

**EXECUTION COPY**

**HOST COMMUNITY AGREEMENT**

**(COHOCTON PROJECT)**

This Host Community Agreement ("Agreement") is made as of August 10, 2007 by and between CANANDAIGUA POWER PARTNERS, LLC, a Delaware limited liability company (the "Company"), and the TOWN OF COHOCTON, a municipal corporation organized under the laws of New York State, located in Steuben County, New York (the "Town") (the Company and the Town together, the "Parties").

**RECITALS**

1. The Company proposes to construct and operate a wind energy project (the "Project") consisting of approximately 35 turbines ("Wind Turbines") with a nameplate capacity of up to 87.5 megawatts ("MWs"); and

2. The Company has requested that the Steuben County Industrial Development Agency ("SCIDA") participate in the development of the Project, which participation would include, among other things, a Payment-In-Lieu-Of-Taxes Agreement between SCIDA and the Company ("PILOT Agreement") pursuant to which the Company will make annual payment-in-lieu-of-taxes payments ("PILOT Payments"); and

3. The Company's PILOT Payments are to be allocated among certain affected taxing jurisdictions, including the Town, the Wayland-Cohocton Central School District and Steuben County; and

4. In addition to the PILOT Payments to be paid to the Town, County and School District under the PILOT Agreement, the Company hereby agrees to make supplemental

payments in lieu of taxes to compensate the Town for potential impacts associated with the Project ("Annual Payments") under the terms and conditions of this Agreement; and

5. The Company will execute and deliver a mortgage in favor of the Town ("Host Mortgage"), which Host Mortgage will be in effect during the term of the PILOT Agreement to secure a portion of the Annual Payments to the Town; and

6. The parties believe that their mutual best interests will be served by the execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein and good and valuable consideration, the receipt of and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **DEFINITIONS**

Capitalized terms shall have the meaning herein ascribed to them:

"Actual MW Installation" shall have the meaning set forth in Section 3.1 hereof.

"Additional Turbine Annual Payments" shall have the meaning set forth in Section 7.1 hereof.

"Additional Wind Turbines" shall have the meaning set forth in Section 7.1 hereof.

"Affiliates" shall have the meaning set forth in Section 9 hereof.

"Annual Payments" shall have the meaning set forth in Recital 4 hereof.

"Annual Payment Invoice" shall have the meaning set forth in Section 12.1 hereof.

"Assignment" shall have the meaning set forth in Section 20.3 hereof.

"Bankruptcy Default" shall have the meaning set forth in Section 13.3 hereof.

"Building Permit" shall have the meaning set forth in Section 2.1 hereof.

"Building Permit Fee" shall have the meaning set forth in Section 2.1 hereof.

"Certification of Decommissioning Completion" shall have the meaning set forth in Section 1 hereof.

"Company Event of Default" shall have the meaning set forth in Section 13 hereof.

"Company Nonmonetary Default" shall have the meaning set forth in Section 13.2 hereof.

"Company Payment Default" shall have the meaning set forth in Section 13 hereof.

"Consents to be Reasonable" shall have the meaning set forth in Section 28 hereof.

"Decommissioning Notice" shall have the meaning set forth in Section 5.1 hereof.

"Decommissioning Plan" shall have the meaning set forth in Section 1 hereof.

"Default Date" shall have the meaning set forth in Section 14.6 hereof.

"Defaulting Party" shall have the meaning set forth in Section 14.9 hereof.

"Due Date" shall have the meaning set forth in Section 11 hereof.

"Enforcing Party" shall have the meaning set forth in Section 14.9 hereof.

"Escrow Account" shall have the meaning set forth in the Escrow Agreement.

"Escrow Agent" shall have the escrow agent appointed under the Escrow Agreement.

"Excess Fees" shall have the meaning set forth in Section 2.2 hereof.

"Financing Parties" shall have the meaning set forth in Section 14.6 hereof.

"Force Majeure Event" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, order of any kind of the Government of the United States or of the State of New York or civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts or other weather related events, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation or any other similar or different cause not reasonably within the control of the party claiming such Force Majeure Event.

"Governmental Approvals" shall have the meaning set forth in Section 29.1.2 hereof.

"Host Mortgage" shall have the meaning set forth in Recital 5 hereof.

"IDA Termination" shall have the meaning set forth in Section 4 hereof.

"Indemnifying Parties" shall have the meaning set forth in Section 18.1 hereof

"Initial Payment" shall have the meaning set forth in Section 2.1 hereof.

"Injunction" shall have the meaning set forth in Section 6.1.3 hereof.

"Material Project Improvements" shall have the meaning set forth in Section 5.1 hereof.

"MFN Project" shall have the meaning set forth in Section 9 hereof.

"MFN Term" shall have the meaning set forth in Section 9 hereof.

"MFN Town" shall have the meaning set forth in Section 9 hereof

"MFN True-Up Amount" shall have the meaning set forth in Section 9 hereof.

"MW Reduction" shall have the meaning set forth in Section 6.1 hereof.

"MW Reduction Credit" shall have the meaning set forth in Section 6.1.2 hereof.

"MWs" shall have the meaning set forth in Recital 1 hereof.

"Non-Monetary Event of Default" shall have the meaning set forth in Section 14.6 hereof.

"Normal Property Taxes" shall have the meaning set forth in Section 4 hereof.

"Notice" shall have the meaning set forth in Section 14.6 hereof.

"Original MW Installation" shall have the meaning set forth in Section 3.1 hereof.

"Oversight Agreement" shall have the meaning set forth in Section 1 hereof.

"Payment" shall have the meaning set forth in Section 9 hereof.

"Permitted Collateral Assignee" shall have the meaning set forth in Section 20.4 hereof.

"PILOT Agreement" shall have the meaning set forth in Recital 2 hereof.

"PILOT Payments" shall have the meaning set forth in Recital 2 hereof.

"Post-PILOT Annual Payments" shall have the meaning set forth in Section 4 hereof.

"Project" shall have the meaning set forth in Recital 1 hereof.

"Project COD" shall have the meaning set forth in Section 2.3.1 hereof.

"Project Violation" shall have the meaning set forth in Section 6.1.3 hereof.

"Renewal Building Permit" shall have the meaning set forth in Section 2.2 hereof.

"Renewal Building Permit Fee" shall have the meaning set forth in Section 2.2 hereof,

"SCIDA" shall have the meaning set forth in Recital 2 hereof.

"Security Agreement" shall have the meaning set forth in Section 13.1 hereof.

"Survival" shall have the meaning set forth in Section 18.5 hereof.

"Term" shall have the meaning set forth in Section 1 hereof.

"Termination Date" shall have the meaning set forth in Section 29.1.1 hereof.

"Town Building Code" shall have the meaning set forth in Section 2.2 hereof.

"Town Event of Default" shall have the meaning set forth in Section 15 hereof.

"Town Payments" shall have the meaning set forth in Section 9 hereof.

"Town Property Taxes" shall have the meaning set forth in Section 4.1 hereof.

"Transferee" shall have the meaning set forth in Section 20.2 hereof.

