

AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS

This AGREEMENT FOR ROAD USE, REPAIR, AND IMPROVEMENTS (“**Agreement**”) is made and entered into this _____, _____ 20[] (“**Effective Date**”), between HERITAGE WIND, LLC (“**Developer**”), a Delaware Limited Liability Company with offices at 10 4th St. N.E., Suite 200, Charlottesville, VA 22902, the Town of Barre, a municipal corporation with offices at 14317 West Barre Road Albion, New York 14411 (“**Town**”), the COUNTY OF ORLEANS, a municipal corporation with offices at 14016 Route 31 West, Albion, New York 14411 (“**County**”). Developer, Town and County may be referred to herein, individually, as a “**Party**” and, collectively, as the “**Parties**”.

RECITALS

1. Developer has been developing a wind-powered electric generating facility with a planned nameplate capacity of up to approximately 150 MW, located in the Town of Barre, Orleans County, New York (the “**Project**”).
2. The Town of Barre is responsible for the maintenance of certain roads within the Town. The County is responsible for the maintenance of certain roads within Orleans County.
3. In connection with the development, construction, operation, maintenance, and decommissioning of the Project, it will be necessary for Developer and its contractors and subcontractors or designees to: (i) transport heavy equipment and materials over designated haul routes located in the County, which may in certain cases be in excess of the design limits of such roads; (ii) transport personnel, equipment, and materials on such roads; (iii) widen such roads and make certain modifications and improvements (both temporary and permanent) to such roads to permit such equipment and materials to pass; and (iv) place certain electrical cables for the Project adjacent to, or under, or across certain roads for the purposes of the collection, distribution, and transmission of electricity to and from, and between and among various parts of, the Project.
4. The Town, County and Developer wish to enter into an agreement for the use, repair, and improvement of the Designated Roads (as defined in Appendix A), all in accordance with the terms and conditions set forth herein.

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

ARTICLE I DEFINITIONS

Capitalized terms used in this Agreement and not otherwise defined shall have the meanings assigned to them in Appendix A.

ARTICLE II

USE OF DESIGNATED ROADS BY DEVELOPER

2.1 Use of Designated Roads by Developer. The Developer Parties may use the Designated Roads at any time, seven (7) days a week. Such use may include the transportation of personnel, equipment, and materials to and from the Project and shall not be restricted by limitations or regulations of the Town or County except as expressly provided in this Agreement (including Appendix B). The Town and County hereby acknowledge and approve that the Developer will need to cross the Designated Roads with heavy construction equipment, such as but not limited to cranes, during the construction, operation, maintenance, and decommissioning of the Project. As such, for the duration of the construction and the operations of the Project, no over-weight or over-size permits will be required from the Town and County for the use of the Designated Roads by the Developer Parties.

2.2 Additional Designated Roads. From time to time, including during operations, Developer may request that additional roads be included as Designated Roads by (A) submitting such a request to the Town and County in writing, accompanied by an updated version of Appendix B that includes such additional roads, and (B) performing an Initial Evaluation on such additional roads. Upon Developer's submission of such a request, the Town and County shall promptly (A) review such request and (B) unless there exists a material defect in the form of the updated Appendix B or substantial reasons related to public safety why such request should not be granted, provide written notice that such request has been granted, whereupon Appendix B shall be deemed automatically amended and restated as such updated version of Appendix B without any further action required by either Party.

2.3 Incidental Use. The Town and County hereby acknowledge and agree that, in connection with the development, construction, operation, maintenance, and decommissioning of the Project, Developer Parties may use, non-exclusively, all public Town and County roads. Use of public Town and County roads that are not Designated Roads shall be restricted by all applicable limitations and regulations concerning their use, whether federal, state, County, Town, or those of any other governmental entity or agency having jurisdiction over such roads. The Parties recognize that, while Developer does not currently anticipate use of roads within Orleans County during construction of the Project other than Designated Roads and certain federal and state highways, the Developer Parties may, nevertheless, make some incidental use of roads other than Designated Roads. All Repairs of damage caused by such incidental use shall be dealt with by adding such road to Appendix B, as provided for in Section 2.2 and the performance of Repairs in accordance with Section 4.2 as if such road had been a Designated Road when such damage occurred.

