

Amended and Restated Host Community Agreement
between the
Town of Ellenburg
and
Marble River, LLC

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AMENDED AND RESTATED HOST COMMUNITY AGREEMENT

This **AMENDED AND RESTATED HOST COMMUNITY AGREEMENT**, is made as of the 1st day of January, 2009 (this “**Agreement**”) by and between Marble River, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware, and having its offices at 52 James Street, Albany, New York 12207 (“**Marble River**”), and the Town of Ellenburg, a municipal corporation duly organized and existing under the laws of the State of New York and having its offices at Town of Ellenburg Town Hall, 13 Brandy Brook Road, Ellenburg Center, New York 12924 (the “**Town**”), and amends and restates a Host Community Agreement dated as of the 17th day of June 2008 between the Parties (the “**2008 Agreement**”). Marble River and the Town may sometimes be referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties**”.

WHEREAS, Marble River has submitted to the Town and other involved agencies permit applications to construct a 199.5 megawatt (“**MW**”) wind-powered electric generating facility in the Town and the Town of Clinton (the “**Project**”) comprised of ninety-five (95) wind turbine generators (each a “**Turbine**”), twenty (20) Turbines of which will be located in the Town and each Turbine having a nameplate rated generating capacity of 2.1 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 Local Law No. 4 of 2005, 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, Marble River will use certain of the Town’s roadways (identified in the attached Exhibit “A”, as such list may be modified or supplemented from time to time, 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 Marble River 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 the Project, Marble River 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, the Parties believe that their mutual best interests will be served by the execution of this Agreement which specifies their respective rights, interests, and obligations relative to the construction, operation, and decommissioning of the Project, subject to the conditions, if any, attached to any approvals that may be issued by the Town; and

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WHEREAS, the Project's construction schedule has been delayed, giving rise to the Parties' interest in amending and restating the 2008 Agreement in the form of this Agreement.

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 Amended and Restated 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 5.6.

"Commercial Operation Date" shall mean January 1 of the calendar year following the Construction Year.

"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.

"Construction Year" shall have the meaning set forth in Section 4.2.

"CPI" shall have the meaning set forth in Section 4.3.

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

"Decommissioning" shall have the meaning set forth in Section 11.1.

"Decommissioning Amount" shall have the meaning set forth in Section 11.6.

"Decommissioning Notice" shall have the meaning set forth in Section 11.3.

"Decommissioning Order" shall have the meaning set forth in Section 11.4.

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“Decommissioning Security” shall have the meaning set forth in Section 11.6.

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

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

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

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

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

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

“Findings Statement” means the determination and findings issued by the Town pursuant to SEQRA on April 8, 2008.

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

“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 Local Law No. 4 of 2005 of the Town of Ellenburg, Clinton County, as presently written or as it may be subsequently amended.

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

“Marble River” shall mean Marble River, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware.

“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 Norsonic Model 118, ANSI Type I precision integrating octave band analyzer, Rion Model NL-06 and NL-32 ANSI Type 2 A-weighted sound level meter, or similarly sophisticated noise meter.

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

“Noise Test Escrow Account” shall have the meaning set forth in Section 8.4.

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

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

“Parties” shall mean Marble River and the Town.

“PILOT Agreement” shall have the meaning set forth in Section 4.7.

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

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

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

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

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

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

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

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

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

“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.

“State” means the State of New York.

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

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

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

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

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

“Town Permit” means any permit issued by the Town to Marble River which is necessary to construct and operate the Project.

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

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“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 Local Law 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 MARBLE RIVER REPRESENTATIONS AND WARRANTIES. Marble River represents, warrants, and agrees as follows:

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

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

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Agreement and perform all of its duties and obligations contained herein. Neither Marble River nor any successor, transferee, or other party acting through rights acquired through or from Marble River will bring a claim challenging, nor raise as a defense in litigation, the legal validity or enforceability of this Agreement.

c. **Signatory.** Marble River 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 Marble River.

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

ARTICLE III

TERM

SECTION 3.1 **EFFECTIVE DATE.** This Agreement will become effective (the “**Effective Date**”) upon the later to occur of (a) its execution by Marble River and the Town Supervisor, or (b) the approval by the Town Board of any Town Permit to construct and operate all or a portion of the Project as set forth in the applications submitted to the Town.

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. Notwithstanding the foregoing, the Parties’ obligations to defend and indemnify each other as set forth above and to maintain liability insurance will continue in full force and effect through Decommissioning and any obligations by either Party to defend and indemnify the other shall survive this Agreement for a period of two (2) years.

ARTICLE IV

HOST COMMUNITY PAYMENTS

SECTION 4.1 **CONSTRUCTION PERIOD PAYMENT.** In consideration of impacts associated with construction of the Project, including the use of Town right-of-ways, Marble River has made a payment to the Town (the “**Construction Period Payment**”) in the amount of \$21,000 based on the number of Turbines permitted by the Town.

SECTION 4.2 **ANNUAL HOST FEE.** Marble River shall annually pay the Town a host community fee (the “**Host Fee**”) in the amount of \$3,000 per MW of nameplate rated capacity for each Turbine installed by Marble River in the Town as part of the Project, for each year or part of a year in which the Turbine has a valid Town Permit and Certificate of Completion. Host Fee payments shall be due on or before January 1 of each year during the term hereof, following the year in which the majority of construction for the Project occurs, as evidenced by issuance of a Town Permit, construction of a majority of the Turbines in the Town, and issuance of Certificates of Completion for such Turbines (the “**Construction Year**”).

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No later than January 1 of the year anticipated by the Parties to be the Construction Year, Marble River will deposit into an escrow account established by the Town an amount equal to \$3,000 per MW of nameplate rated capacity for each Turbine anticipated to be constructed by Marble River in the Town. As a Certificate of Completion or Temporary Certificate of Completion is issued for each Turbine, the Town shall earn the Host Fee for that Turbine, and it shall be paid from the escrow account to the Town. Any monies remaining in such escrow account at the time the second annual Host Fee is payable shall, at the Town's election, be refunded to Marble River or applied as a credit against the second annual Host Fee, if Marble River has relinquished the Town Permits for the Turbines for which funds remain in the escrow account prior to January 1 of the calendar year following the Construction Year. In the year that a Host Fee is earned, on a per Turbine basis, Marble River shall not also owe an annual Host Fee for the involved Turbine(s).

SECTION 4.3 INFLATION ADJUSTMENT TO HOST FEE. Starting in the sixth year following the calendar year in which the Commercial Operation Date occurs, the Host Fee shall be adjusted for inflation by the lesser of: (a) five percent (5%) or (b) Bureau of Labor Statistics Consumer Price Index ("**CPI**") for the Northeast Region (expressed as a percentage) for the last full year for which inflation statistics were published (e.g., 2017 CPI to adjust the 2018 Host Fee payment), but in no case shall the Host Fee be reduced to less than \$3,000 per MW of nameplate capacity for each Turbine.

SECTION 4.4 TERMINATION OF HOST FEE FOR DECOMMISSIONED TURBINES. Marble River shall pay a Host Fee with respect to each Turbine until and including the calendar year in which such Turbine is Decommissioned.

SECTION 4.5 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 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 Host Fee is paid. Penalties shall be due within ten (10) days of receipt of written notice from the Town. Late payment of penalties shall be subject to the same penalties as late payment of Host Fees.

SECTION 4.6 NO OFFSET. No payment due under this Agreement shall be offset against any other fee, payment, tax, or payment in-lieu of taxes due under any other agreement, even in the event that any federal, state, county or local law is enacted which would otherwise allow Marble River to reduce or otherwise discontinue such payments.

SECTION 4.7 CREDIT FOR TOWN TAXES FOLLOWING EXPIRATION OF PILOT AGREEMENT. Marble River has entered into (or will enter into) a payment in-lieu of taxes agreement with respect to the Project with the Clinton County Industrial Development Agency, the Town, the Town of Clinton, the Northern Adirondack Central School District, the Chateaugay Central School District and Clinton County (the "**PILOT Agreement**"). Following expiration of the term of the PILOT Agreement, or any extended term thereof, Marble River shall have the right to claim a credit against the next following Host Fee owed by Marble River

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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. For the purposes of this Section, the "Project" shall only include Turbines originally installed as part of the Project and maintained in accordance with commonly accepted business practices but shall not include re-powered Turbines.

SECTION 4.8 INSTRUCTIONS TO TOWN ASSESSOR. The Town and Marble River acknowledge that it is difficult to determine the value of the Project for real property tax purposes. Accordingly, the Town and Marble River request the Town Assessor to establish the full value assessments for the Project as set forth on Exhibit "C". Exhibit "C" shall not be binding on the Town Assessor and nothing herein shall (i) constitute an admission as to value of the Project by either the Town or Marble River or (ii) affect Marble River's right to challenge any full value assessment on the Project.

ARTICLE V

ROAD USE, REINFORCEMENT AND REPAIR

SECTION 5.1 ACCESS AND IMPROVEMENT. The Town hereby grants Marble River, 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 Marble River 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 Marble River 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 Marble River (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".

SECTION 5.3 PRE-CONSTRUCTION INSPECTION. Marble River 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

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(the “**Pre-Construction Inspection Report**”), and such report shall be subject to the approval of the On-Site Monitor.

SECTION 5.4 DESIGN AND SAFETY. Except to the extent that Marble River may be responsible for safety of the Roads and Road Structures during Marble River’s performance of Reinforcement Activities or Repair Activities, nothing herein shall give rise to liability or create responsibility on the part of Marble River for adequacy of Road and Road Structure design and Road and Road Structure safety in relation to construction, reinforcement, improvement, reconstruction and repair of Roads and Road Structures.

