use is to be “one time” the Town Highway Superintendent shall make the determination to allow the road use without the road being added to Exhibit “A” as a Designated Haul Route, provided the environmental impacts of the use of the road have been reviewed. If the Company determines that the road may be used multiple times, it shall be added to Exhibit “A” as described in the appropriate section of this Article as a Designated Haul Route; such action is an amendment to this Agreement, subject to approval by the Town Board pursuant to Section 20.6.

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 all permits and other authorizations issued by the Town, the Town Planning Board, State agencies, or Federal agencies with respect to the site and the documents identified in the Town Permits, including the mitigation measures included in the Findings Statement (the “**Findings Statement**”).

ARTICLE VII

COMPLAINT MANAGEMENT PROGRAM

SECTION 7.1 WINDPOWER COMPLAINT HOTLINE.

a. Establishment and Maintenance. The Company will establish a toll free complaint hotline telephone number (the “**Windpower Complaint Hotline**”) which will be in operation and accessible on a 24 hours a day, 7 days a week basis (except for telephone outages and other circumstances beyond the control of the Company) for the receipt of citizen complaints regarding Project construction and operations, including, but not limited to noise, traffic and other issues.

b. Publication and Posting. The Windpower Complaint Hotline telephone number will be (i) posted by the Town in public areas within the Town, and (ii) published in the telephone directory white pages at the expense of the Company, and identified as an “Allegany Wind LLC Windpower Complaint Hotline”.

SECTION 7.2 COMPLAINT LOG. All complaints received by the Company on the Windpower Complaint Hotline will be recorded in a complaint log, showing the date and time of the complaint, the name of the complainant and telephone and address, if furnished, location, nature and duration of the circumstances giving rise to the complaint and other supporting details. The Company will also record in the complaint log, the details of its investigation and its findings, including whether any mitigation or corrective measures were undertaken as a result of the complaint.

SECTION 7.3 INVESTIGATION OF COMPLAINTS. The Company will timely investigate the complaint and determine the appropriate response, if any, to address and mitigate, where necessary and appropriate, the conditions giving rise to the complaint. The Company will implement reasonable corrective measures to eliminate or mitigate the conditions giving rise to the complaint, if such condition is the result of non-compliance with the Local Law and Town Permits.

SECTION 7.4 REPORTING.

a. Monthly Reports to On-site Monitor. The Company will provide a copy of the complaint log on a monthly basis to the Town Supervisor, including the results of investigative activities and the ultimate resolution of the complaint.

b. Other Reports to On-site Monitor and Complainants.

1. Noise Complaints. In the event of a noise complaint, the Company will provide to the On-site Monitor a copy of the portion of the complaint log and its response within two (2) days of the complaint.

2. All Complaints. The Company will provide to the complainant a copy of the portion of the complaint log relating to his or her complaint as soon as practicable after the Company completes its investigation.

ARTICLE VIII

POST-CONSTRUCTION NOISE COMPLAINT PROCESS

SECTION 8.1 NOISE MONITORING PROGRAM. The parties recognize that the Turbines constructed by the Company are subject to noise limitations under the Local Law and Town Permits. As required as a Town Permit condition and as a part of this Agreement, the Company agrees to fund an escrow account in accordance with terms set forth herein to fund post-construction noise testing. The post-construction noise testing shall be conducted as follows.

a. Purpose. The purpose of noise testing shall be to demonstrate compliance with the terms and conditions of the Local Law and any Town Permit issued to Company, and to evaluate any complaints received by the Town regarding noise emanating from the Project.

b. Noise Setback. The Town Permits and Local Law establish a distance from each Turbine at which the noise emanating from such Turbine must be equal to or below a certain decibel level (a “**Noise Setback**”).

c. Random Noise Setback Testing. Following the Commercial Operation Date, on a periodic basis, but not more frequently than every two (2) years, the Town may conduct random tests of Company’s compliance with Noise Setbacks (“**Random Noise Testing**”). Random Noise Testing shall involve not more than ten percent (10%) of Company’s Turbines within the Town and shall be conducted using a SPER Scientific Direct, Model #840015, certified Type 1 Sound Meter, or similarly sophisticated noise meter (“**Noise Meter**”) at the Town’s cost and expense.

d. Noise Setback Testing in Response to a Complaint. Following the Commercial Operation Date, in the event the Town receives a complaint from a Town resident regarding alleged non-compliance of the Project with a Noise Setback, the Town shall investigate such complaint using the Noise Test Escrow Account described in Section 8.4 (the “**Noise Complaint Screening**”).

e. Town Noise Consultant. If Random Noise Testing or Noise Complaint Screening indicates that the Project is not in compliance with a Noise Setback, the Town may engage a qualified independent third-party acoustical measurement consultant (“**Town Noise Consultant**”) to conduct noise testing. If the Town Noise Consultant is other than the **On-Site Monitor** designed in Article IX, the Town shall provide Company ten (10) days’ advance written notice of the Town’s selection and designation, or proposed change, of the Town Noise Consultant. Company shall have thirty (30) days to object in writing to the Town of the Town’s designation of the Town Noise Consultant, which objection shall include why such consultant is either not qualified or is objectionable to Company. If Company objects to the Town’s designation of the Town Noise Consultant, the Town shall designate a different consultant.

f. Reports of Town Noise Consultant. Any report generated by the Town Noise Consultant shall be provided to Company at the same time any such report is provided to the Town.

SECTION 8.2 COMPLIANCE WITH NOISE SETBACKS. In any case where a Noise Setback is tested and found to be in compliance, Company (a) shall be deemed to be in compliance with such Noise Setback, for the purposes of **Random Noise Testing**, a period of at least three (2) years from the date of the result of such test, and (b) the **Noise Test Escrow Account** shall not be further used for the costs of any testing by the Town in response to complaints about the same Noise Setback and involved Turbine for a period of three (2) years. However, if the Town pays for an additional Test during said three (2) year period, and any turbine is found to be out of compliance, the Town shall be reimbursed for such costs from the **Noise Test Escrow Account**.

SECTION 8.3 NON-COMPLIANCE WITH NOISE SETBACKS. If the Town Noise Consultant determines that the Project is in violation of a Noise Setback, the Town shall issue to Company a written notice to cure any deficiency. Company shall have ninety (90) days after receiving such written notice to cure any deficiency. Company may request a second noise test, at its sole cost and expense, and, if Company so requests, Company may also request an extension of the ninety (90) day period for up to a total one hundred eighty (180) days, which extension may be granted by the Town Board, but the total cure period may not exceed one hundred eighty (180) days. The failure of Company to cure any defect within ninety (90) days, or one hundred eighty (180) days if an extension is granted, or to cease operating the Turbine in question until the Turbine is demonstrated by independent testing, at Company's sole cost and expense, to be in compliance, shall be considered a breach of this Agreement.

SECTION 8.4 NOISE TEST ESCROW ACCOUNT.

a. Initial Deposit. Within one-hundred eighty (180) days of the Commercial Operation Date, Company shall deposit NINE THOUSAND DOLLARS (\$9,000.00) in an interest-bearing escrow account to be established by the Town at a local banking institution (the "**Noise Test Escrow Account**"), with interest accruing to Company's benefit.

b. Maintenance of Account and Return of Account Balance. The parties agree that the principal balance of the initial Noise Test Escrow Account shall be maintained for the entire term of this Agreement. Upon the termination or expiration of this Agreement, the Town shall promptly return to Company any monies remaining in the Noise Test Escrow Account.

c. Withdrawals. At any time during the term hereof, the Town may withdraw from the Noise Test Escrow Account any amounts necessary to reimburse the Town Noise Consultant for noise testing activities. Any such withdrawal shall be included in the Town's monthly accounting.

d. Replenishment of Account. The Town shall inform Company, in advance, of the cost of any testing performed by the Town Noise Consultant (the "**Replenishment Amount**"). Company shall pay into the Noise Test Escrow Account the Replenishment Amount within thirty (30) days of its receipt of written notice of such amount.