2.4 Road Closures. Developer shall use reasonable efforts to avoid the closure of any Designated Road. Nevertheless, Developer shall be permitted to close Designated Roads for brief periods in the interest of safety and to permit the passage of large loads and the installation of Improvements; *provided*, that Developer shall have provided the Town and County with twenty-four (24) hours' prior notice of any planned road closure and obtained the Town's or County's approval thereof, which approval shall not be withheld except for reasons of public safety or substantial and unavoidable public inconvenience. Notice to the Town or County Designee shall satisfy such requirement, provided that such notice is given by both telephone and either fax or e-mail.

2.5 Land Rights. The Parties acknowledge that the Developer Parties may require certain Private Land Rights in order to conduct maintenance or complete Improvements to Designated Roads, perform the Electrical/Communications Installation/maintain the Collection System, or access private lands necessary for any of the foregoing. Except for such Private Land Rights and subject to the terms and conditions of this Agreement, the Town and County represent and warrant that the Town and County possess and grant to Developer all Land Rights required, and that no further Land Rights are required for Developer, (i) to use and, to the extent required by this Agreement, maintain the Designated Roads, (ii) to complete and maintain Improvements of the Designated Roads, and (iii) to complete the Electrical/Communications Installation and maintain the Collection System within the public right-of-way as depicted in Appendix F.

2.6 No Additional Permitting. Except as expressly set forth in this Agreement, the Town and County represent, warrant, and covenant that:

- (a) as of the Effective Date, no further licenses, permits, or approvals are required by or from the Town or County for use, maintenance, upgrading, completion of the Project, including the Improvements, except as provided herein; and
- (b) in the event that a requirement for review and/or approval of plans by, or for any other approval, license, permit, authorization, or consent from the Town or County comes into effect which would otherwise be applicable to the Project, the Town or County shall, to the maximum extent permissible by law, apply such requirement proactively so as to “grandfather” the Project and maintain the effectiveness of Section 2.6(a) as written.

2.7 County Jurisdiction. Nothing in this Article II or this Agreement shall be construed as limiting or abrogating the Towns’ or County’s jurisdiction or duties under applicable law concerning the construction, maintenance, and repair of highways and bridges within the Town or County.

ARTICLE III IMPROVEMENTS AND MODIFICATIONS TO DESIGNATED ROADS

3.1 In General. Developer shall complete Improvements in accordance with this Article III. Developer shall not be required to complete any improvement or modification, or perform any road work, that is not required by this Article III, or in the case of Repairs, by Section 4.2, unless such improvement, modification, or work is required by applicable law.

3.2 Initial Evaluations. Developer shall conduct an Initial Evaluation of Designated Roads prior to commencement of construction of the Project or any Improvements to establish the Initial Condition of such Designated Roads. Developer shall provide such Initial Evaluation to the Town and County; if the Town or County, as appropriate, do not give written notice of any objection to the completeness and accuracy of the Initial Evaluation within thirty (30) calendar days after receipt, the Initial Evaluation shall be deemed accepted by the Town and/or County. If, pursuant to Section 2.2, Developer submits to the Town and County an updated version of

Appendix B that designates an additional road as a Designated Road, Developer shall perform an Initial Evaluation with respect to such additional Designated Road prior to any Improvements and submit to the Town and/or County, as appropriate, for approval following the process set forth in the preceding sentence. The costs of all Initial Evaluations will be borne by Developer. Any evaluations of the Designated Roads other than Initial Evaluations that are reasonably requested by either party shall be conducted upon mutual agreement of the Parties.

3.3 Improvements. Prior to and during construction of the Project, Developer may widen designated areas, including intersections, of Designated Roads; upgrade the base thickness and surface of the Designated Roads; strengthen and/or expand existing culverts and bridges on Designated Roads; install driveway and road entrances from Designated Roads; and perform the Electrical/Communications Installation (together, the “Improvements”) in accordance with the plans, drawings, and specifications set forth in Appendix C and Appendix F.

- (a) Due to unforeseen constraints or modifications to the Project, amendments to Appendix C and Appendix F may be required; in such case, Developer shall submit an updated Appendix C and/or Appendix F to the Town and County. The Town and County shall promptly (A) review such revised Appendix and (B) unless there exists a material defect in the form of the updated Appendix or substantial reasons related to public safety why such request should not be granted, provide written notice that such request has been granted, whereupon Appendix C and/or Appendix F, as applicable, shall be deemed automatically amended and restated as such updated version of Appendix C and/or Appendix F without any further action required by either Party.
- (b) For the avoidance of doubt, separate permits or agreements from the Town or County for Improvements set forth in Appendix C and Appendix F, as may be updated pursuant to this Section 3.3, are not needed.

