# WARREN COUNTY
# DECOMMISSIONING AGREEMENT

This Decommissioning Agreement ("Agreement") dated as of October 12, 2016 ("Effective Date") by and between **Jordan Creek Wind Farm LLC**, a Delaware limited liability company, qualified to do business in Indiana (the "Company") and **Warren County, Indiana** (the "County").

RECITALS

WHEREAS, the Company desires to build wind farm facilities in Warren County, Indiana (the "Wind Farm" or "Project");

WHEREAS, the Company has or will enter into certain Wind Energy Easement Agreements or other agreements (collectively, the "Easements") with the landowners within the Wind Farm area (the "Landowners");

WHEREAS, pursuant to Section 1.9.1(C) of the "Wind Energy Conversion Systems (WECS) Siting Regulations" of the Warren County Zoning Ordinance (the "Ordinance"), the Company is required to provide financial assurance to cover the estimated cost of decommissioning the Wind Farm, including demolition and removal of the Wind Farm facility (the "Net Removal Cost" as defined herein), in the form of a bond, letter of credit or other security acceptable to the County;

WHEREAS, the Company shall post a bond, letter of credit or other security acceptable to the County, for the Net Removal Cost upon the terms and conditions more fully set forth below;

WHEREAS, pursuant to Section 1.9.5 of the Ordinance, the County may, but shall not be required to, use the salvage value of Generating Units (as defined below) located within the Wind Farm to cover the Net Removal Cost in the event the Company and its lenders fail to complete the decommissioning in accordance with the Ordinance; and

WHEREAS, for purposes of this Agreement, "Generating Units" are defined to include, but not be limited to, wind power facilities, transformers, met towers, underground cable circuits, site roads and collector substations.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## ARTICLE 1
## BOND ISSUANCE

Section 1.1 Agreement to Decommission; Restoration Fund Amount. Company shall decommission each Generating Unit and related improvements pursuant to the terms of this Agreement and the Ordinance. This Agreement shall be deemed the decommissioning plan under Section 1.9 of the Ordinance. The Company shall decommission each Generating Unit

and related improvements upon the discontinuation of use ("Discontinuation of Use"), which, under Section 1.9.2 of the Ordinance, shall be deemed to occur upon the failure of such Generating Units to produce electricity for twelve (12) consecutive months, unless a plan outlining the steps and schedule for returning the Generating Units to service is submitted and approved by the Warren County Zoning Office or such failure is a result of a Force Majeure event (defined below). The approval of the Warren County Zoning Office of such a plan may not be unreasonably withheld. If the Company's performance of its obligations to decommission pursuant to such a plan is prevented, delayed, or otherwise impaired at any time due to any of the following causes, then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances: acts of God, extreme weather, 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, civil strife or other violence; or the effect of any law, proclamation, action, demand or requirement of any government agency (any such cause, a "Force Majeure event").

After the Warren County Board of Zoning Appeals approves the Wind Farm Special Exception and prior to the issuance of the Improvement Location Permit, Company shall deliver to County a bond, letter of credit or other security reasonably acceptable to the County (the "Restoration Fund"), issued by a financial institution, an investment grade entity, one of the companies listed in the latest version of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," Department Circular 570, issued by the Department of the Treasury, or other company reasonably acceptable to the County (the "Bond Provider"), securing performance of the decommissioning obligations. The amount of the Restoration Fund shall be equal to one hundred percent (100%) of the estimated amount, if any (the "Net Removal Cost"), by which the cost of removing the Generating Units exceeds the salvage value of such Generating Units, which Net Removal Cost shall be determined as follows: Pursuant to Section 1.9.1(B) of the Ordinance, the Company shall retain a licensed professional engineer, a contractor capable of completing the decommissioning, or a person with suitable expertise or experience with decommissioning wind farms (a "Professional Engineer"), to provide an estimate of the Net Removal Cost, which Professional Engineer shall be subject to reasonable approval of the County. The Professional Engineer's estimate of the Net Removal Cost shall include a reasonable adjustment factor for inflation. Company shall pay the cost of retaining the Professional Engineer. Company shall keep the Restoration Fund, or a like replacement security, in force throughout the remainder of the term of this Agreement.

