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IN THE DISTRICT COURT OF BOURBON COUNTY, KANSAS  
CIVIL DEPARTMENT

|                                        |   |
|----------------------------------------|---|
| DAVID BEERBOWER, LEROY KRUGER,         | ) |
| BRANDON WHISENHUNT, BOA CASPER,        | ) |
| KATIE CASPER, TIMOTHY EMERSON,         | ) |
| SAMUEL TRAN, KAREN TRAN, and           | ) |
| MICHAEL WUNDERLY,                      | ) |
|                                        | ) |
| Plaintiffs,                            | ) |
| v.                                     | ) |
|                                        | ) |
| THE BOARD OF COUNTY COMMISSIONERS OF   | ) |
| BOURBON COUNTY KANSAS, HINTON CREEK    | ) |
| SOLAR LLC; KINGBIRD SOLAR ENERGY, LLC; | ) |
| TENNYSON CREEK SOLAR LLC, and          | ) |
| TENNYSON CREEK SOLAR II LLC,           | ) |
|                                        | ) |
| Defendants.                            | ) |

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Pursuant to Chapter 60 of K.S.A.

**PETITION**

COME NOW, Plaintiffs, and for their cause of action against Defendants, state as follows:

1. Defendant Hinton Creek Solar, LLC is a Delaware limited liability company that has procured leases, licenses, and/or easements to use land in Bourbon County for purposes of commercial-scale power generation using solar resources and seeks to construct and operate a facility (Solar Project) in Bourbon County for such purposes.

2. Defendant Kingbird Solar Energy, LLC is a Delaware limited liability company that has procured leases or easements to use land in Bourbon County for purposes of commercial-scale power generation using solar resources and seeks to construct and operate a facility (Solar Project) in Bourbon County for such purposes..

3. Defendant Tennyson Creek Solar LLC is a Delaware limited liability company that has procured leases or easements to use land in Bourbon County for purposes of commercial-scale power generation using solar resources and seeks to construct and operate a facility (Solar Project) in Bourbon County for such purposes.

4. Defendant Tennyson Creek Solar II LLC is a Delaware limited liability company that has procured leases or easements to use land in Bourbon County for purposes of commercial-scale power generation using solar resources and seeks to construct and operate a facility (Solar Project) in Bourbon County for such purposes.

5. Defendants Hinton Creek Solar, LLC, Kingbird Solar Energy, LLC, Tennyson Creek Solar LLC and Tennyson Creek Solar II LLC (Corporate Defendants) each entered into agreements with the Board of County Commissioners of Bourbon County, approved by the board on October 31, 2024 (the Agreements), pertaining to the development in Bourbon County of their respective Solar Projects. Copies of those agreements are attached as Exhibits 1-9.

6. The minutes of the October 31, 2024, meeting of the Board of County Commissioners of Bourbon County are attached as Exhibit 10.

7. At the October 31, 2024, meeting, commissioner Jim Harris made a motion, through proposed Resolution 14-24, to revoke an existing moratorium on solar

energy developments which was seconded by commissioner Clifton Beth. That motion never came to a vote.

8. Plaintiffs David Beerbower and LeRoy Kruger are commissioners-elect of the Board of County Commissioners of Bourbon County, Kansas, set to take office in January 2025 as the result of their election on November 5, 2024.

9. Plaintiffs David Beerbower and LeRoy Kruger defeated sitting commissioners Jim Harris and Clifton Beth in the August 2024 primary election.

10. Plaintiff Brandon Whisenhunt is a sitting member of the Board of County Commissioners of Bourbon County, Kansas, and was reelected in the November 2024 election.

11. Plaintiffs Boa and Katie Casper, Timothy Emerson, Samuel and Karen Tran, and Michael Wunderly are landowners, residents, and qualified electors of Bourbon County, Kansas. Each owns land adjacent to or in close proximity to land as to which a Corporate Defendant has a lease, license and/or easement for energy generation purposes from solar resources and each would be adversely affected by the development of a Solar Project facility by one or more of the Corporate Defendants in Bourbon County by virtue of the proximity of such plaintiff's property to the facility.

12. The Agreements were approved by the Board of County Commissioners of Bourbon County on October 31, 2024, by a single 2-1 vote. Plaintiff Brandon Whisenhunt voted against approval.

13. Plaintiff Brandon Whisenhunt had not been provided with a copy of the Agreements until the evening before the approval came to a vote.

14. The Agreements would enable the development of a Solar Project on land in Bourbon County adjacent to property owned by plaintiffs Boa and Katie Casper, Timothy Emerson, Samuel and Karen Tran, and Michael Wunderly.

15. The terms of the Agreements purport to limit the Board of County Commissioners' exercise of police powers in the future with respect to Corporate Defendants, including during times when those commissioners who voted for the approval of the Agreements would no longer be serving as county commissioners and when plaintiffs David Beerbower, LeRoy Kruger, and Brandon Whisenhunt would be the sitting county commissioners by virtue of their election to those positions.

16. The Agreements purport to agree that the rights of Corporate Defendants to develop their solar projects vest upon execution of the Agreements.

17. The Agreements purport to agree that if Bourbon County adopts zoning regulations in the future the rights to use Bourbon County property for the Corporate Defendants' Solar Projects will be vested, effectively excluding those Solar Projects from the application of the zoning regulations.

18. The Agreements purport to bind the Board of County Commissioners of Bourbon County to make, on an ongoing basis into the future, every reasonable effort to further the implementation of the intentions of the parties as reflected in the Agreements, including exempting the Corporate Defendants' Solar Projects from any future zoning regulations that the County might adopt.

19. The Agreements purport to bind Bourbon County to cooperate with Corporate Defendants in the development and construction of their Solar Projects.

20. The Agreements purport to bind the County to continue the same road maintenance practices as had become usual at the time of the Agreements and thereby limit the power of Board of County Commissioners to change those practices to serve the needs of the community as determined by the Board of County Commissioners.

21. The Agreements purport to limit the rights of Bourbon County Commission, as constituted in the future, in the case of a future breach, to pursue remedies otherwise permitted by law.

22. The Agreements purport to subject Bourbon County indemnity obligations unlimited in amount, in violation of the Kansas Cash Basis Law.

23. The Agreements are injurious to the interests of the public and/or tend to interfere with the public welfare or safety and contravene public policy such that they are void.

24. The terms of the Agreements, if enforceable, would materially impede or prevent the Board of County Commissioners as constituted in the future from exercising police power through zoning over future land uses by Corporate Defendants.

25. Within the weeks prior to the Board of County Commissioners of Bourbon County voting to approve the Agreements, each of the Corporate Defendants committed to donate funds to specific recipients, which did not include Bourbon County (Donation Commitments).

26. At the time the Donation Commitments were made by the Corporate Defendants, plaintiff David Beerbower was unopposed in the upcoming general election for County Commission seats.

27. At the time the Donation Commitments were made by the Corporate Defendants, plaintiffs David Beerbower and LeRoy Kruger had publicly disclosed that they were more skeptical of appropriateness of unregulated utility scale solar energy in Bourbon County than the commissioners they would replace and that they were willing to consider using the police power of the Board of County Commissioners of Bourbon County once in office to adopt zoning or otherwise impose regulations with respect to utility scale solar energy developments in Bourbon County in view of their adverse effects or potential adverse effects on the citizens of Bourbon County.

28. The Donation Commitments were at variance with, and in substitution for, prior commitments or expressions of willingness on the part of the Corporate Defendants to make donations in connection with their proposed Solar Projects in Bourbon County.

29. On information and belief, the decision to change the anticipated recipients of the donations and to make the Donation Commitments was the result of direct or indirect communications from one or more individual commissioners that the Corporate Defendants would find favorable treatment from the commissioners with respect to the Agreements if those defendants changed the anticipated recipients of donations to recipients or causes of personal interest to one or more of the commissioners who, after the changes reflected in the Donation Commitments, voted in favor of the Agreements.

30. On information and belief, one or more of the commissioners voting in favor of approving the Agreements intentionally requested, directly or indirectly, a

benefit, reward or consideration in the form of a donation commitment to a cause or entity of personal interest to that commissioner to improperly influence the commissioner and in exchange for the approval of the Agreements, including provisions in the Agreements promising that the Board County Commissioners would not exercise, and would omit the performance of, police powers.

31. On information and belief, the Corporate Defendants entered into the Donation Commitments to provide a benefit to one or more of the commissioners to improperly influence one or more of the commissioners, in exchange for the approval of the Agreements including provisions therein promising that the Board of County Commissioners would not exercise, and would omit the performance of, police powers.

32. The fact that the Corporate Defendants had entered into the Donation Commitments was explicitly considered in connection with the vote to approve the Agreements.

33. The approval of the Agreements was unlawful, fraudulent, and oppressive.

34. The terms of the Agreements, including those terms purporting to limit, or having the effect of limiting, the exercise of police powers by the Board of County Commissioners of Bourbon County as constituted after January 20, 2025, are unenforceable, void, and/or voidable.

WHEREFORE, Plaintiffs seek judgment setting aside the Agreements; declaring them to be unenforceable; establishing that the powers of the Board of Commissioners of Bourbon County as it will be constituted after January 20, 2025, to regulate the activities of the Corporate Defendants companies will be unimpaired by any agreement

with any of those defendants; declaring that Resolution 14-24 was not adopted and is of no force and effect; and for such further relief as may be just and equitable.

Respectfully submitted,

ADAMS JONES LAW FIRM, P.A.

By: /s/ Patrick B. Hughes  
Patrick B. Hughes, #16648  
*Attorney for Plaintiffs*



# **EXHIBIT 1**

## **DECOMMISSIONING AGREEMENT**

THIS DECOMMISSIONING AGREEMENT ("Agreement") is entered into as of this 31<sup>st</sup> day of October, 2024 ("Effective Date") by and between the Board of County Commissioners of Bourbon County, Kansas (the "County"), a governmental entity in the State of Kansas and Hinton Creek Solar, LLC ("Developer"), a Delaware limited liability company. County and Developer may each be referred to herein individually as a "Party", and collectively as the "Parties".

### **RECITALS**

WHEREAS, Developer intends to construct and operate a solar project in one or more phases (each, a "Phase"), commonly referred to as the Hinton Creek Solar Project, to be located on privately-owned land within the County and consisting of assets which may include photovoltaic solar panels, battery storage, invertors, solar monitoring equipment, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Solar Project");

WHEREAS, the Solar Project will be located on property owned or controlled by the County and by private landowners within the County (collectively, the "Property");

WHEREAS, Developer has or will enter into certain lease agreements, easement agreements, and/or forms of landowner consent documents (each individually, a "Lease") with the participating landowners within the Solar Project area (the "Landowners"), which may include provisions governing the decommissioning of Solar Project facilities located on such Landowners' property;

WHEREAS, Developer desires to provide financial security to address the cost of decommissioning the portions of the Solar Project located on the Property in the form of a bond;

WHEREAS, for purposes of this Agreement, "Generating Units" are defined to include the energy collection cells, panels, mirrors, inverters, lenses and racking, and "Supporting Facilities" are defined to include any related foundations, battery storage, transformers, solar monitoring equipment, roads, and collector substations; and

WHEREAS, on November 13, 2023, the Parties executed a Decommissioning Agreement for the Solar Project (the "Prior Agreement").

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

### **TERMS AND CONDITIONS**

#### **Article I.**

#### **DECOMMISSIONING AND RESTORATION SECURITY**

##### **Section 1.1 Agreement to Decommission.**

(a) No later than ninety (90) days prior to the expiration of the Term or prior to termination of this Agreement by either Party pursuant to this Agreement, Developer shall present a decommissioning plan to the County for the portions of the Solar Project located on the Property. The decommissioning plan shall include the removal of all physical material related to the applicable Phase of the Solar Project located on the Property to a depth of thirty-six inches (36") and restoration of the surface of the Property to substantially the same or better condition it was in at the Effective Date so that the Property will be suitable for its prior use (reasonable wear and tear, condemnation, casualty damage and acts of God excepted) (all hereinafter referred to as "Restoration"). The Restoration shall be at Developer's expense and shall be completed within twenty-four (24) months after the expiration of the Term or termination of this Agreement by either Party pursuant to this Agreement.

(1) On the tenth (10th) anniversary of the commencement of commercial operation of each Phase of the Project and every fifth (5th) anniversary following the tenth (10th) anniversary for such Phase, Developer shall provide to the County an estimate of the projected salvage value of the equipment to be removed from the Project site for the applicable Phase and the projected cost to Developer of decommissioning and restoration upon the termination of commercial operation of the applicable Phase of the Project as determined by an independent engineer (the "IE") mutually agreeable to the County and Developer. If the projected costs of Restoration exceed the projected salvage value as determined by the IE, a credit support ("Decommissioning Surety") in the form of a bond from an institution with at least a "BBB" Standard and Poor's or "Baa2" Moody's or "A-" AM Best's financial rating or better for the benefit of the County shall be provided in an amount equal to the difference between the projected salvage value and the projected Restoration cost; however, at no point shall the amount of such Decommissioning Surety be less than one million dollars, escalating at two percent (2%) annually beginning on the first anniversary of the issuance of the Decommissioning Surety. Such Decommissioning Surety shall remain in place until such time as Developer's Restoration obligations for such Phase hereunder have been performed. Upon the earlier of the completion of the Restoration of the applicable Phase of the Project by Developer, or the termination of this Agreement (other than for a default of Developer in the performance of its Restoration obligations pursuant to this Agreement), such Decommissioning Surety shall terminate. For the avoidance of doubt, in the event of a repowering of the Project on any year after the commencement of commercial operation, the Decommissioning Surety amount will be re-calculated.

(2) The Decommissioning Surety shall remain in force until the completion of Restoration. Upon written request, no more than once in any calendar year, the County may request Developer provide County with information and documentation to confirm the existence and maintenance of such Decommissioning Surety in favor of County.

(b) The Decommissioning Surety amount shall be reduced by the amount of bond or other security, if any, that Developer is required to post by applicable governmental authorities for Restoration associated with the Solar Project improvements on the Property.

(c) Once Restoration for a Phase commences, Developer will, in a competent manner in accordance with industry standards, diligently, continuously and in good faith continue such Restoration. If Developer's ability to operate the Solar Project or performance of its obligations to decommission is prevented, delayed, or otherwise impaired at any time due to Force Majeure, then the time for performance shall be appropriately extended by the time of delay actually caused by the Force Majeure, provided that Developer shall promptly notify County and shall take immediate action to minimize such delay. For purposes of this Section 1.1(c), Force Majeure shall mean the acts of God, extreme weather, war, epidemic or pandemic, civil commotion, riots, damage to work in progress by reason of fire or other casualty, strikes, lock outs or other labor disputes, terrorism, sabotage, or the effect of any law, proclamation, action, demand or requirement of any government agency.

(d) In the event Developer or its lenders fail to decommission any applicable Generating Unit in accordance with the requirements of this Agreement, the County may undertake the decommissioning of such Generating Unit. The County's election to decommission all or any portion of a Generating Unit shall not create an obligation to the Landowners, the Developer or any other third-party to complete the decommissioning of such Generating Unit. In the event the County elects to undertake the decommissioning of a Generating Unit, it may make a claim(s) upon the Decommissioning Surety for the expenses incurred, 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 Decommissioning Surety shall be limited to such expenses incurred by the County for the removal of all structures up to a depth of three (3) feet below the surface and the restoration of the soil and vegetation, including reasonable professional and attorney fees.

## Article II.

### REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations, Warranties and Covenants of County. The County represents and warrants to Developer 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 2.2 Representations, Warranties and Covenants of Developer. The Developer represents and warrants to the County as follows:

(a) The Developer 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 Developer and constitutes the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

(c) The execution, delivery, and performance of this Agreement by Developer will not violate any applicable law of the State of Kansas.

### Article III.

#### TERM

Section 3.1 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate upon the earlier of the 50th anniversary of the date of Completion of Construction or such time as the Solar Project is fully decommissioned, unless earlier terminated or extended by the mutual agreement of the Parties.

### Article IV.

#### MISCELLANEOUS

Section 4.1 No Waiver; Remedies Cumulative. No failure on the part of any Party 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 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 expressly herein provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

Section 4.2 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 electronic mail 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.

To Developer:

Business Manager  
Hinton Creek Solar, LLC  
700 Universe Boulevard, FEW-JB  
Juno Beach, FL 33408

Copy to:

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

To County:

Bourbon County Clerk  
210 S National Ave # 3  
Fort Scott, KS 66701

Section 4.3 Amendments. This Agreement constitutes the entire agreement and undertaking of the Parties and supersedes all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth herein. This Agreement may be amended, supplemented, modified or waived only by an instrument in writing duly executed by all of the parties hereto.

Section 4.4 Successors and Assigns. This Agreement may be assigned only upon written consent of the Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except Developer may, without obtaining consent or approval from County, assign this Agreement to an affiliate or successor entity, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Developer shall provide County with written notice of any assignment within thirty (30) days of such assignment becoming effective.

Section 4.5 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

Section 4.6 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 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 4.7 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 4.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to conflicts of laws provisions and each Party waives all right to trial by jury for all suits or causes of action arising out of this agreement.

Section 4.9 Termination of Prior Agreement. The Parties hereby agree to terminate the Prior Agreement in its entirety without any liability or ongoing obligations for either Party, and to have this Agreement govern the obligations of the Parties going forward relating to the subject matter described herein.

**[REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK; SIGNATURE  
PAGES FOLLOW.]**

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:**

HINTON CREEK SOLAR, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

**THE COUNTY:**

THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

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

Name: Brandon Whisenhunt, County Commissioner (District 1)

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

Name: Jim Harris, County Commissioner (District 2)

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

Name: Clifton Beth, County Commissioner (District 3)

ATTEST  
By:  \_\_\_\_\_

*Reviewed and approved by:*

\_\_\_\_\_



# **EXHIBIT 2**

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this 31<sup>st</sup> day of October, 2024 (the "Effective Date"), by and between the Board of County Commissioners for Bourbon County, Kansas ("County") and Hinton Creek Solar, LLC ("Developer"), a Delaware limited liability company, whose address is 700 Universe Boulevard, Juno Beach, FL 33408. The County and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

### **RECITALS**

WHEREAS, Developer intends to construct in one or more phases (each, a "Phase") and operate a solar project, commonly referred to as the Hinton Creek Solar Project, to be located on privately-owned land within the County and consisting of assets which may include photovoltaic solar panels, battery storage, invertors, solar monitoring equipment, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Solar Project"); and

WHEREAS, Developer has or will enter into certain lease agreements, easement agreements, and forms of landowner consent documents (individually, a "Lease" and, collectively, the "Leases") with the participating landowners within the Solar Project area (the "Landowners"); and

WHEREAS, the County intends, through this Agreement, to consider the orderly development, construction, operation, and maintenance of the Solar Project in the County, pursuant to the terms and conditions set forth in this Agreement; and

WHEREAS, upon execution of this Agreement and the Definitive Agreements (defined below), the County acknowledges and agrees that all County permits and approvals required for the Solar Project have been granted and substantial amounts of work have been completed;

WHEREAS, on November 13, 2023, the Parties executed a Development Agreement (the "Prior Development Agreement").