SECTION 5.5 REINFORCEMENT. If the Pre-Construction Inspection Report reveals deficiencies or inadequacies in the Roads and Road Structures relative to planned construction activities, Marble River shall undertake construction to reinforce and improve the Roads and Road Structures as necessary to correct such deficiencies or inadequacies (“**Reinforcement Activities**”). Marble River 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, 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 5.6 REPAIR AND RECONSTRUCTION.

a. Obligation to Repair. Marble River shall, following construction of the Project (but in no event later than twelve (12) months following installation of all Turbines) repair any damage to the Roads and Road Structures caused by construction of the Project; provided, however, that Marble River 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, Marble River 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 On-Site Monitor 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**”). Marble River shall undertake construction to correct and repair the identified degradation (“**Repair Activities**”). Marble River shall perform the Repair

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Activities only after the Town approves the Repair Activities. Marble River 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 Marble River 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, Marble River 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 On-Site Monitor shall 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 Marble River a certificate of restoration ("**Certificate of Restoration**"). Upon issuance by the Town of the Certificate of Restoration, Marble River's obligations under this Agreement shall be deemed to have been satisfied.

b. Temporary Repair Activities During Construction. During construction, Marble River 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 notice (by e-mail or other written method) to Marble River of such damage.

c. Disputes Regarding Repair and Restoration Work. In the event Marble River's engineer and the On-Site Monitor do not agree regarding the quality or completeness of the repair or restoration work, Marble River and the Town shall engage an independent engineer with road repair experience to review Marble River's certification and inspect the repair and restoration work. The cost of the independent engineer shall be borne equally by Marble River 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 Marble River a Certificate of Restoration. If the independent engineer is not satisfied with the quality and completeness of the repair or restoration work, Marble River shall perform Repair Activities required by the independent engineer but shall not be required to perform Repair Activities beyond what the Town requested of Marble River.

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 grade slope, b) binder or ground material with a minimum of two (2) inches of hot mix or three (3) 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 Marble River's road use, as identified in the Post-Construction Inspection Report, shall be replaced.

SECTION 5.7 USE BY OVER-SIZED VEHICLES. Marble River agrees that over-sized vehicles related to the Project shall be restricted to traveling on the Roads ("**Haul Routes**") during the hours of 7:00 A.M. and 7:00 P.M. local time. A copy of the haul route map for such over-sized vehicles is attached hereto as Exhibit "E". Such haul route may be modified or

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supplemented from time to time. In addition, Marble River's transportation activities on the Roads shall be conducted so as to minimize the effects on local transportation. Nothing in this Section shall permit the use of Haul Routes at times inconsistent with the Local Law (i.e., delivery schedules will minimize delivery during periods of school bus activity).

SECTION 5.8 OPERATING, MAINTAINING AND DECOMMISSIONING THE PROJECT. In the event operating, maintaining or decommissioning of the Project requires use by Marble River of over-sized or overweight vehicles, prior to entry upon Roads with such vehicles Marble River 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), Marble River shall repair such damage in a manner consistent with Section 5.6 hereof.

SECTION 5.9 ROAD CONSTRUCTION CONTRACTORS. Marble River 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. Marble River's indemnification and insurance obligations set forth in this Agreement shall cover all work performed by Marble River pursuant to this Section. If the Town performs Repair Activities, Marble River shall have no obligation relative to indemnity and insurance for the Town and the Town shall be responsible for its own insurance protection.

SECTION 5.11 SECURITY. The Town may require Marble River to post a bond, irrevocable letter of credit, or other mutually acceptable cash equivalent in the amount of Marble River's actual construction contract price for Reinforcement Activities or Repair Activities (the "**Construction Security**"). Such Construction Security may be provided by the Financing Parties. Upon submission of the Certificate of Restoration, Marble River's obligation to maintain Construction Security shall terminate and the Town shall return the Construction Security to Marble River forthwith.

SECTION 5.12 ADDITIONAL ROAD USE REQUIREMENTS.

a. Haul Routes will be established before use (current Haul Routes are identified on Exhibit "E"). Town Roads will not be used until surveyed and bonded in accordance with Section 5.11 hereof.

b. All construction vehicles must stay on Haul Routes and Roads identified on Exhibits "A" and "E". No short cuts on other Town roads hauling in or out.

c. Roads that are widened will need ditching plus culverts, or ditches cleaned where filled in, in accordance with Sections 5.1 and 5.6 hereof.

d. All shoulders that are damaged need to be fixed in accordance with Sections 5.1 and 5.6 hereof.

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- e. Confer with Highway Superintendent about proper size pipes before putting in.
- f. Proper signs need to be in place during construction.
- g. During construction, all roads must be fixed everyday to the extent required by Section 5.6(b) hereof. Black topped roads need to be fixed with black top. Pot holes or any problems on dirt and seasonal roads need to be fixed every day to the extent required by Section 5.6(b) hereof.
- h. Entrances on each access road on blacktopped roads, must be blacktopped in eighteen (18) feet.

ARTICLE VI

COMPLIANCE WITH LAW

SECTION 6.1 COMPLIANCE WITH LAWS. Marble River 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 or the State with respect to the site and the documents identified in the Town Permits, including the mitigation measures included in the Findings Statement.

ARTICLE VII

COMPLAINT MANAGEMENT PROGRAM

SECTION 7.1 WINDPOWER COMPLAINT HOTLINE.

a. Establishment and Maintenance. Marble River will establish a local 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 Marble River’s control) for the receipt of citizen complaints regarding Project 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 Marble River’s expense and identified as a “Marble River Windpower Complaint Hotline”.

SECTION 7.2 COMPLAINT LOG. All complaints received by Marble River 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. Marble River 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.

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SECTION 7.3 INVESTIGATION OF COMPLAINTS. Marble River 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. Marble River 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 Town Supervisor. Marble River 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 Town Supervisor and Complainants.

1. Noise Complaints. In the event of a noise complaint, Marble River will provide to the Town Supervisor a copy of the portion of the complaint log and its response within two (2) days of the complaint.

2. Other Complaints. Marble River will also provide to the complainant a copy of the portion of the complaint log relating to his or her complaint as soon as practicable after Marble River completes its investigation.

ARTICLE VIII

POST-CONSTRUCTION NOISE MONITORING PROGRAM

SECTION 8.1 NOISE MONITORING PROGRAM. The Parties recognize that the Turbines constructed by Marble River are subject to noise limitations by the Local Law and Town Permits. As required as a Town Permit condition and as a part of this Agreement, Marble River 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 any Town Permit issued to Marble River, and to evaluate any complaints received by the Town regarding noise emanating from the Project.

b. Noise Setback. The Town Permits 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 Marble River’s compliance with Noise Setbacks (“**Random Noise Testing**”). Random Noise Testing shall involve not more than ten percent (10%) of Marble River’s Turbines within the Town and shall be conducted using a Norsonic Model 118, ANSI Type I precision integrating octave band analyzer, Rion Model NL-06

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and NL-32 ANSI Type 2 A-weighted sound level 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 a Noise Meter at its own cost and expense (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. The Town Noise Consultant shall provide Marble River ten (10) days' advance written notice of the Town's selection and designation, or proposed change, of the Town Noise Consultant. Marble River 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 Marble River. If Marble River 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 Marble River 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, Marble River (a) shall not be responsible for the costs of any testing by the Town in response to complaints about the same Noise Setback and involved Turbine and (b) shall be deemed to be in compliance with such Noise Setback, for a period of at least three (3) years from the date of the result of such test.

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 Marble River a written notice to cure any deficiency. Marble River shall have ninety (90) days after receiving such written notice to cure any deficiency. Marble River may request a second noise test, at its sole cost and expense, and, if Marble River so requests, Marble River may also request an extension of the ninety (90) day period for up to a total one hundred eighty (180) days, which extension shall be granted by the Town Board, but the total cure period may not exceed one hundred eighty (180) days. The failure of Marble River 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 Marble River's sole cost and expense, to be in compliance, shall be considered a breach of this Agreement.

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SECTION 8.4 NOISE TEST ESCROW ACCOUNT.

a. Initial Deposit. Within one-hundred eighty (180) days of the Commercial Operation Date, Marble River shall deposit EIGHT THOUSAND TWO HUNDRED DOLLARS (\$8,200.00) 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 Marble River’s benefit. The Escrow Account is to be used for the expense of the Noise Test Consultant retained pursuant to Section 8.1(e), but not for expenses associated with Random Noise Testing or Noise Complaint Screening.

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 Marble River 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 Marble River, in advance, of the cost of any testing performed by the Town Noise Consultant (the “**Replenishment Amount**”). Marble River 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 Marble River, together with an itemized accounting of monies disbursed from the Noise Test Escrow Account, if applicable.

f. Disputes. In the event Marble River disputes or objects to any item set forth in the annual accounting, Marble River shall identify the disputed item and the basis for the dispute, in writing, within thirty (30) days of the receipt of such accounting. Marble River 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 and Article V of this Agreement (the “**On-Site Monitor**”).

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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. Marble River 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 Marble River of such decision and the Town’s selected replacement firm. Such selected firm must be a qualified independent engineering firm with wind project experience. Marble River 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 Marble River raises an objection, the Town and Marble River agree to meet within three (3) days of the Town’s receipt of Marble River’s notice to discuss Marble River’s concerns with the selected replacement firm and potential substitute firms. The Town shall not replace the On-Site Monitor without Marble River’s consent.

SECTION 9.3 RESPONSIBILITIES OF ON-SITE MONITOR. The On-Site Monitor shall be responsible for monitoring Marble River’s compliance with any condition or requirement set forth in a Town Permit, including without limitation compliance with Noise Setbacks, and Article V of this Agreement. The On-Site Monitor shall be trained in the use of a Noise Meter and shall conduct all Random Noise Testing and 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. Marble River 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 Marble River at the same time such reports are provided to the Town Supervisor, Town Board, or other Town representative.

SECTION 9.6 EMERGENCY NOTIFICATIONS. In the event of an emergency which requires Marble River to notify the New York State Department of Environmental Conservation, the New York State Department of Health, the Clinton County Department of Health or any federal, county or local emergency service or agency, Marble River will immediately thereafter notify the Town Supervisor of the circumstances and events requiring the initial reporting to the previously-referenced entities. All written reports and documents regarding such notifications will be made available to the Town Board, along with any responses or further written directions received from the entities to which Marble River 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 Marble River’s building permit applications, (b)

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issuance of building permits to Marble River, (c) oversight of Marble River's compliance with building permits, applicable Town codes, approved Project plans, and Town Permit conditions, (d) issuance to Marble River of Certificates of Completion, and (e) issuance to Marble River 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. The Town will endeavor to review Marble River's building permit applications and issue building permits within thirty (30) days of Marble River's submission of a completed application.

