

## HOST COMMUNITY AGREEMENT

This **Host Community Agreement** (“Agreement”) is made effective as of \_\_\_\_\_, 2021 by and among South Fork Wind, LLC (“Developer”), the Town of East Hampton, New York (the “Town”), and The Trustees of the Freeholders and Commonalty of the Town of East Hampton (the “Trustees”) (hereinafter collectively the “Parties” and each a “Party”).

**WHEREAS**, Developer is developing an offshore wind farm, to be comprised of up to 15 wind turbine generators, in federal waters over 30 miles east of Montauk Point, New York (the “Wind Farm”) to deliver power to the existing Long Island Power Authority (“LIPA”) East Hampton substation located on Cove Hollow Road in East Hampton, NY (the “Substation”);

**WHEREAS**, the Wind Farm will deliver its output to the Substation via a single 138-kilovolt transmission line and associated equipment and facilities (collectively the “Cable,” as hereinafter defined) and Interconnection Facilities (as hereinafter defined; and, together with the Cable, the “Project”), portions of which Cable are planned to be installed within rights-of-way of certain Town-owned roads and beneath the public beach and parking lot at the end of Beach Lane in Wainscott in the Town, including lands owned and/or controlled by the Trustees;

**WHEREAS**, portions of the Cable installation and construction of the Interconnection Facilities will require, among other permits and consents, approval by the New York State Public Service Commission (the “Commission”) in accordance with Developer’s filing under Article VII of the New York State Public Service Law in Case No. 18-T-0604 (the “Proceeding”);

**WHEREAS**, Developer, the Town, and the Trustees desire to enter into this Agreement to memorialize the Parties’ commitments in connection with the development of the Project.

**NOW THEREFORE**, in consideration of the premises and mutual covenants set forth herein, and for other good and valuable consideration, the Parties hereby agree as follows:

### **1. DEFINITIONS, RULES OF INTERPRETATION.**

1.1. Definitions. All capitalized terms used but not otherwise defined in this Agreement shall, unless expressly otherwise stated, have the respective meanings set forth below.

“Affiliate” shall mean a corporation, company, or other entity directly or indirectly being under the Control of a Party or having Control of a Party (as defined herein).

“Agreement” shall mean this Agreement, any attachments hereto, and any other documents incorporated herein by reference, as the context requires.

“Beach” shall mean that area of Atlantic Ocean beach, beginning at the beach grass line at the southerly terminus of Beach Lane in Wainscott in the Town, and running seaward from such beach grass line to the line of mean low water of the Atlantic Ocean.

“Cable” shall mean the aforesaid single 138-kilovolt transmission line, together with all ducts, raceways, conductors, terminals, sustaining and protective fixtures, underground expansion stabilizers, manholes, hand holes, foundations, fittings, and all housings, connectors, switches and any other equipment or appurtenances used for the transmission of high and low voltage electric energy and for the transmission of intelligence, by any means, whether now existing or hereafter devised, reasonably required to connect the Wind Farm to the Substation and to monitor the condition of such facilities.

“Commercial Operation Date” or “COD” shall mean the date on which the Project commences the sale of electricity, excluding the generation and delivery of electricity for test purposes.

“Commencement of Construction Date” shall mean the date on which earth- or seafloor-disturbing construction activities for the Wind Farm or Project first occur, whether within or without the Town’s boundaries, provided, however, that site investigation, survey and sampling work (e.g., geotechnical borings, environmental sampling/delineation, or similar work) and preparation of construction laydown areas shall not be considered such earth- or seafloor-disturbing construction activities.

“Control” shall mean ownership of (a) at least fifty percent (50%) of outstanding shares or securities of an entity; or (b) such interest as affords the right to make the decisions for an entity. Such entity shall be deemed to be an Affiliate of a Party only for the periods, either now or in the future, during which the Party has such ownership or control of the entity.

“Effective Date” shall mean the date on which all Parties, having been duly authorized to execute this Agreement and the Project Access Agreements, have executed and delivered copies of this Agreement and the Project Access Agreements to all Parties.