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

### **SECTION I. RECITALS**

The recitals set forth above constitute a material part of this Agreement and are incorporated herein. The Parties confirm the accuracy, truth and validity of said recitals.

### **SECTION II. COUNTY APPROVAL AND FUTURE COOPERATION**

#### **A. COUNTY CONSENTS AND APPROVALS.**

1. Unless otherwise provided herein, whenever the consents or approvals of the County, or any of its employees, consultants, attorneys, officers, agents, or representatives are required to be secured or obtained by Developer under the provisions of this Agreement, the same shall not be unreasonably conditioned, withheld, or delayed unless otherwise set forth in the Definitive Agreements. The County will reasonably cooperate with Developer in the development, construction, operation, maintenance, and decommissioning of the Solar Project and issue all permits, approvals, and authorizations required by local regulations or other law, if any, provided Developer files compliant applications, pays all applicable fees, and complies with all the requirements specified in this Agreement and is not otherwise in default under the terms of the Definitive Agreements.
2. The County acknowledges, understands and agrees that the development process associated with the Solar Project will take significant time and requires a substantial investment by the Developer. Therefore, in order to induce the Developer to make this commitment and investment, the County hereby agrees that it approves and authorizes the Developer to construct and operate the Solar Project in the County. The County acknowledges, understands and agrees that the Developer will undertake significant financial investment in reasonable reliance on the County's promises and obligations under the Definitive Agreements. The County agrees that the Developer's rights to construct and operate the Solar Project vest upon the execution of this Agreement. The County acknowledges and agrees that there are currently no local laws, requirements, regulations, permits, or approvals applicable to the construction or operation of the Solar Project. The County agrees that if at any time in the future any laws, requirements, regulations, permits or approvals are enacted that would otherwise prevent or limit the Developer's construction or operation of the Solar Project, the Solar Project shall be grandfathered for purposes of compliance with such future laws, requirements, regulations, permits, or approvals and the Solar Project shall be allowed to be developed or to continue operations in the County. In the event the County adopts zoning regulations, the County shall provide in said zoning regulations that the use of the Property for the Solar Project and the operation of the Solar Project shall be vested as provided for in K.S.A. 12-764.

B. FUTURE COOPERATION. The Parties shall cooperate with one another on an ongoing basis and shall make every reasonable effort (including the holding of hearings or meetings and the adoption of such resolutions as may be necessary) to further the implementation of this Agreement and the Definitive Agreements (as defined below) and the intentions of the Parties as reflected by the provisions of this Agreement and the Definitive Agreements. Without limiting the foregoing, in the event that the County adopts any zoning or other laws after the Effective Date that would make the development, construction, operation, repair, replacement, and maintenance of the Project a nonconforming use under such zoning or other laws, or that would otherwise materially interfere with such development, construction, operation, repair, replacement, and maintenance of the Project, or the decommissioning of the Project, the County agrees that it will take such actions, adopt such ordinances and do such other things as are necessary to exempt or exclude the Project from such zoning or other laws. The County acknowledges and agrees that, upon execution of this Agreement and the Definitive Agreements

(defined below), no County permits and approvals are required for the Project, for any future O&M building, or for any crossings over or along County roads.

### **SECTION III. DEVELOPMENT REQUIREMENTS**

- A. DEFINITIVE AGREEMENTS. Concurrently with the execution of this Agreement, Developer shall enter into the following agreements with the County (collectively, the "Definitive Agreements"):
  - 1. A Road Use Agreement ("Road Use Agreement").
  - 2. A Decommissioning Agreement ("Decommissioning Agreement").
- B. LANDOWNER PARTICIPATION. All photovoltaic solar panels, battery storage sites, and related structures within the County shall be located on public rights of way and property that is owned by Developer, or an affiliate thereof, or property for which Developer or its affiliate has or will have executed a lease, easement or other agreement with the applicable landowner.
- C. SETBACKS AND SITING.
  - 1. Setbacks.
    - a. All photovoltaic solar panels and battery storage sites shall be setback at least fifty (50) feet from public roads and property lines of nonparticipating landowners and three hundred (300) feet from non-participating occupied residences in existence as of the Effective Date of this Agreement unless such impacted landowner provides a written waiver of such requirement.
    - b. On or before the completion of construction, the Project shall strategically install and augment vegetative buffers along non-participating landowner property lines as necessary to shield occupied, non-participating residences in existence as of the date of this Agreement, unless such impacted landowner provides a writer waiver of such requirement. Such vegetative buffers may include, but not be limited to, two rows of coniferous tress with staggered spacing. Developer will utilize existing natural visual barriers including pre-existing vegetation wherever possible. Such trees installed by the Developer as part of the vegetative buffer shall be a minimum of 5 feet tall at the time of planting.
  - 2. Above-ground Collection Lines Above-ground Collection Lines and Developer-Owned Transmission Line Tower Setbacks.
    - a. Above-ground collection lines and Developer-owned transmission line towers shall be setback at least one-and-a-half (1.5) times the height of the transmission line tower measured from base of the tower to the nearest outside wall of such structure from any non-participating occupied primary residential dwelling currently in existence in the County and may not be located in a County right of

way without County approval, but above-ground transmission line wires may cross (and be located in) County right of ways as set forth in the Road Use Agreement.

b. Collection lines will be located within leases or easements on participating landowner property, or located underground on public right of way crossings as approved by the County in compliance with the Road Use Agreement.

c. The setbacks and height requirements set forth in this Agreement can be modified with written consent of the Parties.

3. Sound Levels. Unless otherwise agreed to by the landowner, after commencement of operation the Project sound levels are not to exceed fifty (50) dBA Leq, measured at the nearest outside wall of an occupied primary non-participating residential dwellings currently in existence in the County.

4. Ground Cover and Vegetation Preservation.

a. Developer shall create a vegetation management plan prior to commencement of construction and shall implement vegetation management practices in accordance with this plan during construction and operations. Vegetation management practices will include, but not be limited to seeding the land immediately under and surrounding the solar photovoltaic panels with seed mix containing prairie grasses or forbs native to the Midwest United States ("Regeneration Seed Mix") prior to Project operations.

b. In constructing the Solar Project, Developer shall seek to preserve mature trees, tree lines, streamways, ponds, and grasslands to the extent such efforts are reasonable and practicable.

5. Security Fencing. Developer shall enclose the Solar Project with a security fence of no more than twelve (12) feet in height. Developer shall, throughout the Term, reasonably maintain any fencing it or its affiliates erect.

6. Lighting. Developer shall limit its use of outdoor lighting to levels required for safety and security. Developer shall implement reasonable controls on lighting to prevent glare and light spillage offsite.

7. Insurance. Prior to the commencement of construction, Developer shall provide insurance as set forth in the Road Use Agreement.

8. Emergency Services, Fire Protection, and Hazardous Materials.

a. Developer or its affiliate will share applicable EPC and national electrical code guidelines for fire protection and emergency response with the Bourbon County Director of Emergency Management.

- b. Developer or its affiliate will share applicable EPC guidelines on the proper storage and handling of hazardous materials with the Bourbon County Director of Emergency Management.
  - c. Developer or its affiliate will work in cooperation with the County to establish 911 addresses for each photovoltaic solar panel and battery storage site.
9. Reimbursements to the County. Developer or its affiliate will reimburse the County as set forth in the Definitive Agreements.
10. Compliance with Laws. Developer and its affiliates shall comply with, and if found to be out of compliance shall make commercially reasonable efforts to bring the Solar Project into compliance with, all federal and state laws and regulations applicable to the construction and operation of the Solar Project, including:
- a. Federal Aviation Administration statutes and regulations;
  - b. Occupational Safety and Health Administration statutes and regulations;
  - c. United States Fish and Wildlife Service statutes and regulations, including those pertaining to impacts on endangered or threatened species or habitats;
  - d. U.S. Army Corps of Engineers statutes and regulations, including those pertaining to impacts on wetlands;
  - e. Environmental Protection Agency statutes and regulations, including those pertaining to environmental impacts;
  - f. Federal Communication Commission (FCC) statutes and regulations, including those pertaining to wireless communications impacts;
  - g. Consultations with the Kansas Department of Wildlife, Parks, and Tourism, including those pertaining to impacts on endangered or threatened species or habitats;
  - h. Consultations with the Kansas Department of Health and Environment, including those pertaining to any environmental impacts;
  - i. Consultations with the Kansas Historical Society pertaining to surveys of any historical sites that may be located within the Solar Project area; and
  - j. Any other applicable regulations promulgated by these and any other federal and state agencies.
11. 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 electronic mail) 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 electronic mail 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.

To Developer:

Business Manager  
Hinton Creek Solar, LLC  
700 Universe Boulevard, FEW-JB  
Juno Beach, FL 33408

Copy to:

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

To County:

Bourbon County Clerk  
210 S National Ave # 3  
Fort Scott, KS 66701

#### **SECTION IV. REPRESENTATIONS AND WARRANTIES**

A. COUNTY. The County represents and warrants that:

1. the County has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
2. upon execution and delivery by the County and Developer, this Agreement shall be a valid, legal, binding and enforceable obligation of the County enforceable against the County in accordance with its terms, subject to any applicable laws of bankruptcy, insolvency or reorganization, laws affecting the enforcement of creditors' rights generally, and general principals of equity;
3. no approval or consent from any other person or entity is required for the County's execution of this Agreement; and
4. this Agreement is executed by duly authorized representatives of the County who are fully authorized to execute this Agreement on behalf of the County.

B. DEVELOPER. Developer represents and warrants that:

1. Developer has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
2. upon execution and delivery by Developer and the County, this Agreement shall be a valid, legal, binding and enforceable obligation of Developer enforceable against Developer in accordance with its terms, subject to any applicable laws of bankruptcy, insolvency or reorganization, laws affecting the enforcement of creditors' rights generally, and general principals of equity;
3. no approval or consent from any other person or entity is required for Developer's execution of this Agreement; and
4. this Agreement is executed by a duly authorized representative of Developer, who is fully authorized to execute this Agreement on behalf of Developer.

## **SECTION V. DEFAULT PROVISIONS**

If either Party fails to observe or perform any material condition or provision of this Agreement for sixty (60) days after receiving written notice of such failure from the other Party (the "Cure Period"), then the aggrieved Party shall have the right to terminate this Agreement upon thirty (30) days prior notice to the other Party and to pursue any remedy available to it at law or in equity; provided however, that for so long as the delinquent Party is diligently attempting to cure such failure and the failure is, in the aggrieved Party's discretion, reasonably capable of being cured, a default under this Section V shall not be deemed to have occurred. If the Developer fails to observe or perform any material condition or provision within Section III(C)(11) during an isolated instance where curing such a failure is not possible, termination will only be permissible in the event that Developer fails to comply with all relevant penalties associated with such a failure.

Notwithstanding the foregoing, a Party's failure to observe or perform any material condition or provision of this Agreement due to an Excusable Delay shall not constitute a breach of this Agreement. For purposes of this Agreement, "Excusable Delay" means any casualty to property or persons, inclement weather, epidemic or pandemic, inability to secure materials, strikes or labor disputes, acts of God, acts of the public enemy or hostile or terrorist action, civil commotion, and/or governmental actions, restrictions, regulations or controls, including, without limitation, any failure or refusal of any governmental authority to timely issue any required permit or approval for development of the Solar Project or any legal action or proceeding involving any such required permit or approval (whether arising out of any existing laws or changes in laws, including any such laws relating to annexation, zoning, platting, building or other codes or ordinances applicable to development and construction of the Solar Project), or any other cause beyond the reasonable control of that Party (other than financial inability) which affects development, construction, maintenance, operation, repair, replacement or decommissioning of the Solar Project (including, without limitation, any of the foregoing which affect a Party's contractors or subcontractors).



Notwithstanding the foregoing, upon termination of this Agreement for default as defined above, the Development Requirements (Section III) and the Road Use Agreement shall continue in full force and effect until final and complete cessation and decommissioning of the Project.

#### **SECTION VI. SEVERABILITY**

In the event that any term or provision of this Agreement is deemed to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

#### **SECTION VII. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to the conflict of law principles thereof and each Party waives all right to trial by jury for all suits or causes of action arising out of this agreement.

#### **SECTION VIII. MISCELLANEOUS**

- A. NO WAIVER. The failure of either Party to insist in any one or more instances on the performance of any of the obligations required by the other under this Agreement shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.
- B. HEADINGS. The headings used in this Agreement are for ease of reference only and shall not in any way be construed to limit or alter the meanings of any provision hereof.
- C. AMENDMENTS. This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each Party. Any oral or verbal agreements between the Parties different from or in conflict with the provisions of this Agreement shall be null and void and of no force or effect where they are in conflict with the written provisions of this document.
- D. ASSIGNMENT. This Agreement may be assigned only upon written consent of the Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except Developer may, upon notice to County, but without County's consent or approval, assign this Agreement to an affiliate, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Notwithstanding anything to the contrary, Developer may only assign this Agreement if the assignee agrees and acknowledges in writing that such assignee shall be bound by terms and obligations of this Agreement. Upon such assignment all of Developer's rights and obligations shall inure to the benefit of and shall be binding upon the Developer's assignee and its respective successors, assignees and legal representative.

E. INTERPRETATION. This Agreement was prepared with substantial input from both Parties and their respective legal counsel; no phrase, sentence, clause, provision or section of this Agreement shall be construed against a Party as a result of such Party's legal counsel having acted as the primary drafter thereof.

F. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the successors, assigns, trustees and/or receivers of the Parties hereto.

G. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

H. TIME IS OF THE ESSENCE. Time is of the essence of this Agreement, and of each and every provision hereof, and the Parties shall make every reasonable effort to expedite the subject matters hereof and to perform their respective obligations.

I. TERMINATION OF PRIOR AGREEMENTS. The Parties hereby agree to terminate the Prior Development Agreement in its entirety without any liability or ongoing obligations for either Party, and to have this Agreement govern the obligations of the Parties going forward relating to the subject matter described herein. Additionally, the Parties hereby agree to terminate that certain Contribution Agreement by and between the Parties dated November 13, 2023 in its entirety without any liability or ongoing obligations for either Party.

**[REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK;  
SIGNATURE PAGES FOLLOW.]**

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:**

HINTON CREEK SOLAR LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

**THE COUNTY:**

THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

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

Name: Brandon Whisenhunt, County Commissioner (District 1)

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

Name: Jim Harris, County Commissioner (District 2)

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

Name: Clifton Beth, County Commissioner (District 3)

ATTEST:

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

*Reviewed and approved by:*

\_\_\_\_\_

# **EXHIBIT 3**

## **ROAD USE AND MAINTENANCE AGREEMENT**

THIS ROAD USE AND MAINTENANCE AGREEMENT ("Agreement") is entered into as of this 31st day of October, 2023 ("Effective Date") by and between the Board of County Commissioners of Bourbon County, Kansas (the "County"), a governmental entity in the State of Kansas, whose address for purposes of this Agreement is 210 S National Ave # 3, Fort Scott, KS 66701 and Hinton Creek Solar, LLC ("Developer"), a Delaware limited liability company, whose address is 700 Universe Boulevard, Juno Beach, FL 33408. County and Developer may each be referred to herein individually as a "Party", and collectively as the "Parties". For this Agreement, the term "Roads" means any County or township right-of-way, or other roads, alleys, or ways that are owned, operated, or maintained by the County or any township located within the County, including, but in no way limited to, gravel, pavement, ditches, culverts, and bridges.

### **RECITALS**

WHEREAS, Developer is developing a solar electrical generation and battery storage facility (the "Project") in one or more project companies or phases (each, a "Phase"), to be located on privately-owned land within that part of the County shown on the attached Exhibit A (the "Project Boundary"); and

WHEREAS, Developer intends to obtain the necessary approvals to build the Project; and

WHEREAS, in connection with the construction of the Project, the Parties desire to address certain issues relating to Roads over which it will be necessary for Developer and its agents, employees, or servants to, among other things:

- i. Transport heavy equipment and materials which may be in excess of local design limits of certain of the Roads;
- ii. Transport materials, such as concrete and gravel, or other project-related material or equipment;
- iii. Make specific modifications and improvements (both temporary and permanent, including various associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; and
- iv. Place electrical, electric transmission, signal, and communication cables and appurtenant components (collectively "Cables") for the Project adjacent to, along, above, under or across such Roads, and

WHEREAS, it is in the best interest of the public health, safety and welfare that Developer and the County reach an agreement to address possible issues pertaining to the Roads that will arise in, around, and near the Project; and

WHEREAS, Developer and the County wish to set forth their understanding and agreement relating to the use of Roads during construction of the Project;

WHEREAS, on November 13, 2023, the Parties executed a Road Use and Maintenance Agreement (the "Prior Agreement").

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **TERMS AND CONDITIONS**

**Section I. Developer Covenants.** Developer will use commercially reasonable efforts related to the following activities in accordance with the terms of this Agreement:

A. Within ten (10) days following the Effective Date of this Agreement, Developer will designate the name, address, email address and phone number of a company representative with authority to represent Developer. Developer may designate a new representative upon written notice to the County;

B. At least thirty (30) days prior to beginning construction of a Phase of the Project, provide the County Road and Bridge Supervisor with a transportation route for the Project equipment, subject to amendment;

C. Provide plans to the County Road and Bridge Supervisor for the widening of any corner radii necessary to facilitate the turning movements of the transport trucks used by Developer during construction of the Phase of the Project, make any necessary improvements, and at the conclusion of construction, at County's election either leave any improvements located on Roads in place in the condition required prior to Developer's initial use of the improvements, or remove any such improvements and restore the affected property;

D. Transport or cause to be transported oversize loads in a manner reasonably calculated to minimize adverse impact on the local traffic;

E. Developer will provide no less than forty-eight (48) hours' notice to the County Road and Bridge Supervisor when it is necessary for a Road to be closed for any reason relating to the construction of the Project, other than short-term closures to mitigate hazards, or accommodate vehicle turns or ingress or egress from Roads or road closures that are already noted in the plans described in Section I(C). Notwithstanding the foregoing, Developer will provide all materials and personnel necessary to close the Road;

F. Provide signage of all Road closures and work zones in compliance with the most current manual on Uniform Traffic Control Devices adopted by the State of Kansas and as may be required by the County;

G. Purchase and deliver applicable road materials for repairs to Roads that are damaged by Developer and/or Developer agents, employees, or servants during the hauling of materials and/or construction of the Project and bear all costs to restore and repair any Roads that are damaged by Developer and/or Developer agents, employees, or servants during the hauling of materials and/or construction of the Project;

H. Developer will cooperate with the County to reasonably mitigate safety hazards to public travel to the extent such hazards are caused by Developer and/or Developer's agents,

employees, or servants during the hauling of materials and/or construction of the Project;  
and

I. The obligations and terms of this Agreement applicable to the initial pre-construction and construction period of the Phase of the Project also apply to any Post-Construction Activity (as defined in Section 4(C) below) and any decommissioning period.

