

Host Community Agreement

between the

Town of Sheldon

and

Sheldon Energy LLC

HOST COMMUNITY AGREEMENT

THIS AGREEMENT, made this 24th day of September 2007, by and between Sheldon Energy LLC, a limited liability company duly organized and existing under the laws of the State of Delaware (herein referred to as "**Sheldon Energy**"), having its offices at One South Wacker Drive, Suite 2020, Chicago, Illinois 60606, and the Town of Sheldon, a municipal corporation duly organized and existing under the laws of the State of New York and having its offices at Town of Sheldon Town Hall, 1380 Centerline Road, Strykersville, New York 14145 (the "**Town**"). Sheldon Energy and the Town are hereinafter referred to each as a Party or collectively as the Parties

WHEREAS, the Sheldon Town Board and the Sheldon Zoning Board of Appeals have authorized a wind energy conversion project and related infrastructure to be built and operated in the Town, which is known as the "**High Sheldon Wind Farm**" or "**Project**" as defined herein; and

WHEREAS, the Parties hereto 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.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the Parties hereto agree as follows:

1. **PURPOSE**

The purpose of this Agreement is to define the rights, interests, and obligations of the Parties regarding the construction, operation, and decommissioning of the High Sheldon Wind Farm in the Town. The terms of this Agreement only apply to the High Sheldon Wind Farm in the Town of Sheldon.

2. **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.

- a. "**Abandoned Tower**" means a "WECS" as defined below, that has been "Inoperable" as defined below, according to the provisions of Section X of the Local Laws.
- b. "**Agreement**" means this Host Community Agreement and any and all amendments, exhibits, or schedules attached hereto.
- c. "**Certificate of Completion**" shall be a written document as defined in Section 4.4.
- d. "**Decommissioning**" or "**Decommissioned**" means the removal of a WECS in accordance with Exhibit A of this Agreement.

- e. **"Decommissioning Order"** means a written statement issued by the Town Board directing Sheldon Energy to Decommission one or more WECS.
- f. **"Force Majeure"** shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State of New York or civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts or other weather related events, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of Utilities, serial equipment failures, shortages of labor, material, supplies or transportation, litigation or any other similar or different cause not reasonably within the control of the party claiming such inability.
- g. **"Inoperable"** means a WECS for which the "Operations Date" as defined below, has occurred and is out of service or unable to generate electricity from the free flow of wind across the wind turbine blades in accordance with the original equipment manufacturer's rated output.
- h. **"Installation Start Date"** shall be the date on which construction of a WECS has commenced, as evidenced by the start of excavation of the WECS foundation.
- i. **"Installed Generating Capacity"** means the manufacturer-rated generating capacity in megawatts of the High Sheldon Wind Farm WECS: (i) for which the Operations Date has occurred; and (ii) for which no Decommissioning Orders are outstanding or have not been Decommissioned; and (iii) that are not Inoperable due to an event of Force Majeure.
- j. **"Operations Date"** shall be the later of the date that a WECS has: (i) been issued a Certificate of Completion, or (ii) generated electricity (excluding any electricity sold during start-up and commissioning of the WECS) for sale to a third party power purchaser.
- k. **"Project"** means the High Sheldon Wind Farm WECS, Clusters A through L, including related infrastructure, access roads, electrical transmission lines and substations for which the Town Permits and related variances have been approved.
- l. **"Local Laws"** means Local Law No. 1 of 2003 of the Town of Sheldon, Wyoming County.
- m. **"New York State Department of Environmental Conservation"** or **"DEC"** is the Department of the government of the State of New York created by Chapter 140 of the Laws of 1970, and having the jurisdiction, powers, and duties described in the Environmental Conservation Law of the State of New York, or any successor thereto.

- n. **"Sheldon Energy"** means Sheldon Energy LLC, and its successors, assigns, and transferees.
- o. **"Town"** means the municipal corporation known as the Town of Sheldon in Wyoming County, State of New York, and, depending upon the context, the geographic area thereof.
- p. **"Town Agreements"** means this Agreement and any other agreements entered into between the Town and Sheldon Energy concerning the Project.
- q. **"Town Board"** means the Town Board of the Town of Sheldon.
- r. **"Town Permits"** means all Special Use Permits and other approvals issued by the Town for the construction, operation, and Decommissioning of the Project, including the Special Use Permits and variances approved by resolutions of the Town Board on April 17, 2007, the variances approved by resolutions of the Town of Sheldon Zoning Board of Appeals on April 16, 2007, and any other revisions or re-ratifications of the aforementioned approvals and permits.
- s. **"WECS"** is a wind energy conversion system (including supporting towers, pad mounted electrical transformers, and any other associated equipment or structures), also referred to as a wind turbine or a wind turbine generator.