SECTION 10.3 COMPLETION NOTICE AND EVALUATION PERIOD. When Marble River has completed installation of a Turbine in accordance with applicable Town codes, 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 fifteen (15) 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 applicable Town codes, approved Project plans, and Town Permit conditions, the Town will issue to Marble River a certificate of completion confirming that the Turbine has been constructed in accordance with the applicable codes and permit conditions (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 applicable Town codes, 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 Marble River 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 Marble River has satisfied all outstanding conditions in accordance with the applicable Town codes, approved Project plans, and Town Permit conditions relative to a Turbine for which the Town has issued a Temporary Certificate of Completion, Marble River shall submit a Completion Notice to the Town. In the event the Town finds that Marble River has satisfied such conditions, the Town will issue to Marble River, 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.

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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 Marble River and the On-site Monitor do not agree that either a Certificate of Completion or Temporary Certificate of Completion should be issued, at Marble River's election Marble River and the Town shall engage a third party independent engineer with wind project experience to review Marble River'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 Marble River 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 Marble River 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. Marble River 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 Marble River find unacceptable, Marble River 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 PLAN

SECTION 11.1 DECOMMISSIONING. The Parties acknowledge that Turbines may, from time to time, need to be decommissioned and removed from the Project, either at the end of their useful lives, following damage or destruction, or upon order of the Town Board that, due to violations of a Town Permit, the Turbines be decommissioned ("**Decommissioning**").

SECTION 11.2 STANDARD OF DECOMMISSIONING. Decommissioning shall include removal of all footings, concrete pads, anchors, guy wires, fences, towers and other

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fixtures (up to three (3) feet underground, except where New York State Department of Agriculture and Markets Guidelines require four (4) feet) that are part of the Project, covering or filling of all holes, trenches and other excavations made by Marble River, 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. Marble River's standards of Decommissioning are outlined in more detail in the Decommissioning Plan attached hereto as Exhibit "F".

SECTION 11.3 VOLUNTARY DECOMMISSIONING. If Marble River 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 ORDERED DECOMMISSIONING. If the Town Board orders the Decommissioning of a Turbine pursuant to Section 15.3(b) hereof, the Turbine shall stop generating electricity on the later of (a) the date of the Town's final order of Decommissioning (the "**Decommissioning Order**"), or (b) if Marble River appeals the Decommissioning Order, the date of a final, non-appealable order by a court of competent jurisdiction upholding the Decommissioning Order.

SECTION 11.5 FAILURE TO PERFORM DECOMMISSIONING. In the event Marble River fails to perform necessary Decommissioning activities and the Town has to carry out such Decommissioning activities in accordance with the terms herewith, Marble River 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 Marble River's 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 Marble River's rights set forth in, and shall be subject to the terms of, the agreements originally granting Marble River such easement or access rights. Marble River will not allow its access rights or easements to any particular facility to expire until such facility has been decommissioned.

SECTION 11.6 DECOMMISSIONING SECURITY.

a. Establishment of Decommissioning Security. On or before the Commercial Operation Date, Marble River shall provide to the Town financial security (the "**Decommissioning Security**") in an amount equal to the product of (a) NINE THOUSAND NINE HUNDRED DOLLARS (\$9,900.00) per Turbine and (b) the number of Turbines in the Project in the Town (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 Marble River and the form of the instrument subject to the reasonable approval of the Town.

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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 Marble River fails to do so as required by this Agreement.

d. Adjustment to Decommissioning Amount. The Decommissioning Amount 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. Marble River 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, Marble River may provide replacement Decommissioning Security in such lower amount, and if the Decommissioning Amount increases, then by September 1 of that same year, Marble River 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. Marble River 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 CHIEF. Marble River will meet, on at least an annual basis, with the fire chief of the fire district where Turbines are located, to review current access, fire suppression, water supply placement, training needs, and other related issues. The initial meeting with the fire district will take place within ninety (90) days of the Effective Date.

SECTION 12.2 FIRE PROTECTION PLAN. Within thirty (30) days after the initial meeting with the fire chief, Marble River will submit to the fire chief and to the Town a fire protection plan which identifies and addresses any concerns raised by the fire chief. If necessary, such plan shall be updated within thirty (30) days after each subsequent meeting. Marble River must take commercially reasonable steps to mitigate any reasonable concerns raised by a fire chief.

ARTICLE XIII

LIABILITY COVERAGE AND INDEMNIFICATION

SECTION 13.1 INSURANCE. Marble River 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. Marble River 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. Marble River will provide proof of such insurance in the form of a certificate of insurance or proof of self-insurance upon request of the Town.

SECTION 13.2 INDEMNIFICATION OF TOWN.

a. Indemnification. Except to the extent caused by the negligence, illegal or willful misconduct of the Town or its officers, agents, employees or subcontractors, and except with respect to special or consequential damages, Marble River 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 Marble River or its officers, agents or employees; and further provided such losses arise out of or occur in connection with this Agreement or the construction and operation of the Project. In the event a claim, action, demand, suit or proceeding is instituted against the Town by any third party for a money judgment only, pursuant to which the Town is entitled to be indemnified hereunder, the Town shall immediately notify Marble River in writing and contemporaneously provide Marble River with a copy of the written documents presented by such third party. Nothing herein shall obligate Marble River 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 Town's entering into this Agreement, including but not limited to any litigation commenced against the Town or any improvement district therein, by any entity relating to the payments to be made by Marble River to the Town hereunder.

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 Marble River in writing and contemporaneously provide Marble River with a copy of such written documents presented by such third party.

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c. Right to Control Defense. Marble River 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 MARBLE RIVER. The Town shall indemnify, hold harmless and defend Marble River 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, Marble River and the Town shall cooperate in the defense of said action. The Town shall have the right to select its counsel but Marble River shall have the right to control the defense against such action pursuant to Section 13.2(c) hereof. Marble River 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, Marble River 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, in accordance with applicable law, 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 Marble River to change its operations to the detriment of it or the Project, Marble River may opt, in its sole and absolute discretion, to suspend payments hereunder and/or terminate the Agreement. Marble River must exhaust its administrative and judicial remedies, if any, prior to termination of the Agreement. Marble River reserves its rights

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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 Marble River opts to terminate this Agreement, and either the Town or Marble River seeks a judgment in a court of competent jurisdiction to declare the rights of the Parties under this Agreement, any Host Fee otherwise due under this Agreement as of the date of Termination, the payment of which is at dispute in the litigation, shall be deposited with the court or an escrow agent mutually agreeable to both Parties, pending the outcome of the litigation.

ARTICLE XVI

BREACH AND REMEDIES

SECTION 16.1 NOTICE OF BREACH. In any case where either Party breaches this Agreement, the non-breaching Party shall provide written notice to the breaching Party within ten (10) days of such breach ("**Notice of Breach**").

SECTION 16.2 RIGHT TO CURE. Marble River shall have the right to cure any breach and must cure such breach within ninety (90) days of its receipt of a Notice of Breach, unless such breach is not capable of cure within ninety (90) days, in which event Marble River may request an extension of the ninety (90) day period for up to a total one hundred eighty (180) days, which extension shall be granted by the Town Board. In the event the breach continues to remain uncured, the time may be enlarged by the Town to the lesser of the: (a) extension period allowed by the Local Law, or (b) a time period established by the Town Board.

SECTION 16.3 REMEDIES.

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

b. Upon the failure of Marble River or a Mortgagee to cure any material breach within applicable cure periods, the Town may immediately issue a Decommissioning Order with respect to the Turbine(s) that is the subject of the breach.

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, Marble River'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 Marble River's interest in

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the Project for satisfaction of such obligations. Such obligations shall constitute limited obligations of Marble River, payable solely from the revenues of Marble River 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 thirty (30) days of its receipt of the notice unless such breach is not capable of cure within thirty (30) days, in which event Marble River shall give the Town an additional thirty (30) 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, Marble River'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. With respect to any such Mortgage, so long as such Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Mortgagee to the Town, the following provisions shall apply.

b. **Service of Notices on Mortgagee.** The Town shall simultaneously serve a copy of any Notice of Breach upon the Mortgagee, and no such notice or other communication to Marble River 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.

c. In the event of any breach by Marble River under this Agreement, the Mortgagee shall have one hundred twenty (120) days for a monetary breach and one hundred eighty (180) days in the case of any other breach, 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 Marble River. 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, 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

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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. Marble River (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. Marble River 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 occurring prior to the Commercial Operation Date.

SECTION 18.2 FEE ESCROW ACCOUNT.

a. Initial Funding of Fee Escrow Account. Upon execution of this Agreement, Marble River 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 Marble River’s benefit.

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b. Replenishment of Fee Escrow Account. Whenever the balance of the Fee Escrow Account falls below TEN THOUSAND DOLLARS (\$10,000.00), Marble River shall be notified, through notice to Marble River 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, Marble River shall deposit an additional FIVE THOUSAND DOLLARS (\$5,000.00), or such other amount as the Town and Marble River shall mutually agree, into the Fee Escrow Account. In the event Marble River fails to replenish the Fee Escrow Account within fifteen (15) business days of Marble River'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 Marble River.

c. Invoices and Withdrawals. The Invoices for engineering and legal services will be submitted to the Town Board, which will review the invoices. Upon approval by the Town Board, the Town Clerk will thereafter be directed to disburse funds from the Fee Escrow Account to pay the invoices. Copies of all invoices shall be provided prior to approval by the Town Board to Marble River through its attorney, 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 Marble River.

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

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

SECTION 18.3 NO FIDUCIARY RELATIONSHIP. The 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 Marble River.

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.