3.4 County Designee. Within ten (10) days after the execution of this Agreement, the Town and County shall provide the name and contact information for their respective Town and County Designees, who shall have authority to act on behalf of the Town or County, respectively. Developer shall provide to the Town or County Designee forty-eight (48) hours’ prior written notice of the commencement of any Improvements. Upon the commencement of construction of the Project and/or the Improvements, Developer and the Town or County Designee shall meet from time to time upon the reasonable request of any Party to discuss the expected use of the Designated Roads, including the construction schedule and haul routes to be used. To the extent deemed appropriate by Developer, Developer may invite certain landowners whose property is near or adjacent to the areas of use to attend the meetings.

ARTICLE IV MAINTENANCE AND REPAIR OF DESIGNATED ROADS

4.1 Maintenance of Designated Roads.

- (a) Other than the non-paved Designated Roads during construction of the Project, which are to be maintained by Developer pursuant to Sec. 4.1(b), the Town and County shall in a

timely fashion maintain all Designated Roads in accordance with the Town's or County's standard practices for road maintenance, having due regard for safety, prevailing and predicted weather conditions, and the presence of emergency conditions, including without limitation the removal or plowing of snow.

- (b) Developer shall grade and maintain all non-paved Designated Roads during construction, including addressing Significant Fugitive Dust created by the Developer Parties using water, calcium chloride, or appropriate other commercially available reasonable means in Developer's reasonable discretion.

4.2 Repair of Designated Roads.

- (a) Developer shall be responsible for Repairs for damage caused by Developer Parties during construction; provided that during construction, Developer is not required to Repair the Designated Roads to their Initial Condition (e.g., if a chip seal coat road is damaged, the repair may only require gravel patching for the construction phase) so long as the Designated Roads are Repaired to the Initial Condition by the end of construction. Developer shall not be responsible for, or required to Repair, any damage that is not caused by a Developer Party.
- (b) Developer shall notify the Town and/or County, as appropriate, of damage requiring Repairs pursuant to Sec. 4.2(a) and request the Town's or County's authorization to conduct such Repairs. Developer shall provide the Town and/or County with reasonable details as to the nature, scope, and schedule of Repairs that Developer proposes to perform. The Town and/or County shall promptly review such proposed Repairs and provide written notice that such Repairs are approved unless there exists (i) a material defect in such proposal or (ii) substantial reasons related to public safety why such Repairs should not be performed as proposed.
- (c) If the Town or County, as applicable, rejects Developer's proposed Repairs pursuant to Section 4.2(b)(i) or (ii), the Town or County shall perform the Repairs in a timely fashion, in accordance with the Town's or County's standard practices for road repairs and any specific needs of Developer that Developer would address if Developer were making the Repairs, and otherwise having due regard for safety, prevailing and predicted weather conditions, and the presence of emergency conditions. If the Town or County performs Repairs of damage caused by the Developer Parties, Developer shall reimburse the Town or County the reasonable costs of Repairs in accordance with Appendix D, except to the extent that the Repair is of damage that results from a pre-existing condition that made or makes the Designated Road or appurtenance inadequate for, or that would cause it to fail under, normal use. Upon completion of Repairs performed by the County, but no more often than monthly, the Town or County shall deliver an invoice to Developer in accordance with the invoicing procedures attached hereto as Appendix E. Developer shall pay undisputed invoiced amounts within thirty (30) days after receipt of such invoice. Except as provided in this subsection (c), Developer shall not be required to reimburse Town or County for any Repairs performed by Town or County.

- (d) Prior to the commencement of a Repair, whether by Developer or by the Town or County, the Developer Representative and the Town or County Designee shall, in response to a reasonable request by either Party, meet to review the damage in question in relation to any Initial Evaluation or any more recent subsequent evaluation, as applicable, and to discuss the nature, scope, and schedule of Repairs. The Parties shall rely upon any available Initial Evaluation or any subsequent evaluation, as applicable, as a benchmark by which to determine (i) the Initial Condition of Designated Roads and (ii) whether a Repair was required and performed in accordance with this Agreement. At any time during or after completion of a Repair the Parties shall, upon the request of either Party, promptly conduct a joint inspection of the Repair or the progress thereof to determine that the Repair is being performed in accordance with Town or County standards.