"Turbine COD" shall have the meaning set forth in Section 6.2 hereof.

"Wind Turbines" shall have the meaning set forth in Recital 1 hereof.

"Year" shall have the meaning set forth in Section 3 hereof:

### **TERMS AND PROVISIONS**

1. Term of Agreement. Unless terminated earlier as provided for herein, the "Term" of this Agreement shall commence as of the date first stated above and shall continue until the earlier of (a) December 31, 2047, and (b) the date the Town countersigns the "Certification of Decommissioning Completion" as provided for in Exhibit D in that certain Permit Oversight Agreement (Cohocton Project) between the Parties dated even date herewith ("Oversight Agreement") acknowledging compliance by the Company with the Decommissioning Plan (the "Decommissioning Plan") as defined and provided for in the Oversight Agreement.

2. Initial Payment

2.1. On or before January 2, 2008 the Company shall pay the Town the difference between Five Hundred Seven Thousand Five Hundred Dollars (\$507,500.00) and the building permit fee ("Building Permit Fee") for the building permit ("Building Permit") for the Project paid to the Town for the Project in accordance with the Town's building permit fee schedule, as may be modified pursuant to applicable law ("Initial Payment").

2.2. If (a) the Company has not completed construction of the Project (including any Additional Wind Turbines as contemplated and defined in Section 7 herein, provided such Additional Wind Turbines were included in the calculation of the original Building Permit Fee) pursuant to the Town building

construction laws (collectively, "Town Building Code") prior to the fourth (4<sup>th</sup>) anniversary of the date the Building Permit is issued; (b) the Town validly requires, and the Company requests, a renewal of the Building Permit ("Renewal Building Permit") at any time during such four (4) year period in order to permit continuation of construction of the Project; (c) the Building Permit is renewed; and (d) the Company is required to pay an additional Building Permit Fee or Fees for any renewal(s) of the Building Permit, which renewals permit construction to continue during, but not beyond, such four (4) year period (collectively, "Renewal Building Permit Fee"), any amount of Renewal Building Permit Fees that in the aggregate over such four (4) year period exceeds Seventy Thousand Dollars (\$70,000) ("Excess Fees") may be deducted by the Company from the Annual Payments) due in the January following the payment or payments of such Excess Fees. Notwithstanding the foregoing, if the reason for failure to complete such construction before any Renewal Building Permit is required during such four (4) year period is substantially caused by the Company, the Renewal Building Permit Fee paid for such renewal shall not be included in the calculation of Excess Fees described above.

2.3. If, after Project COD, (a) the Company adds Additional Wind Turbines as defined in and contemplated by Section 7 herein, (b) the Additional Wind Turbines were included in the calculation of the Original Building Permit Fee, and (c) the construction thereof is completed within four (4) years of commencement of construction of the rest of the Project, then the Company may deduct any Building Permit Fee charged for such Additional Wind Turbines from



the Annual Payment due in the January following the payment of such Building Permit Fee. However, if the Additional Wind Turbines were not included in the calculation of the Original Building Permit Fee, then the Company may deduct the amount of any Building Permit Fee required to be paid for such Additional Wind Turbines that exceeds Seventy Thousand Dollars (\$70,000) from the Annual Payment due in the January following the payment of such Building Permit Fee.

2.3.1. For purposes of this Agreement, the date of commercial operation for the Project ("Project COD") shall mean the date specified by the Company in a written notice addressed and delivered to the Town as of which (a) all Wind Turbine components have been delivered to the Project site and installed in accordance with applicable installation procedures, (b) the Company has completed the necessary terminations and connections with the collection lines and the supervisory control and data acquisition system communication lines into the controller in the base of each Wind Turbine tower, (c) each Wind Turbine has been commissioned and accepted by the Company in accordance with applicable commissioning and inspection procedures, (d) the Project has been interconnected to the utility electric grid, and (e) the Company has commenced the sale of energy from the Project on a commercial (rather than test) basis to one or more purchasers.

3. Annual Payments During Term of PILOT Agreement. The Company shall pay the Annual Payments to the Town during the Term, upon the terms and conditions set forth

herein. The term "Year" as used herein shall be a calendar year. Year 1 shall commence on January 1, 2009. The Annual Payments during the term of the PILOT Agreement shall be as follows:

3.1. Prior to Project COD, the Company will notify the Town of the total nameplate capacity of the Project based on the number of installed Wind Turbines measured in MWs ("Original MW Installation"). The Original MW Installation shall be the basis on which all Annual Payments after December 31, 2008 are calculated, subject to adjustments and/or credits as provided herein. If the Company has not notified the Town of the Original MW Installation prior to December 31, 2008, then the Original MW Installation shall be assumed to be 87.5 MW for the January 2009 Annual Payment and each Annual Payment thereafter until the Company notifies the Town of the actual installed MWs ("Actual MW Installation").

3.2. Subject to any MW Reduction Credit (as defined and provided for below) and subject to any increase in Annual Payments as provided in Section 7 below, if the Original MW Installation is 87.5 MWs, then provided the PILOT Agreement is in effect, commencing in January 2009 and continuing until the PILOT Agreement is terminated or expires, the Annual Payment shall be the amounts set forth on Exhibit A under the column labeled "Annual Payment If Original MW Installation Is 87.5 MWs".

3.3. Subject to any MW Reduction Credit and subject to any increase in Annual Payments as provided in Section 7 below, if the Original MW Installation

is less than 87,5 MWs, then provided the PILOT Agreement is in effect, then each Annual Payment in the column entitled "Annual Payment If Original MW Installation Is 87.5 MWs" on Exhibit A will be reduced by multiplying the Actual MW Installation by the "Annual Payment Per MW" in the column on Exhibit A so labeled for the corresponding Year, and the Parties will execute an amendment to this Agreement providing for such an amended Exhibit, The amendment will include the amended schedule of payments and a correction to the label of the column entitled "Annual Payment If Original MW Installation Is 87.5 MWs" to reflect the Actual MW Installation.

4. Annual Payments During Term After Expiration or Termination of PILOT Agreement, in the event that (a) no PILOT Agreement has been executed, (b) the PILOT Agreement expires at the end of the stated term thereof, or (c) the PILOT Agreement is otherwise terminated at an earlier point in time (either (b) or (c), the "IDA Termination"), the Company shall continue to make the Annual Payments ("Post-PILOT Annual Payments") as set forth below, beginning (i) in the event no PILOT Agreement is executed, January 1, 2009 and (ii) in the event of an IDA Termination, in the first full fiscal year of the Town after the year in which the IDA Termination occurs and the Project has become subject to Town and other taxing jurisdiction property taxes ("Normal Property Taxes").

4.1. Subject to any MW Reduction Credit and subject to any increase in Annual Payments as provided in Section 7 below, Post-PILOT Annual Payments each Year will be calculated as (a) the amounts set forth on Exhibit B attached hereto in the column labeled "Annual Post-PILOT Payment If Original MW Installation Is 87.5 MWs Before Deduction For Town Property Taxes," reduced

by (b) the Town portion of (i) Normal Property Taxes levied against the Project or (ii) any payments in lieu of taxes made by the Company on account of the Project (collectively, "Town Property Taxes") for the corresponding fiscal Year in which the Post-PILOT Annual Payment is due.