3. PROJECT OWNERSHIP AND TRANSFER

- 3.1. **Applicability.** This Agreement is applicable to Sheldon Energy, its successors, transferees, and assigns, and to all parties to which Sheldon Energy may transfer any or all of its ownership interests or contracts or subcontracts concerning the construction, management, operations and/or maintenance in, and responsibilities of the Project.
- 3.2. **Assignee Obligations.** Sheldon Energy may transfer any or all of its interests in the ownership, operation and/or maintenance of the Project or its property interests if the proposed transferee has, in writing, agreed to abide by the terms of this Agreement, the Town Agreements, and any Town Permits, including any bonds or financial commitments, including the requirements of any payment in lieu of taxes pursuant to an agreement with the Wyoming County Industrial Development Agency.
- 3.3. **Security Assignment.** Notwithstanding Section 3.2 herein, Sheldon Energy may assign without further notice to the Town, pledge and mortgage to any lender as collateral security, all of its rights to and under the Town Agreements and all escrow accounts established pursuant thereto. The Town hereby: (i) irrevocably consents to said assignment, pledge and mortgage and to any subsequent assignments by the lenders, and the assumption of the Town Agreements by the lender or their nominee, designee or assignee; (ii) agrees to unconditionally execute without undue delay any such consents or other documents as may be required by the lender or their nominee, designee or assignee; and, (iii) agrees that,

following the assumption of the Town Agreements by lender or their 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 Town under the Town 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 Town Agreements.

4. **COMPLIANCE WITH LAW**

- 4.1. **Legal Compliance.** The Project shall be constructed and operated in compliance with the Town Permits.
- 4.2. **Construction Monitor.** The Town shall engage a third party with a reasonable amount of experience in the construction industry to monitor the construction and operation of the Project (the “**Construction Monitor**”) to represent the Town’s interest in ensuring the Project complies with: (i) the Town Permits; (ii) the Town Agreements; and, (iii) the Local Laws. The Construction Monitor shall also be the Town’s designated party to perform post-construction environmental monitoring duties of the Project.
- 4.3. **Monitoring Costs.** Sheldon Energy shall reimburse the Town for the reasonable and documented expenses of the Construction Monitor in performing the duties specified in Section 4.2 above up to a maximum value of Fifty Thousand Dollars (\$50,000.00) during the period between the Effective Date of this Agreement and the Operations Date, and a limit of Ten Thousand Dollars (\$10,000.00) per year thereafter until the earlier of: (i) all WECS are Decommissioned; (ii) this Agreement is terminated.
- 4.4. **Certificate of Completion.** The Construction Monitor shall issue a written, dated, and signed “**Certificate of Completion**” to Sheldon Energy and the Town immediately upon confirming a WECS has been installed in accordance with: (i) the Town Permits; (ii) the Town Agreements; and, (iii) the Local Law.
- 4.5. **Appeal of Certificate of Completion Denial.** In addition to any remedies otherwise available, Sheldon Energy may seek an appeal with the Town Board of any Certificate of Completion denial or approval with conditions. For such an appeal, the Town Board shall issue a final determination within thirty (30) days from the application for appeal by Sheldon Energy. If the Town Board upholds such denial, or approves the Certificate of Completion with conditions that Sheldon Energy finds unacceptable, Sheldon Energy will have satisfied its administrative remedies and may immediately pursue its remedies against the Town, including immediate commencement of an Article 78 or equivalent proceeding to review such denial or approval action.