4.3 **Failure to Maintain or Repair.** With respect to a Designated Road, in the event that the Town or County does not perform maintenance as required by Section 4.1(a) or does not perform Repairs undertaken by the Town or County pursuant to Section 4.2(c), Developer may request in writing that the Town or County permit Developer to perform such maintenance or Repair, in which case Developer shall also provide the Town or County with reasonable details as to the nature, scope, and schedule thereof. The Parties shall cooperate so as to permit the Town or County to respond promptly to such a request, which the Town or County shall endeavor in good faith to do. If the Town or County do not object to such request within five (5) Business Days (or within two (2) Business Days if exigent circumstances require [*e.g.*, if significant Project maintenance or construction delays might otherwise result]), or if the Town or County grant such request, Developer may perform, or cause to be performed, such maintenance or Repair. If Developer performs such maintenance or Repair, Developer shall complete such maintenance or Repair to standards that are the same as or better than applicable Town or County standards in all material respects and shall cooperate to permit the Town or County to inspect such maintenance and Repair work during and after its performance. The Town or County shall not be required to reimburse or otherwise compensate Developer for performing any such maintenance or Repair, except to the extent of any maintenance that the Town or County was required to perform pursuant to Section 4.1.

ARTICLE V IMPROVEMENTS AND REPAIR OF DESIGNATED ROADS DURING OPERATIONS

5.1 **Extraordinary Maintenance.** The Parties acknowledge that after construction of the Project is complete and during the operations phase of the Project, circumstances may arise under which it will be necessary or advisable for Developer to transport turbine or other Project components on overweight or oversize vehicles on or across the Designated Roads in order to replace major turbine components, make repairs to turbines beyond ordinary maintenance, repower turbine(s), and/or perform other extraordinary maintenance (“Extraordinary Maintenance”). In the event that Developer elects, at its sole discretion, any time prior to Project decommissioning, to utilize the Designated Roads for Extraordinary Maintenance, Developer may use the Designated Roads pursuant to Section 2.1 of this Agreement. For the avoidance of doubt, Developer use of the Designated Roads during operations in accordance with all applicable limitations and

regulations concerning their use, whether federal, state, County, Town, or those of any other governmental entity or agency having jurisdiction over such roads, is not subject to this Article V.

5.2 Future Improvements. After completion of the construction of the Project and for so long as the Project has not permanently ceased commercial operations, Developer may perform, but shall not be obligated to perform, Future Improvements to the Designated Roads as it deems necessary to transport equipment and parts required for Extraordinary Maintenance. Such Future Improvements shall be subject to the Town's or County's customary review and permitting processes, if any, pursuant to statutory and regulatory authority, and in any case, processes applied consistently and in a fashion that treats Developer in a manner similar to other industrial users of Town and County public roads.

5.3 Developer Repairs During Operations. Prior to utilization of the Designated Roads for Extraordinary Maintenance, Developer shall conduct, at its sole expense, an Initial Evaluation of the applicable Designated Roads to establish the Initial Condition of such Designated Roads. Developer shall provide such Initial Evaluation to the Town and County; if the Town and/or County, as appropriate, do not give written notice of any objection to the completeness and accuracy of the Initial Evaluation within three (3) calendar days after receipt, the Initial Evaluation shall be deemed accepted by the Town and County. Developer shall be responsible for Repairs for damage caused by Developer Parties while performing Extraordinary Maintenance, and each Designated Road shall be Repaired to its Initial Condition. Such Repairs shall be subject to the Section 4.2(b)-(d) as though fully set forth in this Section 5.3.

ARTICLE VI TERM; DEFAULT AND REMEDIES

6.1 Term of Agreement. The term of this Agreement shall be from the Effective Date until substantial completion of construction of the Project, unless either Party terminates this Agreement as herein provided. Notwithstanding anything herein to the contrary, the following provisions of this Agreement shall survive its termination or expiration for so long as the Project has not permanently ceased commercial operation: (i) Section 4.1(a), Section 4.2(b), and Section 4.5 (ii) Article V, including but not limited to the right of the Developer Parties under Article V (but not any obligation) to perform Future Improvements, (iii) this Article VI, and (iii) Article X.

6.2 Remedies Upon Default. Whenever an Event of Default shall have occurred, the Party not in default shall have the right to terminate this Agreement and take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce the performance or observance of any obligations, agreements, or covenants of the Party in default under this Agreement.