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

SECTION 8.5 DISPUTES. In the event the Company disputes or objects to any item set forth in the annual accounting, company shall identify the disputed item and the basis for the dispute, in writing, within thirty (30) days of the receipt of such accounting. 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.

ARTICLE IX

MONITORING AND REPORTING REQUIREMENTS

SECTION 9.1 ON-SITE MONITOR. The Town shall engage a qualified independent engineering firm with wind project experience to monitor compliance of the Project with Town Permits (the “**On-Site Monitor**”).

SECTION 9.2 TOWN ENGAGEMENT OF ON-SITE MONITOR. The Town has engaged Conestoga Rovers & Associates (“**CRA**”) to serve as the On-Site Monitor for the Project. The Company has no objection to the Town’s engagement of CRA. In the event the Town decides to replace CRA 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 project 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. The Town shall not replace the On-Site Monitor without the Company’s consent, which shall not be unreasonably withheld. In the event CRA is no longer able to serve as the On-Site Monitor, the Town shall select a qualified independent engineering firm with wind project experience.

SECTION 9.3 RESPONSIBILITIES OF ON-SITE MONITOR. The On-Site Monitor shall be responsible for monitoring the Company’s compliance with any condition or requirement set forth in a Town Permit, including without limitation compliance with Noise Standards. The On-Site Monitor shall be trained in the use of a Noise Meter and shall review the Company’s noise study and conduct Noise Complaint Screening on behalf of the Town. The On-Site Monitor shall also serve as a liaison between the Project and the Town in relation to any issues that arise. Any written notice given to the On-Site Monitor shall be deemed duly received by the Town for the purposes of this Agreement.

SECTION 9.4 COSTS OF ON-SITE MONITOR. The Company shall reimburse the Town for the costs associated with employing or engaging the On-Site Monitor in accordance with Article XVIII hereof.

SECTION 9.5 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 Board, or other Town body or representative.

SECTION 9.6 EMERGENCY NOTIFICATIONS. In the event of an emergency which requires the Company to notify the New York State Department of Environmental Conservation, the New York State Department of Health, the Cattaraugus County Department of Health or any federal, county or local emergency service or agency, the Company will immediately thereafter notify the On Site Monitor 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 onsite Monitor, along with any

responses or further written directions received from the entities to which the Company initially reported.

ARTICLE X

BUILDINGS PERMITS, CONSTRUCTION OVERSIGHT, AND CERTIFICATES OF COMPLETION

SECTION 10.1 ON-SITE MONITOR AND CONSTRUCTION OVERSIGHT. In addition to the responsibilities outlined in Article IX hereof, the On-Site Monitor shall be responsible for the Town's (a) review of Company building permit applications, (b) issuance of building permits to the Company, (c) oversight of Company compliance with building permits, applicable Town codes, approved Project plans, and Town Permit conditions, (d) issuance to the Company of Certificates of Completion, and (e) issuance to the Company of Temporary Certificates of Completion. The On-Site Monitor shall discharge such responsibilities within the time periods for Town performance prescribed by this Agreement.

SECTION 10.2 PROMPT REVIEW AND ISSUANCE OF BUILDING PERMITS. To the extent that the New York State Building Code has application to the Project or specific components of the Project, The Town will endeavor to review Company building permit applications and issue building permits as required by the NYS Building Code within thirty (30) days of the Company's submission of a completed application.

SECTION 10.3 COMPANY COMPLETION NOTICE AND EVALUATION PERIOD. When the Company has completed installation of a Turbine in accordance with the Town Wind Energy Regulations, approved Project plans, and Town Permit conditions, it shall certify to the Town that it has done so and request that a Town certificate of completion be issued (the "**Completion Notice**"). The Town will have seven (7) days (the "**Evaluation Period**") following its receipt of a Completion Notice to issue either a Certificate of Completion or a Temporary Certificate of Completion as outlined in Sections 10.4 and 10.5 hereof.

SECTION 10.4 CERTIFICATE OF COMPLETION. In the event the Town finds that a Turbine has been constructed in accordance with the Town Wind Energy Regulations, approved Project plans, and Town Permit conditions, the Town will issue to the Company a certificate of completion confirming that the Turbine has been constructed in accordance with the applicable requirements (a "**Certificate of Completion**").

SECTION 10.5 TEMPORARY CERTIFICATE OF COMPLETION.

a. If during the Evaluation Period the Town determines that a Turbine has been constructed in accordance with the Town Wind Energy Regulations approved Project plans, and Town Permit conditions, 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 applicable codes and permit conditions, (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 applicable Town Wind Energy Regulations, approved Project plans, and Town Permit conditions relative to a Turbine 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 fifteen (15) days of its receipt of the Completion Notice, a Certificate of Completion confirming that the involved Turbine has been constructed in accordance with the applicable codes and permit conditions.

SECTION 10.6 NO COMMERCIAL OPERATION WITHOUT CERTIFICATE. No Turbine shall sell power 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.

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, at Company 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(s) in question. The cost of the independent engineer shall be borne equally by the Company and the Town. The independent engineer shall have fifteen (15) days to complete its analysis. If the independent engineer is satisfied with the completeness of the installation, the Town shall 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 or approval with conditions of a building permit, Certificate of Completion or a Temporary Certificate of Completion, shall be in writing and shall be issued prior to expiration of the Evaluation Period and shall state the reasons for the denial. 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 or approval with conditions of a building permit, 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, or if the thirty (30) day period shall expire (whichever occurs earlier) 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.

ARTICLE XI

DECOMMISSIONING AND SITE RESTORATION PLAN

SECTION 11.1 DECOMMISSIONING. The parties acknowledge that Turbines may, from time to time, be decommissioned and removed from the Project (“**Decommissioning**”).

SECTION 11.2 STANDARD OF DECOMMISSIONING. Decommissioning shall include removal of all footings, concrete pads, anchors, guy wires, fences, towers and other fixtures (up to four (4) feet underground) that are part of the Project, covering or filling of all holes, trenches and other excavations made by the Company, replacement of any topsoil that was removed during construction of wind monitoring equipment and Turbines, and re-seeding of impacted areas with native grasses, unless the underlying landowner requests in writing that the access roads or other land surface areas not be restored. The Company standards of Decommissioning are outlined in more detail in the Decommissioning and Site Restoration Plan attached hereto as Exhibit “F”.

SECTION 11.3 VOLUNTARY DECOMMISSIONING. If the Company determines to decommission a Turbine, it shall so notify the Town Supervisor in writing (a “**Decommissioning Notice**”). The Turbine shall stop generating electricity as of the date stated in the Decommissioning Notice.

