

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the 29th day of August, 2016, by and between Warren County, Indiana (the "County") and Jordan Creek Wind Farm LLC, a Delaware limited liability company, qualified to do business in Indiana (the "Company"). The County and the Company may be referenced herein individually as a "Party" and together as the "Parties".

WITNESSETH:

WHEREAS, the Company, an entity related to Orion Wind Resources LLC, a Delaware limited liability company ("Orion"), is contemplating the development and construction of a wind-powered electric generating facility in Warren County (the "Project"), which will consist of (i) an initial phase that will have a nameplate generating capacity of approximately one hundred (100) megawatts of electricity ("Phase I"), and (ii) a second phase ("Phase II") and a third phase ("Phase III") that will have a combined nameplate generating capacity of up to approximately an additional two hundred (200) megawatts of electricity (Phase II and Phase III, each an "Additional Phase" and collectively, the "Additional Phases"), all as further described on Exhibit A; and

WHEREAS, upon the completion of Phase I, the Company will have invested approximately \$150,000,000 in equipment and real estate improvements in the area of the County outlined on Exhibit B (the "Development Area") and create approximately three to five (3-5) long-term jobs; and

WHEREAS, upon the completion of the Additional Phases, the Company will have invested up to approximately \$200,000,000 in additional equipment and real estate improvements in the Development Area; and

WHEREAS, the Company has requested assistance with the completion of certain road improvements, assistance with obtaining zoning permits, and other assistance from the County with respect to the Project as described herein; and

WHEREAS, the County desires to foster economic development, generate new assessed value, and create new jobs in the Development Area, which is currently being used primarily for agricultural and residential purposes, and throughout the County; and

WHEREAS, the Project will involve the installation of wind turbines, facilities, electrical collection lines, communications systems, transmission lines, substations, switchyards, meteorological towers, operation and maintenance facilities, access roads, lay-down and staging yards, construction and related facilities, equipment and improvements related to the Project in the Development Area; and

WHEREAS, in consideration for the assistance provided by the County and the anticipated restriction of certain other potential new commercial development and employment

in portions of the Development Area, as a consequence of the Project, the County desires that the Company make certain economic development payments pursuant to the terms of this Agreement; and

WHEREAS, the Company wishes to further its policy of good corporate citizenship to enhance the economic development and future well-being and quality of life of the citizens of the County; and

WHEREAS, the County has determined that the completion of the Project under the terms set forth in this Agreement is in the best interest of the citizens of the County; and

WHEREAS, the Company has advised the County that the granting of tax abatement deductions described generally in Section 4.02 of this Agreement are of critical importance to the financial viability of the Project, in light of the prevailing market and economic conditions within which the Company seeks to develop the Project; and

WHEREAS, the County and the Company desire to enter into this Agreement to provide for the development of the Project pursuant to the terms set forth herein.

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

ARTICLE I. RECITALS

1.01 Recitals Part of Agreement. The representations and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

ARTICLE II. MUTUAL ASSISTANCE

2.01 Mutual Assistance. The Parties agree, subject to further proceedings required by law, to take such actions, including but not limited to the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the County, holding certain public hearings and using its best efforts to the fullest extent permitted by law to adopt certain ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**ARTICLE III. COMPLETION OF PROJECT
AND OTHER COMPANY AGREEMENTS**

3.01 Completion of Project. Subject to the issuance of necessary permits and any other Permitted Delays pursuant to Section 7.10, the "Construction Commencement Date" as defined in Section 3.03 hereof with respect to Phase I shall occur no later than November 15, 2019 and with respect to the latest of the Additional Phases shall occur no later than November 15, 2021.

The Company shall use its commercially reasonable efforts to (a) complete construction and equipping of Phase I by May 1, 2021, subject to any Permitted Delays pursuant to Section 7.10 hereof, and (b) complete construction and equipping of any Additional Phase by May 1, 2023, subject to any Permitted Delays pursuant to Section 7.10 hereof. As used herein, “construction and equipping” of a phase shall be deemed complete at such time as all turbines in such phase have been certified by Company, as acceptable for commercial operation. If the Construction Commencement Date (defined below) with respect to Phase I has not occurred by November 15, 2019, but subject to any Permitted Delays pursuant to Section 7.10 hereof, this Agreement shall terminate and the Parties shall have no further obligations hereunder.

3.02 Payment of County Expenses. The Company shall pay the County’s legal, financial advisory, and other expenses (“Professional Fees”) in the amount of Eighty Thousand Dollars (\$80,000) related to the negotiation, execution and implementation of this Agreement, the Road Use Agreement (as defined in Section 4.01 below), the Decommissioning Agreement between the County and the Company, dated the date hereof (the “Decommissioning Agreement”), the resolutions and other documentation necessary to approve the tax abatement, as described in Section 4.02 below, and any other actions of the County in connection herewith. The Professional Fees shall be paid to the County no later than October 1, 2016.