**Section 2. County Covenants.** The County, in accordance with the terms of the Agreement, agrees that it shall:

A. Within ten (10) days following the Effective Date of this Agreement, designate the name, address, email address and phone number of a County representative with authority to represent the County. Such representative will coordinate with and keep the County Board of County Commissioners apprised of material information pertaining to this Agreement.

B. Perform reasonable routine and regular maintenance of the Roads in accordance with the County's usual maintenance practices and without unnecessarily hindering construction of the Project-related access points and Road crossings;

D. Within five (5) working days from the date they are submitted, or at the next scheduled meeting of the Board of County Commissioners, review and approve plans (if applicable) for all Project-related utility encroachments on County Roads;

E. Waive otherwise applicable County permits and approvals for the use of the Roads by Owner and Owner's representatives with oversize or overweight vehicles, which use shall instead be authorized and governed by the terms of this Agreement;

F. Authorize the designated County representative to agree on behalf of the County to revisions to any plans or schedules submitted by Developer as soon as practicable after revisions are submitted to the County by or on behalf of Developer.

**Section 3. Road Use and Planning Inventory.**

A. Road Use. The County hereby grants to Developer and its Representatives a non-exclusive road right of way to enter upon and utilize the Roads with vehicles or combined vehicles less than 80,000 pounds, or to have the Roads utilized by third-party courier or delivery services or by Developer and its Representatives for tree clearing or other site preparation activities ("Standard Road Use"). Unless expressly stated otherwise herein, Standard Road Use shall not be subject to the terms and conditions of this Agreement. County additionally hereby grants to Developer and its representatives, subject to the terms of this Agreement, a non-exclusive road right of way to enter upon and utilize the portion of the Roads identified pursuant to Section I.B with vehicles or combined vehicles equal to or greater than 80,000 pounds ("Heavy Haul Road Use"). Unless otherwise stated herein, the terms and conditions of this Agreement shall only apply to Heavy Haul Road Use.

B. Road Inventory.



1. Pre-Construction Inventory: At least fourteen (14) days prior to the Commencement of Construction of any Phase or commencement of any Post-Construction Activity (as defined in Section 4(C) below), the Developer shall perform a survey to record the condition of the surface of all Roads which will be used in the transport of equipment, parts, and materials of the Phase of the Project (the "Pre-Construction Inventory"), and shall promptly submit such Pre-Construction Inventory to the County Road and Bridge Supervisor for review. Developer will notify the County Road and Bridge Supervisor in advance of, and allow the County Road and Bridge Supervisor to participate in, the Pre-Construction Inventory. During this survey, the entire length of the Roads selected for use in the Pre-Construction Inventory shall be videotaped and photographs taken by Developer. In addition, the County will provide Developer, if available, with copies of any plans, cross-sections and specifications relevant to the existing Road's structure if the same are requested by Developer. Copies of all preconstruction documentation shall be provided to each of the Parties. Developer will reimburse the County for all reasonable, documented costs associated with the Pre-Construction Inventory. For the purposes of this Agreement, "Commencement of Construction" shall be the date that Developer provides notice to the County that a notice to proceed for a Phase of the Project has been issued pursuant to the primary engineering, procurement, and construction agreement ("EPC Agreement") for such Phase.

2. Post-Construction Inventory:

(a) Following Completion of Construction of the Phase of the Project, the Developer will perform a post-construction inventory (the "Post-Construction Inventory"), and shall promptly submit such Post-Construction Inventory to the County Road and Bridge Supervisor for review. Developer will notify the County Road and Bridge Supervisor in advance of, and allow the County Road and Bridge Supervisor to participate in, the Post-Construction Inventory. The method of the Post-Construction Inventory shall be similar to that of the Pre-Construction Inventory described above. The two (2) sets of pre- and post-construction data will be compared to identify wheel lane rutting, cracking or other damage in excess of the Pre-Construction Inventory, and the Developer will determine the extent and cost of the repairs or improvements needed to return the Roads to pre-construction condition. Developer will reimburse the County for all reasonable, documented costs associated with preparing the Post-Construction Inventory. For the purposes of this Agreement, "Completion of Construction" shall be the first date that all of the following has occurred: (a) Developer provides notice to the County that the requirements for final completion have been satisfied pursuant to the EPC Agreement for the Phase of the Project, and (b) all Developer use of Roads has concluded for such Phase, except for Developer's use of Roads with typical vehicles used to manage and operate a solar energy project, none of which will be oversized or overweight (as defined by the Kansas Department of Transportation).

(b) As described further in subsections (i) and (ii) below, Developer will, and is obligated to, at County's sole option either make any or all repairs of damage

caused by Developer or Developer's agents, employees, contractors, subcontractors, affiliates, and servants necessary to return the Roads to a pre-construction condition, at its sole cost and expense, or provide a payment to the County for the amount of such repairs. Within 10 business days of the County's receipt of the Post-Construction Inventory, the County shall submit a written election to the Developer specifying whether Developer shall be responsible for making repairs as described in subsection (i) below, or whether the Developer shall provide a payment for the County to make such repairs as described in subsection (ii) below.

(i) In the event that the County opts for Developer to make such repairs, within twenty (20) calendar days following the completion of the Post-Construction Inventory for a Phase, Developer shall provide written notice to the County of when it will make any such repairs. The notice shall specifically identify the methods and materials for repairs identified in the Post-Construction Inventory and the expected date by which such repairs shall be completed. All identified repairs are to be completed within ninety (90) calendar days after the Post-Construction Inventory subject to day-for-day extension in the event that repair activities are actually delayed as a result of events beyond the reasonable control of Developer that Developer could not have foreseen with reasonable diligence. In order to provide for the safety of those using Roads, at least forty-eight (48) hours prior to making any such repairs Developer shall notify the County Road and Bridge Supervisor of the location of such repairs and the times when such repairs will be made. All such repairs shall be conducted in a manner reasonably calculated to minimize adverse impact on the local traffic.

(ii) In the event that the County opts to make such repairs at Developer's sole cost and expense, Developer shall, within twenty (20) business days of Developer's receipt of the County's election pursuant to Section 3(B)(2)(b) above, provide the County with a good faith estimate of the reasonable costs to purchase and deliver all road materials used by the County to complete the repairs specified in the Post-Construction Inventory, and costs incurred in obtaining the labor and equipment necessary to undertake and complete such repairs in a timely and workmanlike manner (the "Repair Estimate"). Developer shall pay an amount equal to the Repair Estimate to the County within twenty (20) business days of the County's acceptance of the Repair Estimate (the "Repair Payment"). As a condition to the County's receipt of the Repair Payment, the County shall certify in writing that the Developer's post-construction repair obligations have been completed to the County's satisfaction.

(c) If Developer fails to provide the notice to the County described in Section 3(B)(2)(b)(i) above within the time allotted or, after providing notice to County of its intention to undertake any such repairs, fails to complete the repairs within the period set forth in Section 3(B)(2)(b)(i), and there is no ongoing dispute between County and Developer regarding Developer's obligations hereunder, then after

Developer fails to complete such repairs within 60 days after County provides notice of its intent to undertake such repairs, Developer shall be deemed to have waived its rights to make any such repairs and County may immediately undertake all repairs necessary to return the affected Roads to a preconstruction condition at Developer's sole cost and expense. Such expense may include the reasonable costs to purchase and deliver all road materials used by the County to restore Roads to a pre-construction condition, and costs incurred in obtaining the labor and equipment necessary to undertake and complete such repair in a timely and workmanlike manner. Developer further agrees that County may, in its sole but commercially reasonable discretion, enter into agreements with one or more third party contractors specifically for the repair of those Roads which suffer damage caused or contributed to by any of Developer's activities undertaken in the construction of the Project, and that Developer will bear all commercially reasonable costs incurred by County in the retention of any such third party contractor(s).

(d) Within sixty (60) days following receipt of an invoice from the County, Developer shall reimburse County for all documented, reasonable amounts incurred by County in the purchase and delivery of all materials, and payment of the cost of labor, mileage and hourly machines costs, in connection with the repair and restoration of any Roads damaged as a result of the construction of any Phase of the Project, not repaired by the Developer, and which repair the County elected to undertake as provided in Section 3(B)(2)(c).

C. Routing and Access Coordination. As soon as practical after execution of this Agreement and as necessary throughout the construction of the Project, Developer and County shall meet to discuss routing for the oversized and overweight (as defined by the Kansas Department of Transportation) transportation of equipment to the Project, Project-related access points, Road crossings and Cable locations.

#### **Section 4. Financial Instrument to be established by Developer.**

A. Prior to commencement of construction of each Phase of the Project and its use of the Roads, Developer shall provide, from an agent selected by Developer and acceptable to County ("Agent"), a letter of credit, bond, or credit-worthy parent guaranty, securing payment of One Thousand Two Hundred and Fifty Dollars (\$1,250) per megawatt ("MW") of installed capacity in such Phase of the Project, subject to the conditions set forth herein or as otherwise negotiated by the Parties (such instrument being referred to herein as the "Financial Instrument") to secure Developer's payment and performance obligations hereunder.

B. All costs and expenses of maintaining the Financial Instrument, including the fees and expenses of the Agent, and the costs and expenses of making distributions pursuant to the Financial Instrument, shall be borne by Developer.

C. The Financial Instrument shall continue for a period of six (6) months after Completion of Construction of the applicable Phase. Upon delivery by Developer and County of notice certifying that the Project has been commercially operational for six (6) months after Completion of Construction of the applicable Phase, and the County has no outstanding

claims for payments or reimbursements arising from Road repair and restoration necessitated by construction of the Project, the Financial Instrument shall terminate.

D. In the event that any post-commercial operation activity during the life of the Project with a projected cost exceeding \$500,000 requires i) delivery of oversize/overweight (as such terms are defined by the Kansas Department of Transportation) equipment or components; ii) crane mobilization; or iii) repowering the Project (collectively "Post-Construction Activity"), prior to commencing such Post-Construction Activity, Developer shall provide a letter of credit, bond, or credit-worthy parent guaranty that provides the same security as the Financial Instrument in an amount to be determined by Developer and the County that is commensurate with the potential impact of the Post-Construction Activity on the Roads (each a "New Financial Instrument"), but not to exceed the original Financial Instrument amount, and shall maintain such New Financial Instrument for a period of six (6) months after both the Post-Construction Activity has completed, and all Developer use of Roads with oversized or overweight traffic for Post-Construction activity has concluded. Upon delivery by Developer to County of notice certifying that the Post-Construction Activity has been completed for a period of six (6) months, cessation of use of Roads for Post-Construction Activity, and at the time of such certification by Developer the County has made no outstanding claims for payments or reimbursements arising from Road repair and restoration necessitated by Post-Construction Activity, any New Financial Instrument shall terminate.

E. All other terms and conditions concerning the Financial Instrument, any New Financial Instrument, and the provisions for making claim against same, shall be negotiated in good faith between County and Developer, and shall form the basis of a separate agreement.

## **Section 5. Construction Cooperation.**

A. With Others: Prior to the commencement of construction of modifications or improvements to the Roads for each Phase, Developer shall hold a meeting and shall invite the County Road and Bridge Supervisor and any other applicable County public safety officials that the County may designate to discuss plans for the construction of the applicable Phase. Developer shall not commence construction of modifications or improvements to the Roads without approval by the County Road and Bridge Supervisor. The County Road and Bridge Supervisor shall provide such approval or comments within five (5) business days of the Developer's submission of proposed modifications or improvements, such approval not to unreasonably withheld or delayed. If such approval or comments have not been provided by County within 5 business days, proposed modifications will be deemed as accepted by County. County shall compile a list of contact persons who will need to be notified of any temporary Road closures that may have an effect on the daily routine or functioning of these agencies and/or departments. A copy of this list shall be furnished by the County to Developer.

B. Between the County and Developer: During construction of the Project, the County and Developer shall meet regularly to discuss Project activities, including anticipated oversized and overweight (as defined by the Kansas Department of Transportation) material and equipment deliveries.

## **Section 6. Mutual Indemnification/Hold Harmless and Liability Insurance Provisions.**

A. Indemnity. Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party and such party's mortgagees, lenders, officers, employees and agents (the "Indemnified Party") against any and all losses, direct or indirect damages, claims expenses, and other liabilities resulting from or arising out of:

1. Any negligent act or negligent failure to act on the part of the Indemnifying Party or anyone else engaged in doing work for the Indemnifying Party, or
2. Any breach of this Agreement by the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by any negligent or willful act or omission on the part of the Indemnified Party.

B. Limitation of Liability. In no event shall Developer or any of its members, officers, directors or employees or the County or any of its boards, elected officials, officers or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to any Party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, nonperformance or delay in performance under this Agreement.

C. Required Insurance. Developer shall, upon commencement of construction of the Project and for the period of construction of the Project, maintain in full force and effect, commercial general liability insurance, naming Bourbon County as additional insured, in the aggregate amount equal to five million dollars (\$5,000,000.00). Developer may utilize any combination of primary and/or excess insurance to satisfy this requirement and may satisfy this requirement under existing insurance policies for the Project. Developer will annually provide a certificate of insurance evidencing the insurance limits and coverage to County upon written request by the County.

## **Section 7. Miscellaneous**

A. Use of County Right-of-Way. In consideration of the obligations assumed by the Developer under this Agreement, and in addition to the surface use of the Roads, the County hereby grants to the Developer a non-exclusive license, interest, right and privilege to utilize any County rights-of-way for the construction and location of driveways and other points of ingress and egress, installation, operation, maintenance, repair, and decommissioning of the Project and for the siting, installation, operation, repair, maintenance, and repowering of facilities that benefit the Project including, but not limited to, Cables, collection lines, electrical or data transmission lines or other facilities or utilities as may be beneficial for the operation of the Project, except that any use of the County right-of-way shall be limited to perpendicular crossings and in no instance shall Developer install facilities, whether temporary or permanent, along any length of the County right-of-way. In the event the Project requires facilities to be installed and operated within real property in

which the County owns a fee simple interest, a leasehold interest, an easement interest, or some other real property interest, upon the request of Developer, the County agrees to enter into an insurable and recordable easement agreement with Developer to allow the installation and operation of such facilities in the real property according to terms and conditions customary for energy projects without requiring additional payment from Developer.

B. Remedies and Enforcement. The Parties acknowledge that money damages would not be an adequate remedy for any breach or threatened breach of this Agreement. Each of the Parties hereto covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any Party (the "Defaulting Party"), which default is not caused by the Party seeking to enforce said provisions (the "Non-Defaulting Party") and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right to seek specific performance and/or injunctive relief or remedy or prevent any breach or threatened breach of this Agreement. The remedies of specific performance and/or injunctive relief shall be exclusive of any other remedy available at law or equity. With respect to the opportunity to cure a default, if a Party has failed to perform a material obligation under this Agreement, the other Party shall be required to provide written notice of default. The defaulting Party shall have a right to cure the default within thirty (30) days after having received notice of the default. Notwithstanding the forgoing, so long as the defaulting Party has initiated and is diligently attempting to cure the default, the defaulting Party's cure period shall extend for a time period beyond thirty (30) days as reasonably sufficient for the default to be remedied. If the default is not cured, then the non-defaulting party shall have the right to pursue all remedies.

C. Due Authorization. Developer covenants, represents and warrants to County that: (a) Developer 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; and (b) this Agreement has been duly approved, executed and delivered on behalf of Developer. The County hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County.

D. Amendments. This Agreement constitutes the entire agreement and undertaking of the Parties and supersedes all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth herein. No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by both Parties to this Agreement. Time is of the essence regarding every obligation hereunder.

E. 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 electronic

mail 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.

To Developer:

Business Manager  
Hinton Creek Solar, LLC  
700 Universe Boulevard, FEW-JB  
Juno Beach, FL 33408

Copy to:

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

To County:

Bourbon County Clerk  
210 S National Ave # 3  
Fort Scott, KS 66701

**F. Assignment.** This Agreement may be assigned only upon written consent of the Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except Developer may, without obtaining consent or approval from County, assign this Agreement to an affiliate or successor entity, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Developer shall provide County with written notice of any assignment within thirty (30) days of such assignment becoming effective.

**G. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

**H. Governing law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to conflicts of laws provisions.

**I. Successor and Assigns.** This Agreement shall inure to the benefits of and shall be binding upon the Parties hereto, their respective: successors, assignees and legal representative.

**J. Severance.** If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect, and the Parties agree to take such additional action as may be beneficial to effectuate the intent of the Agreement.

**K. No Waiver; Remedies Cumulative.** No failure on the part of any Party 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 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 expressly herein provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

L. Venue and Waiver of Jury Trial. Each Party waives all right to trial by jury and specifically agrees that trial or suits or causes of action arising out of this Agreement shall be to the applicable court with jurisdiction in this matter.

M. 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 such Party upon request proof of compliance with this Agreement, estoppel certificates, and further assurances, documents and reasonably-requested agreements.

N. Termination of Prior Agreement. The Parties hereby agree to terminate the Prior Agreement in its entirety without any liability or ongoing obligations for either Party, and to have this Agreement govern the obligations of the Parties going forward relating to the subject matter described herein.

[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:**

HINTON CREEK SOLAR, LLC,  
a Delaware limited liability company

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

\_\_\_\_\_ Date

Printed Name: \_\_\_\_\_

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

**THE COUNTY:**

THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

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

Name: Brandon Whisenhunt, County Commissioner (District 1)

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

Name: Jim Harris, County Commissioner (District 2)

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

Name: Clifton Beth, County Commissioner (District 3)

ATTEST:

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

*Reviewed and approved by:*

\_\_\_\_\_

# **EXHIBIT 4**

## **DECOMMISSIONING AGREEMENT**

THIS DECOMMISSIONING AGREEMENT ("Agreement") is entered into as of this 31st day of October, 2024 ("Effective Date") by and between the Board of County Commissioners of Bourbon County, Kansas (the "County"), a governmental entity in the State of Kansas and Kingbird Solar Energy LLC ("Developer"), a Delaware limited liability company. County and Developer may each be referred to herein individually as a "Party", and collectively as the "Parties".

