

STEBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

CANANDAIGUA POWER PARTNERS, LLC

AMENDED AND RESTATED TAX AGREEMENT

Relating To:

Wind Farm Turbine Project
Located in Steuben County, New York

Affected Tax Jurisdictions:

Steuben County
Town of Cohocton
Wayland-Cohocton Central School District
Naples Central School District

Dated as of December 1, 2019

AMENDED AND RESTATED TAX AGREEMENT

THIS AMENDED AND RESTATED TAX AGREEMENT, dated as of December 1, 2019 (as so amended and restated, the "Tax Agreement"), is by and between the **STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, with offices at 7234 Route 54 North, P.O. Box 393, Bath, New York 14810 (the "Agency") and **CANANDAIGUA POWER PARTNERS, LLC**, a limited liability company duly formed and validly existing under the laws of the State of Delaware and authorized to conduct business under the laws of the State of New York, with offices at 10535 Rynders Road, Cohocton, New York 14826 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 178 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York (the "State"); and

WHEREAS, the Company and the Agency entered into that certain Tax Agreement, dated as of February 1, 2008 (the "Original Tax Agreement") in connection with a certain project to be undertaken by the Company as agent of the Agency (the "Original Project") consisting of: (i) the acquisition by the Agency of fee title to or a leasehold interest in certain parcels of land located in the Town of Cohocton, Steuben County, New York (the "Land"); (ii) the construction and equipping on the Land of wind generation facilities consisting of approximately thirty-five (35) wind turbines generating approximately 87.5 megawatts of power, together with related substations, overhead and underground cabling and roadways for the production of wind-generated electricity and related improvements (the "Original Improvements"); and (iii) the acquisition of and installation in and around the Original Improvements of certain items of equipment and other tangible personal property (the "Original Equipment"; and, collectively with the Land and the Original Improvements, the "Original Facility"); and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (i) the retention by the Agency of its interest in the Land, (ii) the replacement of the Original Improvements to extend the useful life of the Original Facility (the "Improvements"), and (iii) the acquisition and installation by the Company in and around the Original Improvements of certain items of equipment and other tangible personal property to undertake the Project (the "Equipment"; and, collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, by resolution adopted by the Agency on October 24, 2019, the Agency approved the Project and the execution and delivery of all documents necessary and incidental thereto; and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to retain a leasehold interest in the Land, Improvements and personal property constituting the Facility pursuant to the terms and conditions of a certain Amended and

Restated Lease Agreement, dated as of the date hereof (as so amended and restated, the "Lease Agreement"), and lease said Land, Improvements and personal property back to the Company pursuant to the terms and conditions of a certain Amended and Restated Leaseback Agreement, dated as of the date hereof (as so amended and restated, the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Steuben County (the "County"), the Town of Cohocton (the "Town") and the Wayland-Cohocton Central School District and Naples Central School District (together, the "School District"; and, collectively with the County and the Town, the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows.

The Original Tax Agreement is hereby amended and restated in its entirety as follows:

Section I - Payment in lieu of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the taxable status date (**March 1, 2020**) or the continued exemption of the Facility pursuant to the Original Lease Agreement and Original Leaseback Agreement (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes commencing with the **2020** County and Town calendar tax year and the **2019/2020** School District fiscal tax years. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, Town and School District. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any

danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. For the term of this Agreement, the Company agrees to pay on January 1 of each year to the Agency at 7234 Route 54, P.O. Box 393, Bath, New York 14810, or at such other address as shall be designated from time to time by the Agency, on behalf of the Affected Tax Jurisdictions and as a payment in lieu of taxes, commencing on or before January 1, 2020, an amount equal to the Total Payment. The Total Payment shall be calculated as described on Schedule A.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, if any, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For the purpose of determining the allocation of the Total Payment among the Affected Tax Jurisdictions during the term of this Agreement, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction.

1.4 Valuation of Future Additions to the Facility. If there shall be a future addition to the Facility constructed or added in any manner after the date of this Tax Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total Payment. The Agency shall notify the Company of any proposed increase in the Total Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased payment until a different Total Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the **2019/2020** School District fiscal tax year through the **2040/2041** School District fiscal tax year, and (ii) the **2020** County and Town calendar tax year through the **2041** County and Town calendar tax year. This Tax Agreement shall **expire on December 31, 2041**; provided, however, the Company shall pay the **2041/2042** School District tax bill and the **2042** County and Town tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Tax Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of years elapsed under the Leaseback Agreement), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II - Special District Charges, Special Assessments and other charges.

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I hereof, or this Tax Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Tax Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I hereof are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I hereof, if said payment is not received by the Delinquency Date defined in Section 6.1 hereof, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the greater of the applicable penalties and

interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section VII - Assignment.

7.1 No portion of any interest in this Tax Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section VIII - Miscellaneous.

8.1 This Tax Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Steuben County Industrial Development Agency
P.O. Box 393
7234 Route 54 North
Bath, New York 14810
Attn.: James C. Johnson, Executive Director

With Copy To: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Russell E. Gaenzle, Esq.

To the Company: Canandaigua Power Partners, LLC
10535 Rynders Road
Cohocton, New York 14826
Attn: Benjamin Wolcott

With Copy To: Barclay Damon LLP
Barclay Damon Tower, 125 East Jefferson Street
Syracuse, New York 13202
Attn: Kevin McAuliffe, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This Tax Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable

to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the Federal or state courts located in Steuben County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. None of the members of the Agency nor any person executing this Tax Agreement on its behalf shall be liable personally under this Tax Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Tax Agreement.

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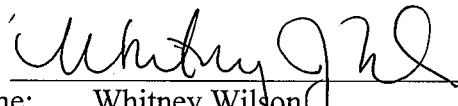
[Signature Page to Amended and Restated Tax Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Tax Agreement as of the day and year first above written.

**STEBEN COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: James C. Johnson
Title: Executive Director

CANANDAIGUA POWER PARTNERS, LLC

By: 
Name: Whitney Wilson
Title: Authorized Representative

SCHEDULE A
TO
AMENDED AND RESTATED TAX AGREEMENT DATED AS OF DECEMBER 1, 2019
BY AND BETWEEN THE
STEBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY
AND CANANDAIGUA POWER PARTNERS, LLC

"Total Payment" shall be calculated as follows:

<u>Tax Year</u>	<u>County and Town Tax Year</u>	<u>School Tax Year</u>	<u>Total Annual Payment per MW</u> (as of the date of this Agreement, the MW production is 87.5MW)
Year 1	2020	2019/2020	\$6,519
Year 2	2021	2020/2021	\$6,519
Year 3	2022	2021/2022	\$6,519
Year 4	2023	2022/2023	\$6,519
Year 5	2024	2023/2024	\$6,519
Year 6	2025	2024/2025	\$6,519
Year 7	2026	2025/2026	\$6,519
Year 8	2027	2026/2027	\$6,519
Year 9	2028	2027/2028	\$6,519
Year 10	2029	2028/2029	\$6,519
Year 11	2030	2029/2030	\$6,519
Year 12	2031	2030/2031	\$6,519
Year 13	2032	2031/2032	\$6,519
Year 14	2033	2032/2033	\$6,519
Year 15	2034	2033/2034	\$6,519
Year 16	2035	2034/2035	\$6,519
Year 17	2036	2035/2036	\$6,519
Year 18	2037	2036/2037	\$6,519
Year 19	2038	2037/2038	\$6,519
Year 20	2039	2038/2039	\$6,519
Year 21	2040	2039/2040	\$6,519
Year 22	2041	2040/2041	\$6,519