4.2. Subject to any MW Reduction Credit and subject to any increase in Annual Payments as provided in Section 7 below, if the Original MW Installation is less than 87.5 MWs, then each Post-PILOT Annual Payment in the column entitled "Annual Post-PILOT Payment If Original MW Installation Is 87.5 MWs Before Deduction For Town Property Taxes" on Exhibit B will be reduced by multiplying the Actual MW Installation by the "Annual Payment Per MW" in the column on Exhibit B so labeled for the corresponding Year, and the Parties will execute an amendment to this Agreement providing for such an amended Exhibit. The amendment will include the amended schedule of payments and a correction to the label of the column "Annual Post-PILOT Payment If Original MW Installation Is 87.5 MWs Before Deduction For Town Property Taxes" to reflect the Actual MW Installation.

5. Annual Payments After End of Term.

5.1. At such time as the Company notifies the Town pursuant to Section 9.1 (a) of the Oversight Agreement of the Company's intent to commence decommissioning the Project ("Decommissioning Notice") provided no Company Event of Default shall have occurred and be continuing as of the date of such Decommissioning Notice, the Company shall not be obligated to make any

Annual Payment or Post-PILOT Annual Payment, whichever is then applicable, in the following January(s) for the succeeding calendar Years after the date of the Decommissioning Notice. Notwithstanding the foregoing, if at the end of eighteen (18) months after the date contained in the Decommissioning Notice, the Company has not removed from the Town, in accordance with applicable law and regulations, all Wind Turbines, all Wind Turbine towers, all transmission line facilities for the Project, all substation improvements for the Project, and all concrete foundations for Project improvements (collectively, "Material Project Improvements"), then in the next January after the end of such eighteen (18) month period, and in succeeding Januarys until all Material Project Improvements have been so removed, the Company will owe fifty percent (50%) of the scheduled Annual Payment(s) on Exhibit A or Exhibit B, whichever is then applicable, without regard to credits or adjustments, unless the Company, if it so chooses, adds to the existing Security under the Security Agreement an amount equal to the difference, if any, between (a) a then-current estimate of the full estimated cost of decommissioning the Project, less salvage value, as of the end of such eighteen (18) month period (such estimate to be obtained for the benefit of the Town and paid for by the Company) and (b) the last-determined decommissioning cost estimate pursuant to the Decommissioning Plan.

5.2. If the Company terminates this Agreement pursuant to Section 29.1.1 hereof, the Company will not have any obligation to pay the scheduled Annual Payment in January 2009, but if the decommissioning of the Project is not fully completed by September 1, 2009 (other than the one-year monitoring requirement

provided for in the Decommissioning Plan), in January 2010 the Company will pay the scheduled Annual Payment due in January 2010 and the scheduled Annual Payment due in each succeeding January unless and until the Certification of Decommissioning Completion has been countersigned by the Town as provided for in Exhibit D to the Oversight Agreement prior to the September 1 preceding any such scheduled January payment.

6. Adjustment to Annual Payments for Reduction in Project MW Production.

6.1. During the Term, if one or more Wind Turbines are (a) fully decommissioned in compliance with the Decommissioning Plan, or (b) taken out of service, directly or indirectly, by reason of (i) a "Force Majeure Event" which affects any of the Wind Turbines, the substation(s) for the Project and/or the transmission line for the Project, or (ii) an "Injunction" (as defined herein), or a combination of the foregoing, for a period of more than fifteen (15) consecutive days (collectively, "MW Reduction"), then the Annual Payment or Post-PILOT Annual Payment, whichever is then applicable, as reflected on Exhibit A or Exhibit B, will be adjusted as follows, and the Annual Payment Per MW which is used to calculate the Annual Payment as set forth on Exhibit A or Exhibit B, whichever is then applicable, will be used for purposes of such adjustment:

6.1.1. For the full calendar year(s) after a MW Reduction, the Annual Payments will equal the product of multiplying (a) the MWs of the reduced, remaining operating Wind Turbines by (b) the "Annual Payment

Per MW" amount as defined as set forth on Exhibit A or Exhibit B, whichever is then applicable.

6.1.2. For the Year in which the MW Reduction occurs, the Company shall be entitled to a credit against a subsequent Annual Payment or Post-PILOT Annual Payment, whichever is then applicable ("MW Reduction Credit") on the terms and conditions set forth in this Section 6.1. The amount of the MW Reduction Credit for a MW Reduction shall be equal to the amount by which (a) the product of (i) the MWs of the Wind Turbines which qualify for the MW Reduction, multiplied by (ii) the number of days less fifteen (15) days such MW Reduction continues during the Year in which the MW Reduction occurs, multiplied by (iii) the Annual Payment Per MW set forth on Exhibit A or Exhibit B, whichever is then applicable, for the Year in which such MW Reduction occurs, exceeds (b) twenty percent (20%) of the total Annual Payment or Post-PILOT Annual Payment, whichever is then applicable, due in the Year in which the MW Reduction occurs

6.1.2.1. If the MW Reduction occurs before September 1 in any Year, the MW Reduction Credit shall be applied by the Company to the Annual Payment or Post-PILOT Annual Payment, whichever is then applicable, due in January of the Year following the Year in which the MW Reduction occurs,

6.1.2.2. If the MW Reduction occurs after September 1 in any Year, the MW Reduction Credit shall be applied by the Company to the Annual Payment or Post-PILOT Annual Payment, whichever is then applicable, due in January of the second Year following the Year in which the MW Reduction occurs.

6.1.2.3. If the basis for the Company's claim for a MW Reduction Credit is an Injunction, such MW Reduction Credit shall not apply until (a) the Annual Payment due in the January following the issuance of a final, binding determination referred to below in subsection 6.1.3 if such determination occurs prior to September 1 in the Year in which such determination is issued, or (b) the Annual Payment due in the second January following such determination if such determination occurs between September 1 and December 31 of the Year in which such determination is issued.

6.1.3. For purposes of Section 6.1, "Injunction" shall mean a stop work order, injunction, or other notice or order issued or obtained by the Town relating to one or more Wind Turbines, provided, however, if the basis or reason for the Injunction is for actions or omissions by the Company in violation of law or regulation applicable to the Project or the Special Use Permit ("Project Violation") and if it is determined through administrative action or any judicial proceeding applicable to the Project Violation, which administrative or judicial determination is final, binding and no



longer subject to appeal, that the Company did, in fact, commit a Project Violation, then the Injunction shall not constitute a valid basis for the Company to claim a MW Reduction Credit based thereon. In addition to the foregoing, if the Company discontinues or settles such administrative or judicial action prior to receipt of final and binding decision, the Company shall not be entitled to claim such a MW Reduction Credit.