### **RECITALS**

WHEREAS, Developer intends to construct and operate a solar project in one or more phases (each, a "Phase"), commonly referred to as the Kingbird Solar Project, to be located on privately-owned land within the County and consisting of assets which may include photovoltaic solar panels, battery storage, invertors, solar monitoring equipment, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Solar Project");

WHEREAS, the Solar Project will be located on property owned or controlled by the County and by private landowners within the County (collectively, the "Property");

WHEREAS, Developer has or will enter into certain lease agreements, easement agreements, and/or forms of landowner consent documents (each individually, a "Lease") with the participating landowners within the Solar Project area (the "Landowners"), which may include provisions governing the decommissioning of Solar Project facilities located on such Landowners' property;

WHEREAS, Developer desires to provide financial security to address the cost of decommissioning the portions of the Solar Project located on the Property in the form of a bond;

WHEREAS, for purposes of this Agreement, "Generating Units" are defined to include the energy collection cells, panels, mirrors, inverters, lenses and racking, and "Supporting Facilities" are defined to include any related foundations, battery storage, transformers, solar monitoring equipment, roads, and collector substations.

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

### **TERMS AND CONDITIONS**

#### **Article I.**

#### **DECOMMISSIONING AND RESTORATION SECURITY**

##### **Section 1.1 Agreement to Decommission.**

(a) No later than ninety (90) days prior to the expiration of the Term or prior to termination of this Agreement by either Party pursuant to this Agreement, Developer shall present a decommissioning plan to the County for the portions of the Solar Project located on the Property. The decommissioning plan shall include the removal of all physical material related to the

applicable Phase of the Solar Project located on the Property to a depth of thirty-six inches (36") and restoration of the surface of the Property to substantially the same or better condition it was in at the Effective Date so that the Property will be suitable for its prior use (reasonable wear and tear, condemnation, casualty damage and acts of God excepted) (all hereinafter referred to as "Restoration"). The Restoration shall be at Developer's expense and shall be completed within twenty-four (24) months after the expiration of the Term or termination of this Agreement by either Party pursuant to this Agreement.

(1) On the tenth (10th) anniversary of the commencement of commercial operation of each Phase of the Project and every fifth (5th) anniversary following the tenth (10th) anniversary for such Phase, Developer shall provide to the County an estimate of the projected salvage value of the equipment to be removed from the Project site for the applicable Phase and the projected cost to Developer of decommissioning and restoration upon the termination of commercial operation of the applicable Phase of the Project as determined by an independent engineer (the "IE") mutually agreeable to the County and Developer. If the projected costs of Restoration exceed the projected salvage value as determined by the IE, a credit support ("Decommissioning Surety") in the form of a bond from an institution with at least a "BBB" Standard and Poor's or "Baa2" Moody's or "A-" AM Best's financial rating or better for the benefit of the County shall be provided in an amount equal to the difference between the projected salvage value and the projected Restoration cost; however, at no point shall the amount of such Decommissioning Surety be less than one million dollars, escalating at two percent (2%) annually beginning on the first anniversary of the issuance of the Decommissioning Surety. Such Decommissioning Surety shall remain in place until such time as Developer's Restoration obligations for such Phase hereunder have been performed. Upon the earlier of the completion of the Restoration of the applicable Phase of the Project by Developer, or the termination of this Agreement (other than for a default of Developer in the performance of its Restoration obligations pursuant to this Agreement), such Decommissioning Surety shall terminate. For the avoidance of doubt, in the event of a repowering of the Project on any year after the commencement of commercial operation, the Decommissioning Surety amount will be re-calculated.

(2) The Decommissioning Surety shall remain in force until the completion of Restoration. Upon written request, no more than once in any calendar year, the County may request Developer provide County with information and documentation to confirm the existence and maintenance of such Decommissioning Surety in favor of County.

(b) The Decommissioning Surety amount shall be reduced by the amount of bond or other security, if any, that Developer is required to post by applicable governmental authorities for Restoration associated with the Solar Project improvements on the Property.

(c) Once Restoration for a Phase commences, Developer will, in a competent manner in accordance with industry standards, diligently, continuously and in good faith continue such Restoration. If Developer's ability to operate the Solar Project or performance of its obligations to

decommission is prevented, delayed, or otherwise impaired at any time due to Force Majeure, then the time for performance shall be appropriately extended by the time of delay actually caused by the Force Majeure, provided that Developer shall promptly notify County and shall take immediate action to minimize such delay. For purposes of this Section 1.1(c), Force Majeure shall mean the acts of God, extreme weather, war, epidemic or pandemic, civil commotion, riots, damage to work in progress by reason of fire or other casualty, strikes, lock outs or other labor disputes, terrorism, sabotage, or the effect of any law, proclamation, action, demand or requirement of any government agency.

(d) In the event Developer or its lenders fail to decommission any applicable Generating Unit in accordance with the requirements of this Agreement, the County may undertake the decommissioning of such Generating Unit. The County's election to decommission all or any portion of a Generating Unit shall not create an obligation to the Landowners, the Developer or any other third-party to complete the decommissioning of such Generating Unit. In the event the County elects to undertake the decommissioning of a Generating Unit, it may make a claim(s) upon the Decommissioning Surety for the expenses incurred, 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 Decommissioning Surety shall be limited to such expenses incurred by the County for the removal of all structures up to a depth of three (3) feet below the surface and the restoration of the soil and vegetation, including reasonable professional and attorney fees.

## Article II.

### REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations, Warranties and Covenants of County. The County represents and warrants to Developer 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 2.2 Representations, Warranties and Covenants of Developer. The Developer represents and warrants to the County as follows:

(a) The Developer 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 Developer and constitutes the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

(c) The execution, delivery, and performance of this Agreement by Developer will not violate any applicable law of the State of Kansas.

### Article III.

#### TERM

Section 3.1 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate upon the earlier of the 50th anniversary of the date of Completion of Construction or such time as the Solar Project is fully decommissioned, unless earlier terminated or extended by the mutual agreement of the Parties.

### Article IV.

#### MISCELLANEOUS

Section 4.1 No Waiver; Remedies Cumulative. No failure on the part of any Party 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 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 expressly herein provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

Section 4.2 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 electronic mail 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.

#### To Developer:

Collin Brown  
Advanced Power Services (NA) Inc.  
155 Federal St, 17<sup>th</sup> Floor  
Boston, MA 02110  
857-206-4175  
cbrown@advancedpowerna.com

#### Copy to:

Kelly Huffman  
Advanced Power Services (NA) Inc.  
155 Federal St, 17<sup>th</sup> Floor  
Boston, MA 02110  
617-406-9965  
khuffman@advancedpowerna.com

#### To County:

Bourbon County Clerk  
210 S National Ave # 3  
Fort Scott, KS 66701

Section 4.3 Amendments. This Agreement constitutes the entire agreement and undertaking of the Parties and supersedes all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth herein. This Agreement may be amended, supplemented, modified or waived only by an instrument in writing duly executed by all of the parties hereto.

Section 4.4 Successors and Assigns. This Agreement may be assigned only upon written consent of the Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except Developer may, without obtaining consent or approval from County, assign this Agreement to an affiliate or successor entity, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Developer shall provide County with written notice of any assignment within thirty (30) days of such assignment becoming effective.

Section 4.5 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

Section 4.6 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 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 4.7 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 4.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to conflicts of laws provisions and each Party waives all right to trial by jury for all suits or causes of action arising out of this agreement.

**[REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK; SIGNATURE  
PAGES FOLLOW.]**



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:**

KINGBIRD SOLAR ENERGY LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

**THE COUNTY:**

THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

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

Name: Brandon Whisenhunt, County Commissioner (District 1)

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

Name: Jim Harris, County Commissioner (District 2)

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

Name: Clifton Beth, County Commissioner (District 3)

ATTEST:

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

*Reviewed and approved by:*

\_\_\_\_\_

# **EXHIBIT 5**

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this 31<sup>st</sup> day of October, 2024 (the "Effective Date"), by and between the Board of County Commissioners for Bourbon County, Kansas ("County") and Kingbird Solar Energy LLC ("Developer"). The County and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

### **RECITALS**

WHEREAS, Developer intends to construct in one or more phases (each, a "Phase") and operate a solar project, commonly referred to as the Kingbird Solar Project, to be located on privately-owned land within the County and consisting of assets which may include photovoltaic solar panels, battery storage, invertors, solar monitoring equipment, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Solar Project"); and

WHEREAS, Developer has or will enter into certain lease agreements, easement agreements, and forms of landowner consent documents (individually, a "Lease" and, collectively, the "Leases") with the participating landowners within the Solar Project area (the "Landowners"); and

WHEREAS, the County intends, through this Agreement, to consider the orderly development, construction, operation, and maintenance of the Solar Project in the County, pursuant to the terms and conditions set forth in this Agreement; and

WHEREAS, upon execution of this Agreement and the Definitive Agreements (defined below), the County acknowledges and agrees that all County permits and approvals required for the Solar Project have been granted and substantial amounts of work have been completed;

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

### **SECTION I. RECITALS**

The recitals set forth above constitute a material part of this Agreement and are incorporated herein. The Parties confirm the accuracy, truth and validity of said recitals.

### **SECTION II. COUNTY APPROVAL AND FUTURE COOPERATION**

#### **A. COUNTY CONSENTS AND APPROVALS.**

1. Unless otherwise provided herein, whenever the consents or approvals of the County, or any of its employees, consultants, attorneys, officers, agents, or representatives are required to be secured or obtained by Developer under the provisions of this Agreement, the same shall not be unreasonably conditioned, withheld, or delayed unless otherwise set forth in the Definitive Agreements. The

County will reasonably cooperate with Developer in the development, construction, operation, maintenance, and decommissioning of the Solar Project and issue all permits, approvals, and authorizations required by local regulations or other law, if any, provided Developer files compliant applications, pays all applicable fees, and complies with all the requirements specified in this Agreement and is not otherwise in default under the terms of the Definitive Agreements.

2. The County acknowledges, understands and agrees that the development process associated with the Solar Project will take significant time and requires a substantial investment by the Developer. Therefore, in order to induce the Developer to make this commitment and investment, the County hereby agrees that it approves and authorizes the Developer to construct and operate the Solar Project in the County. The County acknowledges, understands and agrees that the Developer will undertake significant financial investment in reasonable reliance on the County's promises and obligations under the Definitive Agreements. The County agrees that the Developer's rights to construct and operate the Solar Project vest upon the execution of this Agreement. The County acknowledges and agrees that there are currently no local laws, requirements, regulations, permits, or approvals applicable to the construction or operation of the Solar Project. The County agrees that if at any time in the future any laws, requirements, regulations, permits or approvals are enacted that would otherwise prevent or limit the Developer's construction or operation of the Solar Project, the Solar Project shall be grandfathered for purposes of compliance with such future laws, requirements, regulations, permits, or approvals and the Solar Project shall be allowed to be developed or to continue operations in the County. In the event the County adopts zoning regulations, the County shall provide in said zoning regulations that the use of the Property for the Solar Project and the operation of the Solar Project shall be vested as provided for in K.S.A. 12-764.

B. FUTURE COOPERATION. The Parties shall cooperate with one another on an ongoing basis and shall make every reasonable effort (including the holding of hearings or meetings and the adoption of such resolutions as may be necessary) to further the implementation of this Agreement and the Definitive Agreements (as defined below) and the intentions of the Parties as reflected by the provisions of this Agreement and the Definitive Agreements. Without limiting the foregoing, in the event that the County adopts any zoning or other laws after the Effective Date that would make the development, construction, operation, repair, replacement, and maintenance of the Project a nonconforming use under such zoning or other laws, or that would otherwise materially interfere with such development, construction, operation, repair, replacement, and maintenance of the Project, or the decommissioning of the Project, the County agrees that it will take such actions, adopt such ordinances and do such other things as are necessary to exempt or exclude the Project from such zoning or other laws. The County acknowledges and agrees that, upon execution of this Agreement and the Definitive Agreements (defined below), no County permits and approvals are required for the Project, for any future O&M building, or for any crossings over or along County roads.

### **SECTION III. DEVELOPMENT REQUIREMENTS**

- A. DEFINITIVE AGREEMENTS. Concurrently with the execution of this Agreement, Developer shall enter into the following agreements with the County (collectively, the "Definitive Agreements"):
1. A Road Use Agreement ("Road Use Agreement").
  2. A Decommissioning Agreement ("Decommissioning Agreement").
- B. LANDOWNER PARTICIPATION. All photovoltaic solar panels, battery storage sites, and related structures within the County shall be located on public rights of way and property that is owned by Developer, or an affiliate thereof, or property for which Developer or its affiliate has or will have executed a lease, easement or other agreement with the applicable landowner.
- C. SETBACKS AND SITING.
1. Setbacks.
    - a. All photovoltaic solar panels and battery storage sites shall be setback at least fifty (50) feet from public roads and property lines of nonparticipating landowners and three hundred (300) feet from non-participating occupied residences in existence as of the Effective Date of this Agreement unless such impacted landowner provides a written waiver of such requirement.
    - b. On or before the completion of construction, the Project shall strategically install and augment vegetative buffers along non-participating landowner property lines as necessary to shield occupied, non-participating residences in existence as of the date of this Agreement, unless such impacted landowner provides a written waiver of such requirement. Such vegetative buffers may include, but not be limited to, two rows of coniferous trees with staggered spacing. Developer will utilize existing natural visual barriers including pre-existing vegetation wherever possible. Such trees installed by the Developer as part of the vegetative buffer shall be a minimum of 5 feet tall at the time of planting.
  2. Above-ground Collection Lines Above-ground Collection Lines and Developer-Owned Transmission Line Tower Setbacks.
    - a. Above-ground collection lines and Developer-owned transmission line towers shall be setback at least one-and-a-half (1.5) times the height of the transmission line tower measured from base of the tower to the nearest outside wall of such structure from any non-participating occupied primary residential dwelling currently in existence in the County and may not be located in a County right of way without County approval, but above-ground transmission line wires may cross (and be located in) County right of ways as set forth in the Road Use Agreement.
    - b. Collection lines will be located within leases or easements on participating landowner property, or located underground on public right of way crossings as approved by the County in compliance with the Road Use Agreement.

- c. The setbacks and height requirements set forth in this Agreement can be modified with written consent of the Parties.
3. Sound Levels. Unless otherwise agreed to by the landowner, after commencement of operation the Project sound levels are not to exceed fifty (50) dBa Leq, measured at the nearest outside wall of an occupied primary non-participating residential dwellings currently in existence in the County.
4. Ground Cover and Vegetation Preservation.
- a. Developer shall create a vegetation management plan prior to commencement of construction and shall implement vegetation management practices in accordance with this plan during construction and operations. Vegetation management practices will include, but not be limited to seeding the land immediately under and surrounding the solar photovoltaic panels with seed mix containing prairie grasses or forbs native to the Midwest United States ("Regeneration Seed Mix") prior to Project operations.
- b. In constructing the Solar Project, Developer shall seek to preserve mature trees, tree lines, streamways, ponds, and grasslands to the extent such efforts are reasonable and practicable.
5. Security Fencing. Developer shall enclose the Solar Project with a security fence of no more than twelve (12) feet in height. Developer shall, throughout the Term, reasonably maintain any fencing it or its affiliates erect.
6. Lighting. Developer shall limit its use of outdoor lighting to levels required for safety and security. Developer shall implement reasonable controls on lighting to prevent glare and light spillage offsite.
7. Insurance. Prior to the commencement of construction, Developer shall provide insurance as set forth in the Road Use Agreement.
8. Emergency Services, Fire Protection, and Hazardous Materials.
- a. Developer or its affiliate will share applicable EPC and national electrical code guidelines for fire protection and emergency response with the Bourbon County Director of Emergency Management.
- b. Developer or its affiliate will share applicable EPC guidelines on the proper storage and handling of hazardous materials with the Bourbon County Director of Emergency Management.
- c. Developer or its affiliate will work in cooperation with the County to establish 911 addresses for each photovoltaic solar panel and battery storage site.
9. Reimbursements to the County. Developer or its affiliate will reimburse the County as set forth in the Definitive Agreements.

10. Compliance with Laws. Developer and its affiliates shall comply with, and if found to be out of compliance shall make commercially reasonable efforts to bring the Solar Project into compliance with, all federal and state laws and regulations applicable to the construction and operation of the Solar Project, including:

- a. Federal Aviation Administration statutes and regulations;
- b. Occupational Safety and Health Administration statutes and regulations;
- c. United States Fish and Wildlife Service statutes and regulations, including those pertaining to impacts on endangered or threatened species or habitats;
- d. U.S. Army Corps of Engineers statutes and regulations, including those pertaining to impacts on wetlands;
- e. Environmental Protection Agency statutes and regulations, including those pertaining to environmental impacts;
- f. Federal Communication Commission (FCC) statutes and regulations, including those pertaining to wireless communications impacts;
- g. Consultations with the Kansas Department of Wildlife, Parks, and Tourism, including those pertaining to impacts on endangered or threatened species or habitats;
- h. Consultations with the Kansas Department of Health and Environment, including those pertaining to any environmental impacts;
- i. Consultations with the Kansas Historical Society pertaining to surveys of any historical sites that may be located within the Solar Project area; and
- j. Any other applicable regulations promulgated by these and any other federal and state agencies.

11. 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 electronic mail) 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 electronic mail 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.

To Developer:

Collin Brown  
Advanced Power Services (NA) Inc.  
155 Federal St, 17<sup>th</sup> Floor  
Boston, MA 02110



857-206-4175  
cbrown@advancedpowerna.com

Copy to:

Kelly Huffman  
Advanced Power Services (NA) Inc.  
155 Federal St, 17<sup>th</sup> Floor  
Boston, MA 02110  
617-406-9965  
khuffman@advancedpowerna.com

To County:

Bourbon County Clerk  
210 S National Ave # 3  
Fort Scott, KS 66701

#### **SECTION IV. REPRESENTATIONS AND WARRANTIES**

**A. COUNTY.** The County represents and warrants that:

1. the County has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
2. upon execution and delivery by the County and Developer, this Agreement shall be a valid, legal, binding and enforceable obligation of the County enforceable against the County in accordance with its terms, subject to any applicable laws of bankruptcy, insolvency or reorganization, laws affecting the enforcement of creditors' rights generally, and general principals of equity;
3. no approval or consent from any other person or entity is required for the County's execution of this Agreement; and
4. this Agreement is executed by duly authorized representatives of the County who are fully authorized to execute this Agreement on behalf of the County.