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SECTION 18.5 SCOPE OF SERVICES OF ON-SITE MONITOR. The services provided by the On-Site Monitor that are subject to reimbursement shall be limited to those services reasonably necessary to assist the Town in connection with the Project. The scope of such services is set forth on Exhibit "G" attached hereto.

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 Ellenburg
Attn: Town Supervisor
Town of Ellenburg Town Hall
13 Brandy Brook Road
Ellenburg Center, New York 12924

With a copy to:

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

b. Notices to Marble River:

Marble River, LLC
52 James Street
Albany, New York 12207

With a copy to:

Horizon Wind Energy
808 Travis Street, Suite 700,
Houston, Texas 77002

With a copy to:

Nixon Peabody LLP
1100 Clinton Square
Rochester, New York 14604
Attn: Peter H. Swartz
Matthew S. Moses

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 Local Law by either Party shall not be deemed an election of remedies limiting either Party's right to seek any other remedy otherwise allowed by this Agreement or the Local Law.

SECTION 20.2 APPLICABLE LAW AND VENUE. This Agreement will be governed by the laws of the State of New York. Venue for any dispute arising under this Agreement and not settled by mediation shall be solely in the New York State Supreme Court for Clinton County.

SECTION 20.3 FEES ASSOCIATED WITH ENFORCEMENT. In the event the Town commences any action to collect any payment due under this Agreement, or to enforce any provision of this Agreement, the Town shall have the right to recover all expenses and fees, including reasonable attorneys fees, incurred in bringing the action, if the Town prevails in such action. Nothing in this Agreement shall limit the right of the Town to enforce the Local Law 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 Marble River 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.

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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 Marble River and any such transfer or assignment shall be null and void and of no force and effect. Marble River 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 MARBLE RIVER. Marble River may, without the consent of the Town, (a) assign this Agreement to any (x) purchaser of the Project, (y) affiliate (as such term is defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934) of Marble River that is controlled by, controlling or under common control with Marble River, or (z) 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 “H”, and (b) pledge, mortgage, grant a security interest in and collaterally assign this Agreement to any Financing Parties. The Town shall cooperate with Marble River, 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 Marble River 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 attached hereto as Exhibit “I”. In the event this Agreement is assigned to a Successor, Marble River shall have no further obligations hereunder. Nothing herein shall limit in any way the right of the owners of Marble River to sell or otherwise transfer (including by merger or consolidation with any other entity) all or a portion of their ownership interests in Marble River.

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]

EXECUTION COPY

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

MARBLE RIVER:

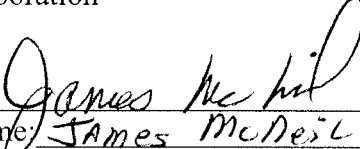
MARBLE RIVER, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

TOWN:

TOWN OF ELLENBURG, a New York municipal corporation

By:  _____
Name: JAMES McNEIL
Title: Town Supervisor

EXECUTION COPY

STATE OF _____) ss:
COUNTY OF _____)

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

Notary Public

STATE OF _____) ss:
COUNTY OF _____)

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

Notary Public

STATE OF New York) ss:
COUNTY OF Clinton)

On the 8 day of June, in the year 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared James McNeil 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.

Thelma Lorraine LaBombard
Notary Public

THELMA LORRAINE LABOMBARD
Notary Public, State of New York
No. 01LA4606124


12340077.2 Residing in the County of Clinton
Commission Expires May 31, 2011.

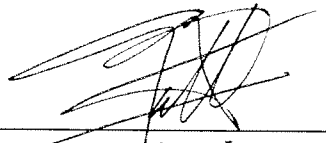
EXECUTION COPY

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

MARBLE RIVER:

MARBLE RIVER, LLC, a Delaware limited liability company

By: 
Name: Jayshree Desai
Title: Vice President - Finance

By: 
Name: Gabriel Alonso Imaz
Title: President & Chief Development Officer

TOWN:

TOWN OF ELLENBURG, a New York municipal corporation

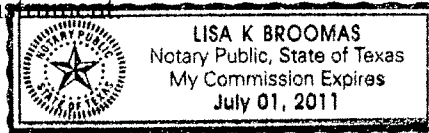
By: _____
Name: _____
Title: _____

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STATE OF Texas)
COUNTY OF Harris) ss:

On the 30th day of April, in the year [2009], before me, the undersigned, a Notary Public in and for said State, personally appeared Jayshree Desai, 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.

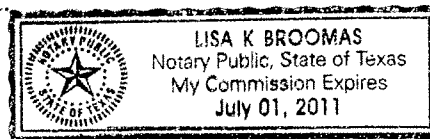
Lisa K. Broomas
Notary Public



STATE OF Texas)
COUNTY OF Harris) ss:

On the 1st day of May, in the year [2009], before me, the undersigned, a Notary Public in and for said State, personally appeared Gabriel Alonso Inez, 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.

Lisa K. Broomas
Notary Public



STATE OF _____)
COUNTY OF _____) ss:

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

Notary Public

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"	Haul Route Map for Oversized Vehicles
Exhibit "F"	Decommissioning Plan
Exhibit "G"	Scope of Services of On-Site Monitor
Exhibit "H"	Form of Notice of Assignment and Assumption of Host Community Agreement
Exhibit "I"	Form of Consent to Assignment

Marble River Host Community Agreement

Exhibit "A"
Schedule of Roads

Roads Located in the Town of Clinton:

Road	Jurisdiction	General Description
Soucia Road	Town	Entire Road
Lafrancis Road	Town	Entire Road
Clinton Mills Road	County	From Churubusco east to Bull Run Road
NYS Route 189	State	From Rt 11 north to Liberty Pole Road
Looby Road	Town	Entire Road
Frontier Road	Town	From Lost Nation to Liberty Pole Road
Liberty Pole Road	Town	Entire Road
Mercia Road	Town	Entire Road
Jones Road	Town	Entire Road
Whalen Road	Town	From Looby north to Mercia Road
NYS Route 11	State	From Bull Run Road west to Lost Nation Road
Campbell Road	Town	From Rt 11 south to Ellenburg Town Line
Patnode Road	Town	From Rt 11 south to Rt 190
Brandy Brook Road	Town	From Rt 11 south to Rt 190
Gagnier Road	Town	Entire Road
Lost Nation Road	Town	From Rt 11 north to Frontier Road
Ryan Road	Town	From Rt 11 south to Rt 190

Roads Located in the Town of Ellenburg:

Road	Jurisdiction	General Description
Brandy Brook Road	Town	Rt 11 to Rt
Star Road Rt 190	State	Rt 11 west to Rt 374
West Hill Road	Town	Rt 190 west to Tacey Road
Cashman Road *	Town	Rt 11 south to Rt 190
Sancomb Road	Town	Rt 190 south to West Hill Road
Tacey Road	Town	Rt 190 south to West Hill Road
Bohen Road	Town	Number 5 Road south to Rt 190
Ryan Road	Town	Rt 11 south to Rt 190
Number 5 Road *	Town	Intersection of Campbell Road west to County Line Road
Bull Run Road	Town	Rt 11 north to Clinton Mills Road
Patnode Road *	Town	Entire Road
* No gravel or concrete trucks (Turbine components only).		

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Exhibit “B”

Town Approving Resolution

TOWN OF ELLENBURG

RESOLUTION NO. 16

June 17, 2008

TOWN OF ELLENBURG RESOLUTION ISSUING SPECIAL USE PERMITS FOR MARBLE RIVER, LLC AND APPROVING RELATED IMPLEMENTING AGREEMENTS

WHEREAS, Marble River, LLC of Albany, NY, has submitted an application for a Special Use Permits to permit construction and operation of wind energy generating facilities and related infrastructure at various sites throughout the Town of Ellenburg (the "Project"); and

WHEREAS, the Town Board of the Town of Ellenburg, acting as Lead Agency, issued a Positive Declaration on the proposed project and required the preparation of a Draft Environmental Impact Statement (DEIS) pursuant to the requirements of the State Environmental Quality Review Act (SEQRA); and

WHEREAS, the Town Board, after review of the DEIS, accepted the DEIS as complete and established a public comment period for the DEIS and proposed Special Use Permits, filed and circulated the Notice of Completion of the DEIS to the Environmental Notice Bulletin and appropriate parties, and filed the DEIS with the appropriate parties pursuant to SEQRA; and

WHEREAS, a public hearing and public comment period was held for the purpose of receiving comments on the DEIS and proposed Special Use Permits; and

WHEREAS, following the public comment period, the Town Board, acting jointly with the Town of Ellenburg, ordered the preparation of a Supplemental Draft Environmental Impact Statement (SDEIS),

WHEREAS, the Town Board, after review of the Supplemental Draft Environmental Impact Statement ("SDEIS"), accepted the SDEIS as complete on June 25, 2007, established a public comment period for the SDEIS, filed and circulated the Notice of Completion of the SDEIS to the Environmental Notice Bulletin and appropriate parties, and filed the SDEIS with the appropriate parties pursuant to SEQRA; and

WHEREAS, a public hearing and public comment period was held for the purpose of receiving comments on the SDEIS and proposed Special Use Permits; and

WHEREAS, following the public comment period, the Town Board, acting jointly with the Town of Ellenburg, ordered the preparation of a Final Environmental Impact Statement (FEIS), was accepted by the Town Board on January 31, 2008, and the Town Board filed and circulated the Notice of Completion of the FEIS to the Environmental Notice Bulletin and appropriate parties, and filed the FEIS with the appropriate parties pursuant to SEQRA and published the Notice of Completion in the official newspaper of the Town; and

WHEREAS, on April 8, 2008, the Town Board acting jointly with the Town of Ellenburg, issued a Joint Statement of Findings and Decision, including the certifications required by 6 N.Y.C.R.R. §617.11(d); and

WHEREAS, the Town Board submitted the proposed Special Use Permits to the Ellenburg County Planning Board pursuant to General Municipal Law §239, and that Board unanimously approved the Project on May 8, 2008; and

WHEREAS, the Town Board has considered the applications, the environmental review documents, the oral and written comments made in the public comment process, and the requirements of its local laws, and

WHEREAS, the Town Board believes that to carry out its responsibility under SEQRA to mitigate the potential impacts from the Project to the maximum extent practicable it is necessary to place conditions on any permits it approves, as well as to ensure that procedures are in place to enforce the conditions and the Town's laws throughout the life of the Project, and

NOW THEREFORE, BE IT RESOLVED by the Town Board of the Town of Ellenburg as follows:

1. The Special Use Permits are hereby issued for the Marble River, LLC Project for the reasons stated in the Joint Statement of Findings and Decision. The Special Use Permits are issued for the locations listed in Schedule A of this resolution. The Special Use Permits are conditioned on compliance with the conditions listed in Schedule B of this resolution, which conditions are an integral part of the Special Use Permits. The Town Supervisor and other Town officials are authorized to take all steps necessary to issue the Special Use Permits.