3.03 Economic Development Payments. As consideration for the possible restriction of certain other new commercial development and employment in portions of the Development Area as a consequence of the Project, and other assistance provided by the County pursuant to this Agreement, the Company agrees to make certain payments in the amounts and on the dates described below (such payments, the “Economic Development Payments”).

With respect to Phase I, the Company shall pay Economic Development payments totaling Two Million Five Hundred Thousand Dollars (\$2,500,000) in nine payments, with the first payment in the amount of Five Hundred Thousand Dollars (\$500,000) due not later than the earlier of (a) the date of commencement of the operation of Phase I or (b) twelve (12) months after the Construction Commencement Date (such date, the “First Payment Date”). The remaining eight payments, each in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), shall be due on each April 1 and October 1 beginning with the April 1 or October 1 immediately following the First Payment Date. “Construction Commencement Date” means the first date the Company begins pouring the concrete for the permanent foundation for the first wind turbine tower in such phase.

If the Company elects to construct any Additional Phases in the Development Area, then the Company shall pay additional Economic Development Payments in the amount of Twenty-Five Thousand Dollars (\$25,000) per megawatt in such Additional Phase, with such increased amount to be paid in nine equal payments structured pursuant to the preceding paragraph, with the first payment due not later than the earlier of (a) the date of commencement of the operation of such Additional Phase or (b) twelve (12) months after the Construction Commencement Date with respect to such Additional Phase (such date, the “First Additional Phase Payment Date”), and the remaining eight payments shall be due on each April 1 and October 1 beginning with the April 1 or October 1 immediately following the First Additional Phase Payment Date, except that the second payment may be delayed at the election of the Company to one hundred eighty (180)

days after the first payment, with the remaining seven payments commencing on the April 1 or October 1 immediately after the date of the second payment.

The Company shall make each of the Economic Development Payments to the Warren County Auditor to be deposited in a special fund established by the Warren County Commissioners and the Warren County Council not less than fifteen (15) days prior to the applicable payment date. Each of the Economic Development Payments shall constitute a contribution by the Company to the furtherance of other economic development in the County, and such Economic Development Payments shall be used by County for the construction, repair, or maintenance of roads, public safety facilities, and other infrastructure, the improvement of the park systems, the completion of economic development projects, or the payment of debt service or personnel or other operating expenses related to such roads, public safety facilities, and infrastructure and other services provided in the County, or other purposes which improve the quality of life in the County and thereby foster economic development in the County, all which shall be determined by the Warren County Commissioners and the Warren County Council. Such Economic Development Payments shall not constitute a payment in lieu of any tax, charge, or fee of the County or any other taxing unit, and shall be in addition to any payments made by the Company pursuant to Section 3.04 of this Agreement and any other tax, charge, or fee payable by the Company.

Any Economic Development Payments shall be guaranteed by Orion as set forth in the Guaranty attached as Exhibit C to this Agreement, and Orion shall pay any reasonable attorney's fees incurred by the County to enforce such Guaranty. The Guaranty shall be executed and delivered by Orion at the time of the Construction Commencement Date for each phase. The Maximum Recovery Amount set forth in the Guaranty assumes that only Phase I is developed. In the event that the Company desires to develop any Additional Phase, then a revised Guaranty setting forth a new Maximum Recovery Amount shall be tendered by Company to County.

3.04 Payments in Lieu of Taxes ("PILOT"). In addition to the Economic Development Payments, the County is entering into this Agreement in reliance upon the property taxes to be paid by the Company to the local taxing units located in the County (including the County, each a "Taxing Unit") as a result of the investment by the Company in the Project (which property taxes shall not include the value of any taxes abated as a result of an Approved Abatement pursuant to Section 4.02 hereof). In the event of a Change in Law, the Company shall pay to each Taxing Unit an annual amount (such payment, a "PILOT"), for each year beginning as of the effective date of such Change in Law, and continuing through and including, but not after, the due date(s) for installments of taxes payable in the year 2046. The annual PILOT shall be paid in semi-annual payments on such dates as regularly scheduled installments of property taxes are payable (currently in May and November of each year). "Change in Law" shall mean a change in the local, state or federal laws, rules, or regulations which makes all or any portion of the Company's property exempt from taxation by the Taxing Units or alters any applicable depreciation rules or regulation. The amount of each annual PILOT shall be determined as follows: (a) the amount of property taxes that the Company would have paid during such year to the Taxing Units had the Change in Law not taken effect, based on the then current property tax rate and the finally-determined assessed value of the Company's property for that assessment year (without taking into any account any Approved Abatement), less (b) any Approved

Abatement (without any effect of the Change in Law), less (c) the amount of other new tax revenue received by the Taxing Unit(s) from the Company as a result of the Change in Law, which other new tax revenue may be collected locally or at the State level and distributed to the Taxing Unit(s) (e.g., a production tax, a license tax based on gross revenue, etc. that is imposed and distributed to the Taxing Unit).