6.3 Remedies Cumulative. The rights and remedies of the Town or County under this Agreement shall be cumulative and shall not exclude any other rights or remedies the Town or County may have at law or in equity with respect to any Event of Default under this Agreement.

6.4 Disputes. If a dispute arises under this Agreement, any Party may commence a proceeding at law or in equity to resolve such dispute.

**ARTICLE VII
FORCE MAJEURE EVENT**

7.1 Applicability of Force Majeure Event. No Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

- (a) the affected Party shall give the other Party written notice describing the particulars of the occurrence, with written notice given promptly after the occurrence of the event, and in no event more than five (5) Business Days after the affected Party becomes aware that such occurrence is a Force Majeure Event; *provided*, however, that any failure of the affected Party to provide such written notice within such five (5) Business Day period shall not waive, prejudice, or otherwise affect such Party's right to relief under this Article VII;
- (b) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;
- (c) the Party whose performance is delayed or prevented will proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance; and
- (d) when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party will give the other Party written notice to that effect.

**ARTICLE VIII
INDEMNITY**

To the fullest extent permitted by law, each Party (as "**Indemnitor**") shall indemnify and hold harmless the other Party, and the affiliates, members, investors, and partners of such other Party, and its and their respective directors, shareholders, members, officers, and employees (collectively, "**Indemnitee**"), from and against all Losses, to the extent that such Losses may be caused by or arise out of performance of work upon Town or County roads by Indemnitor or result from any breach of any representation or warranty made in this Agreement by Indemnitor.

**ARTICLE IX
NO CONSEQUENTIAL DAMAGES**

The Parties waive all claims against each other (and against each other's parent company and Affiliates and their respective members, shareholders, officers, directors, agents, and employees) for any consequential, incidental, indirect, special, exemplary, or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or

warranty, tort, product liability, indemnity, contribution, strict liability, or any other legal theory. This Article V shall be fully effective with respect to the subject matter of this Agreement.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflict of laws provisions in such state.

10.2 Compliance with Law. Developer agrees that all Repairs and Improvements shall comply with all applicable laws.

10.3 Amendments and Integration. This Agreement (including Appendices) shall constitute the complete and entire agreement between the Parties with respect to the subject matter hereof. No prior statement or agreement, oral or written, shall vary or modify the written terms hereof. Except as set out in Section 2.2 and Section 3.3 of this Agreement, this Agreement may be amended only by a written agreement signed by the Parties.

10.4 Assignment.

- (a) Except as provided in subsections (b), (c), and (d) below, no Party to this Agreement shall assign, transfer, delegate, or encumber this Agreement or any or all of its rights, interests, or obligations under this Agreement without the prior written consent of the other Party. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned, or delayed; and (ii) without limiting the foregoing, in the case of the Town or County, the Town's or County's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of Developer pursuant to this Agreement.
- (b) Developer may, without the consent of the Town or County, assign this Agreement or any or all of its rights, interests, or obligations under this Agreement; *provided*, that such assignment shall be in connection with the conveyance or lease of the Project and the Developer assignee agrees in writing to be bound by the terms of this Agreement.
- (c) Developer may, without the consent of the Town or County, pledge, mortgage, grant a security interest in, or otherwise collaterally assign this Agreement or any or all of its rights, interests and obligations under this Agreement to a Permitted Collateral Assignee. In connection with any such collateral assignment to a Permitted Collateral Assignee, the Town or County shall, upon the request of Developer, deliver to Developer and the Permitted Collateral Assignee without delay a consent agreement in a form reasonably requested by Developer and the Permitted Assignee and which shall contain customary provisions.

- (d) Developer may, without the consent of the Town or County, assign this Agreement or any or all of its rights, interests, and obligations under this Agreement to any corporation, partnership, limited liability company, or other business entity that acquires all or substantially all of the assets used in connection with the Project or (ii) any corporation, partnership, limited liability company, or other business entity that acquires all or a portion of the membership interests in Developer; *provided*, in each case, that such Developer assignee agrees in writing to be bound by the terms of this Agreement.