“Force Majeure Event” shall mean an event or circumstance that wholly or partly prevents or delays the performance of any obligation by a Party, but only if and to the extent that: (i) such event is not within the reasonable control of, directly or indirectly, and not the fault of or caused by, the obligated Party and could not have reasonably been provided against by the obligated Party; (ii) such event, despite the exercise of reasonable diligence, cannot be prevented or avoided by the Party claiming a Force Majeure Event; and (iii) such event, despite the exercise of reasonable due diligence, could not be foreseen. The failure of a subcontractor to perform shall not be a Force Majeure Event unless such failure was caused by a Force Majeure Event.

“Interconnection Facilities” shall mean those facilities to be constructed by Developer adjacent to and connecting to the Substation to transfer power between the Cable and the bulk electric system, including appurtenant structures and improvements, but excluding any facilities constructed, owned and/or operated by LIPA, the New York Independent System Operator (“NYISO”) and/or the Public Service Enterprise Group (PSEG) Long Island.

“Party” shall mean Developer, the Town, or the Trustees, as applicable.

“Person” shall mean any natural person, corporation, limited liability company, partnership, firm, association, governmental authority, or any other entity, whether acting in an individual, fiduciary, or other capacity.

“Project Access Agreements” means the Town Easement Agreement and the Trustees Land Lease Agreement.

“Project Access Areas” means the areas as to which Developer is granted rights under the Project Access Agreements.

“Project Financing” shall mean the definitive debt and equity agreements, entered into by Developer (or a Related Party) for the provision of an aggregate amount of committed funds for the Project, which are sufficient to pay all expected costs through the commencement of commercial operations of the Project for the development, design, engineering, construction, start-up, and testing of the Project, and, following COD, the definitive debt and equity agreements, entered into by Developer (or a Related Party) for the provision of an aggregate amount of committed funds to refinance the amounts of debt and equity obtained by Developer through COD.

“Related Party” shall mean any Affiliate of Developer.

1.2. Rules of Interpretation. In this Agreement, unless the context indicates otherwise or unless otherwise expressly provided:

- (a) The singular includes the plural and the plural includes the singular.
- (b) Words of the masculine gender include correlative words of the feminine and neuter genders.
- (c) References to statutes, laws, or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding, or supplementing the statutes, laws, or regulations referenced.
- (d) References to “writing” include printing, typing, lithography, facsimile reproduction, electronic mail, portable document formats, and other means of reproducing words in a tangible visible form.
- (e) The words “including,” “includes,” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import.
- (f) References to articles, sections (or subdivisions of sections), or annexes are references to articles, sections (or subdivisions of sections), or annexes of this Agreement and are incorporated by reference unless otherwise indicated.
- (g) References to agreements and other contractual instruments shall be deemed to include all exhibits attached thereto and all subsequent amendments and other modifications to such agreements and other instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement.
- (h) References to Persons or Parties include their respective successors and permitted assigns.
- (i) The headings or captions used in this Agreement are for convenience of reference only and do not define, limit, or describe any of the provisions hereof or the scope or intent hereof.

## 2. REAL PROPERTY INTERESTS/COMMUNITY BENEFITS.

2.1. Purpose; Contingency. This Article sets forth the undertakings and obligations of Developer to compensate the Town and the Trustees for real property interests set forth in certain Project Access Agreements, and to provide community benefits in connection with the Project. This Agreement, and Developer's undertakings and obligations hereunder, are contingent upon Developer obtaining approval of the Project in connection with the Proceeding and the siting of the Project as set forth on the map annexed hereto as Exhibit A. In the event Developer is unable to obtain such approval, the foregoing undertakings and obligations shall be null and void with the exception of the First Milestone Payment set forth in Section 2.5 and except as otherwise specifically stated herein.

### 2.2. Local Economic Development.

(a) If, prior to or within four (4) years following the Commencement of Construction Date, Developer identifies, in the exercise of its sole discretion, a suitable location in Montauk that is available for lease or purchase on commercially-reasonable terms consistent with the Project budget, then (i) Developer shall require its turbine maintenance contractor to establish and maintain an operations and maintenance support facility for the Wind Farm in Montauk, New York, and (ii) such location shall also serve as a base for the Project's crew transfer vessel(s), in each case until the Wind Farm ceases commercial operations. If, within four (4) years following the Commencement of Construction Date, Developer is unable, using reasonable diligence, to locate and acquire the right to lease or purchase a suitable location, or to obtain the applicable permits needed to construct the necessary operation and maintenance and crew transfer improvements and facilities at such location, the obligations set forth in this Section 2.2(a) shall be null and void.