3.05 Additional Covenants.

- a. The Company hereby covenants and agrees that within fifteen (15) days of filing Form UD-45 with the Department of Local Government Finance, it shall provide a copy thereof to the Warren County Auditor and the County Assessor. Concurrently, Company shall provide a schedule to the County Auditor and the County Assessor showing the total cost of property placed in service for such property for federal tax purposes and the annual and accumulated depreciation for federal tax purposes. The total cost of property placed in service as shown on such schedule is intended to match the amount shown on Line 9 of Form UD-45, and the amount shown on such schedule for accumulated depreciation is intended to match the amount shown on line 21 of Form UD-45. Any discrepancies shall be reconciled on the schedule. The Company agrees to depreciate the wind turbines on a five-year MACRS basis, and to not claim that the wind turbines are subject to any obsolescence deduction. Such schedule shall be used by the County to verify that Company depreciated the wind turbines on a five-year MACRS basis, and did not claim any obsolescence deduction.
- b. Company hereby covenants agrees that at no time after execution of this Agreement and during the operation of the Project shall it initiate or participate in any legislative effort with the objective of seeking a Change in Law.
- c. Notwithstanding the above, Company may in its sole discretion choose to elect bonus depreciation on the wind turbines (including foundations and pad-mounted transformers), substation, and other material eligible items. In the event that Company chooses to elect bonus depreciation for any given tax year, it shall provide the County advance written notice thereof together with a calculation with respect to such tax year of the difference between the anticipated property tax liability prior to such election for bonus depreciation and such property tax liability with bonus depreciation (the "Bonus Calculation"). Based on such calculation, Company shall set out in such notice its intention to make a PILOT payment comprising the Bonus Calculation. If County objects to the Bonus Calculation, it shall provide written notice thereof to Company within thirty (30) days of receipt of such notice and hereafter the parties shall meet to determine an appropriate PILOT payment, considering then current tax rates and other pertinent factors. The PILOT payment shall be made by Company in semi-annual payments on such dates (currently in May and November of each year) as regularly scheduled

installments of property taxes are payable (or would have been payable, but for the bonus depreciation) with respect to the turbines for which bonus depreciation was elected. The Auditor shall distribute all PILOT payments made under this section to the applicable Taxing Units in the same proportion as the normal tax payments are distributed.

ARTICLE IV. ECONOMIC DEVELOPMENT INCENTIVES

4.01 **Road Use Agreement.** The County and the Company shall enter into an Agreement for Use of Roads and Drainage Agreement, dated the date hereof (the "**Road Use Agreement**") that sets forth the terms pursuant to which the County agrees to allow the Company to use, repair and improve certain designated County roads and complete certain modifications to the County drainage system that are necessary to accommodate the Project.

4.02 **Tax Abatement.** In consideration of the benefits to be derived by the County under this Agreement, the Road Use Agreement, and other benefits as a result of the Company's investment in the Project as described in the Statement of Benefits forms attached hereto as **Exhibit D** (collectively, the "**Statement of Benefits**"), and subject to the completion of such procedures as are required by law, the County shall, as permitted by law, approve utility distributable property tax deductions pursuant to Ind. Code § 6-1.1-12.1, for a period of ten (10) years, with respect to Company's investment in Phase I as described in the Statement of Benefits (the "**Phase I Abatement**") and a period of seven (7) years, with respect to Company's investment in the Additional Phases as described in the Statement of Benefits (the "**Additional Phases Abatement**") (the Phase I Abatement and the Additional Phases Abatement, collectively the "**Approved Abatement**"). The Phase I Abatement deductions shall be in accordance with the following schedule, expressed as a portion of the assessed value: (i) first year – 100%; (ii) second year – 90%, (iii) third year – 80%, (iv) fourth year – 70%; (v) fifth year – 60 %; (vi) sixth year – 50%; (vii) seventh year – 40%; (viii) eighth year – 30%; (ix) ninth year – 20%; and (x) tenth year – 10%. The Additional Phases Abatement deductions shall be in accordance with the following schedule, expressed as a portion of the assessed value: (i) first year – 100%; (ii) second year – 100%, (iii) third year – 100%, (iv) fourth year – 100%; (v) fifth year – 100 %; (vi) sixth year – 100%; and (vii) seventh year – 100%.