SECTION 11.4 FAILURE TO PERFORM DECOMMISSIONING. In the event the Company fails to perform necessary Decommissioning activities within a reasonable time and the Town has to carry out such Decommissioning activities in accordance with the terms herewith, the Company hereby acknowledges and agrees that it will use its commercially reasonable efforts to ensure the Town has the necessary access rights to carry out such Decommissioning, including granting the Town the right to use Company easements and access rights to carry out any Decommissioning the Town has a right to conduct; *provided, however*, that the Town’s rights as granted herein shall be concurrent with and derived from Company rights set forth in, and shall be subject to the terms of, the agreements originally granting the Company such easement or access rights. The Company will not allow its access rights or easements to any particular facility to expire until such facility has been decommissioned.

SECTION 11.5 DECOMMISSIONING SECURITY.

a. Establishment of Decommissioning Security. On or before the Commercial Operation Date, the Company shall provide to the Town financial security (the “**Decommissioning Security**”) sufficient to pay for the Decommissioning of the Project in an amount not less than One Hundred Thousand Dollars (\$100,000.00) (the “**Decommissioning Amount**”).

b. Form of Decommissioning Security. The Decommissioning Security shall be in the form of an irrevocable letter of credit, cash deposit governed by an escrow agreement, a surety bond, or other form of security, with the type of security determined by the Company and the form of the instrument subject to the reasonable approval of the Town.

c. Use of Decommissioning Security. The Town shall have immediate and unrestricted access to the Decommissioning Security for the purpose of carrying out and completing Decommissioning whenever the Company fails to do so as required by this Agreement.

d. Adjustment to Decommissioning Amount. The Decommissioning Amount and Decommissioning Security shall be reduced by the “**Resale Salvage Value**” of the Project. The Decommissioning Amount and offsetting Resale Salvage Value shall be recalculated by the parties every five (5) years during the first twenty (20) years of the term hereof and every two (2) years following such period, with the first recalculation occurring on the fifth anniversary of the Commercial Operation Date. The Company shall reimburse the Town for the cost of such recalculation, in an amount not to exceed TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00). If the Decommissioning Amount decreases, the Company may provide replacement Decommissioning Security in such lower amount, and if the Decommissioning Amount increases, then by September 1 of that same year, the Company shall provide Decommissioning Security in such higher amount. If the parties do not agree on the recalculated Decommissioning Amount, the parties shall resolve the dispute pursuant to the dispute resolution procedure set forth in Section 14.1.

e. Expiration. The Decommissioning Security shall not expire for at least one (1) year after the end of the year for which it is provided. The Company shall provide replacement Decommissioning Security as necessary to meet this requirement, and the failure to do so shall be a breach of this Agreement.

f. Bankruptcy. The Decommissioning Security and any escrow account established by this Agreement shall not be subject to disclaimer or rejection in a bankruptcy proceeding.

ARTICLE XII

FIRE PROTECTION CONTROL AND SAFETY

SECTION 12.1 ANNUAL MEETINGS WITH FIRE CHIEFS. The Company will meet, on at least an annual basis, with the fire chiefs of the fire districts where Turbines are located, to review current access, training needs, and other emergency coordination related issues. The initial meeting with the fire districts will take place within ninety (90) days of the Effective Date.

SECTION 12.2 EMERGENCY PLAN. Within thirty (30) days after the initial meeting with the fire chiefs, the Company will submit to the fire chiefs and to the Town a Emergency Plan which identifies and addresses any emergency coordination concerns raised by the fire chiefs. If necessary, such plan shall be updated within thirty (30) days after each subsequent meeting.

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 as are customarily insured against by businesses of like size and type. The Company will provide proof of such insurance in the form of a certificate of insurance or proof of self-insurance annually to the Town.

SECTION 13.2 INDEMNIFICATION OF TOWN.

a. Indemnification. Except to the extent caused by the negligence, illegal or willful misconducts 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, expenses and fees, including reasonable attorneys' fees (collectively, "Losses"), including losses for injury or death to persons or for loss or damage to property, and will defend the Town and its officers and employees in any court action, administrative proceeding or appeal in connection with such Losses, whether or not finally adjudicated and including any settlement thereof, provided such 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 losses arise out of or occur in connection with 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. Nothing herein shall obligate the Company to indemnify, hold harmless and defend the Town and its officers and employees in connection with any litigation commenced against the Town and/or its officers or employees by reason of the Company's commitment to provide funding to the Town's local development corporation.

b. Hold Harmless and Defense Against Actions Concerning the Project or Town Permits. 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 the Project or the Town's issuance of Town Permits, 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. Right to Control Defense. The Company will have the right to control the defense of any such actions or claims and will have the right to settle such actions or claims on such terms as it may deem reasonable so long as such defense and/or settlement are approved by the Town and releases or indemnifies the Town. The Town shall be entitled to its own counsel in defense of such action.

SECTION 13.3 INDEMNIFICATION OF THE COMPANY. The Town shall indemnify, hold harmless and defend the Company and its owners, affiliates, officers, employees, subcontractors and agents from and against any and all damages, penalties, costs,

claims, demands, suits, judgments and expenses, including, without limitation, reasonable attorneys' fees, caused by, arising out of or incurred as a result 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.

SECTION 13.4 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 the Project or the Town Permits, the Company and the Town shall cooperate in the defense of said action. The Town shall have the right to select its counsel but the Company shall have the right to control the defense against such action pursuant to Section 13.2(c) hereof. The Company agrees to fund reasonable attorneys' and experts' fees and costs incurred by the Town in defense of any such action.

ARTICLE XIV

DISPUTE RESOLUTION

SECTION 14.1 DISPUTE RESOLUTION. 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.

ARTICLE XV

TERMINATION

SECTION 15.1 TERMINATION. In the event that the Town modifies the terms and conditions of any Town Permit or modifies its regulations governing operation of the Project in a manner 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 opt, in its sole and absolute discretion, to suspend payments hereunder and/or terminate the Agreement. The Company reserves its rights to initiate a judicial challenge to the Town Permit or regulations in question, which challenge shall not serve as a waiver of its right to terminate the Agreement. In the event that the Company opts 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. Nothing herein shall be construed as constituting the Company's consent or waiver with respect to the Town modification of any Town Permit or Town regulation or otherwise limit the Company's rights and potential remedies in response to such modifications.

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**”).

SECTION 16.2 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 a non-monetary breach and 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. If the non-monetary breach does not constitute a violation of the Town Permit, then the extension shall be granted by the Town Board. If the non-monetary breach constitutes a violation of the Town Permit, then the extension may be granted by the Town Board pursuant to the Local Law. 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 parties acknowledge that neither party has an adequate remedy by way of damages in the event that the other party materially breaches or threatens to materially breach the obligations and restrictions contained within this Agreement, and therefore each party agrees that, in the event of a breach of this Agreement, the aggrieved party may apply to a court of competent jurisdiction for equitable relief directing the other party to comply with this Agreement and/or enjoining or restraining the other party 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 LIMITED RECOURSE. Notwithstanding any other provision in this Agreement, the Company’s obligations under this Agreement to make payments are limited to its interest in the Project and the Town shall be entitled to look solely to the Company’s, interest in the Project for satisfaction of such obligations. Such obligations shall constitute limited obligations of the Company, payable solely from the revenues of the Company derived and to be derived from the operation, lease, sale, or other disposition of the Project.

SECTION 16.6 TOWN BREACH AND RIGHT TO CURE. The Town shall cure all breaches within ninety (90) days of its receipt of the notice unless such breach is not capable of cure within ninety (90) days, in which event the Company shall give the Town an additional ninety (90) 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 Sections 4.1 and 4.2 hereof shall be suspended until such breach is cured.