(b) Developer shall make good faith efforts to make qualified residents of the Town aware of job openings in connection with the Project.

(c) The Town and the Trustees shall not oppose Developer's application for financial assistance, if any, to New York State and any of its agencies and authorities, Suffolk County and/or the Suffolk County Industrial Development Agency for any financial assistance in connection with the acquisition, construction, renovation, and equipping of said operations and maintenance facility.

2.3. Fisheries Liaison. Developer, or a Related Party, shall employ an individual to facilitate communication from time to time between Developer and members of the East Hampton commercial fishing community until such time as the Wind Farm ceases commercial operations.

2.4. Annual Payments. Within six (6) months after the COD, the Developer shall pay to the Town and the Trustees the amount of seven hundred thousand dollars (\$700,000.00) as the first of twenty-five (25) annual installments and shall thereafter pay such installment amount, plus a 2% per year escalation factor, as set forth in Exhibit D, to the Town and the Trustees within thirty (30) days of each anniversary of the COD for each of the twenty-four (24) subsequent calendar years, for an aggregate payment of twenty-two million, four hundred twenty-one thousand, two hundred and ten dollars (\$22,421,210.00) during such period, as specified in Exhibit D.

2.5. Milestone Payments and Wainscott Fund.

Within ninety (90) days of the Effective Date of this Agreement, Developer shall make a non-refundable payment of five hundred thousand dollars (\$500,000.00) to the Town and the Trustees (the “First Milestone Payment”). Within ninety (90) days of the Commencement of Construction Date, Developer shall pay a second five hundred thousand dollars (\$500,000.00) to the Town and the Trustees (the “Second Milestone Payment”). Developer shall also make two (2) payments to the Town, totaling five million, five hundred thousand dollars (\$5,500,000.00) (the “Wainscott Fund”), in the aggregate, as follows: within ninety (90) days following the COD, Developer shall make a non-refundable payment of two million, seven hundred fifty thousand dollars (\$2,750,000.00) to the Town; and within thirty (30) days following the first anniversary of the COD, Developer shall make a second non-refundable payment of two million, seven hundred fifty thousand dollars (\$2,750,000.00) to the Town.

2.6. Payments. All payments pursuant to this Article 2 shall be made by wire transfer to a single account designated by the Town, and, except for the First Milestone Payment and the Second Milestone Payment, which shall each be distributed 50% to the Town and 50% to the Trustees and paid directly to each of the Town and the Trustees, shall be distributed from such account to the Town and Trustees in accordance with a separate agreement between the Town and the Trustees. Each recipient of funds shall deliver to Developer such documentation as Developer may reasonably request to administer such payments, including, without limitation, a form W-9 if applicable, and, upon receipt, written acknowledgment of such payment.

2.7. Exclusive Obligation of Developer. The Parties hereto agree that the payment obligations of Developer set forth in Article 2 of this Agreement shall be the exclusive payment obligations due by Developer to the Town and the Trustees in connection with the Project and the Interconnection Facilities, with the exception of the reasonable and customary fees for obtaining any building permit, soil or groundwater testing permit or authorization, Town road opening permit, Town road work permit, and other permit fees that become due and owing to the Town in connection with any component of the Project. The foregoing shall not be construed as requiring Developer to comply with the procedural requirements for obtaining any such permits that are preempted by the Proceeding, but shall require Developer to pay the reasonable and customary fees for obtaining such permits.

**3. GRANT OF PROJECT ACCESS AGREEMENTS.**

3.1. Town Easement Agreement. As a condition to Developer’s undertakings set forth in Article 2, above, and in exchange for payments to the Town, the Town shall, as of the Effective Date, grant Developer a conditional transmission easement for a term of years, as well as a temporary installation easement (collectively, the “Easements”), subject to possible early termination of such Easements pursuant to the terms and conditions of the Easements, to construct, operate, maintain, repair, and remove portions of the Cable within the boundaries of the Town-owned roads traversed or occupied by the Cable (collectively, the “Easement Areas”). The Easements granted by the Town are more particularly described in that certain easement agreement annexed hereto as Exhibit B (the “Town Easement Agreement”). In the event of any inconsistency between the Town Easement Agreement and this Agreement, the terms and conditions of the Town Easement Agreement shall control.