5. **HOST COMMUNITY PAYMENTS AND IMPROVEMENTS**

- 5.1. **Town Fees.** Beginning on the Operations Date, Sheldon Energy shall pay the Town an amount equal to Six Thousand Six Hundred and Ninety Three Dollars (6,693.00) per year per Megawatt (the "**Town Fee Rate**") times the prevailing Installed Generating Capacity (the "**Town Fees**").
- 5.2. **Fee Dates and Partial Years.** Town Fees shall be calculated on a fiscal year basis, July 1 to June 30, and paid in arrears on or before the November 1st following the end of each fiscal year. The Town Fee shall be pro-rated based on a 365-day year for any changes in Installed Generating Capacity that may have occurred during the prior year.
- 5.3. **Use of Town Fees.** The Town Fees received by the Town may be used by the Town for any purposes allowed by law.
- 5.4. **Escalation.** Starting on the second anniversary date for which Town Fees are due, and for every fiscal year thereafter during the period when Town Fees are due, the Town Fee Rate shall be increased by an amount equal to the percent change for such fiscal year in the Consumer Price Index as published by the Bureau of Labor Statistics of the U.S. Department of Labor, but in no fiscal year shall the total percent change be less than two percent (2.0%) or more than three and one half percent (3.5%).
- 5.5. **Changes in Installed Generating Capacity.** If the Installed Generating Capacity of the Project is increased or decreased for any reason including Decommissioning of any WECS, the Town Fees shall be adjusted upward or downward to match any increase or decrease in the amount of Installed Generating Capacity, prorated for the fiscal year in which the change was made.
- 5.6. **Construction Fee.** On or before November 1st of a fiscal year, Sheldon Energy shall pay the Town an amount equal to product of ("**Construction Fee**"): (i) the Town Fee Rate; and, (ii) the manufacturer-rated generating capacity in megawatts of each WECS for which the Installation Start Date has been achieved. In no event shall a Construction Fee and Town Fees be paid for the same WECS during any fiscal year.
- 5.7. **Varysburg Ballfield Walkway.** Within three (3) months of the Operations Date, Sheldon Energy shall pay the Town an amount not to exceed Thirty Thousand Dollars (\$30,000) for the sole purpose of constructing an extension to the existing walkway around the baseball field owned by the Town of Sheldon in the hamlet of Varysburg, NY. The Town shall be solely responsible for the design and construction of the walkway.
- 5.8. **Historic Preservation Improvements.** As part of the Project's Section 106 consultation with the New York State Department of Parks, Recreation, and Historic Preservation ("**SHPO**"). Sheldon Energy shall contribute an amount not to exceed One Hundred Thirty Five Thousand Five Hundred Dollars (\$135,500) for the sole purposes of ("**SHPO Fee**"): (i) performing renovations to the Strykersville Schoolhouse; (ii) performing maintenance

services on the Person's and Frink's Corner Cemeteries; and, (iii) publishing a history booklet on the Town of Sheldon. Notwithstanding the above, Sheldon Energy reserves the exclusive right to: (i) adjust the specific uses and allocation of the SHPO Fee in performing the services specified in this Section 5.8; (ii) adjust the timing and distribution of the SHPO Fee but in no event after the Operations Date; and, (iii) specifying the specific party including the Town responsible for performing all or portions of the services specified in this Section 5.8 as Sheldon Energy may be directed by SHPO.

6. FIRE PROTECTION CONTROL AND SAFETY

- 6.1. **Fire Chief Meetings.** Sheldon Energy will meet on an annual basis with the chiefs of the fire districts where WECS are located (the "**Fire Chiefs**") to review access, fire suppression procedures, training needs, and other issues related to the Project. The initial meeting will take place within one hundred twenty (120) days of the scheduled commencement of construction of the Project.
- 6.2. **Emergency Preparedness and Fire Prevention Plan.** Within thirty (30) days after completion of the initial meeting with the Fire Chiefs, Sheldon Energy will submit to the Fire Chiefs and to the Town, an Emergency Preparedness and Fire Prevention Plan ("EPFPP") that identifies and addresses reasonable concerns raised by the Fire Chiefs.