6.2. Notwithstanding the foregoing, if any of the MW Reduction for any Wind Turbine thereafter is restored and any such Wind Turbine is placed back into commercial operation (collectively, "Restored MW Capacity"), then the Company shall pay Annual Payments on the Restored MW Capacity beginning as of the date any such Wind Turbine commences the sale of energy on a commercial (rather than test) basis to one or more purchasers ("Turbine COD"). Such Annual Payments for any Restored MW Capacity will be calculated using the Annual Payment Per MW amount on Exhibit A for the Year in which the Turbine COD for any such Wind Turbine occurs, multiplied by the Restored MW Capacity. Any such increased Annual Payment shall be pro-rated in the Year in which such Turbine COD occurs and calculated to cover the balance of such Year. The pro-rated increased Annual Payment shall be paid within thirty (30) days after the date of such Turbine COD. Thereafter, and continuing for the balance of the Years in the Term, the Annual Payments for the Restored MW Capacity for any such Wind Turbine shall be increased by applying the Annual Payment Per MW amount on Exhibit A for each successive Year.

7. Increase in Project Capacity With Addition of More Turbines.

7.1. If the Original MW Installation is at least twenty-one (21) Wind Turbines and if the Company adds additional Wind Turbines ("Additional Wind Turbines") to the Project after the Original MW Installation but in any event no more than a total of thirty-five (35) Wind Turbines approved under the Special Use Permit, the Annual Payments will be increased ("Additional Turbine Annual Payments"), beginning as of the Turbine COD for any such Additional Wind Turbines and continuing for the balance of the Term..

7.2. If the Original MW Installation is twenty (20) or less Wind Turbines and if the Company adds Additional Wind Turbines to the Project after the Original MW Installation, the Company will pay Additional Turbine Annual Payments on (a) such Additional Turbines up to and including twenty (20) Additional Turbines, beginning as of the commencement of construction of such Additional Turbines and continuing for the balance of the Term and (b) on such Additional Wind Turbines between twenty-one (21) Wind Turbines and thirty-five (35) Wind Turbines, beginning as of the Turbine COD thereof.

7.3. The amount of the Additional Turbine Annual Payment in the first Year in which any such Additional Turbine Annual Payments are due will be calculated using the Annual Payment Per MW amount provided for in Section 3 and on Exhibit A or in Section 4 and on Exhibit B, whichever is then applicable, for the Year in which such Turbine COD or the commencement of construction, as applicable, of the Additional Wind Turbines occurs, multiplied by the increase in

the MWs measured in nameplate capacity above the Original MW Installation. Any such Additional Turbine Annual Payment shall be pro-rated in the Year in which such Turbine COD or commencement of construction, as applicable, of the Additional Wind Turbines occurs, commencing as of such Turbine COD or the commencement of construction, as applicable, and calculated to cover the balance of such Year. The pro-rated Additional Turbine Annual Payment shall be paid within sixty (60) days after such Turbine COD or the commencement of construction, as applicable, of the Additional Wind Turbines. Thereafter, and continuing for the balance of the Years in the Term, the Additional Turbine Annual Payments shall be increased by applying the Annual Payment Per MW provided for in Section 3 and on Exhibit A or in Section 4 and on Exhibit B, whichever is then applicable, for each successive Year.

8. Company to Notify Town of Changes in MW Production. The Company shall notify the Town in writing of (a) the Original MW Installation of the Wind Turbines, (b) the Project COD, (c) any MW Reduction, (d) any Restored MW Capacity, (e) any Additional Wind Turbines pursuant to Section 7, (f) the date of commencement of construction of any such Additional Wind Turbines pursuant to Section 7, and (g) the Turbine COD for any such Additional Wind Turbines, and shall provide other relevant information related thereto as reasonably requested by the Town.

9. Possible Adjustment of Annual Payments Based on Another Company Windfarm Project in Town.

9.1. The Company will make additional payments to the Town if, within a period of two years after the date of this Agreement, the Company, any subsidiary of the Company, any Parent of the Company, any subsidiary of any parent of the Company or any other entity under common control with the Company ("Affiliates") enters into one or more agreements pertaining to a windfarm project ("MFN Project") and concerning Payments (as defined in this Section 9), or makes a Payment, either directly or derivatively, to any City, Town, Village, Hamlet, Municipality or other similar political subdivision, including boards, and agencies thereof, within Steuben County ("MFN Town") that is greater than Payments to the Town under this Agreement ("Town Payments").

9.2. For purposes of this Section 9, "Payment" shall be defined as all cash Payments by the MFN Project to the MFN Town, the MFN Town's share of all PILOT payments or tax payments applicable to the MFN Project, and all MFN Project non-cash contributions for the MFN Town including but not limited to MFN Town facilities upgrades, MFN Town construction projects or other donations or contributions of labor, materials, planning, designing, or construction by the MFN Project to the MFN Town. The definition of Payments shall exclude those amounts necessary to reimburse the MFN Town for third-party environmental, noise monitoring, engineering or legal services, and cost of construction and repair of roads used to construct, operate and maintain the MFN Project, and any costs associated with decommissioning the MFN Project, provided such costs are reasonable and customary.

9.3. In order to determine whether the MFN Project Payments are greater than the Town Payments, (a) the total MFN Project Payments over the lesser of the term of years covered by the MFN Project agreements and twenty (20) years ("MFN Term") shall be discounted by a rate of ten percent (10%) and divided by the MW capacity of the MFN Project; and (b) the total Town Payments under this Agreement over the MFN Term shall be discounted at ten percent (10%) and divided by the Actual MW Installation of the Project covered by this Agreement;

9.3.1. If subsection (a) from above is less than or equal to subsection (b) from above, MFN Project Payments do not apply.

9.3.2. If subsection (a) from above is greater than subsection (b) from above, the "MFN True-Up Amount" is equal to the result of (a) minus (b), multiplied by the Actual MW Installation of the Project covered by this Agreement. The MFN True-Up Amount shall be paid by the Company to the Town in equal installments on a pro rata basis over the MFN Term. Payments shall be made at the same time as the January Annual Payments provided for in this Agreement, commencing in the first January after the MFN Project agreements are executed.

9.4. The payments provided for in this Section will not apply to an MFN Project that is wholly within the boundaries of the Town.

10. Use of Annual Payments by Town. Payments made to the Town pursuant to this Agreement may be used by the Town for any purposes.

11. Payment Due Date. The due date ("Due Date") for any payments pursuant to this Agreement is as follows:

11.1. The Due Date for Annual Payments and Additional Turbine Annual Payments for the Years to and including the Year in which IDA Termination occurs shall be on the first business day of January regardless of whether the Town sends the Company an invoice for an Annual Payment as provided in Section 12 below.

11.2. The Due Date for the first year of partial Additional Turbine Annual Payments is set forth in Section 7 hereof

11.3. The Due Date for Post-PILOT Annual Payments and any other payments required to be made by the Company under this Agreement shall be thirty (30) days after receipt by the Company of a written invoice from the Town setting forth such 30-day due date period, the amount due, and the calculations by the town to determine the amount due.