SECTION 16.7 MORTGAGEE RIGHT TO CURE. Notwithstanding any other provision herein, whenever any breach hereof shall have occurred and be continuing with respect to this Agreement, the remedies of the Town shall be limited to the rights hereunder, subject to the rights of Mortgagees (as defined below) 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 whose involvement is communicated in writing to the Town. 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 if the Mortgagee has provided its contact information to the Town, 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. The time periods provided for in this Section shall be calculated from the Mortgagee's receipt of a Notice of Breach.

c. In the event of any breach by the Company and/or its successors under this Agreement, the Mortgagee shall have one hundred twenty (120) days for a monetary breach and one hundred eighty (180) days for a non-monetary breach that does not constitute a violation of the Town Permit, after Notice of Breach is received by the Mortgagee, to cure or to cause to be cured the breach complained of and the Town shall accept such performance by or at the instigation of such Mortgagee as if same had been done by the Company. If the non-monetary breach constitutes a violation of the Town Permit, then the Mortgagee may request an extension of the ninety (90) day period provided to the Company in Section 16.2 and the Town may grant the extension pursuant to the Local Law. If the Breach is monetary in nature, each Notice of Breach given by the Town will state the amounts of any payments herein provided 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, all payments in this Agreement provided for and then in default, and/or in the case of non-monetary breach that does not constitute a violation of the Town Permit, shall have agreed within forty five (45) days to commence or caused 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 (collectively, the

“**Extended Cure Period**”), then the Town shall not exercise any of its rights and remedies under this Agreement until expiration of the 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.

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 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 16.1(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 shall reimburse the Town for all reasonable costs, fees and expenses paid to its special legal counsel and the On-Site Monitor (the “**Fees**”) incurred in connection with the Town’s oversight of the post-Town approval phases of the Project, including road construction and restoration, occurring prior to the Commercial Operation Date.

SECTION 18.2 FEE ESCROW ACCOUNT.

a. Initial Funding of Fee Escrow Account. Within Five days of the execution of this Agreement, the Company shall deposit the sum of FORTY-FIVE THOUSAND DOLLARS (\$45,000.00) in an interest-bearing escrow account to be established by the Town at a local banking institution (the “**Fee Escrow Account**”), with any interest accruing to the Company’s benefit.

b. Replenishment of Fee Escrow Account. Whenever the balance of the Fee Escrow Account falls below TEN THOUSAND DOLLARS (\$10,000.00), 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 FIVE THOUSAND DOLLARS (\$5,000.00), or such other amount as the Town and the Company shall mutually agree, into the Fee Escrow Account. In the event the Company fails to replenish the Fee Escrow Account within fifteen (15) business days of the Company's attorneys being notified, the Town Board 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 engineering and legal services will be submitted to the Town Comptroller, who will review the invoices. Upon approval by the Town Comptroller, the Town Supervisor 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 except for any privileged portions of legal billings.

d. Return of Fee Escrow Account Balance. Upon completion of all of the Town'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 returned to the Company.

e. Quarterly Statements. The Town shall provide quarterly 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 bi-annual 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 first proceed with mediation in accordance with Section 14.1 hereof.

SECTION 18.3 NO FIDUCIARY RELATIONSHIP. The engineers and attorneys retained by the Town are retained pursuant to separate agreement with the Town and do not have any obligation to or fiduciary relationship with the Company.

SECTION 18.4 REASONABLE SERVICES AND RATES. The services provided by the Town's engineers and attorneys are subject to reimbursement and shall be limited to those services reasonably necessary to assist the Town in connection with the Project in accordance with applicable law and the completion of any agreements with the Town. The rates charged by the Town's engineers and attorneys shall not exceed those rates customary within the community for similar services.

ARTICLE XIX

NOTICES

SECTION 19.1 NOTICES. Notices hereunder will be given in writing and delivered to the parties by first class mail, postage prepaid, at the addresses set forth hereafter:

a. Notices to the Town:

Town of Allegany
Attn: Town Supervisor
Town of Allegany Town Hall
52 West Main Street
Allegany, New York 14706

With a copy to:

Daniel A. Spitzer, Esq.
Hodgson Russ, LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, New York 14202-4040

b. Notices to the Company:

Allegany Wind LLC
Attn: Kevin Sheen
44 East 30th Street, 10th Floor
New York, New York 10016

With copies to:

Douglas Ward, Esq.
Young Sommer
5 Palisades Dr # 300
Albany, NY 12205-6416

Peter Swartz, Esq.
Swartz Moses PLLC
1583 E. Genesee St.
Skaneateles, NY 13152

Any party may change its notice address by notifying the other party in accordance with this Section. Notices sent in accordance with this Section shall be deemed received three (3) days after mailing.

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 Wind Energy Regulations 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 under the Wind Energy regulations or under Law or Equity or under Local, State or Federal 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 Cattaraugus County.

SECTION 20.3 FEES ASSOCIATED WITH ENFORCEMENT. In the event either party commences any action to collect any payment or monetary amount due under this Agreement, or to enforce any provision of this Agreement, such party shall have the right to recover all expenses and fees, including reasonable attorneys fees, incurred in bringing the action, if such party prevails in such action. Nothing in this Agreement shall limit the right of the Town to enforce the Wind Energy Regulations through all civil or criminal proceedings available under the law.

SECTION 20.4 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, 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, official, agent, servant, employee, or affiliate of the parties.

SECTION 20.5 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 20.6 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 20.7 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, by their respective successors and permitted assigns.

SECTION 20.8 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 20.9 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 20.10 ASSIGNMENT BY COMPANY. The Company may, without the consent of the Town, (a) assign this Agreement to any (I) purchaser of the Project, (II) affiliate (as such term is defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934) of the Company that is controlled by, controlling or under common control with the Company or (III) persons or entities, including a collateral agent acting on behalf of lenders providing financing for the Project (collectively, the “**Financing Parties**”) (such purchaser, affiliate and Financing Parties 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 “F”, and (b) pledge, mortgage, grant a security interest in and collaterally assign this Agreement to any Financing Parties. The Town shall cooperate with the Company, its affiliates, any Successor, and any Financing Parties from time to time, including, without limitation, by entering into a consent and assignment or other agreements with such Financing Parties 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 Financing Parties, including execution of a consent to the assignment of this Agreement in the form approved by the Company and the Financing Parties, as applicable. In the event this Agreement is assigned to a Successor, the Company shall have no further obligations hereunder. 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.

SECTION 20.11 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 20.12 FILING WITH TOWN CLERK. The Town shall file and maintain a copy of this Agreement in the office of the Town Clerk.

[SIGNATURE PAGE FOLLOWS]

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

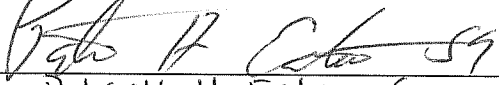
THE COMPANY:

ALLEGANY WIND LLC, a New York limited liability company

By: 
Name: KEVIN SHEERIN
Title: VICE-PRESIDENT

TOWN:

TOWN OF ALLEGANY, a New York municipal corporation

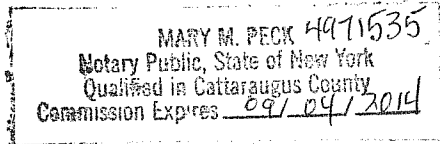
By: 
Name: Patrick H. Eaton, Sr.
Title: TOWN SUPERVISOR

STATE OF New York)
COUNTY OF CATTARAUGUS)

ss:

On the 29 day of [AUG], in the year [2011], before me, the undersigned, a Notary Public in and for said State, personally appeared Kevin Sheen, 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.