10.5 Notices. All notices, requests, demands, and other communications required or permitted to be given by the Parties hereunder shall be in writing and shall be delivered in person or by facsimile or by first class certified mail, postage and fees prepaid, to the address of the intended recipient as set forth below. Notice delivered in person shall be acknowledged in writing at the time of receipt. Notice delivered by facsimile shall be acknowledged by return facsimile within twenty-four (24) hours, excluding Saturdays, Sundays, and public holidays. All such notices, requests, demands, and other communications shall be deemed to have been received by the addressee, as follows: if by first class certified mail, three (3) days following mailing; if by facsimile, immediately following transmission; or if by personal delivery, upon such delivery. All such notices, requests, demands, and other communications shall be sent to the following addresses:

To Developer: Heritage Wind LLC
c/o Apex Wind Energy, Inc.
244 East High Street
Charlottesville, VA 22902
Fax: (434) 220-3712
Attention: General Counsel

To the Town: Town of Barre
14317 West Barre Road
Albion, NY 14411
Attn: Supervisor

To the County: Orleans County
14016 Route 31 West, Suite 201
Albion, New York 14411
Attn: Chief Administrative Officer

The foregoing addresses may be changed by any Party by giving written notice to the other Party as provided above.

10.6 Exercise of Rights and Waiver. The failure of any Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof, nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

10.7 Nature of Relationship. The status of Developer under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, each Party and its officers, agents, employees, representatives, and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives, or servants of the other Party. Each Party accepts full responsibility for providing to its employees all statutory coverage for worker's compensation, unemployment, disability, or other coverage required by law. Notwithstanding the foregoing, it is not the Parties' intention to establish a relationship whereby the Town or the County are, and notwithstanding anything to the contrary in this Agreement the County shall not be, a contractor of Developer with respect to Repairs. Rather, the Town and/or County shall perform Repairs as part of its ongoing maintenance of Town and County roads, and Developer's only obligation with respect to Repairs performed by the Town or County shall be to reimburse the Town or County in accordance with this Agreement.

10.8 Severability. In the event that any clause, provision, or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be impaired, invalidated, or otherwise affected and shall remain in full force and effect.

10.9 Headings and Construction. The section headings in this Agreement are inserted for convenience of reference only and shall in no way effect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement may have been prepared by one of the Parties, the Parties confirm that they and their respective counsel have reviewed, negotiated, and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole, and any presumption that ambiguities are to be resolved against the primary drafting Party shall not apply. All Appendices and Attachments referenced in this Agreement are incorporated in and form a part of this Agreement.

10.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

10.11 No Third Party Beneficiary. No provisions of this Agreement shall in any way inure to the benefit of any person or third party so as to constitute any such person or third party as a third-party beneficiary under this Agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party hereto.

10.12 Confidentiality. Except to the extent in conflict with laws relating to freedom of information or public access to governmental information, and only to such extent, all data and information acquired by the Town and County from Developer Parties (or their affiliates, representatives, agents, or contractors) in connection with the performance by Developer of its obligations hereunder, including information regarding the Project, shall be confidential and will not be disclosed by the Town or County to any third party, and upon request of Developer will be returned thereto. Notwithstanding the foregoing, the Parties acknowledge and agree that such confidential information may be disclosed to third parties as may be necessary for Developer to

perform its obligations under this Agreement and that Developer may disclose such confidential information to its investors, potential investors, lenders, and potential lenders (including any tax equity investors). This provision will not prevent the Town or County from providing any confidential information as required by open records laws, open meetings laws, or other laws regarding public information, or in response to the reasonable request of any governmental agency charged with regulating such Party's affairs; *provided*, that in the case of a request by such a governmental agency, if feasible, the Town or County shall give prior notice to Developer of such disclosure and, if so requested by Developer, shall cooperate reasonably, at Developer's expense, in Developer's efforts (i) to oppose or resist the requested disclosure, as appropriate under the circumstances, or (ii) to otherwise make such disclosure subject to a protective order or other similar arrangement for confidentiality.

10.13 Representative of Developer. The Developer Representative shall act as the manager and coordinator of this Agreement on Developer's behalf and as liaison for Developer's communications with the Town and County and the Town and County Designees. The initial Developer Representative shall be [DEVELOPER REPRESENTATIVE].

10.14 Safety. Developer shall perform the work hereunder in a safe manner and shall obey all safety requirements of Developer, and all applicable federal, state, County, and Town laws, rules, and regulations, that may be established from time to time. While work is being done on a Designated Road, Developer shall cause the Developer Parties to (i) place signs stating that people and vehicles are entering a construction area and (ii) identify certain hazards that may be present on the Designated Road. Developer also agrees to cause the Developer Parties to provide traffic control on the Designated Roads when such roads are blocked during their use by Developer or the Developer Parties under this Agreement. All traffic control devices and signage associated with Road construction shall comply with the Manual on Uniform Traffic Control Devices.