12. Interest on Late Payments.

12.1. Interest on Late Annual Payments Prior to IDA Termination. No interest will accrue on any such Annual Payment and full Additional Turbine Annual Payment if made on or before the thirty-first (31<sup>st</sup>) day of the January in which the Annual Payment is due, unless the Town elects to notify the Company of, and includes a written invoice for, the next due Annual Payment and full Additional Turbine Annual Payment ("Annual Payment Invoice") at any time in the

December preceding the January in which an Annual Payment is due. If the Town sends such an Annual Payment Invoice in December, the Company shall have thirty (30) days from the date thereof to pay such Annual Payment and Additional Turbine Annual Payment without any interest accruing thereon. Interest on partial, pro-rated Additional Turbine Annual Payments, shall accrue as of the Due Date of such payment. Interest, if and when applicable in accordance with this subsection, will accrue on the unpaid portion of the delinquent payment at the rate of five percent (5%) for the first month or a portion of a month due, and one percent (1%) for each subsequent month or a portion of a month on the original amount outstanding, until the outstanding payment is paid.

12.2. Interest on Late Payments for Post-PILOT Annual Payments and any other Payments Pursuant to Section 11.3. Interest on any late payment, other than an Annual Payment or any Additional Turbine Annual Payment as described in Section 12.1, shall accrue at the rate of ten percent (10%) per annum from the Due Date thereof until the date of payment.

13. Company Events of Default. The occurrence of any one or more of the following events shall constitute a "Company Event of Default" hereunder.

13.1. Failure by the Company to (a) make any payment due under the terms of this Agreement, including but not limited to payments pursuant to Sections 2, 3, 4, 5, 6, 7, 9, 14.9, 18 and 20.5 of this Agreement and any accrued interest thereon as provided for in this Agreement, or (b) increase the amount of, or replace, the Letter of Credit (as defined in that certain Security Agreement among the Town,

Canandaigua Power Partners, LLC and Canandaigua Power Partners II, LLC dated even date herewith ("Security Agreement") pursuant to Section 8(a) or 10(a) of the Security Agreement (collectively, "Company Payment Default"), provided that the Company has not cured such Company Payment Default within (i) ten (10) business days after written notice of a Company Payment Default under subsection (b) above or thirty (30) days after written notice of a Company Payment Default under subsection (a) above. The date of the Company Payment Default shall be deemed to be ten (10) or thirty (30) days after such notice, as applicable.

13.2. Failure by the Company to comply with any material nonmonetary covenant, agreement or obligation contained in this Agreement for thirty (30) days after written notice thereof by the Town, provided, that such 30 day period be extended by Company if the Company sends a written notice to the Town stating the defined longer period of time that is reasonably necessary to effect a cure, so long as (a) such default could reasonably be expected to be subject to cure after the already expired 30 day period and (b) the Company is diligently and continuously proceeding to cure, or cause the cure of, such default and so certifies in any such Company notice to the Town; and provided, further, that such extended cure period shall not exceed ninety (90) days ("Company Nonmonetary Default").

13.3. The Company's (a) application for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property; admission in writing of its inability to pay



its debt as such debts become due; making a general assignment for the benefit of its creditors; commencing a voluntary case under the United States Federal Bankruptcy Code (as now or hereafter in effect); filing a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; failure to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the United States Federal Bankruptcy Code or (b) the institution of a case or proceeding against the Company in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, winding-up or composition or readjustment of debts of the Company; or the appointment of a trustee, receiver, custodian, liquidator or the like of the Company or of all or any substantial party of its assets, unless such proceeding or case with respect to any of the foregoing is dismissed within sixty (60) days thereafter (collectively, "Bankruptcy Default").

14. Remedies Upon Company Default.

14.1. Whenever a Company Payment Default, a Company Nonmonetary Default or a Bankruptcy Default shall have occurred and be continuing, the Town shall have the right to take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce the performance or observance of any obligations, agreements, or covenants of the Company. Notwithstanding the foregoing, the Town may not exercise any such general remedies in any manner or order which conflicts with the remedies provided below and the order for the exercise of such remedies.

14.2. Whenever a Company Payment Default shall have occurred and be continuing, the Town shall have the right to seek immediate payment of any amount due hereunder in accordance with the terms and conditions of the Security Agreement.

14.3. Whenever (a) a Company Payment Default shall have occurred and be continuing for a period of two hundred seventy (270) days after the date of the Company Payment Default and (b) at least sixty (60) days before exercising the Town's remedy under this Section 14.3, the Town has requested a draw on the Letter of Credit (as defined in and pursuant to the Security Agreement) and such request has been denied in whole or in part by the issuer of the Letter of Credit (or the Town has drawn on the Letter of Credit and the Letter of Credit was not replaced with a Letter of Credit with the Required Amount (as defined in the Security Agreement) within the period set forth in the Security Agreement, the Town may commence foreclosure proceedings in accordance with the terms and conditions of the Host Mortgage.

14.4. Whenever a Bankruptcy Default shall have occurred and be continuing, the Town shall have the right to seek immediate payment of seventy percent (70%) of the stated amount of the Letter of Credit as of the date of the Bankruptcy Default and apply any such amounts in satisfaction of the Company Payment Default, provided, however, that any amounts not immediately necessary for the satisfaction of any outstanding obligation of the Company to the Town shall be invested in Authorized Investments in accordance with the terms and conditions of the Security Agreement, and the rights of the Company to provide

Replacement Security (as defined in and provided in the Security Agreement) shall continue to apply. In addition to the foregoing, the Town may commence foreclosure proceedings in accordance with the terms and conditions of the Host Mortgage. The Company hereby agrees that it will not contest any request of the Town for relief from the automatic stay provisions of the Federal Bankruptcy Code, as amended, to exercise such foreclosure rights as granted by this Section 14.4.

14.5. Whenever a Company Payment Default or a Bankruptcy Default shall have occurred and be continuing for three hundred sixty-five (365) days after (a) the Due Date for any Annual Payment, (b) the date of any Bankruptcy Default or (c) the date of any other Company Payment Default and at least sixty (60) days before exercising the Town's remedy under this Section 14.5, the Town has requested a draw on the Letter of Credit pursuant to the Security Agreement and such request has been denied in whole or in part by the issuer of the Letter of Credit, or the Town has drawn on the Letter of Credit and the Letter of Credit was not replaced with a Letter of Credit with the Required Amount to the extent required, and within the period set forth, in the Security Agreement, the Town, by written notice to the Company, may direct the Company to decommission the Project in accordance with the terms of the Decommissioning Plan as provided for in the Oversight Agreement, Notwithstanding the foregoing, if the Letter of Credit is equal to or exceeds the Required Amount and the Company provides, or causes to be provided, to the Town a Letter of Credit on or before the three hundred sixty-fifth (365<sup>th</sup>) day after the date of the Company Payment Default or

the date of the Bankruptcy Default in an additional amount equal to the unpaid balance of the Company Payment Default plus interest accrued thereon, then the Town may not exercise the remedy provided for in this Section 14.5 until five hundred forty-five (545) days after the date of the Company Payment Default or the Bankruptcy Default and provided such Company Payment Default or the Bankruptcy Default is continuing. The Company hereby agrees that it will not contest any request of the Town for relief from the automatic stay provisions of the Federal Bankruptcy Code, as amended, to exercise such decommissioning rights as granted by this Section 14.5.