**B. DEVELOPER.** Developer represents and warrants that:

1. Developer has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
2. upon execution and delivery by Developer and the County, this Agreement shall be a valid, legal, binding and enforceable obligation of Developer enforceable against Developer in accordance with its terms, subject to any applicable laws of bankruptcy, insolvency or reorganization, laws affecting the enforcement of creditors' rights generally, and general principals of equity;

3. no approval or consent from any other person or entity is required for Developer's execution of this Agreement; and
4. this Agreement is executed by a duly authorized representative of Developer, who is fully authorized to execute this Agreement on behalf of Developer.

## **SECTION V. DEFAULT PROVISIONS**

If either Party fails to observe or perform any material condition or provision of this Agreement for sixty (60) days after receiving written notice of such failure from the other Party (the "Cure Period"), then the aggrieved Party shall have the right to terminate this Agreement upon thirty (30) days prior notice to the other Party and to pursue any remedy available to it at law or in equity; provided however, that for so long as the delinquent Party is diligently attempting to cure such failure and the failure is, in the aggrieved Party's discretion, reasonably capable of being cured, a default under this Section V shall not be deemed to have occurred. If the Developer fails to observe or perform any material condition or provision within Section III(C)(11) during an isolated instance where curing such a failure is not possible, termination will only be permissible in the event that Developer fails to comply with all relevant penalties associated with such a failure.

Notwithstanding the foregoing, a Party's failure to observe or perform any material condition or provision of this Agreement due to an Excusable Delay shall not constitute a breach of this Agreement. For purposes of this Agreement, "Excusable Delay" means any casualty to property or persons, inclement weather, epidemic or pandemic, inability to secure materials, strikes or labor disputes, acts of God, acts of the public enemy or hostile or terrorist action, civil commotion, and/or governmental actions, restrictions, regulations or controls, including, without limitation, any failure or refusal of any governmental authority to timely issue any required permit or approval for development of the Solar Project or any legal action or proceeding involving any such required permit or approval (whether arising out of any existing laws or changes in laws, including any such laws relating to annexation, zoning, platting, building or other codes or ordinances applicable to development and construction of the Solar Project), or any other cause beyond the reasonable control of that Party (other than financial inability) which affects development, construction, maintenance, operation, repair, replacement or decommissioning of the Solar Project (including, without limitation, any of the foregoing which affect a Party's contractors or subcontractors).

Notwithstanding the foregoing, upon termination of this Agreement for default as defined above, the Development Requirements (Section III) and the Road Use Agreement shall continue in full force and effect until final and complete cessation and decommissioning of the Project.

## **SECTION VI. SEVERABILITY**

In the event that any term or provision of this Agreement is deemed to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the

transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

## **SECTION VII. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to the conflict of law principles thereof and each Party waives all right to trial by jury for all suits or causes of action arising out of this agreement.

## **SECTION VIII. MISCELLANEOUS**

A. **NO WAIVER.** The failure of either Party to insist in any one or more instances on the performance of any of the obligations required by the other under this Agreement shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

B. **HEADINGS.** The headings used in this Agreement are for ease of reference only and shall not in any way be construed to limit or alter the meanings of any provision hereof.

C. **AMENDMENTS.** This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each Party. Any oral or verbal agreements between the Parties different from or in conflict with the provisions of this Agreement shall be null and void and of no force or effect where they are in conflict with the written provisions of this document.

D. **ASSIGNMENT.** This Agreement may be assigned only upon written consent of the Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except Developer may, upon notice to County, but without County's consent or approval, assign this Agreement to an affiliate, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Notwithstanding anything to the contrary, Developer may only assign this Agreement if the assignee agrees and acknowledges in writing that such assignee shall be bound by terms and obligations of this Agreement. Upon such assignment all of Developer's rights and obligations shall inure to the benefit of and shall be binding upon the Developer's assignee and its respective successors, assignees and legal representative.

E. **INTERPRETATION.** This Agreement was prepared with substantial input from both Parties and their respective legal counsel; no phrase, sentence, clause, provision or section of this Agreement shall be construed against a Party as a result of such Party's legal counsel having acted as the primary drafter thereof.

F. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns, trustees and/or receivers of the Parties hereto.

G. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

H. TIME IS OF THE ESSENCE. Time is of the essence of this Agreement, and of each and every provision hereof, and the Parties shall make every reasonable effort to expedite the subject matters hereof and to perform their respective obligations.

**[REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK;  
SIGNATURE PAGES FOLLOW.]**

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:**

KINGBIRD SOLAR ENERGY LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

**THE COUNTY:**

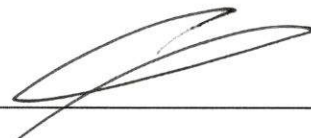
THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

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

Name: Brandon Whisenhunt, County Commissioner (District 1)

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

Name: Jim Harris, County Commissioner (District 2)

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

Name: Clifton Beth, County Commissioner (District 3)

ATTEST:

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

*Reviewed and approved by:*

\_\_\_\_\_

# **EXHIBIT 6**

## **ROAD USE AND MAINTENANCE AGREEMENT**

THIS ROAD USE AND MAINTENANCE AGREEMENT ("Agreement") is entered into as of this 31<sup>st</sup> day of October, 2024 ("Effective Date") by and between the Board of County Commissioners of Bourbon County, Kansas (the "County"), a governmental entity in the State of Kansas and Kingbird Solar Energy LLC ("Developer"). County and Developer may each be referred to herein individually as a "Party", and collectively as the "Parties". For this Agreement, the term "Roads" means any County or township right-of-way, or other roads, alleys, or ways that are owned, operated, or maintained by the County or any township located within the County, including, but in no way limited to, gravel, pavement, ditches, culverts, and bridges.

### **RECITALS**

WHEREAS, Developer intends to construct and operate a photovoltaic solar energy project, commonly referred to as the Kingbird Solar Project, in one or more phases (each, a "Phase"), to be located in Bourbon County on privately-owned land and consisting of assets which may include photovoltaic solar panels, battery storage, invertors, solar monitoring equipment, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Project"); and

WHEREAS, Developer intends to obtain the necessary approvals to build the Project; and

WHEREAS, in connection with the construction of the Project, the Parties desire to address certain issues relating to Roads over which it will be necessary for Developer and its agents, employees, or servants to, among other things:

- i. Transport heavy equipment and materials which may be in excess of local design limits of certain of the Roads;
- ii. Transport materials, such as concrete and gravel, or other project-related material or equipment;
- iii. Make specific modifications and improvements (both temporary and permanent, including various associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; and
- iv. Place electrical, electric transmission, signal, and communication cables and appurtenant components (collectively "Cables") for the Project adjacent to, along, above, under or across such Roads, and

WHEREAS, it is in the best interest of the public health, safety and welfare that Developer and the County reach an agreement to address possible issues pertaining to the Roads that will arise in, around, and near the Project; and

WHEREAS, Developer and the County wish to set forth their understanding and agreement relating to the use of Roads during construction of the Project;

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:



## TERMS AND CONDITIONS

**Section I. Developer Covenants.** Developer will use commercially reasonable efforts related to the following activities in accordance with the terms of this Agreement:

- A. Within ten (10) days following the Effective Date of this Agreement, Developer will designate the name, address, email address and phone number of a company representative with authority to represent Developer. Developer may designate a new representative upon written notice to the County;
- B. At least thirty (30) days prior to beginning construction of a Phase of the Project, provide the County Road and Bridge Supervisor with a transportation route for the Project equipment, subject to amendment;
- C. Provide plans to the County Road and Bridge Supervisor for the widening of any corner radii necessary to facilitate the turning movements of the transport trucks used by Developer during construction of the Phase of the Project, make any necessary improvements, and at the conclusion of construction, at County's election either leave any improvements located on Roads in place in the condition required prior to Developer's initial use of the improvements, or remove any such improvements and restore the affected property;
- D. Transport or cause to be transported oversize loads in a manner reasonably calculated to minimize adverse impact on the local traffic;
- E. Developer will provide no less than forty-eight (48) hours' notice to the County Road and Bridge Supervisor when it is necessary for a Road to be closed for any reason relating to the construction of the Project, other than short-term closures to mitigate hazards, or accommodate vehicle turns or ingress or egress from Roads or road closures that are already noted in the plans described in Section I(C). Notwithstanding the foregoing, Developer will provide all materials and personnel necessary to close the Road;
- F. Provide signage of all Road closures and work zones in compliance with the most current manual on Uniform Traffic Control Devices adopted by the State of Kansas and as may be required by the County;
- G. Purchase and deliver applicable road materials for repairs to Roads that are damaged by Developer and/or Developer agents, employees, or servants during the hauling of materials and/or construction of the Project and bear all costs to restore and repair any Roads that are damaged by Developer and/or Developer agents, employees, or servants during the hauling of materials and/or construction of the Project;
- H. Developer will cooperate with the County to reasonably mitigate safety hazards to public travel to the extent such hazards are caused by Developer and/or Developer's agents, employees, or servants during the hauling of materials and/or construction of the Project; and

I. The obligations and terms of this Agreement applicable to the initial pre-construction and construction period of the Phase of the Project also apply to any Post-Construction Activity (as defined in Section 4(C) below) and any decommissioning period.

**Section 2. County Covenants.** The County, in accordance with the terms of the Agreement, agrees that it shall:

A. Within ten (10) days following the Effective Date of this Agreement, designate the name, address, email address and phone number of a County representative with authority to represent the County. Such representative will coordinate with and keep the County Board of County Commissioners apprised of material information pertaining to this Agreement.

B. Perform reasonable routine and regular maintenance of the Roads in accordance with the County's usual maintenance practices and without unnecessarily hindering construction of the Project-related access points and Road crossings;

D. Within five (5) working days from the date they are submitted, or at the next scheduled meeting of the Board of County Commissioners, review and approve plans (if applicable) for all Project-related utility encroachments on County Roads;

E. Waive otherwise applicable County permits and approvals for the use of the Roads by Owner and Owner's representatives with oversize or overweight vehicles, which use shall instead be authorized and governed by the terms of this Agreement;

F. Authorize the designated County representative to agree on behalf of the County to revisions to any plans or schedules submitted by Developer as soon as practicable after revisions are submitted to the County by or on behalf of Developer.

**Section 3. Road Use and Planning Inventory.**

A. Road Use. The County hereby grants to Developer and its Representatives a non-exclusive road right of way to enter upon and utilize the Roads with vehicles or combined vehicles less than 80,000 pounds, or to have the Roads utilized by third-party courier or delivery services or by Developer and its Representatives for tree clearing or other site preparation activities ("Standard Road Use"). Unless expressly stated otherwise herein, Standard Road Use shall not be subject to the terms and conditions of this Agreement. County additionally hereby grants to Developer and its representatives, subject to the terms of this Agreement, a non-exclusive road right of way to enter upon and utilize the portion of the Roads identified pursuant to Section I.B with vehicles or combined vehicles equal to or greater than 80,000 pounds ("Heavy Haul Road Use"). Unless otherwise stated herein, the terms and conditions of this Agreement shall only apply to Heavy Haul Road Use.

B. Road Inventory.

1. Pre-Construction Inventory: At least fourteen (14) days prior to the Commencement of Construction of any Phase or commencement of any Post-

Construction Activity (as defined in Section 4(C) below), the Developer shall perform a survey to record the condition of the surface of all Roads which will be used in the transport of equipment, parts, and materials of the Phase of the Project (the "Pre-Construction Inventory"), and shall promptly submit such Pre-Construction Inventory to the County Road and Bridge Supervisor for review. Developer will notify the County Road and Bridge Supervisor in advance of, and allow the County Road and Bridge Supervisor to participate in, the Pre-Construction Inventory. During this survey, the entire length of the Roads selected for use in the Pre-Construction Inventory shall be videotaped and photographs taken by Developer. In addition, the County will provide Developer, if available, with copies of any plans, cross-sections and specifications relevant to the existing Road's structure if the same are requested by Developer. Copies of all preconstruction documentation shall be provided to each of the Parties. Developer will reimburse the County for all reasonable, documented costs associated with the Pre-Construction Inventory. For the purposes of this Agreement, "Commencement of Construction" shall be the date that Developer provides notice to the County that a notice to proceed for a Phase of the Project has been issued pursuant to the primary engineering, procurement, and construction agreement ("EPC Agreement") for such Phase.

## 2. Post-Construction Inventory:

(a) Following Completion of Construction of the Phase of the Project, the Developer will perform a post-construction inventory (the "Post-Construction Inventory"), and shall promptly submit such Post-Construction Inventory to the County Road and Bridge Supervisor for review. Developer will notify the County Road and Bridge Supervisor in advance of, and allow the County Road and Bridge Supervisor to participate in, the Post-Construction Inventory. The method of the Post-Construction Inventory shall be similar to that of the Pre-Construction Inventory described above. The two (2) sets of pre- and post-construction data will be compared to identify wheel lane rutting, cracking or other damage in excess of the Pre-Construction Inventory, and the Developer will determine the extent and cost of the repairs or improvements needed to return the Roads to pre-construction condition. Developer will reimburse the County for all reasonable, documented costs associated with preparing the Post-Construction Inventory. For the purposes of this Agreement, "Completion of Construction" shall be the first date that all of the following has occurred: (a) Developer provides notice to the County that the requirements for final completion have been satisfied pursuant to the EPC Agreement for the Phase of the Project, and (b) all Developer use of Roads has concluded for such Phase, except for Developer's use of Roads with typical vehicles used to manage and operate a solar energy project, none of which will be oversized or overweight (as defined by the Kansas Department of Transportation).

(b) As described further in subsections (i) and (ii) below, Developer will, and is obligated to, at County's sole option either make any or all repairs of damage caused by Developer or Developer's agents, employees, contractors, subcontractors, affiliates, and servants necessary to return the Roads to a pre-

construction condition, at its sole cost and expense, or provide a payment to the County for the amount of such repairs. Within 10 business days of the County's receipt of the Post-Construction Inventory, the County shall submit a written election to the Developer specifying whether Developer shall be responsible for making repairs as described in subsection (i) below, or whether the Developer shall provide a payment for the County to make such repairs as described in subsection (ii) below.

(i) In the event that the County opts for Developer to make such repairs, within twenty (20) calendar days following the completion of the Post-Construction Inventory for a Phase, Developer shall provide written notice to the County of when it will make any such repairs. The notice shall specifically identify the methods and materials for repairs identified in the Post-Construction Inventory and the expected date by which such repairs shall be completed. All identified repairs are to be completed within ninety (90) calendar days after the Post-Construction Inventory subject to day-for-day extension in the event that repair activities are actually delayed as a result of events beyond the reasonable control of Developer that Developer could not have foreseen with reasonable diligence. In order to provide for the safety of those using Roads, at least forty-eight (48) hours prior to making any such repairs Developer shall notify the County Road and Bridge Supervisor of the location of such repairs and the times when such repairs will be made. All such repairs shall be conducted in a manner reasonably calculated to minimize adverse impact on the local traffic.

(ii) In the event that the County opts to make such repairs at Developer's sole cost and expense, Developer shall, within twenty (20) business days of Developer's receipt of the County's election pursuant to Section 3(B)(2)(b) above, provide the County with a good faith estimate of the reasonable costs to purchase and deliver all road materials used by the County to complete the repairs specified in the Post-Construction Inventory, and costs incurred in obtaining the labor and equipment necessary to undertake and complete such repairs in a timely and workmanlike manner (the "Repair Estimate"). Developer shall pay an amount equal to the Repair Estimate to the County within twenty (20) business days of the County's acceptance of the Repair Estimate (the "Repair Payment"). As a condition to the County's receipt of the Repair Payment, the County shall certify in writing that the Developer's post-construction repair obligations have been completed to the County's satisfaction.

(c) If Developer fails to provide the notice to the County described in Section 3(B)(2)(b)(i) above within the time allotted or, after providing notice to County of its intention to undertake any such repairs, fails to complete the repairs within the period set forth in Section 3(B)(2)(b)(i), and there is no ongoing dispute between County and Developer regarding Developer's obligations hereunder, then after Developer fails to complete such repairs within 60 days after County provides notice of its intent to undertake such repairs, Developer shall be deemed to have

waived its rights to make any such repairs and County may immediately undertake all repairs necessary to return the affected Roads to a preconstruction condition at Developer's sole cost and expense. Such expense may include the reasonable costs to purchase and deliver all road materials used by the County to restore Roads to a pre-construction condition, and costs incurred in obtaining the labor and equipment necessary to undertake and complete such repair in a timely and workmanlike manner. Developer further agrees that County may, in its sole but commercially reasonable discretion, enter into agreements with one or more third party contractors specifically for the repair of those Roads which suffer damage caused or contributed to by any of Developer's activities undertaken in the construction of the Project, and that Developer will bear all commercially reasonable costs incurred by County in the retention of any such third party contractor(s).

(d) Within sixty (60) days following receipt of an invoice from the County, Developer shall reimburse County for all documented, reasonable amounts incurred by County in the purchase and delivery of all materials, and payment of the cost of labor, mileage and hourly machines costs, in connection with the repair and restoration of any Roads damaged as a result of the construction of any Phase of the Project, not repaired by the Developer, and which repair the County elected to undertake as provided in Section 3(B)(2)(c).

C. Routing and Access Coordination. As soon as practical after execution of this Agreement and as necessary throughout the construction of the Project, Developer and County shall meet to discuss routing for the oversized and overweight (as defined by the Kansas Department of Transportation) transportation of equipment to the Project, Project-related access points, Road crossings and Cable locations.

#### **Section 4. Financial Instrument to be established by Developer.**

A. Prior to commencement of construction of each Phase of the Project and its use of the Roads, Developer shall provide, from an agent selected by Developer and acceptable to County ("Agent"), a letter of credit, bond, or credit-worthy parent guaranty, securing payment of One Thousand Two Hundred and Fifty Dollars (\$1,250) per megawatt AC ("MWac") of installed capacity in such Phase of the Project, subject to the conditions set forth herein or as otherwise negotiated by the Parties (such instrument being referred to herein as the "Financial Instrument") to secure Developer's payment and performance obligations hereunder.

B. All costs and expenses of maintaining the Financial Instrument, including the fees and expenses of the Agent, and the costs and expenses of making distributions pursuant to the Financial Instrument, shall be borne by Developer.

C. The Financial Instrument shall continue for a period of six (6) months after Completion of Construction of the applicable Phase. Upon delivery by Developer and County of notice certifying that the Project has been commercially operational for six (6) months after Completion of Construction of the applicable Phase, and the County has no outstanding claims for payments or reimbursements arising from Road repair and restoration necessitated by construction of the Project, the Financial Instrument shall terminate.