7. COMPLAINT MANAGEMENT PROGRAM

- 7.1. **Complaint Hotline.** Sheldon Energy will establish, advertise, and maintain a local or toll-free telephone number that will serve as a High Sheldon Wind Farm Hotline where residents can make complaints regarding the Project on a 24-hour a day, 7-day a week, basis.
- 7.2. **Complaint Log.** Received complaints will be recorded in a Project complaint log, which will contain the date and time of the complaint provided the name of the complainant, and telephone and address of the complainant are furnished, and the location, nature and duration of the circumstances giving rise to the complaint and any other relevant information. Details of complaint investigations and findings, including whether any mitigation or corrective measures were undertaken as a result of the complaint will be documented in the complaint log.
- 7.3. **Complaint Investigation.** Sheldon Energy will investigate legitimate complaints and determine the response necessary to address and mitigate the conditions giving rise to the complaint. Sheldon Energy will implement commercially reasonable corrective measures to eliminate or mitigate the conditions giving rise to verified and reasonable complaints.
- 7.4. **Access to Complaint Log.** On a quarterly basis, Sheldon Energy will provide a copy of the complaint log to the Town Supervisor, including the results of any investigative activities and the ultimate resolution of any complaints.

8. ENFORCEMENT OF RESTRICTIONS.

- 8.1. Remedies. Sheldon Energy acknowledges the Town has no adequate remedy by way of damages in the event Sheldon Energy breaches the obligations or restrictions contained within this Agreement and, therefore, Sheldon Energy agrees that in such event the Town may apply to the Courts for equitable relief directing Sheldon Energy to comply and/or enjoining or restraining Sheldon Energy from any breach hereof.
- 8.2. Dispute Resolution. In the event of a dispute concerning compliance with this Agreement, Sheldon Energy and the Town agree they will engage in alternative dispute resolution in the form of non-binding mediation, except where this Agreement grants an immediate right to commence judicial action. 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, the litigation shall be tolled during the period of mediation, but nothing in this provision shall toll any applicable statute of limitations or requirement to pursue administrative remedies. The materials submitted to the mediator, and any statements during the mediation process or recommendations of the mediator are not admissible in any other forum, administrative or judicial, without the written consent of both parties, and will not be used against any party in any other forum, administrative or judicial.

9. INDEMNIFICATION AND INSURANCE

- 9.1. Town Protection. Except to the extent caused by the negligence, illegal or willful misconduct of the Town or its officers, agents, employees or subcontractors, Sheldon Energy agrees that it will indemnify and hold harmless the Town and its officers and employees from and against liability, actions, damages, claims, demands, judgments, losses, cost, expenses and fees, including reasonable and documented attorney's fees (collectively, "losses"), including losses for injury or death to persons or for loss or damage to property, and private nuisance actions, and will defend the Town and its officers and employees in court actions in connection with such losses, whether or not finally adjudicated and including any settlement thereof, provided such losses result from or arise out of acts of Sheldon Energy or its officers or employees; and further provided such losses are 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 a third party pursuant to which the Town is entitled to be indemnified hereunder, the Town shall immediately notify and contemporaneously provide Sheldon Energy with a copy of the written documents presented by such third party. Sheldon Energy 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 solely deem reasonable.
- 9.2. Sheldon Energy Protection. Except to the extent caused by the negligence, illegal or willful misconduct of Sheldon Energy or its officers, agents, employees or subcontractors, the Town agrees that it will indemnify and hold harmless Sheldon Energy and its officers and employees from and against liability, actions, damages, claims, demands, judgments, losses, cost, expenses and fees, including reasonable and documented attorney's fees (collectively,

"losses"), including losses for injury or death to persons or for loss or damage to property, and private nuisance actions, and will defend Sheldon Energy and its officers and employees in court actions in connection with such losses, whether or not finally adjudicated and including any settlement thereof, provided such losses result from or arise out of acts of the Town or its officers or employees; and further provided such losses are 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 Sheldon Energy by a third party pursuant to which Sheldon Energy is entitled to be indemnified hereunder, Sheldon Energy shall immediately notify and contemporaneously provide the Town with a copy of the written documents presented by such third party. The Town 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 solely deem reasonable.

- 9.3. Insurance. Upon the commencement of construction of the Project, Sheldon Energy will, at its expense, maintain a general commercial liability and excess umbrella insurance policy with a combined total coverage limit of at least Five Million Dollars (\$5,000,000.00) with a deductible of not more than Ten Thousand Dollars (\$10,000.00) that will cover personal injuries, accidents, or judgments related to the Project. Sheldon Energy will provide proof of such insurance upon the written request of the Town.