The abatement application was preliminarily approved by the County Council on August 15, 2016 and a final hearing before the County Council is scheduled for August 29, 2016. To the extent any of the improvements and/or facilities to be constructed as a part of the Project are ultimately classified, regulated, assessed and/or taxed as locally-assessed real property or business personal property, Company shall be deemed, under Ind. Code § 6-1.1-12.1-11.3 and/or 50 IAC 10-4-1, to have filed its Statement of Benefits in a manner consistent with the claiming of a deduction for new manufacturing equipment under Ind. Code § 6-1.1-12.1-4.5, and/or for the redevelopment or rehabilitation of real property under Ind. Code § 6-1.1-12.1-3 in the manner required for such real property and/or business personal property, as the case may be.

In the event that such abatements are not approved as described on August 29, 2016 or in the event that any materially complete, timely, and valid claim(s) for deduction which may be filed by or on behalf of the Company in the future as a result of such Approved Abatement is

disallowed in a given assessment year (or if any portion of such abatement is ultimately rescinded, canceled or modified) then the Company may, at its option, terminate this Agreement by providing written notice of termination to the County in the manner prescribed in this Agreement. Such termination shall be effective as of the date set forth in the notice thereof, upon which the Parties shall have no further obligations to each other under this Agreement, including, but not limited to payment of any remaining unpaid Economic Development Payments under Section 3.03; provided, however, in any such event, the County retains the right to deny any application for and terminate, in whole or in part, a deduction based on the failure of the Company to substantially comply with the Statement of Benefits pursuant to Ind. Code § 6-1.1-12.1-5.9 or comparable law then in effect.

4.03 Other Assistance. The County shall provide reasonable assistance to the Company in obtaining such zoning permits, decommissioning agreements or other State or local government actions as are required for the Company to commence construction and complete the Project.

ARTICLE V. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE COMPANY

5.01 Accuracy of Information. The Company represents and warrants that, to the best of its actual knowledge, all estimates, statements, and information provided in this Agreement regarding initial capital investment and job creation, the impact on roads and other infrastructure, and other matters with respect to the Project are reasonably accurate in all material respects.

5.02 Authority. The Company represents and warrants that it has all requisite authority to enter into this Agreement.

5.03 Compliance with Laws. The Company agrees to comply in all material respects with all applicable laws related to the construction, development and use of the Project.

5.04 Warren County Zoning Ordinance. The Company acknowledges that the Project is subject to all the provisions of the Warren County Zoning Ordinance in the form as of the Effective Date (the "Zoning Ordinance"), and that prior to the Construction Commencement Date, the Company must obtain a special exception (the "Permit"), and comply with all other provisions in the Zoning Ordinance. County shall use its best efforts to cooperate with Company regarding the Permit and agrees the Board of Commissioners shall not vote to approve any changes to the Zoning Ordinance without prior consultation with the Company as it is the objective of the parties that the Zoning Ordinance in effect at the time of the Effective Date shall apply to the Project.

ARTICLE VI. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE COUNTY

6.01 Actions. The County represents, warrants and covenants that it has taken or will use its best efforts as permitted by law to take such action(s) as may be required and necessary to enable the County to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions of this Agreement.

6.02 Authority. The County represents and warrants that it has all requisite authority to enter into this Agreement.

6.03 Powers. The County represents and warrants that it has full constitutional and lawful right, power and authority to execute and deliver and perform its obligations under this Agreement, including, but not limited to, the provisions of Section 3.04 with respect to Taxing Units, and Section 4.02 Tax Abatement.

ARTICLE VII. GENERAL PROVISIONS

7.01 Time of Essence. Time is of the essence with respect to performance of this Agreement. Subject to Section 7.10 hereof, the Parties shall make every reasonable effort to perform expeditiously (subject to time limitations as described herein) and the Parties acknowledge that the successful performance of this Agreement requires their continued cooperation. Notwithstanding any other provision of the Agreement, Company shall have no obligation to build Phase I or any Additional Phase. This Agreement shall remain in full force and effect until the expiration or termination hereof.

7.02 No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the County and the Company or any affiliate thereof.

7.03 Default. Before a Party shall be deemed to be in default due to failure to perform any of its obligations under this Agreement, the Party claiming such failure shall provide written notice to the other Party and the Financing Parties specifying the default and manner of cure, the Party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if (i) with respect to the failure to pay an Economic Development Payment or PILOT, such payment is properly made within fifteen (15) days after the Company's receipt of written notice from the County, or (ii) with respect to any other alleged failure, the Party allegedly failing to perform has begun efforts to cure to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice. The Party claiming a breach of this Agreement may seek any remedy available at law or equity, if (i) with respect to the failure to pay an Economic Development Payment or PILOT, such payment has not been properly made within fifteen (15) days of the Company' receipt of the required notice, or (ii) with respect to any other alleged breach, the Party allegedly failing to perform has not begun efforts to cure within thirty (30) days of the receipt of such notice and continued such efforts to cure to the reasonable satisfaction of the complaining Party. The Parties hereto understand that I.C. § 6-1.1-12.1-5.9 sets out a process for termination of a previously approved tax abatement and I.C. § 6-1.1-12.1-12 sets out a process for repayment of previous tax abatement benefits received. The Parties acknowledge the applicability of these statutes to any Approved Abatement granted and confirm their intention to comply with them.