2. The following agreements are approved:

a. Host Community Agreement between the Town of Ellenburg and Marble River, LLC.

b. Agreement For The Payment Of Municipal Engineering And Legal Expenses.

3. The Town Supervisor is authorized to execute the Agreements.

4. Nothing in this Resolution shall be read as authorizing any activity by Marble River prior to receipt, where required, of any additional required Town, State or Federal permits.

5. This resolution shall be effective immediately.

PASSED AND ADOPTED BY THE TOWN BOARD OF THE TOWN OF ELLENBURG
on the 17th day of June, 2008.

Exhibit “C”**Instructions to Town Assessor**

The Town and Marble River acknowledge that it is difficult to determine the value of the Project for real property tax purposes. Accordingly, the Town and Marble River 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. This exhibit shall not be binding on the Town Assessor and nothing herein shall (i) constitute an admission as to value of the Project by either the Town or Marble River or (ii) affect Marble River’s right to challenge any full value assessment on the Project.

<u>Assessment Year</u>	<u>Full Value Assessment Per MW (\$)</u>	<u>Full Value Assessment Assuming 20 2.1 MW Turbines (\$)</u>
2010	1,266,667	53,200,000
2011	1,203,333	50,540,000
2012	1,140,000	47,880,000
2013	1,076,667	45,220,000
2014	1,013,333	42,560,000
2015	950,000	39,900,000
2016	886,667	37,240,000
2017	823,333	34,580,000
2018	760,000	31,920,000
2019	696,667	29,260,000
2020	633,333	26,600,000
2021	570,000	23,940,000
2022	506,667	21,280,000
2023	443,333	18,620,000
2024	380,000	15,960,000
2025	316,667	13,300,000
2026	253,333	10,640,000
2027	190,000	7,980,000
2028	126,667	5,320,000
2029 - Decommissioning	126,667 (10% Floor)	5,320,000 (10% Floor)

Exhibit "D" <u>Schedule of Project Facilities Requiring Municipal Franchises, Road Permit and Curb Cuts</u> <u>For Roads Located in the Town of Ellenburg</u>			
Road	Type of Intersection	Location	Description
Ryan Road	Access Road	West	3200' south of the Number 5 Road
Ryan Road	Access Road	East	3200' south of the Number 5 Road
Ryan Road	Collection Line Crossing	East to West	3200' south of the Number 5 Road
State Route 190	Collection Line Along Road	North	Starting 4100' West of Ryan Road and continuing East for 6450', the collection line runs parallel to the road.
State Route 190	Collection Line Crossing	North to South	600' West of Bohen Road
State Route 190	Collection Line Along Road	South	Starting 600' West of Bohen Road and continuing East for 1100', the collection line runs parallel to the road
State Route 190	Access Road	South	550' East of Bohen Road
State Route 190	Collection Line Along Road	South	Starting 600' East of Bohen Road and continuing East for 300', the collection line runs parallel with the road
State Route 190	Collection Line Crossing	North to South	600' East of Bohen Road
State Route 190	Access Road	North	900' East of Bohen Road
Sancomb Road	Collection Line Crossing	West to East	500' South of State Route 190
Sancomb Road	Collection Line Along Road	East	Starting 500' South of State Route 190 and continuing South for 1100', the collection line runs parallel with the road
Sancomb Road	Access Road	East	2200' South of State Route 190
State Route 190	Collection Line Crossing	South to North	525' East of Patnode Road
State Route 190	Access Road	North	525' East of Patnode Road
State Route 190	Access Road	North	4700' East of Patnode Road
State Route 190	Access Road	South	4700' East of Patnode Road
State Route 190	Collection Line Crossing	South to North	4700' East of Patnode Road
Patnode Road	Access Road	East	5000' North of State Route 190
Patnode Road	Access Road	West	5000' North of State Route 190
Patnode Road	Collection Line Crossing	West to East	5000' North of State Route 190
<u>For Roads Located in the Town of Clinton</u>			
Road	Type of Intersection	Location	Description
Patnode Road	Access Road	East	5900' South of Gagnier Road
Patnode Road	Access Road	West	2000' South of Gagnier Road
Patnode Road	Access Road	East	2000' South of Gagnier Road
Patnode Road	Collection Line Crossing	West to East	2000' South of Gagnier Road
Patnode Road	Access Road	East	1500' South of Gagnier Road
Patnode Road	Collection Line Crossing	West to East	1500' South of Gagnier Road

Marble River Host Community Agreement

Patnode Road	Collection Line Along Road	West	Starting 1500' South of Gagnier Road and continuing to Gagnier Road, the collection line runs parallel to the road
Gagnier Road	Collection Line Crossing	North to South	Intersection of Gagnier Road and Patnode Road
Patnode Road	Collection Line Along Road	East	Starting at the intersection of Patnode Road and Gagnier Road and continuing North for 1200', the collection line runs parallel to the road
Patnode Road	Access Road	West	750' North of Gagnier Road
Patnode Road	Collection Line Crossing	West to East	750' North of Gagnier Road
Patnode Road	Access Road	East	1200' North of Gagnier Road
Campbell Road	Access Road	East	2600' North of Gagnier Road
Campbell Road	Access Road	East	5600' North of Gagnier Road
Campbell Road	Collection Line Crossing	West to East	5600' North of Gagnier Road
Campbell Road	Collection Line Along Road	West	Starting 5600' North of Gagnier Road and continuing North for 1650', the collection line runs parallel to the road
Campbell Road	Collection Line Crossing	East to West	5800' South of State Route 11
Campbell Road	Collection Line Along Road	East	Starting 5800' South of State Route 11 and continuing North for 1900', the collection line runs parallel to the road
Gagnier Road	Access Road	North	4500' East of Patnode Road
Gagnier Road	Access Road	North	2200' West of State Route 11
Gagnier Road	Access Road	South	2200' West of State Route 11
Gagnier Road	Overhead Collection Line Crossing	North to South	2200' West of State Route 11
Gagnier Road	Access Road	South	600' West of State Route 11
Brandy Brook Road	Access Road	West	2900' South of State Route 11
State Route 11	Access Road	South	650' East of State Route 189
State Route 11	Access Road	North	650' East of State Route 189
State Route 11	Overhead Collection Line Crossing	North to South	650' East of State Route 189
State Route 11	Access Road	South	1700' West of Patnode Road
State Route 189	Access Road	East	1500' North of State Route 11
State Route 189	Access Road	West	3500' North of State Route 11
State Route 189	Collection Line Crossing	West to East	3500' North of State Route 11
State Route 189	Collection Line Along Road	East	Starting 3500' North of State Route 11 and continuing for 1400', the collection line runs parallel to the road
State Route 189	Access Road	East	4250' North of State Route 11
State Route 189	Collection Line Crossing	West to East	4900' North of State Route 11
State Route 189	Collection Line Along Road	West	Starting 4900' North of State Route 11 and continuing for 3200' to the intersection of Lagree Road and State Route 189, the collection line runs parallel to the road
State Route 189	Access Road	West	5050' North of State Route 11
State Route 189	Collection Line Crossing	West to East	At the intersection of Lagree Road/Swamp Road and State Route 189
State Route 189	Collection Line Along Road	East	Starting at the Intersection of Lagree Road/Swamp Road and State Route 189 and continuing North for 500', the collection line runs parallel to the road
State Route 189	Access Road	East	1400' North of Swamp Road

Marble River Host Community Agreement

State Route 189	Access Road	West	3300' North of Clinton Mills Road
State Route 189	Collection Line Crossing	West to East	3300' North of Clinton Mills Road
State Route 189	Access Road	East	3900' North of Clinton Mills Road
State Route 189	Collection Line Along Road	East	Starting 3900' North of Clinton Mills Road and continuing North for 3300', the collection line runs parallel with the road
State Route 189	Access Road	West	2300' North of Merchia Road
State Route 189	Access Road	East	2300' North of Merchia Road
State Route 189	Collection Line Crossing	West to East	2300' North of Merchia Road
State Route 189	Access Road	West	3200' South of Frontier Road
Lagree Road	Access Road	South	2600' East of Looby Road
Lagree Road	Access Road	North	2600' East of Looby Road
Lagree Road	Collection Line Crossing	North to South	2600' East of Looby Road
Lagree Road	Collection Line Along Road	North	Starting 2400' East of Looby Road and continuing West for 800', the collection line runs parallel to the road
Lagree Road	Access Road	North	1600' East of Looby Road
Looby Road	Access Road	East	3500' North of State Route 11
Looby Road	Collection Line Along Road	East	Starting 3500' North of State Route 11 and continuing North for 800', the collection line runs parallel to the road
Looby Road	Collection Line Crossing	North to South	At the intersection of Looby Road and Whalen Road
Whalen Road	Collection Line Along Road	East	Starting at the intersection of Whalen Road and Looby Road and continuing North for 1100', the collection line runs parallel to the road
Whalen Road	Access Road	East	1100' North of Looby Road
Looby Road	Access Road	South	3400' West of State Route 189
Merchia Road	Access Road	South	7200' West of State Route 189
Merchia Road	Collection Line Along Road	South	Starting 7200' West of State Route 189 and continuing West for 2100', the collection line runs parallel to the road
Merchia Road	Access Road	North	8300' West of State Route 189
Merchia Road	Collection Line Crossing	North to South	8300' West of State Route 189
Merchia Road	Access Road	South	9400' West of State Route 189
Jones Road	Access road	East	2100' South of Frontier Road
Jones Road	Collection Line Crossing	East to West	2100' South of Frontier Road
Jones Road	Collection Line Along Road	West	Starting 2100' South of Frontier Road and continuing South for 1700', the collection line runs parallel to the road
Jones Road	Access Road	West	3800' South of Frontier Road
Liberty Pole Road	Access Road	South	3800' East of State Route 189
Liberty Pole Road	Collection Line Crossing	South to North	3800' East of State Route 189
Liberty Pole Road	Collection Line Along Road	North	Starting 3800' East of State Route 189 and continuing for 350', the collection line runs parallel to the road
Liberty Pole Road	Access Road	North	6500' East of State Route 189
Liberty Pole Road	Access Road	South	6500' East of State Route 189