Mary M Peck
Notary Public

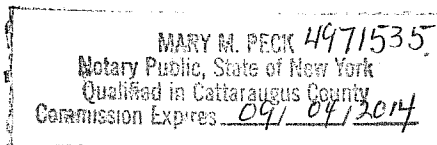


STATE OF New York)
COUNTY OF CATTARAUGUS)

ss:

On the 29 day of [AUG], in the year [2011], before me, the undersigned, a Notary Public in and for said State, personally appeared Patrick H Eaton Sr., 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.

Mary M Peck
Notary Public



List of Exhibits

Exhibit "A" Schedule of Roads

Exhibit "B" Town Approving Resolution

Exhibit "C" Instructions to Town Assessor

Exhibit "D" Schedule of Project Facilities Requiring Municipal Franchises, Road Permits and Curb Cuts

Exhibit "E" Material and Equipment Delivery Route Assessment

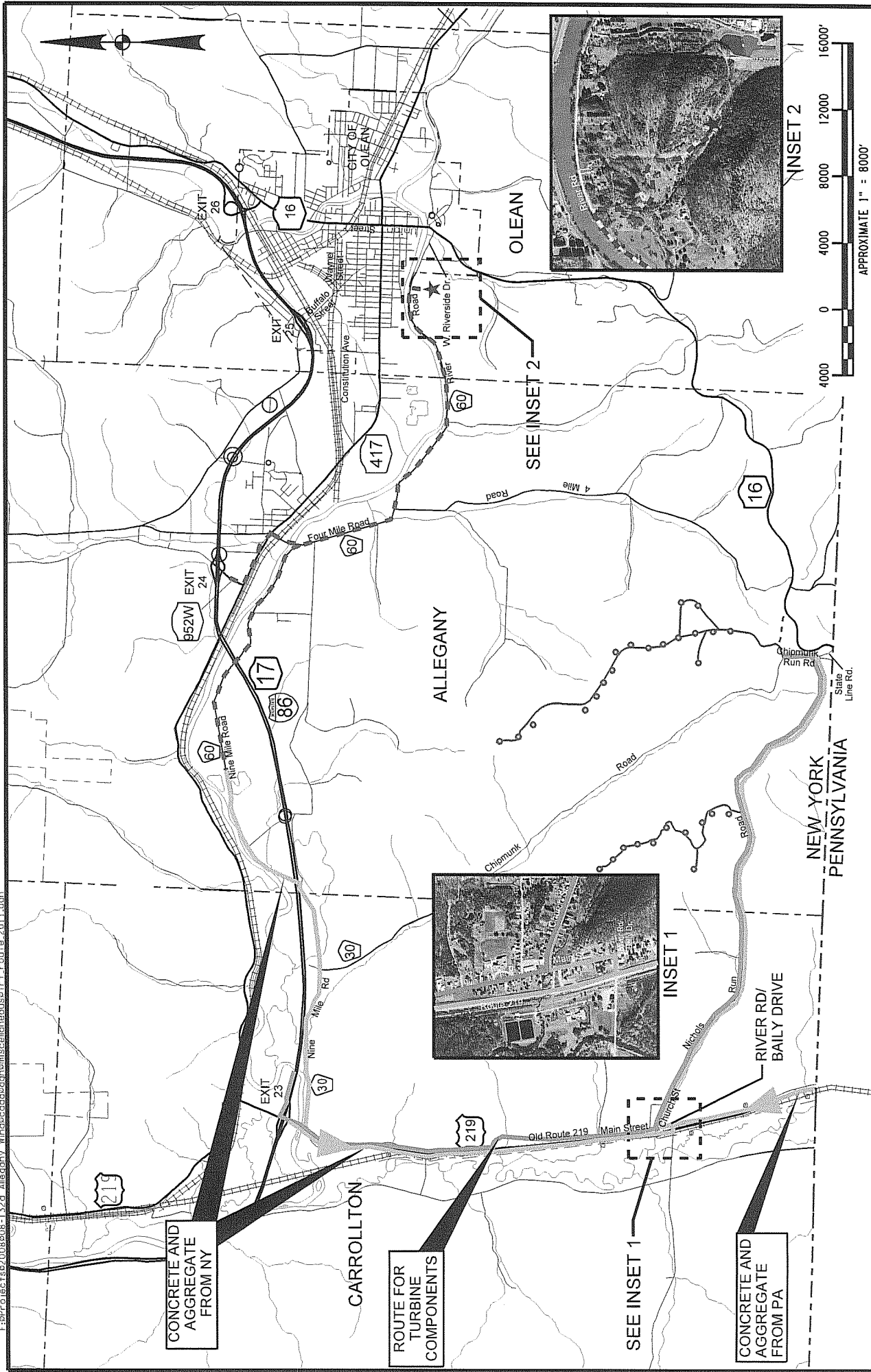
Exhibit "F" Decommissioning and Site Restoration Plan

Exhibit "G" Form of Notice of Assignment and Assumption of Host Community Agreement

Exhibit "A"

Schedule of Roads

F:\proj\proj\08-132d Allegany Wind\docs\misc\allencous\trf_route_2011.dwg



CONCRETE AND AGGREGATE FROM NY

ROUTE FOR TURBINE COMPONENTS

CONCRETE AND AGGREGATE FROM PA

SEE INSET 1

INSET 1

SEE INSET 2

INSET 2

- LEGEND:**
- ROUTE FOR TURBINE COMPONENTS
 - - - ROUTE FOR CONCRETE AND AGGREGATE ROUTE
 - · · ROUTE FOR POINT OF INTERCONNECT
 - ★ POINT OF INTERCONNECT (POI)

LOCAL TRAVEL ROUTES

ALLEGANY WIND POWER PROJECT
CATTARAUGUS COUNTY, NEW YORK



PROJECT: 08-132d

DATE: 6/11

FIGURE: 5A

Exhibit "B"

Town Approving Resolution

TOWN OF ALLEGANY TOWN BOARD

RESOLUTION AUTHORIZING THE EXECUTION OF A HOST COMMUNITY AGREEMENT AND RELATED AGREEMENTS RELATIVE TO THE ALLEGANY WIND LLC WIND FARM PROJECT

WHEREAS, the Town Board of the Town of Allegany (herein the “Town Board”) has received an application from Allegany Wind LLC for a rezoning to create a Wind Energy Overlay District in which Allegany Wind proposes to construct a wind energy facility, including wind energy generating turbines and related infrastructure (collectively the “Project”); and

WHEREAS, the Town Board has received and reviewed a proposed Host Community Agreement and related agreements with Allegany Wind LLC relative to the Project; and

WHEREAS, the Planning Board of the Town of Allegany (the “Planning Board”) was designated to act as “Lead Agency” with respect to the Project; and

WHEREAS, with respect to the Project, the Lead Agency issued an environmental impact statement (the “FEIS”) prepared with respect to the Project and the members of the Town Board have received and reviewed a copy of the FEIS; and

WHEREAS, the members of the Town Board received a copy of a statement of findings and decision relative to the FEIS (the “Findings Statement”), which was adopted by the Planning Board (Lead Agency), and the members of the Town Board have reviewed the Findings Statement; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43 B of the Consolidated Laws of New York, as amended (“SEQR Act”), and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), the Town Board, an Involved Agency, conducted the requisite environmental review and issued a Findings Statement for the Project pursuant to SEQRA; and

WHEREAS, the Host Community Agreement and the related agreements provide a mechanism to confirm and fund Allegany Wind LLC’s commitments under SEQRA and the Town permits.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF TOWN BOARD OF THE TOWN OF ALLEGANY AS FOLLOWS:

1. The Host Community Agreement, attached as Exhibit A and incorporated herein, is hereby approved, and the Town Supervisor is directed to execute the Host Community Agreement.