10.15 Cooperation. Notwithstanding anything contained herein to the contrary, the Town and County agree to reasonably cooperate with Developer's reasonable use of all Town and County roads for the operation and maintenance of the Project.

10.16 Constitutional Limitations. Notwithstanding anything to the contrary in this Agreement, this Agreement shall not be construed or interpreted as having indebted the Town or County, in any manner or for any purpose, to an amount exceeding in any year the Town's or County's income and revenue provided for such year.

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IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Agreement for Road Use, Repair, and Improvements effective as of the date first above written.

TOWN OF BARRE

By: _____

Name: _____

Title: _____

ORLEANS COUNTY

By: _____

Name: _____

Title: _____

HERITAGE WIND, LLC

By: _____

Name: _____

Title: _____

APPENDIX A

DEFINITIONS

“**Agreement**”, “**Developer**”, “**Town**”, “**County**”, “**Effective Date**”, “**Parties**”, and “**Party**” have the respective meanings assigned to them in the preamble to the Agreement.

“**Appendix**” shall mean an appendix to this Agreement, including any Attachment to such Appendix.

“**Article**” and “**Section**” shall refer, respectively, to an article and section of this Agreement.

“**Attachment**” shall refer to an attachment to an Appendix.

“**Business Day**” refers each of, and “**Business Days**” refers to all weekdays, except those designated as national holidays or state holidays in New York.

“**County Designee**” means the County Highway Superintendent or a person designated by the County Highway Superintendent in a written notice delivered to Developer.

“**Collection System**” means certain wires, cables, conduits, and/or lines (and their associated equipment) related to the collection, distribution, or transmission of the Project’s (i) electrical power output at a voltage of up to 345 kV and (ii) construction, maintenance, and operation related data.

“**Designated Road**” means any road and related appurtenance(s) (including any bridge, culvert, or other fixture upon such road) specifically and expressly identified as a Designated Road in Appendix B to the Agreement, and “**Designated Roads**” means any two or more thereof; *provided, however*, that Designated Roads do not include any state or federal road or highway even if depicted in Appendix B.

“**Developer Party**” refers to each of, and “**Developer Parties**” refers to all of, Developer and its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns.

“**Developer Representative**” means the initial representative of Developer designated in Section 10.13 or such other representative of Developer as may be designated by Developer in a written notice delivered to the Town and County from time to time.

“**Electrical/Communications Installation**” means the routing, construction, and installation, above or below ground, at a location adjacent to, under, or across certain roads, as identified on Appendix F, of the Collection System.

“**Event of Default**” means the occurrence of any one or more of the following events:

- (a) Failure by either Party to make any payment or reimbursement due under the terms of the Agreement when due and payable, when such failure continues for thirty (30) days after receipt by Developer of written notice of such failure from the Town or County.
- (b) Failure by either Party to comply with any of its non-monetary obligations, covenants, agreements or conditions contained in this Agreement, when such failure continues for thirty (30) days after written notice of default from the County; *provided*, that if such failure cannot reasonably be cured within the thirty (30) day period, a default shall not be deemed to have occurred if Developer begins to cure the breach within the thirty (30) day period and thereafter diligently and in good faith continues to pursue the cure of the breach until cured.
- (c) Either Party experiencing either of the following:
 - (i) Voluntarily commencement of bankruptcy, insolvency, moratorium, reorganization, stay, or similar debtor-relief proceedings, or having become insolvent or generally failing to pay its debts as they become due, or having admitted in writing its inability to pay its debts, or the making of an assignment for the benefit of creditors; or
 - (ii) Bankruptcy, insolvency, receivership, reorganization, or a similar proceeding having been commenced against such Party and such proceeding remaining undismissed or unstayed for a period of ninety (90) days.

“Extraordinary Maintenance” has the meaning given in Section 5.1.

“Force Majeure Event” means a cause or event that is beyond the reasonable control, and without the fault or negligence, of the Party claiming such Force Majeure Event, to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money), and includes the following: natural disasters; fire; lightning strikes; earthquake; unavailability of equipment; acts of God; unusually severe actions of the elements such as snow, floods, hurricanes, or tornadoes; causes or events affecting the performance of third-party suppliers of goods or services to the extent caused by an event that otherwise is a Force Majeure Event under this definition; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act (including expropriation and requisition) of any governmental agency.