Marble River Host Community Agreement

Liberty Pole Road	Collection Line Crossing	South to North	6500' East of State Route 189
Liberty Pole Road	Collection Line Along Road	North	Starting 6500' East of State Route 189 and continuing East for 2300', the collection line runs parallel to the road
Liberty Pole Road	Access Road	North	8800' East of State Route 189
Liberty Pole Road	Access Road	South	8800' East of State Route 189
Liberty Pole Road	Collection Line Crossing	North to South	8800' East of State Route 189
Clinton Mills Road	Access Road	South	2600' East of LaFrancis Road
Clinton Mills Road	Collection Line Along Road	South	Starting 2600' East of LaFrancis Road and continuing East for 900', the collection line runs parallel to the road
Clinton Mills Road	Access Road	North	1300' West of Soucia Road
Clinton Mills Road	Access Road	South	1300' West of Soucia Road
Clinton Mills Road	Overhead Collection Line Crossing	North to South	1300' West of Soucia Road
Soucia Road	Access Road	West	400' North of Clinton Mills Road
Soucia Road	Overhead Collection Line Along Road	West	Starting 400' North of Clinton Mills Road and continuing North for 6000', the overhead collection line runs parallel to the road
Soucia Road	Access Road	West	3900' North of Clinton Mills Road
Soucia Road	Access Road	North	Access continues where Soucia Road ends
LaFrancis Road	Access Road	East	3500' South of Clinton Mills Road
LaFrancis Road	Access Road	West	3500' South of Clinton Mills Road
LaFrancis Road	Overhead Collection Line Crossing	East to West	3500' South of Clinton Mills Road

EXECUTION COPY

Exhibit “E”

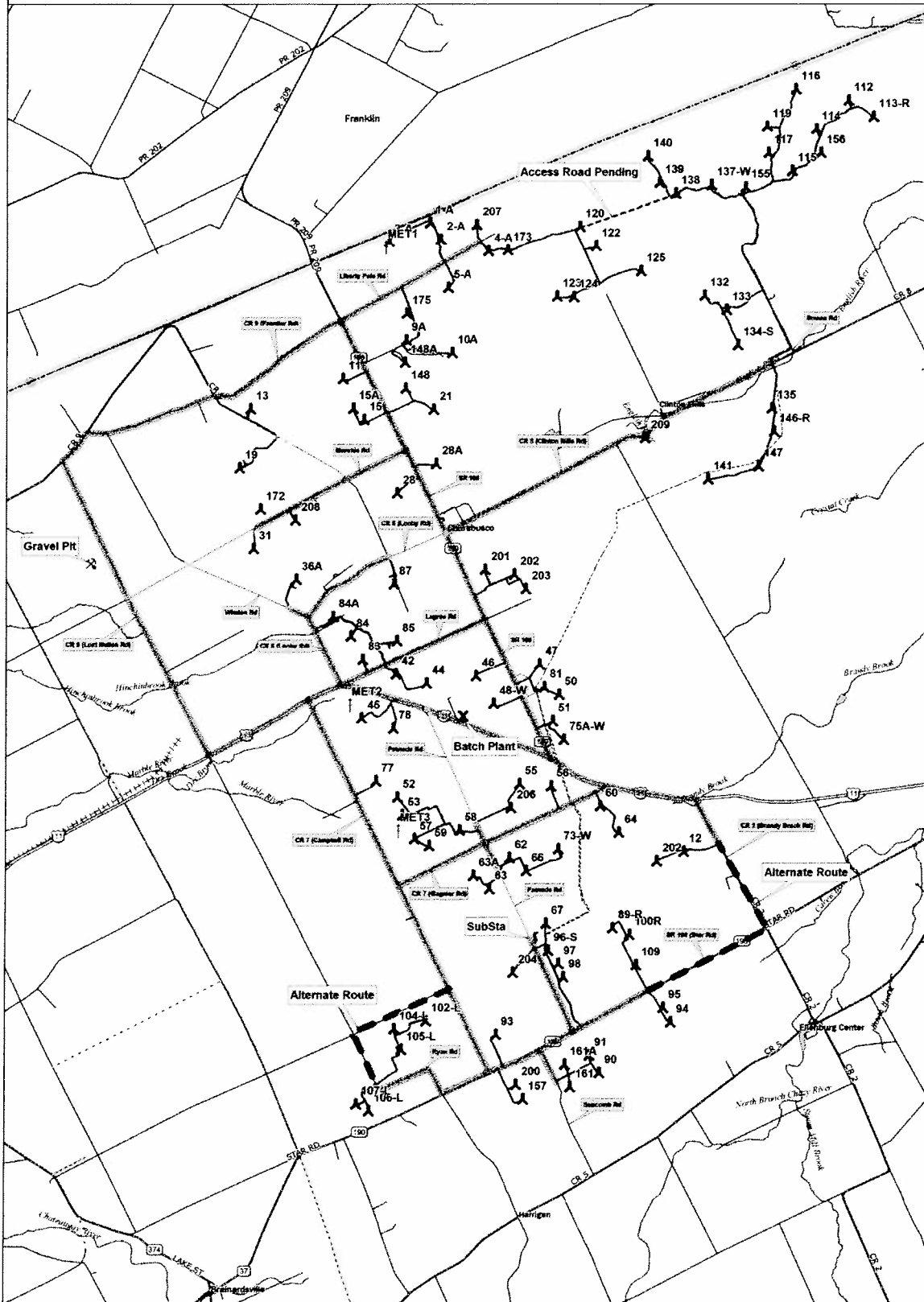
Haul Route Map for Oversized Vehicles

Marble River

Loaded Haul Roads in Green

Haul Routes 4-22-08

Unloaded Haul Roads in Yellow



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www.delorme.com

Scale 1 : 62,500

0 1 2

1" = 5,208.3 ft

Data Zoom 11-6

EXECUTION COPY

Exhibit “F”
Decommissioning Plan

Decommissioning Plan for the Marble River Wind Farm

Anticipated life of turbines

Megawatt-scale wind turbine generators available on the market today have a life expectancy of more than 20 years. The tubular steel towers supporting the generators are of simple design and with basic routine maintenance will serve well beyond that of the generators.

As the generators approach the end of their expected life, technological advances should make available more efficient and cost effective generators that will economically drive the replacement of the existing generators.

Estimated costs of decommissioning

The cost of decommissioning the wind turbines is offset by the salvage value of the towers and turbine components.

Decommissioning costs per tower (in current dollars):

Removal of a Tower	
200 man hours x \$65/hour	\$13,000
Crane 5 days x \$2,900/day	\$14,500
Remove concrete to 36" below grade	
100 man hours x \$50/hour	\$5,000
Equipment 3 days x \$1,500/day	\$4,500
Remove access roads: (average of 1986 feet/turbine)	
100 man hours x \$65/hour	\$6,500
Equipment 6 days x \$1,500/day	\$9,000
Seeding and re-vegetation:	
80 man hours x \$30/hour	<u>\$2,400</u>
	\$54,900
Salvage value of a turbine: (based on Gamesa G90)	
Scrap value of tower steel (200 tons x \$200/ton)	\$40,000
Scrap value of generator components	<u>\$5,000</u>
	\$45,000
Estimated cost of decommissioning minus salvage value	<u>\$9,900</u>

Ensuring decommissioning and site restoration funds

The Applicant will continuously maintain a surety bond or equivalent financial security instrument payable to the Town for the removal of non-functioning turbines and appurtenant facilities, in a form and amount approved by the Town Board for the period of the life of the facility. Prior to the issuance of a building permit, The Applicant will, in writing, request approval of a proposed surety bond or financial security instrument in a proposed amount not less than \$200,000 for the removal of non-functioning turbines and associated facilities. The Applicant will fully fund the approved bond or financial instrument prior to issuance of a building permit for the Marble River Wind Farm. The Applicant recognizes that the Town may include a condition in any approval of the Project that prohibits transfer of the Project permits/approvals unless the Town

Board reasonably approves a decommissioning bond or financial security instrument for the prospective Transferee.

The costs associated with decommissioning and restoration will be studied by an independent licensed engineer retained by the town and paid by the applicant on a cycle beginning after the operations date of the wind farm and every five years thereafter for the life of the wind farm. A report of each study will be submitted to the Town Board. Any adjustment in the security value recommended by the engineer's report will be made within 60 days of delivery of the report to the Town Board.

Decommissioning process description

All decommissioning and restoration activities will adhere to the requirements of appropriate governing authorities and will be in accordance with all applicable federal, state, and local permits.

The decommissioning and restoration process comprises removal of above-ground structures, below-ground structures to a depth of 36 inches or greater, removal of access roads if required by the landowner, restoration of topsoil, re-vegetation and seeding, and a two year monitoring and remediation period.

Above-ground structures include the turbines, transformers, overhead collection lines, wind farm owned portions of the substation, maintenance buildings, and access gates. Below-ground structures include turbine foundations, collection system conduits, drainage structures, and access road sub-base material.

The process of removing structures involves evaluating and categorizing all components and materials into categories of recondition and reuse, salvage, recycling, and disposal. In the interest of increased efficiency and minimal transportation impacts, components and material may be stored on site in a pre-approved location until the bulk of similar components or materials are ready for transport. The components and material will be transported to the appropriate facilities for reconditioning, salvage, recycling, or disposal.