7.04 Indiana Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

7.05 Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To the Company:

Jordan Creek Wind Farm LLC
c/o Orion Wind Resources LLC
Attn: General Counsel
155 Grand Avenue, Suite 706
Oakland, CA 94612

with copy to:

Bingham Greenebaum Doll LLP
Attn: Mary E. Solada, Esq.
2700 Market Tower, 10 West Market Street
Indianapolis, IN 46204

To the County:

Warren County Board of Commissioners
Warren County Courthouse (Second Floor)
125 N. Monroe Street, Suite 7
Williamsport, IN 47993
Attn: County Auditor

All notices to the County shall include a copy to County Attorney:

Richard Hall, Esq.
Barnes & Thornburg LLP
11 South Meridian
Indianapolis, IN 46204

If to any Financing Party: To the address indicated in the notice to County provided pursuant to Section 7.07 hereof.

Or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

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

7.07 Assignment.

- a. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.
- b. Except as provided in subsections (c), (d) (e) and (f) 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 County, the 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 the Company pursuant to this Agreement; provided, however, that the assignee may be required to execute a new Guaranty in favor of County in substantially the same form as attached hereto as Exhibit C to the extent Economic Development Payments remain unpaid, at which time the assignor's Guaranty shall terminate and assignor shall be released from its obligations and liabilities under this Agreement.
- c. Company may, without the need for consent of the County, but upon notice to County, assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement to any affiliate or subsidiary or, with the consent of the County (not to be unreasonably withheld), a company or other entity that acquires substantially all of the assets of the Company. Additionally, with prior written notice to the County but without the need for consent of the County, Company may assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement, to a (i) public utility or (ii) any other company or other entity, provided in either instance that such assignee or an affiliated company shall have comparable experience to the Company in constructing and operating a wind project in the United States and a net worth of a minimum of \$25,000,000 as confirmed by audited financial statements as of the most recent fiscal year. Upon any permitted assignment or transfer hereunder, the Guaranty shall terminate when the assignee or an affiliated company or other entity executes and delivers to the County a new Guaranty, in substantially the same form as attached hereto as Exhibit C, for any Economic Development Payments that remain unpaid.
- d. Company will not be required to obtain consent of the County for or in connection with (i) a corporate reorganization of Company or any of its

direct or indirect affiliates, or (ii) a sale or transfer of equity interest of Company or any direct or indirect affiliate of Company.

- e. Any transfer or assignment pursuant to this Section shall be subject to the assignee agreeing in writing to be bound by the terms of this Agreement to the extent of the assigned rights, interests, and obligations hereunder, including execution and delivery of a new Guaranty. Any transfer or assignment of this Agreement by Company to an assignee shall be subject to Company assigning its rights and obligations under the Road Use Agreement and the Decommissioning Agreement to the same assignee to the extent of the assigned rights, interests, and obligations hereunder. Any notice of assignment required to be delivered by Company pursuant to this Section shall be in writing, shall set forth the basis for the assignment, including such supporting information as may be necessary to demonstrate compliance with this Section, and shall be delivered to the County not less than forty-five (45) days prior to the effective date of the assignment. The restrictions on the Company's ability to transfer or assign this Agreement set forth in this Section shall expire on the later of (i) the payment of the last Economic Development Payment by the Company to the County, or (ii) ten (10) years after the date of the completion of the Project; provided however, following the expiration of such restrictions, the Company shall still provide notice of any assignment of this Agreement to the County not less than forty-five (45) days prior to the effective date of the assignment, the assignee shall still agree in writing to be bound by the terms of this Agreement, and any assignment of this Agreement by Company to an assignee shall still be subject to Company assigning its rights and obligations under the Road Use Agreement and the Decommissioning Agreement to the same assignee, all as provided in this Section.
- f. Company may also, without the need for prior approval of the County, enter into any partnership, joint venture or contractual arrangement, including but not limited to, a partial or conditional assignment of equitable interest in whole or in part in the Company or its parent or affiliate to any person or entity, including but not limited to tax equity investors, or by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Project or any portion thereof (any of the foregoing actions, a "Collateral Assignment") and County shall agree to execute and deliver any reasonably requested estoppels related to a Collateral Assignment. Promptly after making such encumbrance, Company shall notify the County in writing of the name, address, and telephone and facsimile numbers of each party in favor of which Company's interest under this Agreement has been encumbered (each such party, a "Financing Party" and together, the "Financing Parties"). Such notices shall include the names of the account managers or other representatives of the Financing Parties to whom all written and telephonic communications may be addressed. After giving the County such initial

notice regarding either an Assignment or a Collateral Assignment, Company shall promptly give the County notice of any change in the information provided in the initial notice or any revised notice. The Company shall, in the event of any such Collateral Assignment, remain bound to the terms of this Agreement unless otherwise agreed by the County.