3.2. Trustees Land Lease Agreement. As a condition to Developer's undertakings set forth in Article 2, above, and in exchange for payments to the Trustees hereunder, the Trustees shall, as of the Effective Date, grant Developer leasehold interests (collectively, the "Leases") to construct, operate, maintain, repair, and remove portions of the Cable within the boundaries of the portions of the Beach that are owned by the Trustees (which portions are collectively designated as the "Lease Areas"). The Leases granted by the Trustees shall be more particularly described in that certain land lease agreement annexed hereto as Exhibit C (the "Trustees Land Lease Agreement"). In the event of any inconsistency between the Trustees Land Lease Agreement and this Agreement, the terms and conditions of the Trustees Land Lease Agreement shall control.

3.3. Recording of the Project Access Agreements. Upon execution of the Project Access Agreements, such Project Access Agreements, or a memorandum thereof, shall each be recorded with the Suffolk County Clerk by Developer, at its cost and expense.

#### **4. ON-SITE MONITORING AND REPORTING REQUIREMENTS.**

4.1. Developer shall comply with all applicable federal, state and local monitoring and reporting obligations associated with the construction, operation, maintenance, repair, decommissioning, removal, and restoration activities related to the Project, including those monitoring and reporting obligations set forth in the Commission's directives and conditions in the Proceeding as well as the Project Access Agreements.

#### **5. DECOMMISSIONING OF PROJECT; RESTORATION OF THE PROJECT ACCESS AREAS.**

5.1. In the event the Project is decommissioned, any decommissioning will be conducted in accordance with the Commission's directives and conditions in the Proceeding and also in accordance with the Project Access Agreements.

5.2. In the event the Project is decommissioned, restoration of the Project Access Areas will be conducted in accordance with the Project Access Agreements.

#### **6. DEFAULT; REMEDIES.**

6.1. Events of Default. The occurrence of any of the following events shall constitute an event of default (individually, an "Event of Default") hereunder:

- (a) any representation or warranty made by a Party herein is false or misleading when made or repeated;
- (b) any Party fails to perform any covenant or obligation set forth in this Agreement; and
- (c) any breach of the terms or conditions of the Project Access Agreements.

6.2. Right to Cure. The Parties shall cure an Event of Default within thirty (30) days of receipt of notice of such Event of Default. If such Event of Default is not capable of cure within thirty (30) days and if the defaulting Party has commenced to cure and proceeded diligently to effect such cure, then the defaulting Party may request additional time to effect such cure, and the non-

defaulting Party shall have sole discretion, reasonably exercised, to extend the time to complete such cure.

6.3. Remedies. Upon the occurrence of any Event of Default, and the failure of the defaulting Party to cure an Event of Default within the timeframe set forth in Section 6.2, above, or any approved extension of such timeframe, the non-defaulting Party may, immediately and without further notice to the defaulting Party, pursue any action to enforce performance, to recover damages, or to seek other relief from the defaulting Party with respect to such Event of Default, together with reasonable attorney fees due to the cost of such action(s). All obligations under this Agreement, including, but not limited to, payment obligations, shall continue during any initial or extended cure period.

6.4. Limitation on Damages. **IN NO EVENT SHALL ANY PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, AND REGARDLESS OF THE EXISTENCE OF INSURANCE THAT MAY COVER LIABILITY FOR SUCH DAMAGES.**

## **7. RESPONSIBILITY.**

7.1. Responsibility. Except as provided in Article 8, below, each Party shall be solely responsible for the safety and protection of its employees, contractors, and property and shall comply with all applicable federal, State, local, and safety laws and regulations.

## **8. INDEMNIFICATIONS.**

8.1. Indemnification by Developer. Except to the extent they are caused by the gross negligence, illegal conduct, or willful misconduct of the Town or the Trustees, or their officers, directors, agents, or employees, Developer shall indemnify, defend, and hold harmless the Town and the Trustees, and their officers, officials, agents, employees, and contractors, against any and all liability, actions, damages, claims, demands, judgments, losses, costs, reasonable expenses, and fees, including reasonable attorneys' fees, to the extent such losses relate to injury or death to persons, loss or damage to property, or environmental harm or damage (collectively, "Losses"), and Developer will defend the Town and the Trustees and their officers, officials, agents, employees, and contractors in any court or administrative action or proceeding, and any appeal thereof, in connection with such Losses, whether or not finally adjudicated and including any settlement thereof, provided such Losses result from or arise out of any act, omission, negligence or other fault of Developer, any Related Party, or any of Developer's or any Related Party's officers, directors, members, agents, employees, and/or contractors, and further provided such Losses arise out of or occur in connection with this Agreement, or the construction, operation, maintenance, repair, decommissioning, or removal of the Project, or any restoration activity associated with the Project. In the event a claim, action, demand, suit, or proceeding is instituted against the Town or the Trustees by any third party for a money judgment only, pursuant to which the Town or the Trustees is entitled to be indemnified hereunder, the Town or the Trustees shall immediately notify Developer in writing and contemporaneously provide Developer a copy of the written document(s) presented by such third party.

8.2. Indemnification by the Town. The Town shall indemnify, defend, and hold harmless Developer against any and all liability, actions, damages, claims, demands, judgments, losses, costs, reasonable expenses, and fees, including reasonable attorneys' fees, resulting solely from (a) the negligent acts or omissions or willful misconduct of the Town, (b) breach of any obligation, covenant or undertaking of the Town contained herein or (c) any misrepresentation or breach of warranty on the part of the Town pursuant to this Agreement. For the sake of clarity, the Town shall have no indemnity obligation for any liability, actions, damages, claims, demands, judgments, losses, costs, reasonable expenses, and fees, including reasonable attorneys' fees, that arise, in whole or in part, out of Developer's conduct, acts, or omissions. Notwithstanding the foregoing, in no event shall the Town indemnify, defend, or hold harmless Developer against any claim for consequential, incidental, indirect, punitive, exemplary, or special damages.

8.3. Indemnification by the Trustees. The Trustees shall indemnify, defend, and hold harmless Developer against any and all liability, actions, damages, claims, demands, judgments, losses, costs, reasonable expenses, and fees, including reasonable attorneys' fees, resulting solely from (a) the negligent acts or omissions or willful misconduct of the Trustees, (b) breach of any obligation, covenant or undertaking of the Trustees contained herein or (c) any misrepresentation or breach of warranty on the part of the Trustees pursuant to this Agreement. For the sake of clarity, the Trustees shall have no indemnity obligation for any liability, actions, damages, claims, demands, judgments, losses, costs, reasonable expenses, and fees, including reasonable attorneys' fees, that arise, in whole or in part, out of Developer's conduct, acts, or omissions. Notwithstanding the foregoing, in no event shall the Trustees indemnify, defend, or hold harmless Developer against any claim for consequential, incidental, indirect, punitive, exemplary, or special damages.

## **9. COOPERATION IN PROCEEDINGS AND LAWSUITS.**

9.1. Should any person(s) or entity(ies) conduct or bring any federal or state administrative proceeding or court action or proceeding (including, but not limited to, an adjudicatory phase of the Proceeding, a proceeding pursuant to Article 78 of the New York State Civil Practice Law and Rules, an action for declaratory judgment, injunction, damages, or any other kind or relief, or any other kind of proceeding or action in any forum) with respect to or related to this Agreement, either or both of the Project Access Agreements, the Proceeding, or any certificate (and/or its conditions) issued in the Proceeding, Developer, the Town, and the Trustees shall cooperate in the defense of such proceeding or action. Developer agrees to fund the Town's and the Trustees' administrative and court fees, reasonable attorneys' fees, and experts' fees incurred in connection with any such proceeding or action. The Town and Trustees shall have the right to select their own counsel with respect to any such proceeding or action, and neither Developer, the Town, nor the Trustees shall be bound by each other's decisions with respect to the prosecution, defense, strategy, compromise, or settlement of any such proceeding or action. In the case any such proceeding or action is brought, the Parties hereby authorize their respective counsel to enter into a joint defense agreement, so that they and their clients can, among other things, continue to pursue their separate but common interests and avoid any suggestion of waiver of privileged communications.



## **10. REPRESENTATIONS AND WARRANTIES.**

10.1 General-Corporate. Each Party represents and warrants to the other Parties, for itself and its Related Parties, that: (a) it is duly organized, validly existing, and authorized and in good standing under the laws of the state of its organization and in each jurisdiction where it is required to be qualified as a foreign organization or entity; (b) it has all requisite power to own, operate, grant easements in, and lease its properties and to carry on its business as now conducted; (c) it has or will endeavor to obtain all regulatory and other authorizations and approvals necessary for it to legally perform its obligations under this Agreement; (d) the execution, delivery, and performance of this Agreement are within its powers, have been duly authorized by all necessary action (except for actions of bodies and agencies and other non-parties), and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party, or any Law or regulation applicable to it; (e) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with the terms thereof (except as otherwise provided by law); (f) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; and (g) there are no legal proceedings that would be reasonably likely to materially adversely affect its ability to perform this Agreement.

10.2 Waiver. Developer, the Town, and the Trustees represent, warrant, and agree, for themselves and Developer's Related Parties, that they are subject to the civil and commercial law specified in Section 12.2, below, with respect to their obligations under this Agreement, except to the extent the Town and/or the Trustees possess sovereign immunity, which is not waived, and shall not be deemed to be waived, by this Agreement or otherwise. Developer, Developer's Related Parties, the Town, and the Trustees are entities with legal capacity to sue and be sued, except to the extent the Town and/or the Trustees possess sovereign immunity as aforesaid.

**11. EXCUSABLE DELAYS.** No Party shall be liable for damages resulting from a Force Majeure Event, provided that such Party shall have taken all commercially reasonable steps to avoid or mitigate the effects of such Force Majeure Event. In the event of a Force Majeure Event, the Party claiming such Force Majeure Event shall provide written notice to the other Parties as soon as reasonably practicable after the claiming Party first has knowledge of or becomes aware of the circumstances of such Force Majeure Event. Thereafter, the claiming Party shall provide to the other Parties a detailed assessment of the delay, and periodic updates to such assessment as mutually agreed to by the Parties. Any delay from a Force Majeure Event shall be no longer than necessary. Notwithstanding the foregoing, no Party shall be relieved from performing any obligation under this Host Community Agreement that is not directly affected by such Force Majeure Event.

## **12. MISCELLANEOUS.**

12.1 Notices. All notices, requests, and other communications required or permitted by this Agreement or by Law to be served upon or given to a Party by any other Party shall be deemed duly served and given (i) when received after being delivered by hand or courier service, (ii) on the date sent by confirmed facsimile or e-mail if sent at or prior to 4:00 P.M., recipient's time, and on the next business day if sent after 4:00 P.M., recipient's time, or (iii) when received if sent by certified mail, return receipt requested, postage prepaid, to the address set forth below the Party's

signature to this Agreement. Each Party may change its address for the purposes of this Section by giving notice of change to the other Parties in the manner provided in this Section.

12.2 Governing Law. This Agreement, any disputes or claims arising out of or relating to this Agreement, and any questions concerning this Agreement's validity, construction, or performance shall be governed by the substantive laws of the State of New York without regard to its conflict of law principles (other than Section 5-1401 of the New York General Obligations Law).

The foregoing choice of governing law shall, unless otherwise specified, apply to all subcontracts entered into pursuant to this Agreement and to all insurance contracts required to be maintained by Developer in accordance with this Agreement.

12.3 Assignment, Successors, and Assigns.

(a) Developer shall have the right, upon and subject to Developer first providing the Town and the Trustees documentation reasonably demonstrating that any proposed assignee has the operational and financial capability to perform Developer's obligations under this Agreement, and subject to the prior written consent of the Town and the Trustees to such assignment, which consent shall not be unreasonably withheld or delayed, to assign this Agreement, and the rights and obligations of Developer thereunder, to another entity.

(b) Developer may, subject to the provisions of Subsection 12.3(a), assign this Agreement to any (A) purchaser or successor in and to the Project, or (B) Affiliate of Developer. Developer may, without regard for Subsection 12.3(a) and without the consent of the Town or the Trustees, (i) assign this Agreement to persons or entities providing Project Financing ("Lender") and (ii) pledge, encumber, hypothecate, mortgage, grant a security interest in and collaterally assign this Agreement to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation whether or not such obligation is related to any indebtedness (a "Lender's Lien"). A Lender shall have the absolute right to (i) assign its Lender's Lien; (ii) take possession of and operate the Project or any portion thereof in accordance with this Agreement and perform any obligations to be performed by Developer or any successor hereunder; or (iii) exercise any rights of Developer hereunder. Upon a Lender, or any assignee of a Lender, taking possession of and/or operating the Project or any portion thereof, such Lender or Lender assignee shall automatically assume and be responsible for all obligations of the Developer under this Agreement. The Town and the Trustees shall cooperate with Developer, Developer's Affiliates, and any successor from time to time, including, without limitation, by entering into a consent and assignment or other agreements with Developer or any successor in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by Developer, Developer's Affiliates, or any successor, as applicable. In the event this Agreement is assigned to a successor, Developer shall have no further obligations hereunder, except for any obligations outstanding on the date of the transfer. Nothing herein shall limit in any way the right of the owners of Developer to sell or otherwise transfer (including by merger or consolidation with any other entity) all or a portion of their ownership interests in Developer.

(c) This Agreement shall inure to the benefit of, be binding upon, and be enforceable by and against the Parties and their respective successors and permitted assigns.

12.4 No Partnership or Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to render or constitute any Party as the employee, agent, partner, joint venturer, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns, and no other person or entity shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

12.5 Non-Discrimination. No Party shall deny this Agreement's benefits to any person on the basis of race, religion, color, national origin, ancestry, ethnic group identification, physical handicap, mental disability, medical condition, marital status, age, gender, sexual orientation, or sexual identification, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, ethnic group identification, physical handicap, mental disability, medical condition, marital status, age, gender, sexual orientation, or sexual identification.

12.6 Currency. All payments to be made under or pursuant to this Agreement shall be in U.S. dollars.

12.7 Counterparts. This Agreement may be executed by the Parties in one or more counterparts or duplicate originals, all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement or a signature page hereto bearing an original signature by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall have the same effect as physical delivery of the paper document bearing the original signature. "Original signature" means or refers to a signature that has not been mechanically or electronically produced.

12.8 Other. The terms and provisions of this Agreement, and its exhibits, may only be modified, amended, or supplemented by written agreement duly executed by all the Parties. No failure or delay by a Party in exercising any right hereunder and no course of dealing between the Parties shall operate as a waiver of any right hereunder. No waiver of any breach of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party against which such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach. If any provision of this Agreement shall, for any reason, be held invalid, illegal, or unenforceable by any judicial or other governmental authority, then such holding shall not invalidate or render unenforceable any other provision hereof and such portions shall remain in full force and effect as if this Agreement had been executed without the invalid, illegal, or unenforceable portion. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the subject matter hereof.

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IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

**South Fork Wind, LLC**

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

Address:  
107 Selden Street  
Berlin, CT 06037  
Attn: General Counsel

**Town of East Hampton**

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

Address:  
Town Hall  
159 Pantigo Road  
East Hampton, NY 11937

**The Trustees of the Freeholders and Commonalty of the Town of East Hampton**

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

Address:  
267 Bluff Road  
Amagansett, NY 11930

**EXHIBIT A  
PROJECT MAP**

**EXHIBIT B**  
**TOWN EASEMENT AGREEMENT**

**EXHIBIT C**  
**TRUSTEES LAND LEASE AGREEMENT**

**EXHIBIT D**  
**Payment Schedule**

**Pre-Operation Payments**

Execution of HCA and Real Estate Agreements	\$	500,000
Commencement of Construction	\$	500,000
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Total Payments Prior to Operation	\$	1,000,000

**Operation Payments**

Year	Payment	Wainscott Fund
1	\$ 700,000	\$ 2,750,000
2	\$ 714,000	\$ 2,750,000
3	\$ 728,280	\$ -
4	\$ 742,846	\$ -
5	\$ 757,703	\$ -
6	\$ 772,857	\$ -
7	\$ 788,314	\$ -
8	\$ 804,080	\$ -
9	\$ 820,162	\$ -
10	\$ 836,565	\$ -
11	\$ 853,296	\$ -
12	\$ 870,362	\$ -
13	\$ 887,769	\$ -
14	\$ 905,525	\$ -
15	\$ 923,635	\$ -
16	\$ 942,108	\$ -
17	\$ 960,950	\$ -
18	\$ 980,169	\$ -
19	\$ 999,772	\$ -
20	\$ 1,019,768	\$ -
21	\$ 1,040,163	\$ -
22	\$ 1,060,966	\$ -
23	\$ 1,082,186	\$ -
24	\$ 1,103,829	\$ -
25	\$ 1,125,906	\$ -
<hr/>		
Total Operation Payments	\$ 22,421,210	\$ 5,500,000

**Other Payments**

Geotech Access/License Fee	\$	100,000
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Grand Total	\$	29,021,210