Turbine removal. Access roads to turbines will be widened to sufficient width to accommodate movement of appropriate sized cranes or other machinery required for the disassembly and removal of the turbines. Control cabinets, electronic components, and internal cables will be removed. The blades, hub and nacelle will be lowered to grade for disassembly. The tower sections will be lowered to the ground where they will be further disassembled into transportable sections. The blades, hub, nacelle, and tower sections will either be transported whole for reconditioning and reuse or disassembled into salvageable, recyclable, or disposable components.

Turbine foundation removal. Topsoil will be removed from an area surrounding the foundation and stored for later replacement. Turbine foundations will be excavated to a depth sufficient to remove all anchor bolts, rebar, conduits, cable, and concrete to a depth of 36 inches below grade. The remaining excavation will be filled with clean sub-grade material of quality comparable to the immediate surrounding area. The sub-grade material will be compacted to a density similar to surrounding sub-grade material. All unexcavated areas compacted by equipment used in decommissioning shall be de-compacted in a manner to adequately restore the topsoil and sub-grade material to the proper density consistent and compatible with the surrounding area.

Underground collection cables. The cables and conduits contain no materials known to be harmful to the environment and will be cut back to a depth greater than 36 inches. All cable and conduit buried greater than 36 inches will be left in place and abandoned.

Overhead collection lines. The conductors will be removed and stored in a pre-approved location. The supporting poles will be removed and the holes filled in with compatible sub-grade material. In areas where environmental damage from complete removal may outweigh the benefits, the poles will be sawed flush with the surrounding grade (determined by appropriate governing authority). The poles will be stored in a pre-approved location. Stored conductors and poles will be later removed and transported to appropriate facilities for salvage or disposal.

Substation. Disassembly of the substation will include only the areas owned by the Applicant (any System Upgrades made by the Applicant and conveyed to the New York Power Authority or any improvements made to the local NYSEG distribution system will remain in place). Steel, conductors, switches, transformers, etc. will be reconditioned and reused, sold as scrap, recycled, or disposed of appropriately depending upon market value. Foundations and underground components will be removed to a depth of 36 inches and the excavation filled, contoured, and re-vegetated.

Access roads and construction pads. After decommissioning activities of a turbine site are completed, access road and construction pad removal shall commence. Gravel will be removed from access roads and construction pads and transported to a pre-approved disposal location. Drainage structures integrated with the access road or construction pad will be removed and backfilled with sub-grade material, the topsoil replaced, and the surface contoured and re-vegetated.

Access gates shall remain operational until completion of decommissioning at which time they will be removed unless requested by the landowner that they remain. Ditch crossings connecting access roads to public roads will be removed unless requested that they remain by the landowner.

Improvements to Town and County roads that were not removed after construction at the request of the Town or County will likely remain in place.

Site restoration process description

Topsoil will be removed prior to removal of structures from all work areas and stockpiled, clearly designated, and separate from other excavated material. Prior to topsoil replacement, all rocks 4 inches or greater will be removed from the surface of the subsoil. The topsoil will be de-compacted to match the density and consistency of the immediate surrounding area. The topsoil will be replaced to original depth and original surface contours reestablished where possible. All rocks 4 inches or larger will be removed from the surface of the topsoil. Any topsoil deficiency and trench settling shall be mitigated with imported topsoil consistent with the quality of the affected site.

In accordance with guidelines provided by New York State Department of Agriculture and Markets, topsoil de-compaction and replacement will be avoided after October 1, unless approved by the landowner in consultation with Ag. and Markets since areas restored after October 1st may not obtain sufficient growth to prevent erosion over the winter months. If areas are restored after October 1st, provision will be made to restore any eroded areas in the springtime to establish proper growth.

Following decommissioning activities, the sub-grade material and topsoil from all affected agricultural areas will be de-compacted and restored to a density and depth consistent with the surrounding fields or to a depth of 18 inches. The affected areas will be inspected, thoroughly cleaned, and all debris removed.

All disturbed soil surfaces within agricultural fields will be seeded with a seed mix agreed upon with the landowner in order to maintain consistency with the surrounding agricultural uses. All other disturbed areas will be restored to a condition and forage density reasonably similar to original condition. In all areas restoration shall include, as reasonably required, leveling, terracing,

mulching, and other necessary steps to prevent soil erosion, to ensure establishment of suitable grasses and forbs, and to control noxious weeds and pests.

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 will be provided. The two-year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur from which various monitoring determinations can be made. Any remaining agriculture impacts can be identified during this period and follow-up restoration efforts will be implemented.

Exhibit "G"

Scope of Services of On-Site Monitor

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

1. Review of construction plans and building permit applications for compliance with applicable state and local codes, and if appropriate, in cooperation with Town officials, issuance of required building permits, Certificates of Completion and Temporary Certificates of Completion.
2. Attendance at weekly Project progress meetings as needed or requested.
3. Observation of site construction work for conformance and/or compliance with all local, state and federal governmental approvals and permits, as well as the Findings Statement, this Agreement and other agreements to which the Town and Marble River have executed for the Project.
4. Attendance at meetings with the Towns and/or State or federal agencies to review and discuss Project's status and construction conformance issues.
5. Provision of witness testing of site facilities relative to building permit and/or code compliance, if/as applicable.
6. Acting as the Town's representative with respect to dispute resolution between property owners and Marble River and/or its subcontractors.
7. Preparation and submission of any required reports to the relevant local, state or federal agency summarizing the project's status. The On-Site Monitor agrees to provide a copy of any reports sent to any local, state or federal agency with jurisdiction if requested by Marble River.
8. Home-office coordination/supervision of environmental monitor staff, and/or periodic site visits by supervisory personnel; any necessary support (e.g., clerical) of field staff.
9. Conduct of pre- and post-construction road surveys pursuant to the Agreement.
10. Conduct any inspections required by Marble River's use of Town right-of-way pursuant to the Agreement.
11. Other Project-related tasks as specified by the Town or requested by Marble River.

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

1. Neither the On-Site Monitor nor its representatives will be responsible for construction means, methods or techniques.
2. Neither the On-Site Monitor nor its representatives will be responsible for construction site safety.
3. The On-Site Monitor and its representatives shall have no approval authority over the work and/or immediate comment participation unless the observation deals with public safety or building code or other compliance issues.
4. The On-Site Monitor agrees to work within Project scheduling parameters established by Marble River to the maximum extent possible, provided that reasonable advance schedule notification is received.

Exhibit "H"

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

NOTICE OF ASSIGNMENT

To: Town of Ellenburg
Attn: Town Supervisor
Town of Ellenburg Town Hall
13 Brandy Brook Road
Ellenburg Center, New York 12923

From: [_____] [_____] [_____]
[_____] [_____] [_____]

Date: [_____]

Re: Assignment and Assumption of Host Community Agreement for Marble River Wind
Power Project

[_____] a limited liability company duly organized and existing under the laws of the State of [_____] and having an office at [_____] hereby provides notice to the Town of Ellenburg that as of [_____] it purchased or otherwise acquired all or substantially all of the assets of Marble River, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware and having an address at 52 James Street, Albany, New York 12207. [_____] hereby assumes all obligations under the Host Community Agreement by and between Marble River, LLC and the Town of Ellenburg dated as of [_____] and agrees to be bound by its provisions.

[_____] a [_____] limited liability
company

By: _____
Name: _____
Title: _____

Marble River Host Community Agreement
Exhibit "I"

CONSENT TO ASSIGNMENT
OF
TOWN AGREEMENTS

This Consent to Assignment (this "Consent") is entered into as of _____, 2008 by the TOWN OF _____, a municipal corporation organized and existing under the laws of the State of New York ("Consenting Party"), MARBLE RIVER, LLC, a _____ limited liability company ("Assignor"), and [INSERT NAME OF BANK OR AGENT FOR BANKS]. Capitalized terms used but not otherwise defined shall have the respective meanings ascribed to such terms in the [INSERT NAME OF LOAN DOCUMENTS OR FINANCING AGREEMENT] referred to below.

RECITALS

[ADD RECITALS THAT DESCRIBE THE LENDING SITUATION]

NOW, THEREFORE, in consideration of the premises and of other valuable consideration, the parties hereto agree as follows:

1. Assignment and Security Interest

As security for the performance and payment of all of the [INSERT NAME OF DEBT], Assignor has assigned or will assign to [INSERT NAME OF COLLATERAL AGENT AND DEFINE AS "COLLATERAL AGENT"] as collateral security, all of Assignor's rights in, to and under the [INSERT REFERENCE TO ASSIGNED AGREEMENTS AND DEFINE AS "ASSIGNED AGREEMENTS"] upon the terms set forth in the [INSERT NAME OF LOAN DOCUMENTS].

2. Consent

Consenting Party hereby (i) irrevocably consents to the assignment specified in paragraph 1 of this Consent and to any subsequent assignments by Collateral Agent upon and after Collateral Agent's exercise of its rights and remedies under the [LOAN DOCUMENTS] upon the occurrence and during the continuance of any Event of Default thereunder and (ii) agrees that, following the assumption of the Assigned Agreements by Collateral Agent or its nominee, designee or assignee, all representations, warranties, indemnities and agreements (other than those representations and warranties expressly made only as of an earlier date) made by Consenting Party under or pursuant to the Assigned Agreements shall inure to the benefit of such party and shall be enforceable by such party to the same extent as if such party were originally named in the Assigned Agreements. Collateral Agent shall provide to Consenting Party and Assignor notice of any such assumption (it being understood that the failure by Collateral Agent to provide such notice shall not affect or restrict Collateral Agent's rights or remedies hereunder or under the [LOAN DOCUMENTS]).