10. JOINT DEFENSE OF LITIGATION

- 10.1. Should any party bring a Federal or State suit or proceeding, including a proceeding pursuant to Article 78 of the Civil Practice Law and Rules regarding the validity of the Town Permits, Town Agreements, and any other approvals or permits for the Project, Sheldon Energy and the Town shall cooperate in the defense of said action. Sheldon Energy agrees to fund reasonable attorneys' and experts' fees and costs applicable to the Town's defense of any such action. In the case of said litigation, the Parties hereby authorize their respective counsels to enter into a separate joint defense agreement, so they and their clients can continue to pursue their separate but common interests and to avoid any suggestion of waiver of privileged communications.

11. SHELDON ENERGY'S RIGHT OF TERMINATION

- 11.1. Right of Termination. In the event the Town modifies the terms and conditions of any permits issued to or its regulations governing operation of the Project in a manner that, in the sole opinion of Sheldon Energy, impacts the Project or requires Sheldon Energy to materially change its operations, Sheldon Energy may opt, at its discretion, to terminate the Agreement and have no further obligations or liability hereunder. Sheldon Energy reserves its rights to initiate a judicial challenge to the Town's modifications of the permits or regulations in question, which challenge shall not serve as a waiver of its right to terminate the Agreement.
- 11.2. Escrow of Fees. In the event that Sheldon Energy elects to terminate this Agreement pursuant to Section 11.1, and the Town seeks a judgment in a court of competent jurisdiction challenging the termination, any Town Fees otherwise due under this

Agreement shall be deposited with the court or an escrow agent mutually agreeable to both Parties, pending the outcome of the litigation, including any and all related appeals. At the end all such litigation, Town Fees shall be paid as appropriate according to the outcome of the litigation.

12. DURATION OF AGREEMENT

- 12.1. Effective Date. This Agreement will become effective upon its execution by Sheldon Energy and the Town Supervisor (the “**Effective Date**”).
- 12.2. Duration. The terms of this Agreement shall be in full force and effect until the earlier of: (i) the Decommissioning of all WECS; or, (ii) the termination of this Agreement.

13. TOWN REMEDIES IN THE CASE OF MONETARY BREACH

- 13.1. Notice; Cure. If Sheldon Energy fails to pay Town Fees due under this Agreement (a “**Monetary Breach**”), the Town Board shall provide written notice of the alleged Monetary Breach specifying the details of the alleged Monetary Breach and the amount due. Sheldon Energy shall cure any non-disputed Monetary Breaches within forty five (45) days after receipt of the notice, which time may be extended by the Town upon Sheldon Energy’s submission of a remedial action plan.
- 13.2. Escrow of Disputed Fees. For any alleged Monetary Breach, Sheldon Energy shall have the right to pay any disputed Town Fees directly into an escrow account, to be distributed to the successful party: (i) by mutual agreement of parties at the end of mediation efforts; or, (ii) at the conclusion of litigation, including appeals, in accordance with the order of a court of competent jurisdiction. The Town Fees shall be the exclusive and sole remedy of the Parties under a Monetary Breach provided Sheldon Energy has made the disputed Town Fee payments into such escrow account.
- 13.3. Remedies. Upon the failure of Sheldon Energy to cure a Monetary Breach as set forth in Section 13.1 or to deposit the disputed Town Fees into an escrow account as provided in Section 13.2, the Town Board may issue a written Notice of Breach. Upon the written request of Sheldon Energy, which must be sent to the Town within thirty (30) days of Sheldon Energy’s receipt of the Notice of Breach, the Town Board shall hold a judicial type hearing at which Sheldon Energy and the Town may present evidence. If after such hearing the Town Board determines Sheldon Energy is still in breach, it shall issue a written Notice of Decision specifying the Monetary Breach and the amount due in Town Fees. Sheldon Energy shall have ninety (90) days after receipt of such notice to make full payment of the disputed Town Fees. If Sheldon Energy shall fail to make full payment of the disputed Town Fees within the period set forth above, the Town Board shall have the right to issue a Decommissioning Order requiring the disputed WECS to be Decommissioned. Where a Monetary Breach involves only certain WECS, the Decommissioning Order may only be sought against those WECS. Said Decommissioning Order shall be tolled by the commencement of litigation by Sheldon Energy challenging the Decommissioning Order.