2. The Road Bond amount is hereby set at \$638,074.76.
3. The Escrow Agreement, attached as Exhibit B and incorporated herein, for the payment of the initial \$500,000 payment is hereby approved, and the Town Supervisor is directed to execute the Escrow Agreement.
4. The Town accepts the \$10,000 amount for the mitigation of impacts to historic and cultural properties in accordance with the Planning Board condition.
5. This Resolution shall take effect immediately.

Passed and Adopted by the Town Board of the Town of Allegany on the 29th day of August, 2011

Exhibit "C"

Advice to Town Assessor¹

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 the full value assessments for the Project set forth below, which values 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. Nothing herein shall constitute an admission as to value of the Project by the Town, the Town Assessor, or the Company.

<u>Assessment Year</u>	<u>Full Value Assessment</u> (<u>\$</u>)
2013	91,833,358
2014	87,241,690
2015	82,650,022
2016	78,058,354
2017	73,466,686
2018	68,875,018
2019	64,283,350
2020	59,691,682
2021	55,100,015
2022	50,508,347
2023	45,916,679
2024	41,325,011
2025	36,733,343
2026	32,141,675
2027	27,550,007
2028	22,958,339
2029	18,366,672
2030	13,775,004
2031	9,183,336
2032 Decommissioning	9,183,336 (10% Floor)

Assumes COD in 2012

Assumes Project capacity of 72.5 MW

Assumes Full Value of \$91,833,358 (assumed value per MW \$1,266,667)

Rate of Depreciation 5%

Annual Depreciation \$(4,591,668)

1 This exhibit is an example of how the payment would be developed for a 72.5 MW project. This is an example for illustrative purposes only.

Exhibit “D”

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

- A location off of Nichols Run Road.
- A location off of Chipmunk Road.

EXHIBIT "E"

Material and Equipment Delivery Route Assessment

To be provided to the Town Board at a later time agreeable to the parties.

EXHIBIT "F"

Decommissioning and Site Restoration Plan

DECOMMISSIONING AND SITE RESTORATION PLAN

Introduction: In accordance with the Town of Allegany Wind Energy Regulations (“the Regulations”), adopted August 28, 2007, a Decommissioning and Site Restoration Plan is required to guard against the remote possibility that the Project ceases to operate and the facilities are abandoned and not removed by Allegany Wind or its successors or assigns.

Financial Security: Consistent with the Regulations (Regulations §5.25[D]), prior to the issuance of a building permit, Allegany Wind (the “Project Sponsor”) will provide financial security for decommissioning the Project (referred to as the “Decommissioning Security”). The Decommissioning Security will be sufficient to ensure the removal of all transformers, met towers, wind turbines, access roads, drive ways, and foundations, as further described in detail below, and regrading and revegetation of the Project site as required by the Regulations. The Decommissioning Security shall be utilized only if the Project, or part thereof, becomes inoperable or nonfunctional for a continuous period of one (1) year following construction of the Project and thereafter the Project Sponsor refuses to conduct decommissioning and site restoration activities, after a request is made in writing by the Town in accordance with the procedures set forth in Regulations §5.25(J)

Prior to the issuance of a building permit, a NYS Licensed Engineer, selected by the Town Board and paid by the Project Sponsor, shall prepare and submit to the Town Board a Decommissioning Report (Report), which will estimate and certify the cost of decommissioning. The Report will also provide an estimate and certification of the salvage value of wind farm components. For purposes of establishing the Decommissioning Security to be provided by the Project Sponsor for the purpose of adequately performing decommissioning, the estimated and certified decommissioning cost will be reduced by the estimated, and certified salvage value of the wind farm components.

It is expected decommissioning costs at the outset of the project can approach a high estimate of \$3,000,000.00. As noted above the final estimate for decommissioning costs will be certified in the Professional Engineer's Report.

At least every five years after the initial Report, A NYS Licensed Engineer, selected by the Town Board and paid by the Project Sponsor, shall provide a Report recalculating the level of Decommissioning Security based on a recalculation and recertification of the estimates of the decommissioning costs minus salvage values. If such Report determines that the amount of the Decommissioning Security in force is insufficient to cover the removal, disposal, and site restoration costs, the Decommissioning Security shall be increased to the amount necessary to cover such costs within ten (10) days of the Project Sponsor's receipt of such Report.

The Project Sponsor agrees to deliver to the Town, before the issuance of a building permit for the Project, Decommissioning Security in the form approved by the Town Board. The Project Sponsor and its successors or assigns shall maintain the Decommissioning Security in place for the duration of the Special Use Permit.

The Decommissioning Security shall belong to the Town, and, in the case of bankruptcy, shall not be part of the permit holders' bankruptcy estate. No sale or transfer of any facility may occur unless there is full compliance with the permit condition requiring Decommissioning Security.

Decommissioning Plan: Megawatt-scale wind turbine generators typically have a life expectancy of 20 to 25 years. The current trend in the wind energy industry has been to replace or "re-power" older wind energy projects by upgrading older equipment with more efficient turbines. However, if not upgraded the turbines and other Project Components will be decommissioned. In general, decommissioning would consist of the following actions:

- All turbines, including the blades, nacelles and towers will be disassembled, and transported off site for reclamation and sale.
- All of the transformers will also be transported off-site for reuse or reclamation.
- All underground infrastructures at depths at or less than 3.5 feet below finished grade will be removed.

- All underground infrastructures at depths greater than 3.5 feet below finished grade including the subsurface collection conductors, and foundations, will be abandoned in place at the Project Sponsor's discretion.
- Areas where subsurface components are removed will be graded to match adjacent contours, stabilized with an appropriate seed mix, and allowed to re-vegetate naturally.
- Project-related access road materials will remain on-site, or will be removed per landowner requirements (see below for additional detail).
- All town, county or state roads, impacted by Project decommissioning activity, if any, will be restored to original condition upon completion of decommissioning.

The initial Report will provide a more particular estimate and certification of the costs of each of the above specified restoration activities.

During decommissioning activities, the town shall have access to the site, pursuant to reasonable notice, to inspect the results of complete decommissioning. All decommissioning and restoration activities will be in accordance with all applicable federal, state, and local permits and requirements and will include the following specific activities:

- **Turbine removal.** Cranes and/or other machinery will be used for the disassembly and removal of the turbines. Electronic components and controls, and internal cables will be removed. The rotor and nacelle will be lowered to the ground for disassembly. The tower sections will be lowered to the ground where they will be further disassembled for transporting. The rotor, nacelle, and tower sections will either be transported whole for reconditioning and reuse or dissembled into salvageable, recyclable, or disposable components.
- **Turbine foundation removal.** Turbine foundations will be removed down to a level 3.5 feet below finished grade. The remaining excavation will be filled with clean sub-grade material, compacted to a density similar to surrounding sub-grade material, and finished with topsoil and revegetated. In the event that the turbine is in an area of agricultural production, the Project Sponsor will adhere to New York State Department of Agriculture & Market Guidelines for Agricultural Mitigation for Wind Power Projects, which will apply to all agricultural lands impacted by the project.