“Future Improvements” means such reasonable further Improvements as Developer believes to be reasonably necessary to accommodate the use of the Designated Roads by the Developer Parties for operation and maintenance of the Project.

“Improvements” has the meaning given in Section 3.3.

“Indemnitor” and **“Indemnitee”** have the respective meaning assigned to them in Article IX.

“Initial Condition” means the condition of Designated Roads prior to commencement of construction of the Project or Improvements as documented in the Initial Evaluation, or, in the case

of an Initial Evaluation conducted prior to Extraordinary Maintenance, the condition of the applicable Designated Road(s) prior to commencement of the Extraordinary Maintenance.

“**Initial Evaluation**” means a detailed visual record and textual report of the then-current condition of a Designated Road.

“**Land Rights**” means rights or interests in real estate, including any easement (proscriptive or otherwise), leasehold, right of way, licenses, or title in fee, as well as all consents, authorizations, and approvals that may be required for the full exercise thereof.

“**Losses**” means any and all losses, damages, liabilities, and expenses, including reasonable attorneys’ fees and court costs.

“**Permitted Collateral Assignee**” means any lender providing financing of any sort, including equity financing, for the Project as security for Developer’s obligations under a financing agreement or similar (including a trustee or agent for the benefit of its lenders).

“**Private Land Rights**” means Land Rights in or to private property which Land Rights are not owned by and do not relate to any real property that lies within any easement or right of way held by the Town or County.

“**Project**” has the meaning assigned to it in the recitals of this Agreement.

“**Repair**” and “**Repairs**” refer to the performance of work (or causing the performance of work) on a Designated Road in order to repair damage beyond ordinary wear and tear, so as to restore such Designated Road to its Initial Condition, as near as is reasonably practicable and; *provided, however,* that Repairs performed by or on behalf of Developer shall not include removal or plowing of snow.

“**Significant Fugitive Dust**” means dust that creates a nuisance by drifting beyond the boundary of the property on which such dust is raised, it being understood that a nuisance is not created unless a person is significantly and adversely affected and that dust drifting onto a vacant lot, pasture, or field may not be a nuisance.

“**Town Designee**” means the Town Highway Superintendent or a person designated by the Town Highway Superintendent in a written notice delivered to Developer.

APPENDIX B

DESIGNATED ROADS

Designated Roads are depicted in the Attachments hereto. No other roads are Designated Roads. State highway(s) may be depicted on Attachments (and, if depicted, may be depicted in yellow). Nevertheless, State highway(s) are not Designated Roads and are not subject to the Agreement.

APPENDIX C

[plans for improvements to Designated Roads/appurtenances]

APPENDIX D

REIMBURSEMENT RATES

- Labor:** With respect to labor used in making Repairs, the Town or County shall be reimbursed for the expense of such labor at the then-prevailing wage rate, as published or provided by the New York State Department of Labor for the specific type of labor in question and for the most specific region of New York of which Orleans County is a part. If a comparable prevailing wage rate cannot be obtained, the rate shall be equal to the Town's or County's actual, reasonable, out-of-pocket cost (without mark-up) for such labor.
- Equipment:** With respect to equipment used in making Repairs, the Town or County shall be compensated for the use of such equipment at the rates set out in the then-current ["Rental Rate Blue Book (Equipment Cost Recovery)", as published by Equipment Watch]. Where such rates are stated in monthly terms, such rate shall be prorated to and billed as an hourly rate, where one month equals 176 hours.
- Materials:** With respect to materials used in making Repairs, the Town or County shall be reimbursed for the expense of such materials at actual, reasonable, out-of-pocket cost (without mark-up).

APPENDIX E

INVOICING PROCEDURES

The Town and County shall invoice Developer in accordance with the invoicing procedures set out below. Invoices shall:

- Identify the invoice as relating to the Agreement for Road Use, Repair, and Improvements, including the Effective Date, between Heritage Wind, LLC, the Town of Barre and Orleans County.
- Set out an itemization of the Repairs made and their location, in each case in such detail and with such supporting documentation as are reasonable to permit Developer to verify the invoiced amounts.
- Be addressed to the Developer address set out in the Agreement's notice provision, to the attention of Project Controls.

APPENDIX F

Electrical /Communications Installation

The attached map(s) depict routing, construction, and installation of the Electrical /Communications Installation adjacent to, under, or across certain roads.