14. TOWN REMEDIES IN THE CASE OF NON-MONETARY BREACH

- 14.1. **Notice; Cure.** If the Project does not comply with the Town Permits or if Sheldon Energy fails to remove an "Abandoned Tower" as required by Section X of the Local Laws for causes other than a Force Majeure event, the Town Board shall issue a written Notice of Alleged Breach specifying the alleged breach and the steps necessary to cure the same. Sheldon Energy shall cure all said breaches within forty five (45) days after receipt of the Notice of Alleged Breach, which time may be extended by the Town Board upon submission to the Town of a remedial action plan by Sheldon Energy.
- 14.2. **Remedies.** Upon the failure of Sheldon Energy to cure a breach set forth in Section 14.1 above, the Town Board may issue a written Notice of Breach. Upon the written request of Sheldon Energy, which must be sent to the Town within thirty (30) days of receipt of the Notice of Breach, the Town Board shall hold a judicial type hearing at which Sheldon Energy and the Town may present evidence. If after such hearing the Town Board determines Sheldon Energy is still in breach, it shall issue a written Notice of Decision specifying the breach and the steps necessary to cure the same and Sheldon Energy shall have one hundred twenty (120) days after receipt of such Notice of Decision to cure such breach or to cause it to be cured. If Sheldon Energy shall fail to cure or cause to be cured any such breach within the period set forth above, the Town Board shall have the right to issue a Decommissioning Order requiring the offending WECS to be Decommissioned. Where a breach involves only certain WECS, the Decommissioning Order may only be sought against those WECS. Said Decommissioning Order shall be tolled by the commencement of litigation by Sheldon Energy challenging the Decommissioning Order.

15. DECOMMISSIONING SECURITY

- 15.1. **Decommissioning Security.** Starting at the Operations Date and continuing until the earlier of: (i) all WECS being Decommissioned; or (ii) the termination of this Agreement, Sheldon Energy shall maintain a form of financial security payable to the Town for purposes of Decommissioning the Project WECS (the "**Decommissioning Security**"). The Decommissioning Security may, at Sheldon Energy's discretion, be in the form of a parent guarantee, bond, or a letter of credit from a State of New York-licensed financial institution. All costs of the Decommissioning Security shall be borne by Sheldon Energy.
- 15.2. **Proof of Decommissioning Security.** On or before the Operations Date, and on or before every anniversary of the Operations Date, Sheldon Energy will provide the Town written evidence that the Decommissioning Security has been posted for a period starting at the upcoming anniversary of the Operations Date and continuing for a period of twelve (12) months or more thereafter.
- 15.3. **Amount of Decommissioning Security.** The Decommissioning Security on the Operations Date shall be in an amount of Five Thousand Nine Hundred Dollars (\$5,900.00) per Project WECS.

- 15.4. Review of Amount of Decommissioning Security. Once every five (5) years the Town may, at its discretion, hire an independent New York licensed engineer to review the cost of Decommissioning and the salvage and resale value of the WECS. If the net cost of Decommissioning plus any credit for the salvage and resale value of the WECS (the "**Engineering Estimate**") exceeds the amount of the Decommissioning Security, then on or before the next anniversary of the Operations Date, Sheldon Energy shall increase or decrease the amount of the Decommissioning Security to the Engineering Estimate provided Sheldon Energy has not disputed such estimate pursuant to Section 15.5 below. The Decommissioning Security may be reduced pro rata by Sheldon Energy whenever decommissioning of a WECS is completed.
- 15.5. Disputes of Engineering Estimates. If Sheldon Energy disagrees with the Engineering Estimate, the dispute shall be resolved in the following manner: Sheldon Energy shall retain its own independent New York licensed engineer to prepare an independent Engineering Estimate. If the Town does not agree with that Estimate, then the two engineers shall jointly retain a third independent New York licensed engineer to prepare a third independent Engineering Estimate with the expense split equally by the parties. If the third Estimate yields an Estimate that is within the range of the two prior Estimates, then the third Estimate shall become the Engineering Estimate and the parties shall be bound to such third Estimate. If the result is not within the range of the two prior Estimates, the arithmetic average of the three Estimates shall become the Engineering Estimate and the parties shall be bound to such average Estimate. The parties each waive their right of judicial review on this sole matter, except to the extent that review is requested of the party's individual compliance with the standards of this section.