- **Underground collection cables.** All cables buried 3.5 feet or less below finished grade will be removed. All cables buried deeper than 3.5 feet will be kept in place at the discretion of the Project Sponsor.
- **Access roads and crane pads.** At the discretion of the landowner, gravel will be removed from access roads and crane pads and transported to a pre-approved disposal location. Any drainage structures will be removed and backfilled with sub-grade material (if necessary). The ground will be de-compacted (in agricultural areas only), and allowed to re-vegetate naturally.
- **Monitoring.** In accordance with the guidelines of the New York State Department of Agriculture and Markets, a monitoring and remediation period of two years immediately following the completion of any decommissioning and restoration activities in agricultural land will commence. If agriculture impacts are identified during this period, follow-up restoration efforts will be implemented.
- **Substation.** The Project substation is generally valuable to the local transmission owner. As per the interconnection rules of the NYISO, the Project sub-station reverts to the ownership of the transmission owner and thus the Project Sponsor does not intend to decommission the substation.

Exhibit "G"

Form Notice of Assignment and Assumption of Host Community Agreement

NOTICE OF ASSIGNMENT

To: Town of Allegany
Attn: Town Supervisor
Town of Allegany Town Hall
52 West Main Street
Allegany, New York 12923

From: [_____] [_____] [_____]

Date: [_____]

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

[_____] , company duly organized and existing under the laws of the State of [_____] , and having an office at [_____] hereby provides notice to the Town of Allegany that as of [_____] it purchased or otherwise acquired all or substantially all of the assets of Allegany Wind LLC, a limited liability company duly organized and existing under the laws of the State of New York and having an address at 44 East 30th Street, New York, New York 10016. [_____] hereby assumes all obligations under the Host Community Agreement by and between Allegany Wind LLC and the Town of Allegany dated as of [_____] and agrees to be bound by its provisions.

[_____] , a [_____] company

By: _____
Name: _____
Title: _____

Exhibit B

Escrow Agreement



August 29, 2011

Town of Allegany Economic Development Corporation
52 West Main Street
Allegany, New York 14706

Town of Allegany
Town Hall
52 West Main Street
Allegany, New York 14706

Re: Allegany Wind LLC Grant Commitments.

This letter sets forth the terms of grant commitments by Allegany Wind LLC (the "Company") for supporting broadband development and other economic development activities to be conducted by the Town of Allegany Economic Development Corporation (the "LDC"), and for other general purposes by the Town of Allegany (the "Town").

- The Company agrees to contribute \$215,000 to the LDC for broadband development and other economic development activities consistent with its purposes and powers in the Town of Allegany, within five (5) days following the effective date of a Host Community Agreement between the Company and the Town (the "HCA").
- The Company agrees to contribute \$285,000 to the Town for its general purposes, within five (5) days following the effective date of the HCA.
- The contributions will be paid into escrow and subject to the terms and conditions of an escrow agreement involving a to be determined institution as escrow agent pursuant to the escrow agreement attached as Exhibit A
- The LDC, having been duly formed and duly authorized expenditure of the grant for broadband development and other economic development activities consistent with its purposes and powers, will administer the monies received by it in a manner consistent with its organizational purposes and for the purposes of developing broadband capability and economic development in the Town of Allegany.
- The Town will administer the monies received by it in a manner consistent with law.
- If requested by the Company, the LDC and the Town agree to affirmatively recognize the Company's role in making the grants to the LDC and the Town.

This will also confirm that the undersigned is an officer of Allegany Wind LLC authorized to make these commitments on behalf of the Company, and that the Company has duly authorized the execution and delivery of these commitments, and that neither the Company nor any successor, transferee, or other party acting through rights acquired through or from the Company will bring a claim challenging, nor raise as a defense in litigation, the legal validity or enforceability of these commitments.

Sincerely,

Kevin Sheen
Senior Director, Development

Everpower Wind Holdings, Inc.
www.everpower.com

44 East 30th Street, 10th Floor, New York, NY 10016
212.647.8111 (main) 212.647.9433 (fax)

ALLEGANY WIND LLC

ESCROW AGREEMENT

This ESCROW AGREEMENT (this “**Agreement**”) is dated as of the ___th day of August, 2011 and is by and between the Town of Allegany Economic Development Corporation (the “**LDC**”), the Town of Allegany, New York (the “**Town**”), Allegany Wind LLC (the “**Company**”), and [_____], a national banking association (the “**Escrow Agent**”), as escrow agent.

WHEREAS, the Company is developing a proposed wind-powered electric generating facility (the “**Project**”) in the Town;

WHEREAS, the Company and the Town entered into a Host Community Agreement dated as of August 29, 2011 regarding the Project (the “**HCA**”); and

WHEREAS, in connection with its development of the Project, the Company has committed to making a grant to the LDC of \$215,000 in support of broadband development and other economic development activities consistent with its purposes and powers in the Town (the “**LDC Grant**”) and a grant to the Town of \$285,000 for its general purposes (the “**Town Grant**”), and together with the LDC Grant, the “**Grant Commitment**”); and

WHEREAS, the LDC has not yet received confirmation from the Internal Revenue Service that its application for Internal Revenue Code Section 501(c)(3) status (“**501(c)(3) Status**”) has been approved; and

WHEREAS, the Company has agreed to deposit the Grant Commitment into escrow pending the LDC’s receipt of 501(c)(3) Status and satisfaction of other conditions relating to the Project; and

WHEREAS, the Company, the Town and the LDC wish to engage the Escrow Agent to act, and the Escrow Agent is willing to act, as escrow agent hereunder and, in that capacity, to hold, administer and distribute the amounts deposited in escrow hereunder in accordance with, and subject to, the terms of this Agreement;

NOW THEREFORE, for valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

Section 1. Deposit of Escrow Funds.

(a) **Escrow Deposit.** On August __, 2011 (the “**Deposit Date**”), the Company deposited with the Escrow Agent immediately available funds in the amount of \$500,000 (the “**Escrow Deposit**”), and together with any investment income received by the Escrow Agent from the investment thereof (the “**Escrow Property**”) pursuant to this Agreement, the Escrow Agent agrees to hold the Escrow Deposit and investment income thereon in a checking or other

account fully insured by the Federal Deposit Insurance Corporation established with the Escrow Agent and to administer the Escrow Deposit in accordance with the terms of this Agreement.

Section 2. Release from Escrow.

(a) Notice of Claim. The Company shall submit a written notice of claim (“**Notice of Claim**”) to the Escrow Agent upon satisfaction of the conditions set forth in this Section 2. A form of the Notice of Claim is attached hereto as Exhibit A.