14.6. Financing Party Cure Rights. If a Company Event of Default occurs and is continuing, prior to exercising of its remedies in Section 14, the Town shall give written notice ("Notice") thereof to the Company identifying the default and the date of the Company Event of Default ("Default Date"), with a copy of such notice to not greater than five (5) lenders or investors identified, in writing, by the Company (collectively, the "Financing Parties"), provided, however, that the obligation of the Town to provide notice to Financing Parties shall be limited to the information (including addresses and contact information) concerning such Financing Parties that is provided to the Town in writing by the Company. The Company may amend the names and addresses of any Financing Party from time to time. Any Financing Party shall have (a) with respect to any such Company Event of Default which is capable of being cured by the payment of money, thirty (30) days after the later of (i) receipt of such notice and (ii) the date of such Company Event of Default, and (b) with respect to any such Company Event of

Default which is not capable of being cured by the payment of money (a "Non-Monetary Event of Default") ninety (90) days after the later of (i) receipt of such notice and (ii) the date of such Non-Monetary Event of Default (or such longer period of time as may be reasonably necessary under the circumstances to cure such Non-Monetary Event of Default or to cause it to be cured, provided that such Non-Monetary Event of Default is curable and such Financing Party is diligently pursuing such cure; provided, that the total cure period for a Non-Monetary Event of Default shall not exceed one hundred twenty (120) days except if it is necessary for such Financing Party to gain possession or to foreclose upon any of the collateral granted to it in order to cure such Non-Monetary Event of Default, in which case the total cure period for such Non-Monetary Event of Default shall extend for a period of one hundred twenty (120) days from the date on which such Financing Party shall have so gained possession or foreclosed upon such collateral, provided such Financing Party shall have agreed to cure such Non-Monetary Event of Default after gaining such possession or foreclosing on the collateral. If such Financing Party fails to cure, or cause to be cured, any such Company Event of Default within the appropriate cure period set forth above, the Town shall be free to pursue any and all such rights and remedies with respect to such default as set forth in this Agreement. Any notices to or by a Financing Party shall be given in accordance with the methods provided in Section 19 herein for notices to the Parties.

14.7. No Refund or Acceleration. Notwithstanding anything to the contrary contained in this Agreement:

14.7.1. All fees paid pursuant to this Agreement are non-refundable.

14.7.2. Upon the occurrence and during the continuation of a Company Event of Default by the Company hereunder, the Town shall not have the right to accelerate future payments not yet due and payable as of the date of such exercise of remedies and such future payments shall continue to be due and payable on the dates set forth in this Agreement.

14.8. Cumulative. Subject to the provisions of Section 14.1, the rights and remedies of the Town under this Agreement shall be cumulative and shall not exclude any other rights or remedies the Town may have at law or in equity with respect to any Event of Default under this Agreement

14.9. Attorney's Fees; Venue. In the event of a final, binding, and non-appealable administration or judicial determination that either party has failed to timely perform any of its obligations under this Agreement whether under Section 14 hereof, Section 15 hereof or otherwise ("Defaulting Party") and the non-defaulting party ("Enforcing Party") employs attorneys or incurs other expenses for the enforcement of performance or observance of any obligations or agreements on behalf of the Defaulting Party herein contained, the Defaulting Party shall, within thirty (30) days of a demand by the Enforcing Party, pay to the Enforcing Party the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Enforcing Party. If an action is commenced, it shall be commenced in Steuben County, New York.

15. Town Events of Default. The occurrence of any one or more of the following events shall constitute a "Town Event of Default" hereunder:

15.1. Any representation or warranty made by the Town in this Agreement that shall prove to have been false, misleading, or incorrect in any material respect as of the date made, and any adverse effect of such incorrect representation or warranty is not eliminated or addressed to the satisfaction of the Company within thirty (30) days after notice thereof from the Company to the Town.

15.2. Failure by the Town to comply with any covenant, agreement or obligation contained in this Agreement, and such failure continues for thirty (30) days after written notice thereof by the Company, provided, that such thirty (30) day period may be extended by the Town if the Town sends a written notice to the Company stating the defined longer period of time that is reasonably necessary to effect a cure, so long as (a) such default could reasonably be expected to be the subject to cure after the already expired thirty (30) day period, and (b) the Town is diligently and continuously proceeding to cure, or cause the cure of, such default and so certifies in any such Town notice to the Company; and provided, further, that such extended cure period shall not exceed ninety (90) days after notice thereof from the Town to the Company.

16. Remedies Upon Town Default Whenever a Town Event of Default shall have occurred and be continuing, the Company shall have the right to take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any obligations, agreements, or covenants of the Town.

17. Representations and Warranties.

17.1. Town Representations and Warranties.

17.1.1. Existence and Good Standing. The Town validly exists as a political subdivision in good standing under the laws of the State of New York.

17.1.2. 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 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, to the extent permit by applicable law, this Agreement constitutes a valid and legally binding obligation of the Town, enforceable in accordance with its terms.

17.1.3. 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.

17.2. Company Representations and Warranties.



17.2.1. Existence and Good Standing. The Company is validly existing as a limited liability company authorized to do business within the State of Delaware.

17.2.2. Approval and Authorization. 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, and, to the extent permitted by applicable law, this Agreement constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms.

17.2.3. 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.

17.2.4. PILOT Agreement. The PILOT Agreement contemplated to be executed by the Company with SCIDA in 2007 or 2008 shall include a schedule of total PILOT Payments to all taxing jurisdictions based on a formula no less than the following:

- PILOT Year 1 - \$500/MW
- PILOT Year 2 - \$1,300/MW
- PILOT Year 3 - \$2,000/MW

- PILOT Year 4 -\$4,000/MW
- PILOT Year 5 - \$5,300/MW
- PILOT Year 6 and thereafter - \$5,300/MW, escalated at 3% per annum, compounded, beginning in PILOT Year 6

18. Indemnification.

18.1. Except to the extent caused by the (a) gross negligence, (b) illegal or willful misconduct, or (c) omission or failure to act, of or by the Town or its officers, agents, employees or subcontractors, the Company agrees that it will indemnify, defend and hold harmless the Town and its officers and employees from and against any and all liability, actions, administrative proceedings, damages, claims, demands, judgments, losses, cost, expenses and fees, including reasonable attorney's fees (collectively, "Losses"), resulting from (i) injury or death of persons arising directly or indirectly from any acts, errors or omissions of the Company or its Affiliates or their respective officers, agents employees or subcontractors ("Indemnifying Parties"); (ii) breach or default of this Agreement by the Company; and (iii) the gross negligence or willful or illegal misconduct of any Indemnifying Party; provided, however, that the above exception to this indemnity with respect to the gross negligence of the Town or its officers, agents, employees or subcontractors shall extend only up to a total Loss of Five Million Dollars (\$5,000,000.00) per Loss related to the Project whether the Loss is claimed under this Agreement, the Oversight Agreement, the Road Use Agreement, or the Security Agreement. In the event a claim, action, demand, suit or proceeding is instituted against the Town by any third party 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.