D. In the event that any post-commercial operation activity during the life of the Project with a projected cost exceeding \$500,000 requires i) delivery of oversize/overweight (as such terms are defined by the Kansas Department of Transportation) equipment or components; ii) crane mobilization; or iii) repowering the Project (collectively "Post-Construction Activity"), prior to commencing such Post-Construction Activity, Developer shall provide a letter of credit, bond, or credit-worthy parent guaranty that provides the same security as the Financial Instrument in an amount to be determined by Developer and the County that is commensurate with the potential impact of the Post-Construction Activity on the Roads (each a "New Financial Instrument"), but not to exceed the original Financial Instrument amount, and shall maintain such New Financial Instrument for a period of six (6) months after both the Post-Construction Activity has completed, and all Developer use of Roads with oversized or overweight traffic for Post-Construction activity has concluded. Upon delivery by Developer to County of notice certifying that the Post-Construction Activity has been completed for a period of six (6) months, cessation of use of Roads for Post-Construction Activity, and at the time of such certification by Developer the County has made no outstanding claims for payments or reimbursements arising from Road repair and restoration necessitated by Post-Construction Activity, any New Financial Instrument shall terminate.

E. All other terms and conditions concerning the Financial Instrument, any New Financial Instrument, and the provisions for making claim against same, shall be negotiated in good faith between County and Developer, and shall form the basis of a separate agreement.

## **Section 5. Construction Cooperation.**

A. With Others: Prior to the commencement of construction of modifications or improvements to the Roads for each Phase, Developer shall hold a meeting and shall invite the County Road and Bridge Supervisor and any other applicable County public safety officials that the County may designate to discuss plans for the construction of the applicable Phase. Developer shall not commence construction of modifications or improvements to the Roads without approval by the County Road and Bridge Supervisor. The County Road and Bridge Supervisor shall provide such approval or comments within five (5) business days of the Developer's submission of proposed modifications or improvements, such approval not to unreasonably withheld or delayed. If such approval or comments have not been provided by County within 5 business days, proposed modifications will be deemed as accepted by County. County shall compile a list of contact persons who will need to be notified of any temporary Road closures that may have an effect on the daily routine or functioning of these agencies and/or departments. A copy of this list shall be furnished by the County to Developer.

B. Between the County and Developer: During construction of the Project, the County and Developer shall meet regularly to discuss Project activities, including anticipated oversized and overweight (as defined by the Kansas Department of Transportation) material and equipment deliveries.

## **Section 6. Mutual Indemnification/Hold Harmless and Liability Insurance Provisions.**

A. Indemnity. Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold

harmless the other Party and such party's mortgagees, lenders, officers, employees and agents (the "Indemnified Party") against any and all losses, direct or indirect damages, claims expenses, and other liabilities resulting from or arising out of:

1. Any negligent act or negligent failure to act on the part of the Indemnifying Party or anyone else engaged in doing work for the Indemnifying Party, or
2. Any breach of this Agreement by the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by any negligent or willful act or omission on the part of the Indemnified Party.

B. Limitation of Liability. In no event shall Developer or any of its members, officers, directors or employees or the County or any of its boards, elected officials, officers or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to any Party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, nonperformance or delay in performance under this Agreement.

C. Required Insurance. Developer shall, upon commencement of construction of the Project and for the period of construction of the Project, maintain in full force and effect, commercial general liability insurance, naming Bourbon County as additional insured, in the aggregate amount equal to five million dollars (\$5,000,000.00). Developer may utilize any combination of primary and/or excess insurance to satisfy this requirement and may satisfy this requirement under existing insurance policies for the Project. Developer will annually provide a certificate of insurance evidencing the insurance limits and coverage to County upon written request by the County.

## **Section 7. Miscellaneous**

A. Use of County Right-of-Way. In consideration of the obligations assumed by the Developer under this Agreement, and in addition to the surface use of the Roads, the County hereby grants to the Developer a non-exclusive license, interest, right and privilege to utilize any County rights-of-way for the construction and location of driveways and other points of ingress and egress, installation, operation, maintenance, repair, and decommissioning of the Project and for the siting, installation, operation, repair, maintenance, and repowering of facilities that benefit the Project including, but not limited to, Cables, collection lines, electrical or data transmission lines or other facilities or utilities as may be beneficial for the operation of the Project, except that any use of the County right-of-way shall be limited to perpendicular crossings and in no instance shall Developer install facilities, whether temporary or permanent, along any length of the County right-of-way. In the event the Project requires facilities to be installed and operated within real property in which the County owns a fee simple interest, a leasehold interest, an easement interest, or some other real property interest, upon the request of Developer, the County agrees to enter into an insurable and recordable easement agreement with Developer to allow the

installation and operation of such facilities in the real property according to terms and conditions customary for energy projects without requiring additional payment from Developer.

B. Remedies and Enforcement. The Parties acknowledge that money damages would not be an adequate remedy for any breach or threatened breach of this Agreement. Each of the Parties hereto covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any Party (the "Defaulting Party"), which default is not caused by the Party seeking to enforce said provisions (the "Non-Defaulting Party") and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right to seek specific performance and/or injunctive relief or remedy or prevent any breach or threatened breach of this Agreement. The remedies of specific performance and/or injunctive relief shall be exclusive of any other remedy available at law or equity. With respect to the opportunity to cure a default, if a Party has failed to perform a material obligation under this Agreement, the other Party shall be required to provide written notice of default. The defaulting Party shall have a right to cure the default within thirty (30) days after having received notice of the default. Notwithstanding the forgoing, so long as the defaulting Party has initiated and is diligently attempting to cure the default, the defaulting Party's cure period shall extend for a time period beyond thirty (30) days as reasonably sufficient for the default to be remedied. If the default is not cured, then the non-defaulting party shall have the right to pursue all remedies.

C. Due Authorization. Developer covenants, represents and warrants to County that: (a) Developer 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; and (b) this Agreement has been duly approved, executed and delivered on behalf of Developer. The County hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County.

D. Amendments. This Agreement constitutes the entire agreement and undertaking of the Parties and supersedes all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth herein. No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by both Parties to this Agreement. Time is of the essence regarding every obligation hereunder.

E. 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 electronic mail 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.

To Developer:  
Collin Brown



Advanced Power Services (NA) Inc.  
155 Federal St, 17<sup>th</sup> Floor  
Boston, MA 02110  
857-206-4175  
cbrown@advancedpowerna.com

Copy to:

Kelly Huffman  
Advanced Power Services (NA) Inc.  
155 Federal St, 17<sup>th</sup> Floor  
Boston, MA 02110  
617-406-9965  
khuffman@advancedpowerna.com

To County:

Bourbon County Clerk  
210 S National Ave # 3  
Fort Scott, KS 66701

F. Assignment. This Agreement may be assigned only upon written consent of the Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except Developer may, without obtaining consent or approval from County, assign this Agreement to an affiliate or successor entity, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Developer shall provide County with written notice of any assignment within thirty (30) days of such assignment becoming effective.

G. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

H. Governing law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to conflicts of laws provisions.

I. Successor and Assigns. This Agreement shall inure to the benefits of and shall be binding upon the Parties hereto, their respective: successors, assignees and legal representative.

J. Severance. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect, and the Parties agree to take such additional action as may be beneficial to effectuate the intent of the Agreement.

K. No Waiver; Remedies Cumulative. No failure on the part of any Party 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 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 expressly herein provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

L. Venue and Waiver of Jury Trial. Each Party waives all right to trial by jury and specifically agrees that trial or suits or causes of action arising out of this Agreement shall be to the applicable court with jurisdiction in this matter.

M. 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 such 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:**

KINGBIRD SOLAR ENERGY LLC,  
a Delaware limited liability company

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

\_\_\_\_\_  
Date

Printed Name: \_\_\_\_\_

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

**THE COUNTY:**

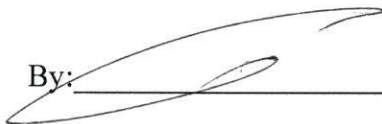
THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

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

Name: Brandon Whisenhunt, County Commissioner (District 1)

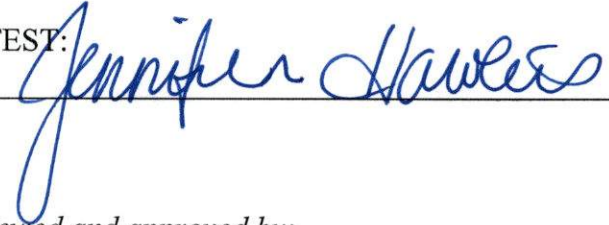
By:  \_\_\_\_\_

Name: Jim Harris, County Commissioner (District 2)

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

Name: Clifton Beth, County Commissioner (District 3)

ATTEST:

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

*Reviewed and approved by:*

\_\_\_\_\_

# **EXHIBIT 7**

## **DECOMMISSIONING AGREEMENT**

THIS DECOMMISSIONING AGREEMENT ("Agreement") is made and entered into this 31<sup>st</sup> day of October, 2024 (the "Effective Date"), by and between the Board of County Commissioners for Bourbon County, Kansas ("County"), Tennyson Creek Solar LLC ("TCS I"), and Tennyson Creek Solar II LLC ("TCS II") (collectively, TCS I and TCS II are referred to herein as "Developer"). County and Developer may each be referred to herein individually as a "Party", and collectively as the "Parties".

### **RECITALS**

WHEREAS, Developer intends to construct and operate a solar project in one or more phases (each, a "Phase"), commonly referred to as the Tennyson Creek Solar Project, to be located on privately-owned land within the County and consisting of assets which may include photovoltaic solar panels, battery storage, invertors, solar monitoring equipment, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Solar Project");

WHEREAS, the Solar Project will be located on property owned or controlled by the County and by private landowners within the County (collectively, the "Property");

WHEREAS, Developer has or will enter into certain lease agreements, easement agreements, and/or forms of landowner consent documents (each individually, a "Lease") with the participating landowners within the Solar Project area (the "Landowners"), which may include provisions governing the decommissioning of Solar Project facilities located on such Landowners' property;

WHEREAS, Developer desires to provide financial security to address the cost of decommissioning the portions of the Solar Project located on the Property in the form of a bond;

WHEREAS, for purposes of this Agreement, "Generating Units" are defined to include the energy collection cells, panels, mirrors, inverters, lenses and racking, and "Supporting Facilities" are defined to include any related foundations, battery storage, transformers, solar monitoring equipment, roads, and collector substations.

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

### **TERMS AND CONDITIONS**

#### **Article I.**

#### **DECOMMISSIONING AND RESTORATION SECURITY**

##### **Section 1.1 Agreement to Decommission.**

(a) No later than ninety (90) days prior to the expiration of the Term or prior to termination of this Agreement by either Party pursuant to this Agreement, Developer shall present a decommissioning plan to the County for the portions of the Solar Project located on the Property.

The decommissioning plan shall include the removal of all physical material related to the applicable Phase of the Solar Project located on the Property to a depth of thirty-six inches (36") and restoration of the surface of the Property to substantially the same or better condition it was in at the Effective Date so that the Property will be suitable for its prior use (reasonable wear and tear, condemnation, casualty damage and acts of God excepted) (all hereinafter referred to as "Restoration"). The Restoration shall be at Developer's expense and, subject to Section 1.1(c) below, shall be completed within twenty-four (24) months after the expiration of the Term or termination of this Agreement by either Party pursuant to this Agreement.

(1) Upon the commencement of commercial operation of each Phase of the Project and every fifth (5th) anniversary following the commencement of commercial operation of such Phase, Developer shall provide to the County an estimate of the projected salvage value of the equipment to be removed from the Project site for the applicable Phase and the projected cost to Developer of decommissioning and restoration upon the termination of commercial operation of the applicable Phase of the Project as determined by an independent engineer (the "IE") mutually agreeable to the County and Developer. If the projected costs of Restoration exceed the projected salvage value as determined by the IE, a credit support ("Decommissioning Surety") in the form of a bond from an institution with at least a "BBB" Standard and Poor's or "Baa2" Moody's or "A-" AM Best's financial rating or better for the benefit of the County shall be provided in an amount equal to the difference between the projected salvage value and the projected Restoration cost; however, at no point shall the amount of such Decommissioning Surety be less than one million dollars, escalating at two percent (2%) annually beginning on the first anniversary of the issuance of the Decommissioning Surety. Such Decommissioning Surety shall remain in place until such time as Developer's Restoration obligations for such Phase hereunder have been performed. Upon the earlier of the completion of the Restoration of the applicable Phase of the Project by Developer, or the termination of this Agreement (other than for a default of Developer in the performance of its Restoration obligations pursuant to this Agreement), such Decommissioning Surety shall terminate. For the avoidance of doubt, in the event of a repowering of the Project on any year after the commencement of commercial operation, the Decommissioning Surety amount will be re-calculated.

(2) The Decommissioning Surety shall remain in force until the completion of Restoration. Upon written request, no more than once in any calendar year, the County may request Developer provide County with information and documentation to confirm the existence and maintenance of such Decommissioning Surety in favor of County.

(b) The Decommissioning Surety amount shall be reduced by the amount of bond or other security, if any, that Developer is required to post by applicable governmental authorities for Restoration associated with the Solar Project improvements on the Property.

(c) Once Restoration for a Phase commences, Developer will, in a competent manner in accordance with industry standards, diligently, continuously and in good faith continue such

Restoration. If Developer's ability to operate the Solar Project or performance of its obligations to decommission is prevented, delayed, or otherwise impaired at any time due to Force Majeure, then the time for performance shall be appropriately extended by the time of delay actually caused by the Force Majeure, provided that Developer shall promptly notify County and shall take immediate action to minimize such delay. For purposes of this Section 1.1(c), Force Majeure shall mean the acts of God, extreme weather, war, epidemic or pandemic, civil commotion, riots, damage to work in progress by reason of fire or other casualty, strikes, lock outs or other labor disputes, terrorism, sabotage, or the effect of any law, proclamation, action, demand or requirement of any government agency.

(d) In the event Developer or its lenders fail to decommission any applicable Generating Unit in accordance with the requirements of this Agreement, the County may undertake the decommissioning of such Generating Unit. The County's election to decommission all or any portion of a Generating Unit shall not create an obligation to the Landowners, the Developer or any other third-party to complete the decommissioning of such Generating Unit. In the event the County elects to undertake the decommissioning of a Generating Unit, it may make a claim(s) upon the Decommissioning Surety for the expenses incurred, 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 Decommissioning Surety shall be limited to such expenses incurred by the County for the removal of all structures up to a depth of three (3) feet below the surface and the restoration of the soil and vegetation, including reasonable professional and attorney fees.

## Article II.

### REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations, Warranties and Covenants of County. The County represents and warrants to Developer 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 2.2 Representations, Warranties and Covenants of Developer. The Developer represents and warrants to the County as follows:

(a) The Developer 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 Developer and constitutes the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

(c) The execution, delivery, and performance of this Agreement by Developer will not violate any applicable law of the State of Kansas.

### Article III.

#### TERM

Section 3.1 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate upon the earlier of the 50th anniversary of the date of Completion of Construction or such time as the Solar Project is fully decommissioned, unless earlier terminated or extended by the mutual agreement of the Parties.

### Article IV.

#### MISCELLANEOUS

Section 4.1 No Waiver; Remedies Cumulative. No failure on the part of any Party 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 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 expressly herein provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

Section 4.2 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 electronic mail 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.

To Developer:

Cliff Williams  
Doral Renewables LLC  
2 Logan Square  
Philadelphia, PA 19103

Copy to:

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

To County:

Bourbon County Clerk  
210 S National Ave # 3  
Fort Scott, KS 66701

Section 4.3 Amendments. This Agreement constitutes the entire agreement and undertaking of the Parties and supersedes all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth herein. This Agreement may be amended, supplemented, modified or waived only by an instrument in writing duly executed by all of the parties hereto.

Section 4.4 Successors and Assigns. This Agreement may be assigned only upon written consent of the Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except Developer may, without obtaining consent or approval from County, assign this Agreement to an affiliate or successor entity, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Developer shall provide County with written notice of any assignment within thirty (30) days of such assignment becoming effective.

Section 4.5 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

Section 4.6 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 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 4.7 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 4.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to conflicts of laws provisions and each Party waives all right to trial by jury for all suits or causes of action arising out of this agreement.

**[REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK; SIGNATURE  
PAGES FOLLOW.]**

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:**

Tennyson Creek Solar LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

**And**

Tennyson Creek Solar II LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

**THE COUNTY:**

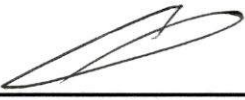
THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

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

Name: Brandon Whisenhunt, County Commissioner (District 1)

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

Name: Jim Harris, County Commissioner (District 2)

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

Name: Clifton Beth, County Commissioner (District 3)

ATTEST:

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

*Reviewed and approved by:*

\_\_\_\_\_

# **EXHIBIT 8**

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this 31st day of October, 2024 (the "Effective Date"), by and between the Board of County Commissioners for Bourbon County, Kansas ("County"), Tennyson Creek Solar LLC ("TCS I"), and Tennyson Creek Solar II LLC ("TCS II") (collectively, TCS I and TCS II are referred to herein as "Developer"). The County and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

### **RECITALS**

WHEREAS, Developer intends to construct in one or more phases (each, a "Phase") and operate a solar project, commonly referred to as the Tennyson Creek Solar Project, to be located on privately-owned land within the County and consisting of assets which may include photovoltaic solar panels, battery storage, invertors, solar monitoring equipment, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Solar Project"); and

WHEREAS, Developer has or will enter into certain lease agreements, easement agreements, and forms of landowner consent documents (individually, a "Lease" and, collectively, the "Leases") with the participating landowners within the Solar Project area (the "Landowners"); and

WHEREAS, the County intends, through this Agreement, to consider the orderly development, construction, operation, and maintenance of the Solar Project in the County, pursuant to the terms and conditions set forth in this Agreement; and

WHEREAS, upon execution of this Agreement and the Definitive Agreements (defined below), the County acknowledges and agrees that all County permits and approvals required for the Solar Project have been granted and substantial amounts of work have been completed;

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

### **SECTION I. RECITALS**

The recitals set forth above constitute a material part of this Agreement and are incorporated herein. The Parties confirm the accuracy, truth and validity of said recitals.

### **SECTION II. COUNTY APPROVAL AND FUTURE COOPERATION**

#### **A. COUNTY CONSENTS AND APPROVALS.**

1. Unless otherwise provided herein, whenever the consents or approvals of the County, or any of its employees, consultants, attorneys, officers, agents, or representatives are required to be secured or obtained by Developer under the provisions of this Agreement, the same shall not be unreasonably conditioned,

withheld, or delayed unless otherwise set forth in the Definitive Agreements. The County will reasonably cooperate with Developer in the development, construction, operation, maintenance, and decommissioning of the Solar Project and issue all permits, approvals, and authorizations required by local regulations or other law, if any, provided Developer files compliant applications, pays all applicable fees, and complies with all the requirements specified in this Agreement and is not otherwise in default under the terms of the Definitive Agreements.