16. **DECOMMISSIONING RIGHTS**

- 16.1. Decommissioning by the Town. If Sheldon Energy fails to Decommission a WECS as required by a final and undisputed Decommissioning Order, then starting on the date ninety (90) days after the issuance of the Decommissioning Order, the Town may draw funds from the Decommissioning Security for the sole purpose of Decommissioning the disputed WECS. Any funds drawn but not required to complete the Decommissioning, including but not limited to sale or salvage of decommissioned equipment and materials, shall be paid by the Town to Sheldon Energy within thirty (30) days after completion of the Decommissioning.
- 16.2. Decommissioning by Sheldon Energy. Sheldon Energy retains the right to Decommission any or all WECS for any reason and at its sole discretion. Such Decommissioning performed at the discretion of Sheldon Energy shall be preceded by written notice provided to the Town prior to the start of Decommissioning. Upon Decommissioning of all the WECS, Sheldon Energy shall have no further obligations or liability under this Agreement.

17. **SEVERABILITY**

If any clause, provision, subsection, section or article of this Agreement shall be ruled invalid by any court of competent jurisdiction, then the Parties will:

- a. Promptly meet and negotiate a substitute for such clause, provision, section or article, which will to the greatest extent legally permissible affect the original intent of the Parties therein.
- b. If necessary or desirable to accomplish Section 17(a) above, apply to the Court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement.
- c. Negotiate such changes in, substitutions for, or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with Section 17(a) and Section 17(b) above to affect the original intent of the Parties in the provision declared invalid.

The invalidity of such clause, provision, subsection, or Section will not affect any of the remaining provisions hereof, and this Agreement will be construed and enforced as if such invalid portion did not exist.

18. 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:

(i) Notices to the Town:

Town of Sheldon
Attention: Town Supervisor
Sheldon Town Hall
1380 Centerline Road
Strykersville, New York 14145

(ii) Notices to Sheldon Energy:

Sheldon Energy LLC
c/o Invenergy Wind North America LLC
Attention: General Counsel
One South Wacker Drive, Suite 2020
Chicago, Illinois 60606

19. MISCELLANEOUS

- 19.1. 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.
- 19.2. 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 shall be solely in the New York State Supreme Court for the County of Wyoming.

- 19.3. Enforcement. Nothing in this Agreement or the Town Agreements shall limit the right of the Town to enforce the Local Laws through all civil or criminal proceedings available under the law.
- 19.4. Entire Agreement. Unless supplemented or otherwise amended in writing by the Town Board and Sheldon Energy in accordance with the laws of the State of New York, this Agreement constitutes the Parties' entire agreement with respect to the subject set forth herein, and no other agreements, written or unwritten, implied or express, will be deemed effective.
- 19.5. Confidentiality. Unless compelled to disclose by judicial or administrative process or other provisions of law or as otherwise provided for in this Agreement, each Party will hold in confidence any and all documents and information furnished by the other Party in connection with this Agreement; provided, however, that to the extent it is necessary for either Party to release or disclose such information to a third party in order to perform that Party's obligations herein, or in accordance with public document disclosure laws, such Party shall advise said third party of the confidentiality provisions of this Agreement and use its best efforts to require said third party to agree in writing to comply with such provisions. Notwithstanding the foregoing sentence, the Town expressly agrees that information regarding the Project's output, markets for or purchase of that output and related facility environmental attributes, and any projected outage or maintenance schedule for the Project shall be considered confidential and shall under no circumstances be shared with the personnel of the Town, or any other entity, involved directly or indirectly in negotiating or effectuating power trading, purchases or sales of electricity, or trading futures.

In the event that a receiving Party: (i) receives notice or otherwise concludes that the production of any confidential information or documentation furnished by the disclosing Party and subject to this section is being sought under any provision of law, (ii) is required by applicable laws or regulations to disclose any of the information deemed by this Agreement to be confidential and/or proprietary; or, (iii) shall be requested by subpoena, court or administrative order, or otherwise, to disclose any of the information deemed by this Agreement to be confidential and/or proprietary, such receiving Party shall give immediate written notice by facsimile or overnight courier to the disclosing Party. Upon receipt of same, disclosing Party reserves the right to interpose all objections it may have to the disclosure of such information, and receiving Party agrees to cooperate fully with disclosing Party with regard thereto. If either Party desires to object or oppose such production, it must do so at its own expense. If any third party commences a proceeding against the Town for failure to provide access to a document designated confidential, Sheldon Energy agrees to defend, indemnify and hold the Town harmless in such action on the terms and subject to the conditions set forth in this Agreement.