18.2. 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 the Company may deem reasonable so long as such defense and/or settlement provides for the release or indemnification of the Town. The Town shall have the right to retain separate legal counsel from the Company's legal counsel, subject to the Company's approval of such legal counsel, the billing rate the scope of services contemplated to be provided by the Town's legal counsel, and the billing rates of and charged for serviced by the Town's legal counsel. If the Company is not named as a party in any action or proceeding instituted against the Town and the Company requests the right to intervene as a party, the Town hereby consents thereto.

18.3. Without limiting the foregoing, the Company agrees to indemnify, hold harmless and defend the Town and its officers and employees for Losses in connection with any litigation commenced against the Town and/or its officers or employees by reason of the Town's entering into this Agreement, including but not limited to any litigation commenced against the Town by any entity relating to the payments to be made by the Company to the Town hereunder. 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, 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, and the provisions of Section 18.2 shall apply.

18.4. Limitation of Liability. The Parties waive all claims against each other (and, in the case of the Company, against the Company's parent company and Affiliates and their respective members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity (including the indemnity set forth in Section 18.1 above), contribution, strict liability or other legal theory.

18.5. Survival. The provisions of this Section 18 shall survive any termination or expiration of the Term of this Agreement for two (2) year after such termination or expiration hereof with respect to any Losses which arise prior to such termination or expiration,

19. Notices. All notices, requests, demands and other communication hereunder shall be in writing and shall be deemed to have been duly given (i) when delivered by messenger or by reputable national overnight courier service, (ii) three (3) business days after mailing when mailed by certified or registered mail (return receipt requested), with postage prepaid and addressed to the parties at their respective addresses shown below or at such other address as any

party may specify by written notice to the other party, or (iii) when delivered by facsimile transmission to the parties at the facsimile numbers listed below:

19.1. If to the Company: Canandaigua Power Partners, LLC  
c/o UPC Wind Management, LLC  
85 Wells Avenue Suite 305  
Newton, MA 02459  
Attention: President  
Facsimile: (617) 964-3342

With a copy to: UPC Wind Management, LLC 85  
Wells Avenue Suite 305  
Newton, MA 02459  
Attention: General Counsel  
Facsimile: (617) 964-3342

and

Nixon Peabody LLP P.O. Box  
31051 Rochester, NY 14603  
Attention: John B. Hood  
Facsimile: (866) 743-0238

19.2. If to the Town: Town of Cohocton  
15 South Main Street Cohocton,  
New York 14826 Attention:  
Supervisor Facsimile: (585)  
534-5472

With a copy to: Whiteman Osterman & Hanna  
One Commerce Plaza Albany,  
New York 12260  
Attention: Daniel A. Ruzow  
Facsimile: (518) 487-7777

Either party may change the name(s) and or address(es) to which notice is to be addressed by giving the other party notice in the manner herein set forth,

20. Transfer of Project.

20.1. Except as provided in subsections 20.2, 20.3, and 20.4 below, no party to this Agreement shall assign, transfer, or encumber this Agreement or any or all of its rights, interests or obligations under this Agreement without the prior written approval of the other party.

20.2. In the event that the Company proposes to sell, lease, assign, or otherwise transfer ownership to a third party (collectively, "Transferee") of the Project, this Agreement and any Permit issued by the Town, no approval by the Town is required, provided:

20.2.1. The Company shall be in compliance with all material terms of this Agreement, and no Company Event of Default shall have occurred and be continuing;

20.2.2. The Company shall notify the Town in writing, at least thirty (30) days prior to any sale, lease, assignment or transfer, confirm to the Town in writing that the Transferee has notice of, and acknowledges, this Agreement and the duties and obligations of the Company hereunder; and

20.2.3. The Transferee shall agree in writing, to abide by the terms of this Agreement and the Oversight Agreement, the Security Agreement, and

that certain Agreement for Road Use, Repair and Improvements (Cohocton Project) between the Parties dated even date herewith.

20.3. In the event of any sale, lease, transfer or assignment (collectively, "Assignment") of all of the Company's rights interest and obligations under this Agreement to a Transferee, the Company shall be released of all of its obligations hereunder from and after the effective date of any such Assignment.

20.4. The Company may, without approval of the Town, pledge, mortgage, grant a security interest in, or otherwise collaterally assign this Agreement or any or all of its rights, interests and obligations under this Agreement to any party providing financing for the Project as security for the Company under the financing agreements (including a trustee or agent for the benefit of any financing parties) (a "Permitted Collateral Assignee"), provided that such pledge, mortgage, grant of a security interest in or other collateral assignment does not materially diminish or impair the Town's rights pursuant to this Agreement. In connection with any such collateral assignment to a Permitted Collateral Assignee, the Town shall cooperate with the Company and the Permitted Collateral Assignee to execute and deliver a consent agreement or estoppel certificate as reasonably requested by the Company and the Permitted Collateral Assignee.

20.5. The Company shall reimburse the Town for its reasonable costs incurred, including reasonable attorney's fees, in connection with the Town's review of any Assignment.

21. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be original but all of which shall constitute one and the same instrument.

22. Amendment This Agreement may not be amended, changed, modified or altered except in writing executed by the parties hereto.

23. Applicable Law. The Agreement shall be governed exclusively by the applicable laws of the State of New York without regard or reference to its conflicts of laws principles.

24. No Waiver. In the event any agreement herein is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

25. Binding Effect. This Agreement shall inure to and be binding upon the Parties and their respective successors and permitted assigns.

26. Complete Agreement. Unless supplemented or otherwise amended in writing by the Company and the Town in accordance with the laws of the State of New York, 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.

27. Headings and Construction. The Section headings in this Agreement are inserted for convenience of reference only and shall in no way effect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact



that this Agreement has been prepared by one of the Parties, all of the Parties confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting party shall not apply. All Exhibits referenced in this Agreement are incorporated in and form a part of this Agreement.

28. Consents to be Reasonable. Any consent, permission, certification, judgment, satisfaction, determination or approval required from either Party under this Agreement shall not be unreasonably withheld, conditioned or delayed, except as specifically provided otherwise in this Agreement

29. Rights of Termination.

29.1. Company Rights of Termination. Provided no Company Event of Default has occurred and is continuing,

29.1.1. at the Company's option, the Company may terminate this Agreement at any time, by written notice to the Town (the date of such notice being the "Termination Date"), delivered on or before September 1, 2008, and

29.1.2. at the Company's option, the Company may terminate this Agreement at any time by written notice to the Town (a) if (i) the Company has taken, or is taking, action reasonably required or desired to obtain and comply with any permit, certification, approval or other action

for the Project from any federal, state or local political subdivision or any other governmental agency, authority or entity with jurisdiction over all or any portion of the Project (collectively, "Governmental Approvals") and if the Town fails to reasonably cooperate with the Company in the grant or issuance of any Governmental Approvals, or (b) if the Town, or any of its departments, officers or Boards, subsequent to the date of this Agreement, adopts, enacts, promulgates, or establishes any law, ordinance, code, regulation, interpretation, or requirement that imposes requirements applicable to the design, construction, operation, maintenance, or decommissioning of the Project that (i) are materially more burdensome than applicable requirements in existence as of the date of this Agreement, (ii) cause the costs of constructing, operating, maintaining or decommissioning the Project to be materially more expensive than such costs would be under the requirements in existence as of the date of this Agreement, or (iii) render it unlawful or impracticable for the Company to continue to construct, operate, maintain, or decommission the Project.

29.2. Town Right of Termination. At the Town's option, the Town may terminate this Agreement by written notice to the Company (the date of such notice also being a Termination Date).

29.3. Obligations of Parties Upon Termination; Survival.

29.3.1. Upon the termination or expiration of this Agreement, neither Party shall have any further rights or obligations hereunder except as set

forth in Section 29.3.2 and further except that if such termination has been effected by the Company pursuant to Section 29.1.1, the Company shall remain liable as provided for in Section 5.2 hereof.

29.3.2. Any obligations that arise prior to a Termination Date or to the expiration of the Term hereof, and any rights and remedies of the Parties arising prior to such Termination Date or expiration under Sections 5.1, 5.2, 13, 14.1, 14.2, 14.4, 14.6-14.9, 18, 19, 22, 23, 24, 26, 27 and 28, if applicable, shall survive and remain enforceable for a period of only two (2) years from such Termination Date or expiration. Any provisions necessary to enforce any surviving rights and remedies shall also only survive for a period of two (2) years after such Termination Date or expiration, except that if litigation is commenced within such two (2) year period in connection with an alleged default under this Agreement, such litigation may proceed to a final, non-appealable decision, judgment or decree even if such litigation extends beyond such two (2) year period.

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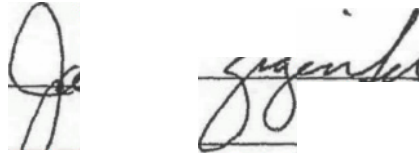
IN WITNESS THEREOF, the parties have executed this Agreement as of the date first written above.

**CANANDAIGUA POWER PARTNERS, LLC**

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

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

**TOWN OF COHOCTON**

Two handwritten signatures are present. The first signature on the left is a stylized, cursive 'A' with a horizontal line through it. The second signature on the right is a more complex cursive signature, possibly starting with 'S' or 'T', with a horizontal line through it.

By: Its:

**[Signature Page to Host Community Agreement]**

SS.

COUNTY OF

On the \_\_\_\_ day of \_\_\_\_\_, in the year 2007 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

STATE OF NEW YORK

) SS.

)

COUNTY OF STEUBEN

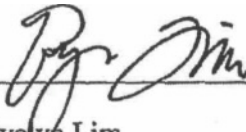
On the \_\_\_\_ day of August, in the year 2007 before me, the undersigned, personally appeared Jack Zigenfus, personally known to me or proved to me on the basis of satisfactory evidence to be me individuals) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

SANDRAL RILEY  
Notary Public - State of New York  
NO. 01RI6047223 Qualified in  
Steuben County  
My Commission Expires \_\_\_\_\_

IN WITNESS THEREOF, the parties have executed this Agreement as of the date first written above.

**CANANDAIGUA POWER PARTNERS, LLC**

By:  \_\_\_\_\_  
Evelyn Lim

Its: Secretary

**TOWN OF COHOCTON**

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

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

**[Signature Page to Host Community Agreement]**

COMMONWEALTH OF ) SS.  
MASSACHUSETTS )

COUNTY OF MIDDLESEX

On the 10th day of August, in the year 2007 before me, the undersigned, personally appeared Evelyn Lim, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Teresa Poliman  
175 Jason St.  
Arlington, MA 02476  
My Commission Expires  
September 17,2010

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

STATE OF NEW YORK ) SS.  
 )

COUNTY OF STEUBEN

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2007 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

**Exhibit A to Host Community Agreement (Cohocton Project)**

**Schedule of Annual Payments for Contemplated 20-Year Term of PILOT Agreement\***

\* If IDA Termination occurs in any Year set forth below, then this Exhibit A shall not apply for any subsequent Year, and Annual Payments for any subsequent Year shall be based on Exhibit B.

"Year" = Year as defined in the Host Community Agreement

<b><u>Year</u></b>	<b><u>Annual Payment If Original MW Installation Is 87.5 MWs</u></b>	<b><u>Annual Payment Per MW</u></b>
0	\$507,500	N/A
1	\$656,250	\$7,500
2	\$586,250	\$6,700
3	\$472,500	\$5,400
4	\$350,000	\$4,000
5	\$236,250	\$2,700
6	\$222,338	\$2,541
7	\$222,008	\$2,537
8	\$221,528	\$2,532
9	\$220,891	\$2,524
10	\$220,089	\$2,515
11	\$219,115	\$2,504
12	\$217,960	\$2,491
13	\$216,615	\$2,476
14	\$215,073	\$2,458
15	\$213,324	\$2,438
16	\$211,358	\$2,416
17	\$209,165	\$2,390
18	\$206,737	\$2,363
19	\$204,061	\$2,332
20	\$201,128	\$2,299



**Exhibit B to Host Community Agreement (Cohocton Project)**

**Schedule of Post-PILOT Payments Prior to Deduction for  
Town's Share of Normal Property Taxes**

- \* The schedule of payments set forth in this Exhibit B shall not apply in any Year in which Exhibit A is in effect and PILOT Payments are being paid pursuant to a PILOT Agreement.

"Year" = Year as defined in the Host Community Agreement

<b><u>Year</u></b>	<b><u>Annual Post-PILOT Payment If Original MW Installation Is 87.5 MWs Before Deduction For Town Property Taxes</u></b>	<b><u>Annual Payment Per MW</u></b>
0	\$507,500	
1	\$665,000	\$7,600
2	\$609,000	\$6,960
3	\$518,000	\$5,920
4	\$420,000	\$4,800
5	\$329,000	\$3,760
6	\$317,870	\$3,633
7	\$320,406	\$3,662
8	\$322,878	\$3,690
9	\$325,282	\$3,718
10	\$327,612	\$3,744
11	\$329,863	\$3,770
12	\$332,030	\$3,795
13	\$334,108	\$3,818
14	\$336,091	\$3,841
15	\$337,972	\$3,863
16	\$339,745	\$3,883
17	\$341,405	\$3,902
18	\$342,943	\$3,919
19	\$344,354	\$3,935
20	\$345,629	\$3,950

**Annual Post-PILOT Payment  
If Original MW  
Installation Is 87.5 MWs  
Before Deduction For  
Town Property Taxes**

<u>Year</u>		
21	\$352,542	\$4,029
22	\$359,593	\$4,110
23	\$366,784	\$4,192
24	\$374,120	\$4,276
25	\$381,603	\$4,361
26	\$389,235	\$4,448
27	\$397,019	\$4,537
28	\$404,960	\$4,628
29	\$413,059	\$4,721
30	\$421,320	\$4,815
31	\$429,746	\$4,911
32	\$438,341	\$5,010
33	\$447,108	\$5,110
34	\$456,050	\$5,212
35	\$465,171	\$5,316
36	\$474,475	\$5,423
37	\$483,964	\$5,531
38	\$493,644	\$5,642
39	\$503,517	\$5,754