Beginning with any replacement or extension of the Restoration Fund on or after five (5) years from the issuance of the Improvement Location Permit, an updated estimate of the Net Removal Cost shall be prepared by the Professional Engineer who provided the original estimate (as set out in Section 1.1) or if such engineer is unwilling or unable to provide a new estimate, a new Professional Engineer selected based on the above process, and the Restoration Fund shall be in an amount equal to the greater of one hundred percent (100%) of the Net Removal Cost or twenty-five percent (25%) of the estimated costs of removing the Generating Units, and for purposes of estimating the salvage value, any turbine or other portion of the Generating Unit that is subject to a lien or security interest for the benefit of a lender or creditor of the Company or other party (other than the County or a tax investor) shall be deemed to have salvage value only

to the extent that the salvage value exceeds the amount of the lien. Notwithstanding the above, salvage value shall not be reduced by the amount of any lien or security interest for the benefit of a lender or creditor to the extent such lender or creditor subordinates its lien or security interest in writing to the County's rights under this Agreement, which subordination shall be in a form reasonably acceptable to the County.

Section 1.2 Restoration Fund Provider; Restoration Fund Beneficiaries. At least thirty (30) days prior to delivery of the Restoration Fund to the County, the Company shall submit to the County the name of the Bond Provider and the proposed form of the Restoration Fund, both of which shall be subject to the approval of the County, such approval not to be unreasonably withheld. The County shall be named as the beneficiary of the Restoration Fund, provided, however, that the disbursement of and rights to the Restoration Fund funds shall be governed by Article 2 below; and provided further, that the Landowners may also be beneficiaries of the Restoration Fund. The Company represents that it has not granted and the Company shall not grant to the Landowners or any other party rights to the Restoration Fund senior to the rights of the County to the Restoration Fund.

Section 1.3 Restoration Fund Renewal. The Company shall deliver to the County not later than ninety (90) days prior to the expiration date of the then-current Restoration Fund (the "Renewal Deadline"), a certificate of continuation extending the expiration date of the then-existing Restoration Fund for an additional period of five (5) years (except in the case of a letter of credit or bond, where the expiration date shall be extended for an additional period of one year) (the "Certificate of Continuation").

Section 1.4 Failure to Provide Restoration Fund. If the Company fails to provide the Restoration Fund or Certificate of Continuation as provided in Sections 1.2 and 1.3, the County shall provide written notice to Company and Company shall be afforded fifteen (15) business days' opportunity to cure prior to County's declaring a default under this Agreement. If Company fails to provide the Restoration Fund or Certificate of Continuation as provided in Sections 1.2 and 1.3 after such fifteen (15) business days and the County declares an event of default hereunder, the County shall have the right to (a) seek any necessary injunctive relief available under applicable law to effect the providing of the Restoration Fund or any other requirement under this Agreement, (b) pay any premium necessary to continue the Restoration Fund, in which case Company shall reimburse the County for the amount of such premium, (c) draw on the Restoration Fund and deposit the drawn funds in a bank account and, at the County's election, apply such funds to the decommissioning of the Generating Units, and (d) seek all remedies at law. Company shall pay to County the County's attorney and professional fees and other costs with respect to the pursuit and implementation of such remedies.

## ARTICLE 2
## DISBURSEMENT OF SECURITY

Section 2.1 Rights of County. In the event of Discontinuation of Use, if the Company and its lenders fail to decommission the Wind Farm in accordance with the requirements of the Ordinance, the County may, in its sole election, undertake the decommissioning of the Wind Farm. The County's election to decommission all or any portion of the Wind Farm shall not create an obligation to the Landowners, the Company or any other third party to complete the

decommissioning of the entire Wind Farm. In the event the County elects to undertake the decommissioning of the Wind Farm, it may make a claim(s) upon the Restoration Fund to the Bond Provider for the Net Removal Cost subject to the limitations set forth herein. Any claim made by the County upon the Restoration Fund shall be limited to such expenses incurred by the County for the removal of all structures including up to a depth of four (4) feet below the surface and the restoration of the Wind Farm area, as set forth in Section 1.9.3 of the Ordinance, including reasonable professional fees (the "Decommissioning Obligations").

Section 2.2 County Cooperation. In the event of Discontinuation of Use, if the County elects not to undertake or complete the decommissioning of all or any portion of the Wind Farm, the County shall execute all documentation reasonably required or requested by the Restoration Fund, the Bond Provider, the Landowners, the Company and/or its lenders necessary to waive the County's rights to all or the corresponding portion, as applicable, of the Restoration Fund funds and to otherwise permit any of the foregoing to make claims against all or the corresponding portion, as applicable, of the Restoration Fund or at the request of any of the foregoing, return all or the corresponding portion, as applicable, of the Restoration Fund to Company. Additionally, the County and any Landowners may enter into a "Letter of Understanding" (in recordable form) by which certain Wind Farm facilities such as access roads and out buildings, as deemed necessary or useful by such Landowners, may be allowed to remain.

Section 2.3 Easements. The Company represents that all Easements for Generating Units shall contain terms that provide financial assurance in the event of abandonment of the Project by the Company, including access to the salvage value of the Generating Units, for Landowners to ensure that the Generating Units and related improvements are properly decommissioned within one (1) year of expiration or earlier termination of the Project, as required by Section 1.9.1(D) of the Ordinance.

Section 2.4 Release of Restoration Fund. The Bond Provider shall release the Restoration Fund when the Company has demonstrated to the reasonable satisfaction of the Warren County Zoning Office that the Decommissioning Obligations have been satisfied.

## ARTICLE 3
## SALVAGE VALUE

Section 3.1 County Right to Salvage Value of Generating Units. If the Company fails to decommission the Wind Farm in accordance with the terms of the Ordinance and this Agreement in the event of a Discontinuation of Use, or if the Company fails to provide the Certificate of Continuation as required under this Agreement, then, in addition to any rights to make a claim upon the Restoration Fund, the Generating Units within the Wind Farm shall be deemed abandoned and pursuant to Section 1.9.5 of the Ordinance, the County is hereby afforded a license to enter the Wind Farm to remove Generating Units and shall be entitled to apply the salvage value of the Generating Units to any costs of decommissioning the Wind Farm in excess of the funds available under the Restoration Fund.

## ARTICLE 4
## OTHER RIGHTS OF COUNTY

Section 4.1 Other Relief. If the Company fails to decommission the Wind Farm in accordance with the terms of the Ordinance and this Agreement in the event of a Discontinuation of Use, or if the Company fails to provide the Certificate of Continuation as required under this Agreement, then, in addition to any other rights and remedies granted herein, the County shall have the right to seek any injunctive relief available under applicable law to effect or complete the decommissioning of the Wind Farm. In addition, the County shall have the right to seek reimbursement from Company, its successors or assigns, for any costs of decommissioning the Wind Farm incurred by the County in excess of the funds available under the Restoration Fund and the salvage value of the Generating Units.

## ARTICLE 5
## REPRESENTATIONS AND WARRANTIES

Section 5.1 Representations, Warranties and Covenants of County. The County represents and warrants to the Company as follows:

a. The County has full power and authority to execute, deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.

b. This Agreement has been duly executed and delivered by the County and constitutes the legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.

c. The execution, delivery, and performance of this Agreement by the County will not, to the best of County's knowledge, violate any applicable law of the State of Indiana.

Section 5.2 Representations, Warranties and Covenants of Company. The Company represents and warrants to the County as follows:

a. The Company has full power and authority to execute, deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.

b. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

## ARTICLE 6
## DISPUTES; DETERMINATIONS

Section 6.1 Default; Disputes. Subject to Section 1.9.4 of the Ordinance, the breach of or default under this Agreement by the Company shall constitute a breach of the Ordinance, and any remedies set forth under the Ordinance shall be in addition to the remedies set forth in this

Agreement. In the event of any dispute as to any amount to be paid pursuant to this Agreement, the right of the County to the Restoration Fund funds and the salvage value of the Generating Units shall take priority over the rights of the Landowners as set forth in this Agreement.

## ARTICLE 7
## TERM

Section 7.1 Term. The term of this Agreement shall commence on the date of this Agreement, and this Agreement and County's rights hereunder shall terminate upon the completion of the decommissioning of the Wind Farm in accordance with the terms of this Agreement. Upon termination of this Agreement, the County shall execute all documentation necessary or reasonably required in order to release and waive all claims to the Restoration Fund and the salvage value of the Generating Units upon the request of the Company.

## ARTICLE 8
## MISCELLANEOUS

Section 8.1 No Waiver; Remedies Cumulative. No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or remedy shall operate as a waiver thereof. No single or partial exercise by any party hereto of any such right, power or remedy hereunder shall preclude any other further exercise of any right, power or remedy hereunder. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

Section 8.2 Notices. All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given or made in writing (including by telecopy) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by telecopier with confirmation of receipt received, personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein.

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

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

If to Financing Parties: To the address indicated in each Financing Party's notice sent to County under Section 8.4(f) hereof

If to the County:
Warren County Commissioners
Warren County Courthouse (Second Floor)
125 North Monroe Street, Suite 7
Williamsport, IN 47993
Attn: County Auditor

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

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

Section 8.3 Amendments. This Agreement may be amended, supplemented, modified or waived only by an instrument in writing duly executed by each of the parties hereto.

Section 8.4 Successors and Assigns.

a. This Agreement shall (i) remain in full force and effect until the termination hereof pursuant to Section 7.1 herein; and (ii) 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.

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. So long as assignee assumes in writing all assigned obligations under this Agreement, Company shall be released from liability for the assigned obligations hereunder. 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.

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. Any transfer or assignment of this Agreement by Company to an assignee shall be subject to Company assigning its rights and obligations under the Agreement for Use of Roads and Drainage Agreement dated the date hereof (the "Road Use Agreement") and the Economic Development Agreement dated the date hereof (the "Economic Development Agreement") to the same assignee to the extent of the assigned rights, interests, and obligations hereunder. County acknowledges that the Road Use Agreement and Economic Development Agreement allow partial assignments of those Agreements pursuant to the terms set forth therein. 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 (which shall not be bound until it receives notice 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 (which shall not be bound until it receives notice 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 Economic Development 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. Upon its receipt of notice of any Financing Parties, County shall provide all such Financing Parties with notice of any alleged breach or default under this Agreement and a reasonable time to cure such breach or default, and shall accept any cure of a breach or default by a Financing Party.

Section 8.5 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement constitutes the entire agreement and understanding among the parties hereto with respect to matters covered by this Agreement and supersede any and all prior agreements and understandings, written or oral, relating to the subject matter hereof.

Section 8.6 Severability. If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by applicable law: (a) the other provisions hereof shall remain in full force and effect in such jurisdiction in order to carry out the intentions of the parties hereto as nearly as may be possible; and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

Section 8.7 Headings. Headings appearing herein are used solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 8.8 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Indiana. Venue for any action related to this Agreement shall be in a court of appropriate jurisdiction located in Warren County, Indiana.

IN WITNESS WHEREOF, this Agreement has been duly executed on the date and year first written above.

**Company:**

**Jordan Creek Wind Farm LLC**

By: _____
Name: Reid M. Buckley
Title: Vice President

**County:**

**Warren County Commissioners**

By: _____
Steve Eberly

By: _____
Tony Briles

By: _____
Tom Hetrick

ATTEST:

By: _____
Robin Weston-Hubner
Auditor, Warren County, Indiana