2. The County acknowledges, understands and agrees that the development process associated with the Solar Project will take significant time and requires a substantial investment by the Developer. Therefore, in order to induce the Developer to make this commitment and investment, the County hereby agrees that it approves and authorizes the Developer to construct and operate the Solar Project in the County. The County acknowledges, understands and agrees that the Developer will undertake significant financial investment in reasonable reliance on the County's promises and obligations under the Definitive Agreements. The County agrees that the Developer's rights to construct and operate the Solar Project vest upon the execution of this Agreement. The County acknowledges and agrees that there are currently no local laws, requirements, regulations, permits, or approvals applicable to the construction or operation of the Solar Project. The County agrees that if at any time in the future any laws, requirements, regulations, permits or approvals are enacted that would otherwise prevent or limit the Developer's construction or operation of the Solar Project, the Solar Project shall be grandfathered for purposes of compliance with such future laws, requirements, regulations, permits, or approvals and the Solar Project shall be allowed to be developed or to continue operations in the County. In the event the County adopts zoning regulations, the County shall provide in said zoning regulations that the use of the Property for the Solar Project and the operation of the Solar Project shall be vested as provided for in K.S.A. 12-764.

B. FUTURE COOPERATION. The Parties shall cooperate with one another on an ongoing basis and shall make every reasonable effort (including the holding of hearings or meetings and the adoption of such resolutions as may be necessary) to further the implementation of this Agreement and the Definitive Agreements (as defined below) and the intentions of the Parties as reflected by the provisions of this Agreement and the Definitive Agreements. Without limiting the foregoing, in the event that the County adopts any zoning or other laws after the Effective Date that would make the development, construction, operation, repair, replacement, and maintenance of the Solar Project a nonconforming use under such zoning or other laws, or that would otherwise materially interfere with such development, construction, operation, repair, replacement, and maintenance of the Solar Project, or the decommissioning of the Solar Project, the County agrees that it will take such actions, adopt such ordinances and do such other things as are necessary to exempt or exclude the Solar Project from such zoning or other laws. The County acknowledges and agrees that, upon execution of this Agreement and the Definitive Agreements (defined below), all County permits and approvals required for the Solar Project have been granted.

### SECTION III. DEVELOPMENT REQUIREMENTS

- A. DEFINITIVE AGREEMENTS. Concurrently with the execution of this Agreement, Developer shall enter into the following agreements with the County (collectively, the "Definitive Agreements"):
1. A Road Use Agreement ("Road Use Agreement").
  2. A Decommissioning Agreement ("Decommissioning Agreement").
- B. LANDOWNER PARTICIPATION. All photovoltaic solar panels, battery storage sites, and related structures within the County shall be located on public rights of way and property that is owned by Developer, or an affiliate thereof, or property for which Developer or its affiliate has or will have executed a lease, easement or other agreement with the applicable landowner.
- C. SETBACKS AND SITING.
1. Setbacks.
    - a. All photovoltaic solar panels and battery storage sites shall be setback at least fifty (50) feet from public roads and property lines of nonparticipating landowners and four hundred (400) feet from non-participating occupied residences in existence as of the Effective Date of this Agreement.
    - b. On or before the completion of construction, the Project shall strategically install and augment vegetative buffers along non-participating landowner property lines as necessary to shield occupied, non-participating residences in existence as of the date of this Agreement, unless such impacted landowner provides a writer waiver of such requirement. Such vegetative buffers may include, but not be limited to, two rows of coniferous trees with staggered spacing. Developer will utilize existing natural visual barriers including pre-existing vegetation wherever possible. Such trees installed by the Developer as part of the vegetative buffer shall be a minimum of 5 feet tall at the time of planting.
  2. Above-ground Collection Lines and Developer-Owned Transmission Line Tower Setbacks.
    - a. Above-ground collection lines and Developer-owned transmission line towers shall be setback at least one-and-a-half (1.5) times the height of the transmission line tower measured from base of the tower to the nearest outside wall of such structure from any non-participating occupied primary residential dwelling currently in existence in the County and may not be located in a County right of way without County approval, but above-ground transmission line wires may cross (and be located in) County right of ways as set forth in the Road Use Agreement.
    - b. Collection lines will be located within leases or easements on participating landowner property, or located underground on public right of way crossings as approved by the County in compliance with the Road Use Agreement.



- c. The setbacks and height requirements set forth in this Agreement can be modified with written consent of the Parties.
3. Sound Levels. Unless otherwise agreed to by the landowner, sound levels are not to exceed fifty (50) dBA Leq, measured at the nearest outside wall of a non-participating occupied primary residential dwelling currently in existence in the County.
4. Ground Cover and Vegetation Preservation.
- a. Developer shall seed the land immediately under and surrounding the solar photovoltaic panels with seed mix to prevent erosion or land disturbance. For the avoidance of doubt, if a regulatory agency governs this process via a SWPP then those requirements shall take priority over anything conflicting in this agreement.
- b. In constructing the Solar Project, Developer shall seek to preserve mature trees, tree lines, streamways, ponds, and grasslands to the extent such efforts are reasonable and practicable.
5. Security Fencing. Developer shall enclose the Solar Project with a security fence of no more than twelve (12) feet in height. Developer shall, throughout the Term, reasonably maintain any fencing it or its affiliates erect.
6. Lighting. Developer shall limit its use of outdoor lighting to levels required for safety and security. Developer shall implement reasonable controls on lighting to prevent glare and light spillage offsite.
7. Insurance. Prior to the commencement of construction, Developer shall provide insurance as set forth in the Road Use Agreement.
8. Emergency Services, Fire Protection, and Hazardous Materials.
- a. Developer or its affiliate will work in cooperation with the Bourbon County Director of Emergency Management to establish standards for fire protection and emergency response.
- b. Developer or its affiliate will work in cooperation with the Bourbon County Director of Emergency Management to establish standards for the proper storage and handling of hazardous materials.
- c. For clarity, items 8.a and 8.b will be handled as a two part process. During the construction phase, the Developer or its construction contractor will coordinate to establish those standards and during the operations phase, the O&M contractor will coordinate with the County to re-establish those standards.
- d. Developer or its affiliate will work in cooperation with the County to establish 911 addresses for each access road leading to the photovoltaic solar panel and battery storage site.

9. Reimbursements to the County. Developer or its affiliate will reimburse the County as set forth in the Definitive Agreements.

10. Compliance with Laws. Developer and its affiliates shall comply with, and if found to be out of compliance shall make commercially reasonable efforts to bring the Solar Project into compliance with, all federal and state laws and regulations applicable to the construction and operation of the Solar Project, including:

- a. Federal Aviation Administration statutes and regulations;
- b. Occupational Safety and Health Administration statutes and regulations;
- c. United States Fish and Wildlife Service statutes and regulations, including those pertaining to impacts on endangered or threatened species or habitats;
- d. U.S. Army Corps of Engineers statutes and regulations, including those pertaining to impacts on wetlands;
- e. Environmental Protection Agency statutes and regulations, including those pertaining to environmental impacts;
- f. Federal Communication Commission (FCC) statutes and regulations, including those pertaining to wireless communications impacts;
- g. Consultations with the Kansas Department of Wildlife, Parks, and Tourism, including those pertaining to impacts on endangered or threatened species or habitats;
- h. Consultations with the Kansas Department of Health and Environment, including those pertaining to any environmental impacts;
- i. Consultations with the Kansas Historical Society pertaining to surveys of any historical sites that may be located within the Solar Project area; and
- j. Any other applicable regulations promulgated by these and any other federal and state agencies.

11. 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 electronic mail) 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 electronic mail 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.

To Developer:  
Cliff Williams

Doral Renewables LLC  
2 Logan Square  
Philadelphia, PA 19103

Copy to:

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

To County:

Bourbon County Clerk  
210 S National Ave # 3  
Fort Scott, KS 66701

#### **SECTION IV. REPRESENTATIONS AND WARRANTIES**

**A. COUNTY.** The County represents and warrants that:

1. the County has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
2. upon execution and delivery by the County and Developer, this Agreement shall be a valid, legal, binding and enforceable obligation of the County enforceable against the County in accordance with its terms, subject to any applicable laws of bankruptcy, insolvency or reorganization, laws affecting the enforcement of creditors' rights generally, and general principals of equity;
3. no approval or consent from any other person or entity is required for the County's execution of this Agreement; and
4. this Agreement is executed by duly authorized representatives of the County who are fully authorized to execute this Agreement on behalf of the County.

**B. DEVELOPER.** Developer represents and warrants that:

1. Developer has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
2. upon execution and delivery by Developer and the County, this Agreement shall be a valid, legal, binding and enforceable obligation of Developer enforceable against Developer in accordance with its terms, subject to any applicable laws of bankruptcy, insolvency or reorganization, laws affecting the enforcement of creditors' rights generally, and general principals of equity;

3. no approval or consent from any other person or entity is required for Developer's execution of this Agreement; and
4. this Agreement is executed by a duly authorized representative of Developer, who is fully authorized to execute this Agreement on behalf of Developer.

## **SECTION V. DEFAULT PROVISIONS**

If either Party fails to observe or perform any material condition or provision of this Agreement for sixty (60) days after receiving written notice of such failure from the other Party (the "Cure Period"), then the aggrieved Party shall have the right to terminate this Agreement upon thirty (30) days prior notice to the other Party and to pursue any remedy available to it at law or in equity; provided however, that for so long as the delinquent Party is diligently attempting to cure such failure and the failure is, in the aggrieved Party's discretion, reasonably capable of being cured, a default under this Section V shall not be deemed to have occurred. If the Developer fails to observe or perform any material condition or provision within Section III(C)(11) during an isolated instance where curing such a failure is not possible, termination will only be permissible in the event that Developer fails to comply with all relevant penalties associated with such a failure.

Notwithstanding the foregoing, a Party's failure to observe or perform any material condition or provision of this Agreement due to an Excusable Delay shall not constitute a breach of this Agreement. For purposes of this Agreement, "Excusable Delay" means any casualty to property or persons, inclement weather, epidemic or pandemic, inability to secure materials, strikes or labor disputes, acts of God, acts of the public enemy or hostile or terrorist action, civil commotion, and/or governmental actions, restrictions, regulations or controls, including, without limitation, any failure or refusal of any governmental authority to timely issue any required permit or approval for development of the Solar Project or any legal action or proceeding involving any such required permit or approval (whether arising out of any existing laws or changes in laws, including any such laws relating to annexation, zoning, platting, building or other codes or ordinances applicable to development and construction of the Solar Project), or any other cause beyond the reasonable control of that Party (other than financial inability) which affects development, construction, maintenance, operation, repair, replacement or decommissioning of the Solar Project (including, without limitation, any of the foregoing which affect a Party's contractors or subcontractors).

Notwithstanding the foregoing, upon termination of this Agreement for default as defined above, the Development Requirements (Section III) and the Road Use Agreement shall continue in full force and effect until final and complete cessation and decommissioning of the Project.

## **SECTION VI. SEVERABILITY**

In the event that any term or provision of this Agreement is deemed to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the

transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

## **SECTION VII. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to the conflict of law principles thereof and each Party waives all right to trial by jury for all suits or causes of action arising out of this agreement.

## **SECTION VIII. MISCELLANEOUS**

A. **NO WAIVER.** The failure of either Party to insist in any one or more instances on the performance of any of the obligations required by the other under this Agreement shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

B. **HEADINGS.** The headings used in this Agreement are for ease of reference only and shall not in any way be construed to limit or alter the meanings of any provision hereof.

C. **AMENDMENTS.** This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each Party. Any oral or verbal agreements between the Parties different from or in conflict with the provisions of this Agreement shall be null and void and of no force or effect where they are in conflict with the written provisions of this document.

D. **ASSIGNMENT.** This Agreement may be assigned only upon written consent of the Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except Developer may, upon notice to County, but without County's consent or approval, assign this Agreement to an affiliate, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Notwithstanding anything to the contrary, Developer may only assign this Agreement if the assignee agrees and acknowledges in writing that such assignee shall be bound by terms and obligations of this Agreement. Upon such assignment all of Developer's rights and obligations shall inure to the benefit of and shall be binding upon the Developer's assignee and its respective successors, assignees and legal representative.

E. **INTERPRETATION.** This Agreement was prepared with substantial input from both Parties and their respective legal counsel; no phrase, sentence, clause, provision or section of this Agreement shall be construed against a Party as a result of such Party's legal counsel having acted as the primary drafter thereof.

F. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns, trustees and/or receivers of the Parties hereto.

G. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

H. TIME IS OF THE ESSENCE. Time is of the essence of this Agreement, and of each and every provision hereof, and the Parties shall make every reasonable effort to expedite the subject matters hereof and to perform their respective obligations.

**[REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK;  
SIGNATURE PAGES FOLLOW.]**

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:**

Tennyson Creek Solar LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

**And**

Tennyson Creek Solar II LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

**THE COUNTY:**

THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

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

Name: Brandon Whisenhunt, County Commissioner (District 1)

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

Name: Jim Harris, County Commissioner (District 2)

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

Name: Clifton Beth, County Commissioner (District 3)

ATTEST:

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

*Reviewed and approved by:*

\_\_\_\_\_



# **EXHIBIT 9**

## **ROAD USE AND MAINTENANCE AGREEMENT**

THIS ROAD USE AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into this 31st day of October, 2024 (the "Effective Date"), by and between the Board of County Commissioners for Bourbon County, Kansas ("County"), Tennyson Creek Solar LLC ("TCS I"), and Tennyson Creek Solar II LLC ("TCS II") (collectively, TCS I and TCS II are referred to herein as "Developer"). The County and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties". For this Agreement, the term "Roads" means any County or township right-of-way, or other roads, alleys, or ways that are owned, operated, or maintained by the County or any township located within the County, including, but in no way limited to, gravel, pavement, ditches, culverts, and bridges.

### **RECITALS**

WHEREAS, Developer is developing a solar electrical generation and battery storage facility (the "Project") in one or more phases (each, a "Phase"), to be located on privately-owned land within that part of the County shown on the attached Exhibit A (the "Project Boundary"); and

WHEREAS, Developer or its designee intends to obtain the necessary approvals to build the Project; and

WHEREAS, in connection with the construction of the Project, the Parties desire to address certain issues relating to Roads over which it will be necessary for Developer and its agents, employees, or servants to, among other things:

- i. Transport heavy equipment and materials which may be in excess of local design limits of certain of the Roads;
- ii. Transport materials, such as concrete and gravel, or other project-related material or equipment;
- iii. Make specific modifications and improvements (both temporary and permanent, including various associated culverts, bridges, road shoulders and other fixtures) to permit such equipment and materials to pass; and
- iv. Place electrical, electric transmission, signal, and communication cables and appurtenant components (collectively "Cables") for the Project adjacent to, along, above, under or across such Roads; and
- v. Place access roads and driveways to the Project adjacent to such Roads; and

WHEREAS, it is in the best interest of the public health, safety and welfare that Developer and the County reach an agreement to address possible issues pertaining to the Roads that will arise in, around, and near the Project; and

WHEREAS, Developer and the County wish to set forth their understanding and agreement relating to the use of Roads during construction of the Project;

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **TERMS AND CONDITIONS**

**Section I. Developer Covenants.** Developer will use commercially reasonable efforts related to the following activities in accordance with the terms of this Agreement:

- A. Within thirty (30) days prior to Commencement of Construction of a Phase of the Project, Developer will designate the name, address, email address and phone number of a company representative with authority to represent Developer. Developer may designate a new representative upon written notice to the County. For the avoidance of doubt, preliminary activities including but not limited to environmental surveys, geotechnical investigation, pre-seeding, and tree-clearing will not be considered as Commencement of Construction of a Phase of the Project;
- B. At least thirty (30) days prior to Commencement of Construction of a Phase of the Project, provide the County Road and Bridge Supervisor with a transportation route for the Project equipment, subject to amendment;
- C. Provide plans to the County Road and Bridge Supervisor for the widening of any corner radii necessary to facilitate the turning movements of the transport trucks used by Developer during construction of the Phase of the Project, make any necessary improvements, and at the conclusion of construction, at County's election and concurrence by the Developer, either leave any improvements located on Roads in place in the condition required prior to Developer's initial use of the improvements, or remove any such improvements and restore the affected property;
- D. Transport or cause to be transported oversize loads in a manner reasonably calculated to minimize adverse impact on the local traffic;
- E. Developer will provide no less than forty-eight (48) hours' notice to the County Road and Bridge Supervisor when it is necessary for a Road to be closed for any reason relating to the construction of the Project, other than short-term closures to mitigate hazards, or accommodate vehicle turns or ingress or egress from Roads or road closures that are already noted in the plans described in Section I(C). Notwithstanding the foregoing, Developer will provide all materials and personnel necessary to close the Road;
- F. Provide signage of all Road closures and work zones in compliance with the most current manual on Uniform Traffic Control Devices adopted by the State of Kansas and as may be required by the County;
- G. Purchase and deliver applicable road materials for repairs to Roads that are damaged by Developer and/or Developer agents, employees, or servants during the hauling of materials and/or construction of the Project and bear all costs to restore and repair any

Roads that are damaged by Developer and/or Developer agents, employees, or servants during the hauling of materials and/or construction of the Project;

H. Developer will cooperate with the County to reasonably mitigate safety hazards to public travel to the extent such hazards are caused by Developer and/or Developer's agents, employees, or servants during the hauling of materials and/or construction of the Project; and

I. The obligations and terms of this Agreement applicable to the initial pre-construction and construction period of the Phase of the Project also apply to any Post-Construction Activity (as defined in Section 4(C) below) and any decommissioning period.

**Section 2. County Covenants.** The County, in accordance with the terms of the Agreement, agrees that it shall:

A. Within ten (10) days following the Effective Date of this Agreement, designate the name, address, email address and phone number of a County representative with authority to represent the County. Such representative will coordinate with and keep the County Board of County Commissioners apprised of material information pertaining to this Agreement.

B. Perform reasonable routine and regular maintenance of the Roads, including snow clearing, in accordance with the County's usual maintenance practices and without unnecessarily hindering construction of the Project-related access points and Road crossings;

D. Within ten (10) working days from the date they are submitted, review and approve plans (if applicable) for all Project-related utility encroachments on County Roads;

E. Waive any County road and right of way permitting requirements for Developer and Developer's agents' use or modification of the Roads and rights of way, as the terms of this Agreement reflect the conditions of Developer's use of the Roads and rights of way and the County's approval for such activities; and

F. Authorize the designated County representative to agree on behalf of the County to revisions to any plans or schedules submitted by Developer as soon as practicable after revisions are submitted to the County by or on behalf of Developer.