Marble River Host Community Agreement
Exhibit "I"

3. Default and Cure

(a) If Assignor defaults under any of the Assigned Agreements, Consenting Party shall, before terminating such Assigned Agreements or exercising any other remedy, give written notice to Collateral Agent specifying the default and the steps necessary to cure the same and Collateral Agent shall have ninety (90) days (thirty (30) days in the case of a default in payment by Assignor) after the later of (i) receipt of such notice and (ii) the date on which such default has become an Event of Default under the [LOAN DOCUMENTS] (or such longer period of time as may be reasonably necessary under the circumstances, provided that such default is curable and Collateral Agent is diligently pursuing such cure) to cure such default or to cause it to be cured; provided further, that the total cure period for defaults other than payment defaults shall not exceed one hundred twenty (120) days except if it is necessary for Collateral Agent to gain possession or to foreclose upon any of the collateral granted to it to secure the [LOAN DOCUMENTS] in order to cure such default in which case the total cure period for defaults other than payment defaults shall extend for a period of one hundred twenty (120) days from the date on which Collateral Agent shall have so gained possession or foreclosed upon such collateral; provided, further, that nothing contained in this Consent shall prevent the [NAME OF TOWN] from exercising its rights under [INSERT CROSS-REFERENCE TO DEFAULT PROVISIONS OF ASSIGNED AGREEMENTS] and Assignor for a default in payment by Assignor after the date that is thirty (30) days after Collateral Agent's receipt of Consenting Party's written notice of Assignor's default if Assignor's default in payment under the Assigned Agreements has not been cured by that date. If Collateral Agent fails to cure, or cause to be cured, any such default within the appropriate period set forth above, Consenting Party shall have all of its rights and remedies with respect to such default as set forth in such Assigned Agreement and at law or in equity.

(b) In the event that any of the Assigned Agreements is terminated by rejection, or otherwise, during a case in which Assignor is the debtor under Title 11, United States Code, or other similar federal or state statute, then Consenting Party shall, at the option of Collateral Agent and so long as all existing payment defaults by Assignor under such Assigned Agreement are cured by Collateral Agent or its nominee, designee or assignee, enter into a new agreement with Collateral Agent or (at the direction of Collateral Agent) its nominee, designee or assignee, having terms substantially identical to such Assigned Agreement, pursuant to which Collateral Agent or its nominee, designee or assignee shall have all of the rights and obligations of Assignor under such Assigned Agreement.

(c) If Collateral Agent notifies Consenting Party in writing that an Event of Default [UNDER THE LOAN DOCUMENTS] has occurred and is continuing and requests that Consenting Party continue performance under any of the Assigned Agreements, Consenting Party shall thereafter perform under such Assigned Agreement in accordance with its terms, so long as all existing defaults by Assignor under such Assigned Agreement that are susceptible to cure are cured by Collateral Agent or its nominee or designee within the time periods prescribed in Section 3(a) above and the obligations of Assignor thereunder shall continue to be paid and performed by Assignor, Collateral Agent or its nominee, designee or assignee.

Marble River Host Community Agreement
Exhibit "I"

4. Payments

Consenting Party agrees that until termination of this Consent in accordance with its terms, Consenting Party shall make all payments due to Assignor under the Assigned Agreements directly to such account as Collateral Agent (and, so long as no Event of Default [UNDER THE LOAN DOCUMENTS] has occurred and is continuing, Assignor) may from time to time hereafter specify in writing and Consenting Party will not be entitled to recover any amount so paid to such account; provided that the foregoing shall not limit Consenting Party's right to recover any such amount from Assignor.

5. Delivery of Notices

Consenting Party agrees that it will promptly notify Collateral Agent of any event of default or material default under any of the Assigned Agreements and will deliver to Collateral Agent simultaneously with the delivery thereof to Assignor (i) any notices regarding any default or event of default under such Assigned Agreement delivered to Assignor pursuant to such Assigned Agreement or otherwise and (ii) all material invoices, budgets, plans and reports delivered to Assignor pursuant to such Assigned Agreement.

6. Liability of Collateral Agent

Consenting Party acknowledges and agrees that Collateral Agent has not assumed and does not have any obligation or liability under or pursuant to any of the Assigned Agreements, and that the exercise by Collateral Agent of its rights and remedies under the [LOAN DOCUMENTS] shall not constitute an assumption of Assignor's obligations under any of the Assigned Agreements (except to the extent any such obligations shall be expressly assumed by an instrument in writing executed by Collateral Agent).

7. Amendment or Termination of Assigned Agreements

Consenting Party covenants and agrees with Collateral Agent that without the prior written consent of Collateral Agent (i) Consenting Party will not amend, modify or terminate (prior to the expiration of the applicable cure periods in Section 3 hereof) any of the Assigned Agreements, except as permitted by the [LOAN DOCUMENTS] and otherwise in accordance with the terms of such Assigned Agreement (as modified by the terms of this Consent), and (ii) no waiver by Assignor of any of the obligations of Consenting Party under any of the Assigned Agreements, and no consent, approval or election made by Assignor in connection with such Assigned Agreement shall be effective as against Collateral Agent, except as permitted by the [LOAN DOCUMENTS].

8. Representations and Warranties

As of the date hereof, Consenting Party hereby represents and warrants to Collateral Agent as follows:

(a) Consenting Party is a municipal corporation duly organized and validly existing under the laws of the State of New York. Consenting Party has the requisite power, authority

Marble River Host Community Agreement
Exhibit "I"

and legal right necessary to incur the obligations provided for in this Consent and the Assigned Agreements.

(b) The execution, delivery and performance by Consenting Party of this Consent and the Assigned Agreements have been duly authorized by all necessary action on its part.

(c) Each Assigned Agreement is in full force and effect and has not been amended and neither Consenting Party, nor to the knowledge of Consenting Party, Assignor, is in default in any respect under the Assigned Agreement and no event or condition exists and is continuing which with the lapse of time, the giving of notice, or both would constitute such a default under the Assigned Agreements.

(d) Each of this Consent and the Assigned Agreements constitutes the legal, valid and binding obligations of Consenting Party enforceable against Consenting Party in accordance with its terms, except as enforceability may be limited by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law) and by applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally.

(e) All representations and warranties made by Consenting Party in the Assigned Agreements were true and correct in all material respects on and as of the date when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects on and as of the date of this Consent.

(f) No material consent, approval, order or authorization of or registration, declaration of a filing with, or giving of notice to, obtaining of any license or permit from, or taking any other action with respect to, any federal, state or local government or public body, authority or agency is required in connection with the valid authorization, execution, delivery and performance of this Consent or the Assigned Agreements by Consenting Party which has not been obtained or which could not reasonably be expected to be timely obtained in the ordinary course.

(g) There is no litigation, action, suit, investigation or proceeding pending or, to the knowledge of Consenting Party, threatened against Consenting Party, before or by any court, administrative agency, arbitrator or governmental authority, body or agency, which could materially and adversely affect the performance by Consenting Party of its obligations hereunder or under the Assigned Agreements or which questions the validity, binding effect or enforceability hereof or thereof or any of the transactions contemplated hereby or thereby.

(h) Consenting Party is not in material violation of its constitutive documents. The execution, delivery and performance by Consenting Party of this Consent and the Assigned Agreements, and the consummation of the transactions contemplated hereby and thereby, does not result in (i) any violation of any term of its constitutive documents or of any material contract or agreement applicable to it, (ii) any violation of any license, permit, franchise, judgment, decree, writ, injunction, order, charter, law, ordinance, rule or regulation applicable to it or any of its properties or to its knowledge any obligations incurred by it or by which it or any of its properties may be bound or affected, or of any determination or award of any arbitrator applicable to it, or (iii) the creation of any lien upon any of its properties or assets that, in each of

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the circumstances and scenarios described in clauses (i), (ii) and (iii), could have a material adverse effect on Consenting Party's ability to perform under this Consent or under the Assigned Agreements.

(i) Consenting Party has not received notice of, or consented to the assignment of, any of Assignor's right, title, or interest in the Assigned Agreements, to any person or entity other than Collateral Agent.

9. Notices

Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Collateral Agent:

If to Assignor:

If to Consenting Party:

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person; (b) if sent by reputable overnight delivery service (including Federal Express, ETA, Emery, DHL, Air Borne and other similar overnight delivery services); (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested; or (d) if sent by telecopy confirmed by telephone. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by telecopy shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving of thirty (30) days' written notice to the other parties in the manner set forth herein above.

10. Governing Law

THIS CONSENT SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK, APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE AND WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

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11. Successors and Assigns

This Consent shall be binding upon and inure to the benefit of the parties and their respective successors and assigns (which assigns, in the case of Collateral Agent, shall include, without limitation, any nominee or designee of Collateral Agent and any purchaser of all or any portion of its rights under the Assigned Agreements in connection with the enforcement of remedies upon the occurrence and during the continuance of an Event of Default [UNDER THE LOAN DOCUMENTS]).

12. Waiver

No amendment or waiver of any provisions of this Consent shall be effective unless the same shall be in writing and signed by each of the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

13. Counterparts

This Consent may be executed in one or more counterparts and by facsimile and when signed by all of the parties listed below shall constitute a single binding agreement.

14. Further Assurances

Consenting Party will, upon the reasonable written request of Collateral Agent, execute and deliver such further documents and do such other acts and things necessary to effectuate the purposes of this Consent.

15. Conflicts

In the event of a conflict between any provision of this Consent and the provisions of the Assigned Agreements, the provisions of this Consent shall prevail.

16. Termination

This Consent and the rights of Collateral Agent hereunder shall terminate upon the Discharge of [OBLIGATIONS SECURED BY THE LOAN DOCUMENTS]. Collateral Agent shall notify promptly Consenting Party and Assignor upon the Discharge of [OBLIGATIONS SECURED BY THE LOAN DOCUMENTS].

IN WITNESS WHEREOF, each of the undersigned has duly executed this Consent as of the date first above written.

TOWN OF

By: _____
Name:
Title:

Marble River Host Community Agreement
Exhibit "I"

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

Town Clerk

MARBLE RIVER, LLC

By: _____
Name:
Title:

Marble River Host Community Agreement
Exhibit "I"

Accepted:

[NAME OF BANK] as Collateral Agent

By: _____
Name:
Title: