

DECOMMISSIONING AGREEMENT

This Decommissioning Agreement ("Agreement") dated as of March ¹³~~12~~, 2020 ("Effective Date") by and between Jayhawk Wind, LLC, a Delaware limited liability company ("Developer"), whose address is 310 4th St. NE, Charlottesville, VA 22902, and the Board of County Commissioners of Bourbon County, Kansas, a governmental entity in the State of Kansas (the "County").

RECITALS

WHEREAS, the Company desires to build wind energy conversion facilities in Bourbon County, Kansas (the "Wind Farm");

WHEREAS, the Company has or will enter into certain Lease and Easement Agreements (collectively, the "Leases") with the landowners within the Wind Farm area (the "Landowners");

WHEREAS, the Company desires to provide financial security to address the 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, guarantee, or other security;

WHEREAS, the Company and the County have agreed that the County must 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;

WHEREAS, for purposes of this Agreement, a "Generating Unit" is defined to include a tower, nacelle, and wind turbine generator (collectively, a "Wind Turbine"), and any related transformers, meteorological towers, underground cable circuits, overhead lines, 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 I RESTORATION SECURITY ISSUANCE

Section 1.1 Agreement to Decommission; Restoration Security Amount. Except in such cases as the Company has otherwise entered into contractual agreements with Landowners that address requirements to decommission Generating Units on such Landowner's property, or as otherwise requested by the Landowner, the Company shall decommission the Generating Units pursuant to the terms of this Agreement. The Company shall decommission a Generating Unit upon the discontinuation of use, which shall be deemed to occur upon the failure of the applicable Wind Turbine to produce electricity for twelve (12) consecutive months, unless a plan outlining the steps and schedule for returning the applicable Wind Turbine to service is submitted to and approved by the County Commission. The approval of the County Commission of such a plan may not be unreasonably withheld. So

long as the Developer execute in good faith upon such a plan to return the Wind Turbine to service, decommissioning shall not commence pursuant to this Section 1.1. Additionally, in the event that there is a dispute as to whether decommissioning should commence pursuant to this Section 1.1, decommissioning shall not commence until a final non-appealable adjudication determining that the Decommissioning Commencement Date has occurred.

Once decommissioning commences, Company will diligently, continuously and in good faith continue the decommissioning until completion of decommissioning. Except as otherwise provided in this Section 1.1, in no event shall the decommissioning extend beyond three hundred and sixty five (365) days following the Decommissioning Commencement Date. If the Company's ability to operate the Wind Farm or performance of its obligations to decommission 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; 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; terrorism; sabotage; or the effect of any law, proclamation, action, demand or requirement of any government agency.

As used in this Article and throughout this Agreement, the term "decommission" shall mean the complete removal of all material components of the applicable Generating Unit to a depth of forty-eight inches below the surface. The term "decommission" shall additionally include materially returning any land, road, or other item disturbed, changed, or otherwise modified in any way as a result of the Wind Farm to its pre-construction condition or the then-existing condition of the contiguous lands or roads.

Section 1.2 Restoration Security. On the ten (10) year anniversary of the Completion of Construction of the Wind Farm, the Company shall deliver to County a performance bond, letter of credit, guarantee or other security acceptable to the County, issued by a creditworthy business or financial institution reasonably acceptable to County (the "Security Provider"), in a form and substance reasonably satisfactory to County (the "Restoration Security"), securing performance of the decommissioning obligations. At least ninety (90) days prior to the Restoration Security delivery date, Company shall provide for the County's review Company's proposed Security Provider and the material terms of the Restoration Security. For the purposes of this Agreement, "Completion of Construction" shall be the date that Company provides notice to the County that the requirements for final completion have been satisfied pursuant to the primary engineering, procurement, and construction agreement for the Wind Farm. The amount secured by the Restoration Security shall be equal to the estimated amount by which the cost of removing the Generating Units, including reasonable professional fees related thereto, exceeds the estimated salvage value of such Generating Unit (the "Net Removal Cost"). To determine the Net Removal Cost, the County shall retain a licensed professional engineer with knowledge of the operation and decommissioning of wind farms (a "Professional Engineer") and who is reasonably acceptable to the Company, to provide an estimate of the Net Removal Cost. The Company shall pay all reasonable fees in obtaining the estimates of the Net Removal Cost, and shall keep the Restoration Security in

force throughout the later of: (1) the remainder of the term of this Agreement, or (2) the release of the Restoration Security pursuant to Section 2.4 herein.

Section 1.3 Restoration Security Provider; Restoration Security Beneficiaries. At least thirty (30) days prior to delivery of the Restoration Security to the County, the Company shall submit to the County the name of the Security Provider and the documents governing the issuance of the Restoration Security. The County shall be named as the beneficiary of the Restoration Security, provided, however, that the disbursement of and rights to the Restoration Security shall be governed by Article II below. The Company represents that it has not granted and shall not grant to the Landowners or any other party rights to the Restoration Security senior to the rights of the County. For the avoidance of doubt, the Security Provider must remain creditworthy throughout the term of the Restoration Security and, in the event that such Security Provider fails to remain creditworthy throughout the term of the Restoration Security, Company must replace such Restoration Security with a new creditworthy Security Provider within ninety (90) days of Company receiving notice of such failure.

Section 1.4 Restoration Security Requirements. The Restoration Security shall have an initial term of five (5) years. The Company shall deliver to the County not later than one hundred twenty days (120) days prior to the expiration date of any posted Restoration Security (the "Renewal Deadline"), a certificate of continuation, or other reasonable evidence of extension of the Restoration Security, extending the expiration date of the then-existing Restoration Security for an additional period of five (5) years. Such certificate of continuation shall include an updated estimate of the Net Removal Cost prepared by the independent 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 engineer selected based on the process outlined in Section 1.1.

Section 1.5 Failure to Provide Restoration Security. If the Company fails to provide the Restoration Security or a certificate of continuation as required by this Agreement, the County shall provide written notice to Company and Company shall be afforded sixty (60) days' notice and opportunity to cure, prior to County's declaring a default under this Agreement. If Company fails to provide the Restoration Security after such sixty (60) 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 affect the providing of the Restoration Security or any other requirement under this Agreement, (b) pay any premium necessary to continue the Restoration Security, in which case Company shall reimburse the County for the amount of such premium, and (c) seek all remedies at law or in equity. 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 II DISBURSEMENT OF RESTORATION SECURITY

Section 2.1 Rights of County. In the event the Company or its lenders fail to decommission each Generating Unit in accordance with the requirements of this Agreement, the County may 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 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 Security to the Security Provider for the Net Removal Cost, subject to the limitations set forth herein, or take any other action available in law or in equity. Any claim made by the County upon the Restoration Security shall be limited to such expenses incurred by the County for the removal of all structures up to a depth of four (4) feet below the surface and the restoration of the soil and vegetation, including reasonable professional and attorney fees.

Section 2.2 County Cooperation. In the event the County elects not to complete the decommissioning of all or any portion of the Wind Farm, the County shall execute all documentation reasonably required by the Restoration Security, the Company and/or its lenders necessary to waive the County's rights to all or a portion of the Restoration Security and to otherwise permit the Landowners to make claims against the Restoration Security or, at the option of the Landowners, return the Restoration Security to Company. Additionally, the County and 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 Landowners, may be allowed to remain.

Section 2.3 Abandonment. In the event of abandonment of the Wind Farm by the Company, the Company will provide an affidavit to the County Commission representing that all Leases for Generating Units contain terms that provide financial assurance, including access to the salvage value of the equipment, for Landowners to ensure that the Generating Units are properly decommissioned within six (6) months of expiration or earlier termination of the Lease; provided, however, delivery of such affidavit shall not relieve the Company of any of its obligations under this Agreement.

Section 2.4 Release of Restoration Security. The Security Provider shall release the Restoration Security when the Company has demonstrated to the reasonable satisfaction of the County Commission, or its designee, that the decommissioning obligations contained in this Agreement have been satisfied.

ARTICLE III SALVAGE VALUE

Section 3.1 County Right to Salvage Value of Generating Units. In the event the Company, its lenders or the Landowners fail to decommission any Generating Unit in accordance with the terms of this Agreement, the Generating Unit shall be deemed abandoned and the County shall apply the salvage value of the Generating Unit to any costs of decommissioning the Generating Unit, with the net result being the amount that may be claimed out of the Restoration Security.

ARTICLE IV
OTHER RIGHTS OF COUNTY

Section 4.1 Other Relief. In addition to any other rights and remedies granted herein or allowed in law or in equity, the County shall have the right to seek injunctive relief 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 Security and the salvage value of the Generating Units.

ARTICLE V
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 violate any applicable law of the State of Kansas.

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 VI
TERM

Section 6.1 Term. The term of this Agreement shall commence on the date of this Agreement and 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 Security and the salvage value of each Generating Unit within the Wind Farm upon the request of the Company.

ARTICLE VII
MISCELLANEOUS

Section 7.1 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 7.2 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 email or 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 the County:

Bourbon County Counselor
210 S. National Ave.
Fort Scott, KS 66701
Email: jmeeks@bourboncountyks.org

If to Company:

Apex Clean Energy, Inc.
310 4th St. NE, Suite 200
Charlottesville, VA 22902
Attention: Deputy General Counsel
Email: legal@apexcleanenergy.com

And

Alan Claus Anderson
Polsinelli PC, 900 W 48th Place, Suite 900
Kansas City, MO 64112
(816)572-4761
aanderson@polsinelli.com

Section 7.3 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 7.4 Successors and Assigns.

(a) This Agreement shall (i) remain in full force and effect until the termination hereof pursuant to Section 6.1 herein; and (ii) be binding upon and inure to the benefit of the respective successors and permitted 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 consent of the County, assign or transfer this Agreement or any or all of its rights, interests, and obligations under this Agreement to any affiliate or subsidiary of the Company, to a company that acquires substantially all the assets of Company, or to a third-party entity that purchases all or a portion of the Wind Farm. Additionally, upon prior written notice to the County and without consent of the County, Company may assign this Agreement to a (i) public utility, (ii) a renewable energy developer, or (iii) a financial institution or a financing party.

(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 any direct or indirect affiliate of Company.

(e) Any assignment pursuant to this Section shall be subject to the assignee agreeing in writing to be bound by the terms of this Agreement. 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 Agreement.

(f) Company may, also, without the prior approval of the County, enter into any partnership or contractual arrangement, including but not limited to, a partial or conditional assignment of equitable interest in the Company or its parent 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 (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.

Section 7.5 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 7.6. 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 7.7 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 7.8 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Kansas. Venue for any action related to this Agreement shall be in a court of appropriate jurisdiction located in Jackson County, Kansas.


Section 7.9 Further Assurances and Cooperation. Each Party will promptly, diligently and in good faith cooperate with the other Party during the Term, including without limitation delivering to the other Party upon request proof of compliance with this Agreement, estoppel certificates, and further assurances, documents and reasonably-requested agreements.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed in their respective names by their duly authorized representatives and dated their signatures as shown below.

DEVELOPER:

Jayhawk Wind, LLC,
a Delaware limited liability company

By: 

3/16/2020

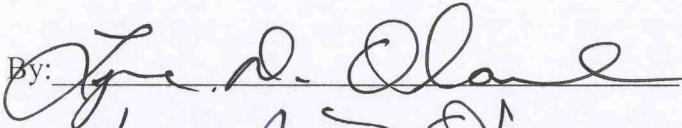
Printed Name: Ken Young

Date

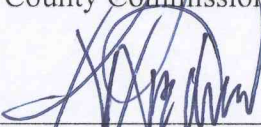
Title: COO and Authorized Signatory of Apex Clean Energy Holdings, LLC, in its capacity as Manager of Apex GBR, LLC, the Sole Member of Apex Clean Energy Finance, LLC, the Sole Member of Jayhawk Wind, LLC

THE COUNTY:

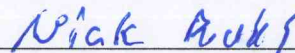
THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

By: 

Name: Lynn D. Okarah
County Commissioner

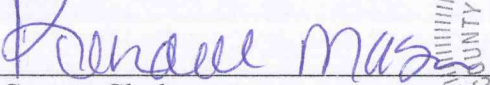
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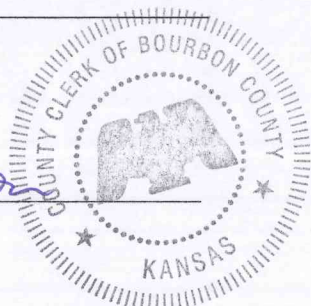
Name: JEFF FISCHER
County Commissioner

By: 

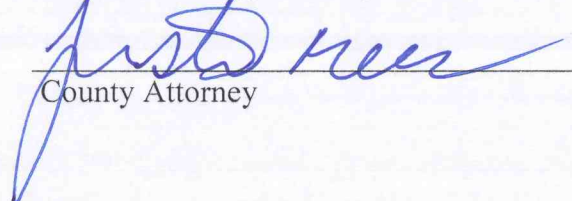
Name: Nick Paul
County Commissioner

ATTEST:

By: 
County Clerk



Reviewed and approved by:


County Attorney