7.08 No Third Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the Parties hereto and any Financing Parties and shall not be deemed to be for the benefit of any other third party.

7.09 Incorporation of Exhibits. All Exhibits attached hereto are incorporated herein by reference.

7.10 Permitted Delays. Whenever performance is required of any Party hereunder, such Party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots or damage to work in progress by reason of fire or other casualty, strikes, lock outs or other labor disputes, delays in transportation, inability to secure labor or materials in the open market, war, terrorism, sabotage, crisis in the financial markets, civil strife or other violence, improper or unreasonable acts or failures to act by the County, the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after a complete and valid application for the same has been submitted, the effect of any law, proclamation, action, demand or requirement of any government agency or utility, or litigation contesting all or any portion of the right, title and interest of County or Company under this Agreement (a "Permitted Delay"), then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances; provided, however, payments by the Company to the County pursuant to Sections 3.02, 3.03 and 3.04 shall not be excused on the basis of delays in transportation or inability to secure labor or materials in the open market. If there should arise a Permitted Delay, and the Party claiming the Permitted Delay anticipates that such Permitted Delay will cause a delay in its performance under this Agreement, then the Party claiming a Permitted Delay shall promptly provide written notice to the other Party detailing the nature and the anticipated length of such delay.

7.11 Other Tax Relief. Nothing in this Agreement shall prohibit Company (or the owner(s) of any portion of the Development Area, as their interests may appear) from (a) reviewing, appealing, or otherwise challenging, at any time, the assessed value of the Development Area or of any tangible property which is constructed in accordance with the Project, including, but not limited to, during the abatement period relative to any deduction(s) claimed by Company and/or approved by the County, or (b) seeking or claiming any other statutory exemption, deduction, credit or any other tax relief (including, but not limited to, any refund of taxes previously paid with statutory interest) for which Company may be or may become eligible, or to which Company may be or may become entitled. If any of the foregoing events has the effect of reducing or eliminating the value of the Approved Abatement to Company, Company shall remain bound by the terms of this Agreement, including but not limited to the obligation to make any payments hereunder.

7.12 No Admission or Waiver. Neither this Agreement, nor any payments made pursuant hereto, shall be interpreted as an admission of liability or a waiver of any rights on behalf of any entity or person including, but not limited to, the Parties hereto, except to the extent that same shall be fully and expressly stated herein. The terms hereof have been freely and fairly negotiated by the Parties with advice of competent legal counsel, and in aid of the Warren County Council's exercise of its powers as the fiscal body of the County, including, but not limited to, its jurisdiction as the "Designating Body" under Ind. Code § 6-1.1-12.1.

7.13 Consent to Jurisdiction. This Agreement has been delivered to the County and is to be performed in Warren County, Indiana, and shall be governed and construed according to the laws of the State of Indiana. With respect to all matters arising under this Agreement to be filed with courts of general jurisdiction, Company hereby designate(s) all courts of record sitting in Tippecanoe County, Indiana with respect to state subject matter jurisdiction and Marion County, Indiana with respect to federal subject matter jurisdiction, as forums where any such action, suit, or proceeding in respect of or arising from or out of this Agreement, its making, validity or performance, may be prosecuted as to all parties, their successors and assigns, and by the foregoing designation the undersigned consent(s) to the jurisdiction and venue of such courts. Company hereby waives any objection which it may have to any such proceeding commenced in a state court located within Tippecanoe County, Indiana, based upon proper venue or forum non conveniens. With respect to all legal matters arising under this Agreement which are required by law to be initiated before a state or federal administrative agency, or for which jurisdiction is assigned by statute to a state or federal court with exclusive jurisdiction over such matter, jurisdiction shall be proper before such agency or court. All service of process may be made by messenger, or certified mail, return receipt requested or by registered mail directed to the Party at the address indicated herein and each Party hereto otherwise waives personal service of any and all process made upon such Party.

7.14 Effective Date. Notwithstanding any provision herein to the contrary, this Agreement shall not be effective until it has been executed by all Parties hereto, and (i) execution by the County shall evidence that each of the Board of Commissioners and County Council of the County has approved or ratified this Agreement at public meetings, and (ii) execution by the Company shall evidence that the Company has received the requisite approval of the Project by its parent to the extent required.

7.15 Indemnity. The Company covenants and agrees at its expense to indemnify, defend, and hold the County, its officers, employees, agents, assignees, and affiliated entities (the "Indemnitees") harmless from any and all claims, demands, suits, actions, proceedings, or causes of action (not including appeals filed under Ind. Code 6-1.12.1-2.5(d)) ("Actions") brought against the Indemnitees for judgments, liabilities, obligations, fines, penalties, or expenses, including without limitation, reasonable attorneys' fees and expenditures, including claims brought by third parties for personal injury or property damage, to the extent such Actions arise directly from or in the course of the performance by the Company (including Company's affiliated entities, officers, employees, contractors, or invitees, "Indemnitors") in the performance of this Agreement (excluding any controversies or disputes which may arise in connection with the disposition of any payments made by the Company to the County or the

Taxing Units pursuant to this Agreement after such payment(s) are made according to the terms hereof, or in connection with any Approved Abatement). The Indemnitors shall further indemnify, defend and hold the Indemnitees harmless from any and all judgments, liabilities, obligations, fines, penalties, or expenses, including expenses of investigation, as a direct result of any action taken against any of the Indemnitees by any governmental entity or agency for violations of federal, state, or local environmental laws, regulations, or ordinances, by the Indemnitors ("Government Action"), to the extent arising from the performance by the Company of this Agreement, excluding therefrom any matters or conditions that existed prior to or unrelated to the Company's performance of this Agreement or the Project. County shall provide Company prompt notice of any Action or Government Action and Indemnitors shall have the right to defend any such Action or Government Action with counsel of its choosing.

7.16 Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements, or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable. Notwithstanding the foregoing, in the event any provision of this Agreement is determined to be invalid under any applicable law and therefore deemed void hereunder (which voided provision prevents either the County or the Company from realizing the intended benefits of this Agreement, including, without limitation, any provision with regard to the payment and receipt of the Economic Development Payments or approval and implementation of the Approved Abatement), then the County and the Company agree to modify this Agreement in a manner that allows both the County and the Company to realize the originally intended benefits of this Agreement to the greatest extent possible. If the Agreement cannot be so modified or amended to allow the Parties to realize the originally intended benefits of this Agreement, then the Party which has been prevented from realizing the intended benefits of this Agreement shall have the right to terminate this Agreement, and upon such termination, all rights and obligations under this Agreement shall be extinguished, and the Parties agree to execute such releases or other evidence of the extinguishment of such obligations as may be necessary.

7.17. Other Agreements. Company shall materially comply with all terms of and fulfill its obligations under the Decommissioning Agreement and the Road Use Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

WARREN COUNTY, INDIANA

By: Board of Commissioners of Warren
County, Indiana

By: [Signature]
Commissioner

By: [Signature]
Commissioner

By: [Signature]
Commissioner

ATTEST:

[Signature]
Auditor, Warren County, Indiana

JORDAN CREEK WIND FARM LLC
a Delaware limited liability company

By: [Signature]

Title: Vice President

EXHIBIT A

THE PROJECT

The Company desires to develop a Wind Energy Conversion System in the County, consisting of (i) an initial phase that will have a nameplate generating capacity of approximately one hundred (100) megawatts of electricity ("Phase I"), and (ii) a second phase ("Phase II") and a third phase ("Phase III") that will have a combined nameplate generating capacity of up to approximately an additional two hundred (200) megawatts of electricity (Phase II and Phase III, collectively, the "Additional Phases"). The Project will consist of wind turbines and steel towers, a substation to be installed with the project area, transmission lines, and an operation facility to house trucks and other equipment.

Phase I will involve the investment of approximately \$150,000,000 and the Additional Phases will involve the investment of an additional approximately \$200,000,000, in real, personal, and utility distributable property.

The Company estimates that three to five permanent full-time employees will be employed at the completion of the Phase I, including crew members and administrative staff. This does not include temporary employment during the construction phase. The salary for these positions will range from approximately \$30,000 per year to approximately \$60,000 per year for managers.

EXHIBIT B

OUTLINE OF THE DEVELOPMENT AREA

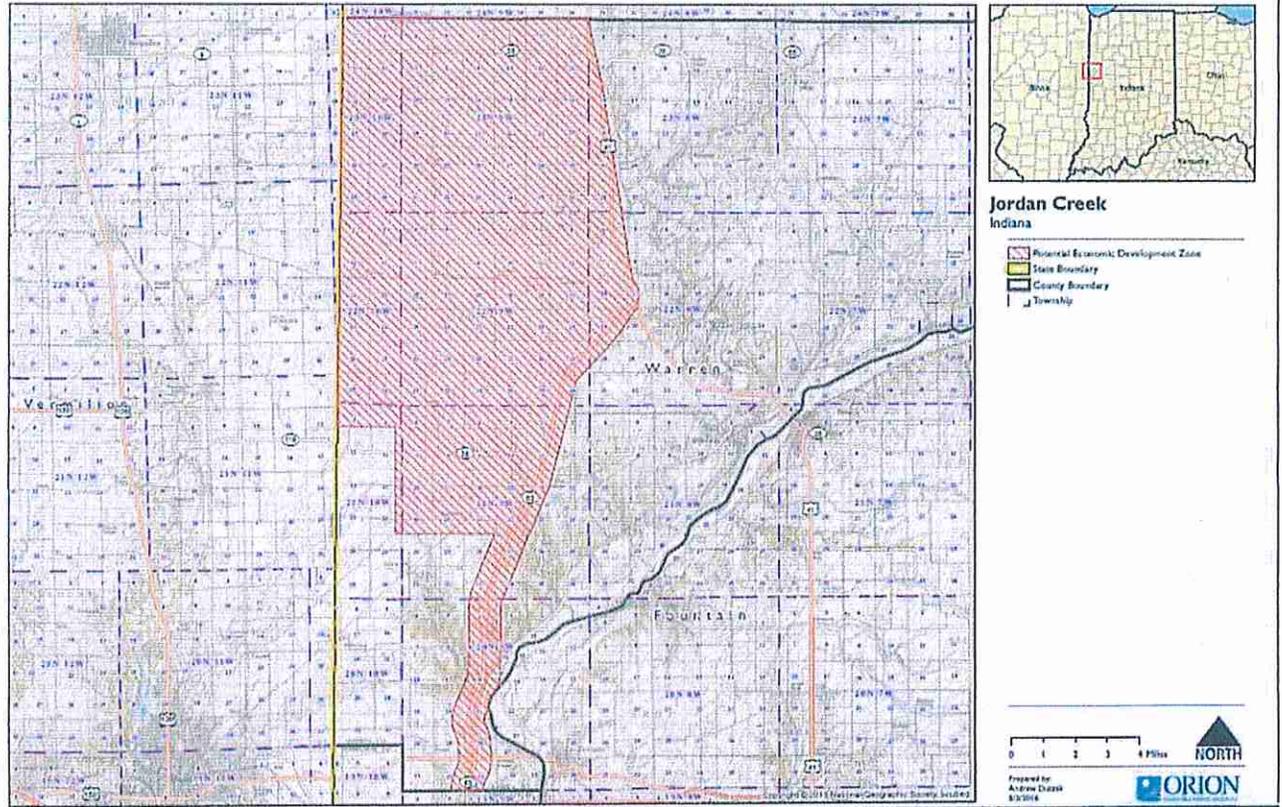


EXHIBIT C

GUARANTY

THIS GUARANTY (this "Guaranty"), dated as of _____, 20__ (the "Effective Date"), is made by ORION WIND RESOURCES LLC ("Guarantor"), in favor of WARREN COUNTY, INDIANA ("Counterparty").

RECITALS:

- A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary Jordan Creek Wind Farm LLC, a Delaware limited liability company ("Obligor") have entered into, or concurrently herewith are entering into, that certain Economic Development Agreement dated [effective date] (the "Agreement"); and
- B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the "Obligations"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed Two Million Five Hundred Seventy-Five Thousand U.S. Dollars (U.S. \$2,575,000.00) (the "**Maximum Recovery Amount**").
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including reasonable attorney's fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. **DEMANDS AND PAYMENT.**

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a

written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "Payment Demand").

- (b) Guarantor's obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 2 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "Business Day" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Delaware or the State of New York.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- (a) it is a limited liability company duly organized and validly existing under the laws of the State of Delaware and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. **WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of this Guaranty:

- (a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. **TERMINATION.** Unless terminated earlier, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately at 11:59:59 Eastern Prevailing Time, _____, 20__ [such date five (5) years after the Construction Commencement Date]; *provided, however,* that no such termination shall affect Guarantor's liability with respect to any Obligation incurred prior to the time the termination is effective, which Obligation shall remain subject to this Guaranty.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice

provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

<u>TO GUARANTOR:</u>	<u>TO COUNTERPARTY:</u>
Orion Wind Resources LLC Attn: General Counsel 155 Grand Avenue, Suite 706 Oakland, CA 94612	Warren County Board of Commissioners Warren County Courthouse 125 N. Monroe Street, Suite 7 Williamsport, IN 47993 Attn: County Auditor
<i>[Tel: (510) 267-8921 -- for use in connection with courier deliveries]</i>	<i>[Tel: _____ -- for use in connection with courier deliveries]</i>

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such

prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the Southern District of Indiana, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of Tippecanoe County, Indiana (without prejudice to the right of any party to remove to the United States District Court for the Southern District of Indiana) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.
- (g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

EXHIBIT D

Statement of Benefits

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 201__,
but it is effective as of the Effective Date.

ORION WIND RESOURCES LLC

By: _____

Name: _____

Title: _____