(b) Conditions for Release from Escrow and Payment to the LDC and the Town. The Company shall submit a Notice of Claim to the Escrow Agent for payment of the Escrow Deposit to the LDC in the amount of the LDC Grant and to the Town in the amount of the Town Grant no earlier than one hundred thirty (130) days after the Deposit Date (the “**Escrow Period**”), upon satisfaction or waiver of the following conditions:

- (i) No litigation is commenced during the Escrow Period by any person or entity challenging: (aa) the Project, (bb) the Company’s right to build the Project, (cc) any approval by the Town Board or the Town Planning Board necessary to construct and operate the Project, (dd) the payment in lieu of tax agreement entered into or to be entered into between the Company and the Cattaraugus County Industrial Development Agency in connection with the Project, (ee) any aspect of HCA or the attachments thereto, (ff) the Grant Commitment, or (gg) this Agreement (any such litigation, a “**Challenge**”); *provided, however*, that this condition shall be deemed satisfied in the event: (xx) a court of competent jurisdiction issues a final order, decree or judgment that is not subject to further appeal based on an opinion of counsel, with such counsel to be chosen by the Company, dismissing such Challenge or resolving such Challenge in a manner satisfactory to the Company, (yy) such Challenge is discontinued or otherwise settled in a manner satisfactory to the Company, or (zz) the Company installs a wind turbine generator in connection with the Project. For purposes of this paragraph “installs a wind turbine generator” shall mean commencing the excavation for any turbine foundation. If a Challenge is commenced, the Escrow Period shall terminate on the later to occur of (aa) one hundred thirty (130) days after the Deposit Date, or (bb) ten (10) days after the date of the above-referenced final order, decree or judgment, stipulation of discontinuance, settlement, or wind turbine generator installation.
- (ii) In regard to the payment to the LDC only, receipt by the Company of reasonably satisfactory evidence from the LDC that its application for 501(c)(3) Status has been approved by the Internal Revenue Service;
- (iii) In regard to the payment to the LDC only, issuance to the Company of a legal opinion by counsel to the LDC that the LDC may legally receive the Grant Commitment from the Company; and

(iv) In regard to the payment to the LDC only, receipt by the Company of a Certificate of Good Standing for the LDC.

(c) Conditions for Release from Escrow and Payment to the Company. The Company may at any time submit a Notice of Claim to the Escrow Agent for payment of the Escrow Property to the Company:

- (i) Failure of any condition set forth in Section 2(b) hereof during the Escrow Period; or
- (ii) The Company declares its intention to discontinue development and construction of the Project.

(d) Payment of Escrow Deposit upon Release from Escrow. The Escrow Agent shall release from escrow and pay the Escrow Deposit to the LDC in the amount of the LDC Grant and to the Town in the amount of the Town Grant or the Company, as the case may be, within ten (10) business days after its receipt of a Notice of Claim. The Escrow Agent shall release from escrow and pay to the Company any Escrow Property remaining after payment of the Escrow Deposit to the LDC in the amount of the LDC Grant and to the Town in the amount of the Town Grant.

Section 3. Investment of Funds.

(a) Eligible Investments. “**Eligible Investments**” shall mean (i) obligations issued or guaranteed by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof); or (ii) obligations (including certificates of deposit) of any domestic commercial bank.

(b) Escrow Agent not Responsible For Investment Decisions. The Escrow Agent shall invest the Escrow Deposit in Eligible Investments. The Escrow Agent shall have no liability for any investment losses.

(c) Tax Reporting. For tax reporting purposes, all interest and other income earned on the Escrow Deposit shall be the Company’s.

Section 4. Concerning the Escrow Agent.

(a) The LDC, the Town, and the Company acknowledge and agree that the Escrow Agent (i) shall not be responsible for any of the agreements referred to or described herein, (ii) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Agreement on its part to be performed, each of which is ministerial (and shall not be construed to be fiduciary) in nature, and no implied duties or obligations of any kind shall be read into this Agreement against or on the part of the Escrow Agent, (iii) shall not be obligated to take any legal or other action hereunder which might in its judgment involve or cause it to incur any expense or liability unless it shall have been furnished with acceptable indemnification, (iv) may rely on and shall be protected in acting or refraining from acting upon any written notice,

instrument, statement, certificate, request or other document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper person, and shall have no responsibility or duty to make inquiry as to or to determine the genuineness, accuracy or validity thereof, or the authority of the person signing or presenting the same, and (v) may consult counsel satisfactory to it.

Section 5. Escrow Agent Compensation and Indemnification.

(a) The Company agrees to pay the Escrow Agent's fees and expenses incurred in connection with this Agreement.

(b) The LDC, the Town, and the Company agree to indemnify the Escrow Agent (and its directors, officers and employees) and hold it (and such directors, officers and employees) harmless from and against any loss, liability, damage, cost and expense of any nature incurred by the Escrow Agent arising out of or in connection with this Agreement or with the administration of its duties hereunder, including but not limited to attorneys' fees and tax liabilities.

(c) Notwithstanding anything herein to the contrary, the Escrow Agent shall have and is hereby granted a possessory lien on and security interest in the Escrow Deposit, and all proceeds thereof, to secure payment of all amounts owing to it hereunder. The Escrow Agent shall have the right to deduct from the Escrow Deposit, and proceeds thereof, any such sums, upon one business day's notice to the LDC, the Town, and the Company.

Section 6. Notices; Wiring Instructions.

(a) Notice Addresses. Any notice permitted or required hereunder shall be in writing, and shall be sent (i) by personal delivery, overnight delivery by a recognize courier or delivery service, or (ii) mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) by confirmed telecopy accompanied by mailing of the original on the same day, in each case the parties at their address set forth below.

If to the LDC:

Town of Allegany Economic Development Corporation
52 West Main Street
Allegany, New York 14706

With copy to:

Daniel A. Spitzer, Esq.
Hodgson Russ, LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203

If to the Town:

Town of Allegany
Town Hall
52 West Main Street
Allegany, New York 14706

With copy to:

Daniel A. Spitzer, Esq.
Hodgson Russ, LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203

If to the Company:

Allegany Wind LLC
Attn: Kevin Sheen
44 East 30th Street, 10th Floor
New York, New York 10016

With copy to:

Peter Swartz, Esq.
Swartz Moses PLLC
1583 E. Genesee St.
Skaneateles, NY 13152

(b) Wiring Instructions. Any funds to be paid to or by the Escrow Agent hereunder shall be sent by wire transfer pursuant to the following instructions:

If to the LDC:

Information to be provided in the Notice of Claim

If to the Town:

Information to be provided in the Notice of Claim

If to the Company:

Information to be provided in the Notice of Claim

If to the Escrow Agent:

Bank: [_____]
ABA#:
Acct. #:
Acct. Name:
Attn:
Ref: Allegany Wind LLC Escrow

Section 7. Miscellaneous.

- (a) Binding Effect; Successors. This Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors and assigns.
- (b) Modifications. This Agreement may not be altered or modified without the express written consent of the parties hereto.
- (c) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.
- (d) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered in its name and on its behalf as of the ___ day of August, 2011.

Allegany Wind LLC

By: _____
Title:
Name:

Town of Allegany Economic Development
Corporation:

By: _____
Title:
Name:

Town of Allegany

By: _____
Title:
Name:

[_____] , as Escrow Agent

By: _____
Title:
Name:

EXHIBIT A

Notice of Claim

[Company Letterhead]

[Date]

[_____] [Address]

Re: Allegany Wind LLC, Escrow Agreement dated August __, 2011
Notice of Claim.

Account:

Bank: [_____]

ABA #:

Acct. #

Acct. Name:

Attn:

Ref: Allegany Wind LLC Escrow

To Whom It May Concern:

Notice of Claim is hereby given regarding the above-referenced escrow agreement. You are directed to pay the Escrow Deposit to [_____] at account # [_____], and to pay any income earned on such Escrow Deposit to Allegany Wind LLC at account # [_____], within ten (10) business days after your receipt of this notice. The undersigned hereby certifies to Escrow Agent [that the conditions set forth in Section 2 of the Agreement have been met] or [that a return of the Escrow Deposit pursuant to Section 1 of the Agreement is required].

Regards,

[Name]

[Title]