- 19.6. Authority of Town. The Town represents and warrants that the Supervisor has executed this Agreement pursuant to a resolution adopted by the Town Board of the Town of Sheldon, at a meeting thereof held on September 18, 2007, and that John Knab, Supervisor, whose signature appears thereafter, is both duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Town. This instrument will be

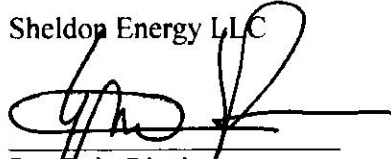
executed in at least triplicate and at least one copy thereof will be permanently filed, after execution thereof, in the office of the Town Clerk, Town of Sheldon, 1380 Centerline Road, Styrkersville, New York.

- 19.7. Authority of Sheldon Energy. Sheldon Energy represents and warrants that Enio Ricci, whose signature appears hereafter, is both duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of Sheldon Energy LLC.

Signature Page Follows

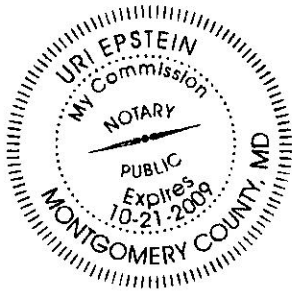
IN WITNESS WHEREOF, the Parties hereto have set their hands and seals on the date and year above written.

Sheldon Energy LLC


By: Enio Ricci
Its: Vice President

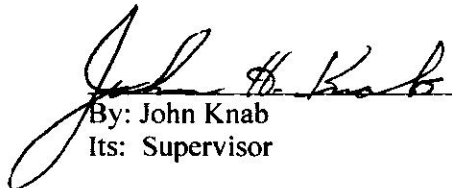
STATE OF MARYLAND)
COUNTY OF MONTGOMERY) ss.:

On the 24th day of September, 2007, before me personally came Enio Ricci to me known who, being by me duly sworn did depose and say that he resides in Maryland, that he is the Vice President of Sheldon Energy LLC; the limited liability company described in and which executed the above instrument.



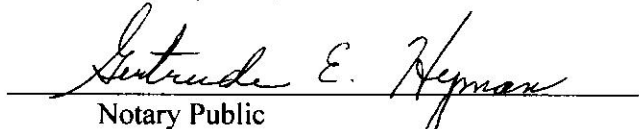

Notary Public

Town of Sheldon


By: John Knab
Its: Supervisor

STATE OF NEW YORK)
COUNTY OF WYOMING) ss.:

On the 19th day of September in the year 2007, before me, the undersigned, personally appeared John Knab, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is 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

GERTRUDE E. HYMAN
Notary Public - State of New York
No. 01HY5013115
Qualified in Wyoming County
My Commission Expires: July 15, 2009

EXHIBIT A
DECOMMISSIONING PLAN

"Decommissioning" of a WECS shall be limited to the following activities, as necessary for a given WECS:

- a. Disassembly of the WECS blades, hub, nacelle, and tower sections;
- b. Removal of the pad-mount transformer and associated foundation and conduit to a depth of three feet (3') below grade.
- c. Removal of the WECS and foundation anchor bolts to a depth of three feet (3') below grade;
- d. Transport of the disassembled WECS to a location outside of the Town or within the Town with appropriate approvals for storage of such materials and equipment;
- e. Removal of WECS access roads where requested by property owners;
- f. Replacement of subsoil and topsoil in the vicinity of removed foundations and any access roads, and ,
- g. Grading and seeding of areas where subsoil and topsoil has been replaced as part of the Decommissioning activities.

Decommissioning shall also include removal and appropriate disposal of the following project-wide components, if they are not required for continued operation of WECS that are not being decommissioned:

- a. Poles and cables for any above-ground portions of the electric collection system;
- b. The project electric transformer substation that is owned Sheldon Energy, including fencing, switchgear, and project transformer(s).

Decommissioning shall not include removal of the 230-kV substation or other transmission infrastructure owned by NYSEG or other utility companies as of the date project decommissioning first commences.