

ALLEGANY WIND LLC

ESCROW AGREEMENT

This ESCROW AGREEMENT (this “**Agreement**”) is dated as of the date signed below 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 KeyBank National Association, 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 December 7, 2011 or one business day thereafter (the “**Deposit Date**”), the Company will deposit 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 or backed by the full faith and credit of the United States Government 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 thirty (30) days after the Deposit Date (the “**Escrow Period**”), upon satisfaction or waiver of the following conditions:

- (i) No litigation is commenced prior to or 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) thirty (30) days after the Deposit Date, or (bb) ten (10) business days after the date of receipt by the Company of notice 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 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 LDC Grant 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.
- (v) If the LDC has not satisfied the conditions for release of either of sections, ii, iii, or iv of this subsection, and the condition for release in section i of this subsection has been met, upon notice from the Town, the Company (without further approval or notice from the LDC) shall direct the Escrow Agent to release the entire escrow deposit to the Town.

(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, upon occurrence of either of the following:

- (i) Failure of any condition set forth in Section 2(b) subsections i, ii, iii or iv hereof during the Escrow Period. The Company may not request such release without first relinquishing all permits to build a wind farm in the Town of Allegany; 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 and Money Market Funds provided by the Escrow Agent) of any domestic commercial bank. Said investment(s) shall be at the written direction of the Company, and must be insured by the FDIC or backed by the full faith and credit of the United States Government.

(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. Escrow Agent's one-time administration fee will be \$2,500.00.

(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 fax or email 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

And with a copy to:

Douglas H. Ward  
Young/Sommer LLC  
Five Palisades Drive  
Albany NY 12205

If to the Escrow Agent:

KeyBank National Association  
127 Public Square, 14<sup>th</sup> floor  
Cleveland, Ohio 44114  
Attn: Terrence J. Stone, Vice President  
Corporate Escrow Department

(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: KeyBank National Association  
ABA#: 041001039  
Acct. #: Trust GL No. 5064  
Acct. Name: Allegany Wind LLC Escrow  
Attn: T. Stone, Corporate Escrow Dept.  
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.

[The remainder of this page intentionally left blank.]

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 December, 2011.

Allegany Wind LLC

By:   
Title: CFO  
Name: CHARLES WILLIAMS

Town of Allegany Economic Development Corporation:

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

Town of Allegany

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

KeyBank National Association, as Escrow Agent

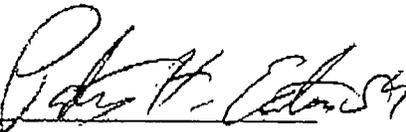
By: \_\_\_\_\_  
Title:  
Name:

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 December, 2011.

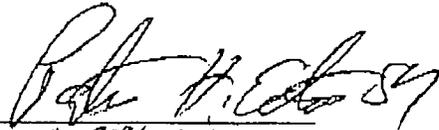
Allegany Wind LLC

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

Town of Allegany Economic Development Corporation:

By:   
Title:  
Name: PATRICK H. EATON SA

Town of Allegany

By:   
Title: SUPERVISOR  
Name: PATRICK H. EATON SA.

KeyBank National Association, as Escrow Agent

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

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 December, 2011.

Allegany Wind LLC

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

Town of Allegany Economic Development Corporation:

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

Town of Allegany

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

KeyBank National Association, as Escrow Agent

By:   
Title: TERRENCE J. STONE  
Name: VICE PRESIDENT

**EXHIBIT A**

Notice of Claim

[Company Letterhead]

[Date]

KeyBank National Association  
127 Public Square, 14th floor  
Cleveland, Ohio 44114  
Attn: Terrence J. Stone, Vice President  
Corporate Escrow Department

Re: Allegany Wind LLC, Escrow Agreement dated September \_\_, 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(b) of the Agreement have been met] / [that a return of the Escrow Deposit pursuant to Section 2(c) of the Agreement is required].

Regards,

[Name]

[Title]