**Section 3. Road Use and Planning Inventory.**

A. Road Use. The County hereby grants to Developer and its Representatives a non-exclusive road right of way to enter upon and utilize the Roads with vehicles or combined vehicles less than 80,000 pounds, or to have the Roads utilized by third-party courier or delivery services or by Developer and its Representatives for tree clearing or other site preparation activities ("Standard Road Use"). Unless expressly stated otherwise herein, Standard Road Use shall not be subject to the terms and conditions of this Agreement. County additionally hereby grants to Developer and its representatives, subject to the terms of this Agreement, a non-exclusive road right of way to enter upon and utilize the

portion of the Roads identified pursuant to Section I.B with vehicles or combined vehicles equal to or greater than 80,000 pounds ("Heavy Haul Road Use"). Unless otherwise stated herein, the terms and conditions of this Agreement shall only apply to Heavy Haul Road Use.

## B. Road Inventory.

1. Pre-Construction Inventory: At least fourteen (14) days prior to the Commencement of Construction of any Phase or commencement of any Post-Construction Activity (as defined in Section 4(C) below), the Developer shall perform a survey to record the condition of the surface of all Roads which will be used in the transport of equipment, parts, and materials of the Phase of the Project (the "Pre-Construction Inventory"), and shall promptly submit such Pre-Construction Inventory to the County Road and Bridge Supervisor for review. Developer will notify the County Road and Bridge Supervisor in advance of, and allow the County Road and Bridge Supervisor to participate in, the Pre-Construction Inventory. During this survey, the entire length of the Roads selected for use in the Pre-Construction Inventory shall be videotaped and photographs taken by Developer. In addition, the County will provide Developer, if available, with copies of any plans, cross-sections and specifications relevant to the existing Road's structure if the same are requested by Developer. Copies of all preconstruction documentation shall be provided to each of the Parties. Developer will reimburse the County for all reasonable, documented costs associated with the Pre-Construction Inventory. For the purposes of this Agreement, "Commencement of Construction" shall be the date that Developer provides notice to the County that the contractor has begun significant work of grading, dirt moving, and other such activities.

## 2. Post-Construction Inventory:

(a) Following Completion of Construction of the Phase of the Project, the Developer will perform a post-construction inventory (the "Post-Construction Inventory"), and shall promptly submit such Post-Construction Inventory to the County Road and Bridge Supervisor for review. Developer will notify the County Road and Bridge Supervisor in advance of, and allow the County Road and Bridge Supervisor to participate in, the Post-Construction Inventory. The method of the Post-Construction Inventory shall be similar to that of the Pre-Construction Inventory described above. The two (2) sets of pre- and post-construction data will be compared to identify wheel lane rutting, cracking or other damage in excess of the Pre-Construction Inventory, and the Developer will determine the extent and cost of the repairs or improvements needed to return the Roads to pre-construction condition. Developer will reimburse the County for all reasonable, documented costs associated with preparing the Post-Construction Inventory. For the purposes of this Agreement, "Completion of Construction" shall be the first date that all of the following has occurred: (a) Developer provides notice to the County that the requirements for final completion have been satisfied pursuant to the EPC Agreement for the Phase of the Project, and (b) all Developer use of Roads has concluded for such Phase, except for Developer's use of Roads with

typical vehicles used to manage and operate a solar energy project, none of which will be oversized or overweight (as defined by the Kansas Department of Transportation).

(b) As described further in subsections (i) and (ii) below, Developer will, and is obligated to, at County's sole option either make any or all repairs of damage caused by Developer or Developer's agents, employees, contractors, subcontractors, affiliates, and servants necessary to return the Roads to a pre-construction condition, at its sole cost and expense, or provide a payment to the County for the amount of such repairs. Within 10 business days of the County's receipt of the Post-Construction Inventory, the County shall submit a written election to the Developer specifying whether Developer shall be responsible for making repairs as described in subsection (i) below, or whether the Developer shall provide a payment for the County to make such repairs as described in subsection (ii) below.

(i) In the event that the County opts for Developer to make such repairs, within twenty (20) calendar days following the completion of the Post-Construction Inventory for a Phase, Developer shall provide written notice to the County of when it will make any such repairs. The notice shall specifically identify the methods and materials for repairs identified in the Post-Construction Inventory and the expected date by which such repairs shall be completed. All identified repairs are to be completed within ninety (90) calendar days after the Post-Construction Inventory subject to day-for-day extension in the event that repair activities are actually delayed as a result of events beyond the reasonable control of Developer that Developer could not have foreseen with reasonable diligence. In order to provide for the safety of those using Roads, at least forty-eight (48) hours prior to making any such repairs Developer shall notify the County Road and Bridge Supervisor of the location of such repairs and the times when such repairs will be made. All such repairs shall be conducted in a manner reasonably calculated to minimize adverse impact on the local traffic.

(ii) In the event that the County opts to make such repairs at Developer's sole cost and expense, Developer shall, within twenty (20) business days of Developer's receipt of the County's election pursuant to Section 3(B)(2)(b) above, provide the County with a good faith estimate of the reasonable costs to purchase and deliver all road materials used by the County to complete the repairs specified in the Post-Construction Inventory, and costs incurred in obtaining the labor and equipment necessary to undertake and complete such repairs in a timely and workmanlike manner (the "Repair Estimate"). Developer shall pay an amount equal to the Repair Estimate to the County within twenty (20) business days of the County's acceptance of the Repair Estimate (the "Repair Payment"). As a condition to the County's receipt of the Repair Payment, the County shall certify in writing that the Developer's post-

construction repair obligations have been completed to the County's satisfaction.

(c) If Developer fails to provide the notice to the County described in Section 3(B)(2)(b)(i) above within the time allotted or, after providing notice to County of its intention to undertake any such repairs, fails to complete the repairs within the period set forth in Section 3(B)(2)(b)(i), and there is no ongoing dispute between County and Developer regarding Developer's obligations hereunder, then after Developer fails to complete such repairs within 60 days after County provides notice of its intent to undertake such repairs, Developer shall be deemed to have waived its rights to make any such repairs and County may immediately undertake all repairs necessary to return the affected Roads to a preconstruction condition at Developer's sole cost and expense. Such expense may include the reasonable costs to purchase and deliver all road materials used by the County to restore Roads to a pre-construction condition, and costs incurred in obtaining the labor and equipment necessary to undertake and complete such repair in a timely and workmanlike manner. Developer further agrees that County may, in its sole but commercially reasonable discretion, enter into agreements with one or more third party contractors specifically for the repair of those Roads which suffer damage caused or contributed to by any of Developer's activities undertaken in the construction of the Project, and that Developer will bear all commercially reasonable costs incurred by County in the retention of any such third party contractor(s).

(d) Within thirty (30) days following receipt of an invoice from the County, Developer shall reimburse County for all documented, reasonable amounts incurred by County in the purchase and delivery of all materials, and payment of the cost of labor, mileage and hourly machines costs, in connection with the repair and restoration of any Roads damaged as a result of the construction of any Phase of the Project, not repaired by the Developer, and which repair the County elected to undertake as provided in Section 3(B)(2)(c).

C. Routing and Access Coordination. As soon as practical after execution of this Agreement and as necessary throughout the construction of the Project, Developer and County shall meet to discuss routing for the oversized and overweight (as defined by the Kansas Department of Transportation) transportation of equipment to the Project, Project-related access points, Road crossings and Cable locations.

#### **Section 4. Financial Instrument to be established by Developer.**

A. Prior to commencement of construction of each Phase of the Project and its use of the Roads, Developer shall provide, from an agent selected by Developer and acceptable to County ("Agent"), a letter of credit, bond, or credit-worthy parent guaranty, securing payment of One Thousand Two Hundred and Fifty Dollars (\$1,250) per megawatt ("MWac") of installed capacity in such Phase of the Project, subject to the conditions set forth herein or as otherwise negotiated by the Parties (such instrument being referred to herein as the "Financial Instrument") to secure Developer's payment and performance obligations hereunder.

B. All costs and expenses of maintaining the Financial Instrument, including the fees and expenses of the Agent, and the costs and expenses of making distributions pursuant to the Financial Instrument, shall be borne by Developer.

C. The Financial Instrument shall continue for a period of six (6) months after Completion of Construction of the applicable Phase. Upon delivery by Developer and County of notice certifying that the Project has been commercially operational for six (6) months after Completion of Construction of the applicable Phase, and the County has no outstanding claims for payments or reimbursements arising from Road repair and restoration necessitated by construction of the Project, the Financial Instrument shall terminate.

D. In the event that any post-commercial operation activity during the life of the Project requires i) delivery of oversize/overweight (as such terms are defined by the Kansas Department of Transportation) equipment or components; ii) crane mobilization; or iii) repowering the Project (collectively "Post-Construction Activity"), prior to commencing such Post-Construction Activity, Developer shall provide a letter of credit, bond, or credit-worthy parent guaranty that provides the same security as the Financial Instrument in an amount to be determined by Developer and the County that is commensurate with the potential impact of the Post-Construction Activity on the Roads (each a "New Financial Instrument"), but not to exceed the original Financial Instrument amount, and shall maintain such New Financial Instrument for a period of six (6) months after both the Post-Construction Activity has completed, and all Developer use of Roads with oversized or overweight traffic for Post-Construction activity has concluded. Upon delivery by Developer to County of notice certifying that the Post-Construction Activity has been completed for a period of six (6) months, cessation of use of Roads for Post-Construction Activity, and at the time of such certification by Developer the County has made no outstanding claims for payments or reimbursements arising from Road repair and restoration necessitated by Post-Construction Activity, any New Financial Instrument shall terminate.

E. All other terms and conditions concerning the Financial Instrument, any New Financial Instrument, and the provisions for making claim against same, shall be negotiated in good faith between County and Developer, and shall form the basis of a separate agreement.

## **Section 5. Construction Cooperation.**

A. With Others: Prior to the commencement of construction of modifications or improvements to the Roads for each Phase, Developer shall hold a meeting and shall invite the County Road and Bridge Supervisor and any other applicable County public safety officials that the County may designate to discuss plans for the construction of the applicable Phase. Developer shall not commence construction of modifications or improvements to the Roads without approval by the County Road and Bridge Supervisor. The County Road and Bridge Supervisor shall provide such approval or comments within five (5) business days of the Developer's submission of proposed modifications or improvements, such approval not to unreasonably withheld or delayed. If such approval or comments have not been provided by County within 5 business days, proposed



modifications will be deemed as accepted by County. County shall compile a list of contact persons who will need to be notified of any temporary Road closures that may have an effect on the daily routine or functioning of these agencies and/or departments. A copy of this list shall be furnished by the County to Developer.

B. Between the County and Developer: During construction of the Project, the County and Developer shall meet regularly but not to exceed quarterly, to discuss Project activities, including anticipated oversized and overweight (as defined by the Kansas Department of Transportation) material and equipment deliveries.

#### **Section 6. Mutual Indemnification/Hold Harmless and Liability Insurance Provisions.**

A. Indemnity. Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party and such party's mortgagees, lenders, officers, employees and agents (the "Indemnified Party") against any and all losses, direct or indirect damages, claims expenses, and other liabilities resulting from or arising out of:

1. Any negligent act or negligent failure to act on the part of the Indemnifying Party or anyone else engaged in doing work for the Indemnifying Party, or
2. Any breach of this Agreement by the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by any negligent or willful act or omission on the part of the Indemnified Party.

B. Limitation of Liability. In no event shall Developer or any of its members, officers, directors or employees or the County or any of its boards, elected officials, officers or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to any Party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, nonperformance or delay in performance under this Agreement.

C. Required Insurance. Developer shall, upon commencement of construction of the Project and for the period of construction of the Project, maintain in full force and effect, commercial general liability insurance, naming Bourbon County as additional insured, in the aggregate amount equal to five million dollars (\$5,000,000.00). Developer may utilize any combination of primary and/or excess insurance to satisfy this requirement and may satisfy this requirement under existing insurance policies for the Project. Developer will annually provide a certificate of insurance evidencing the insurance limits and coverage to County upon written request by the County.

#### **Section 7. Miscellaneous**

A. Use of County Right-of-Way. In consideration of the obligations assumed by the Developer under this Agreement, and in addition to the surface use of the Roads, the County hereby grants to the Developer a non-exclusive license, interest, right and privilege to utilize any County rights-of-way for the construction and location of

driveways and other points of ingress and egress, installation, operation, maintenance, repair, and decommissioning of the Project and for the siting, installation, operation, repair, maintenance, and repowering of facilities that benefit the Project including, but not limited to, Cables, collection lines, electrical or data transmission lines or other facilities or utilities as may be beneficial for the operation of the Project, except that in no instance shall Developer install facilities, whether temporary or permanent, along any length of the County right-of-way. In the event the Project requires facilities to be installed and operated within real property in which the County owns a fee simple interest, a leasehold interest, an easement interest, or some other real property interest, upon the request of Developer, the County agrees to enter into an insurable and recordable easement agreement with Developer to allow the installation and operation of such facilities in the real property according to terms and conditions customary for energy projects without requiring additional payment from Developer.

B. Remedies and Enforcement. The Parties acknowledge that money damages would not be an adequate remedy for any breach or threatened breach of this Agreement. Each of the Parties hereto covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any Party (the "Defaulting Party"), which default is not caused by the Party seeking to enforce said provisions (the "Non-Defaulting Party") and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right to seek specific performance and/or injunctive relief or remedy or prevent any breach or threatened breach of this Agreement. The remedies of specific performance and/or injunctive relief shall be exclusive of any other remedy available at law or equity. With respect to the opportunity to cure a default, if a Party has failed to perform a material obligation under this Agreement, the other Party shall be required to provide written notice of default. The defaulting Party shall have a right to cure the default within thirty (30) days after having received notice of the default. Notwithstanding the forgoing, so long as the defaulting Party has initiated and is diligently attempting to cure the default, the defaulting Party's cure period shall extend for a time period beyond thirty (30) days as reasonably sufficient for the default to be remedied. If the default is not cured, then the non-defaulting party shall have the right to pursue all remedies.

C. Due Authorization. Developer covenants, represents and warrants to County that: (a) Developer 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; and (b) this Agreement has been duly approved, executed and delivered on behalf of Developer. The County hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County.

D. Amendments. This Agreement constitutes the entire agreement and undertaking of the Parties and supersedes all offers, negotiations and other agreements. There are no representations or undertakings of any kind not set forth herein. No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by both Parties to this Agreement. Time is of the essence regarding every obligation hereunder.

E. 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 electronic mail 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.

To Developer:

Cliff Williams  
Doral Renewables LLC  
2 Logan Square  
Philadelphia, PA 19103

Copy to:

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

To County:

Bourbon County Clerk  
210 S National Ave # 3  
Fort Scott, KS 66701

F. Assignment. This Agreement may be assigned only upon written consent of the Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except Developer may, without obtaining consent or approval from County, assign this Agreement to an affiliate or successor entity, or mortgage, charge, pledge, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement. Developer shall provide County with written notice of any assignment within thirty (30) days of such assignment becoming effective.

G. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of an originally signed counterpart to this Agreement.

H. Governing law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas without regard to conflicts of laws provisions.

I. Successor and Assigns. This Agreement shall inure to the benefits of and shall be binding upon the Parties hereto, their respective: successors, assignees and legal representative.

J. Severance. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect, and the Parties agree to take such additional action as may be beneficial to effectuate the intent of the Agreement.

K. No Waiver; Remedies Cumulative. No failure on the part of any Party 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 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 expressly herein provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

L. Venue and Waiver of Jury Trial. Each Party waives all right to trial by jury and specifically agrees that trial or suits or causes of action arising out of this Agreement shall be to the applicable court with jurisdiction in this matter.

M. 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 such 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:**

Tennyson Creek Solar LLC,

a Delaware limited liability company

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

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Date

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

**And**

Tennyson Creek Solar II LLC

a Delaware limited liability company

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

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Date

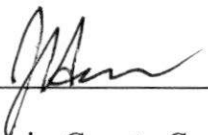
Title: \_\_\_\_\_

**THE COUNTY:**

THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

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

Name: Brandon Whisenhunt, County Commissioner (District 1)

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


Name: Jim Harris, County Commissioner (District 2)

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


Name: Clifton Beth, County Commissioner (District 3)

ATTEST:  
By: \_\_\_\_\_  


*Reviewed and approved by:*

\_\_\_\_\_

# **EXHIBIT 10**

October 31, 2024

Thursday 9:00 a.m.

The Board of Bourbon County Commissioners met in open session with all three Commissioners and the County Clerk present.

Clint Walker, Rachel Walker, Anne Dare, Rep Lime Creek LLC, Debbi Shepard, deb McCoy, Mary Pemberton, Marla Heckman, Monte Carriker, Jean Tucker, Don Tucker, Eric Noreen, Catherine Leigh, Alan Claus Anderson, Tim Emerson, Shanda Stewart, and Mike Wunderly were present for some or all of the meeting.

Jim opened the meeting and led the flag salute.

Clifton made a motion to approve the consent agenda which includes approval of minutes from 10/21/2024. Brandon seconded the motion and all approved.

Eric Bailey, Public Works Director, stated he needed the Chairman's signature on cost closure forms required by the state for the landfill. Eric stated there is a new regulation that requires entities with a landfill to keep the amount the closure of the landfill would cost in the fund. Eric said the landfill is not closing, but they must comply with the new regulations and that the funds would come from the landfill and the remaining from the general fund. Eric stated that the landfill will receive FEMA reimbursement for the flood damage and that in the future the landfill fund will cover the entire cost. Clifton made a motion to allow Chairman Harris to sign the cost closure paperwork for the state. Brandon seconded the motion and all approved. Eric said the City of Bronson wants to do an interlocal agreement as they have funds they need to use by the end of the year. Eric said he is asking if the Commission would like to do this and that he can bring more information and numbers to the next meeting. Jim said if we do this for Bronson then we will have to do for all. Clifton said we don't have time to do our own stuff and this would add to list. He stated we didn't get near what we wanted to completed, and he feels if we do this it will be opening a can of worms. Clifton said he was concerned about manpower but stated he has no problem with having an interlocal agreement with everybody. Jim said he would like any future interlocal agreement to state if or when we have time.

Jennifer Hawkins, County Clerk, presented longevity for employees totaling \$55,900 and asked for approval and to issue a special payroll to pay the longevity out before Thanksgiving. Clifton said this is something we have done every year. Brandon made a motion to approve the longevity and to issue a special payroll. Clifton seconded the motion and all approved. Jennifer said as of this morning they have had 1883 early voters and that she is expecting a large turnout. Jennifer said that Lisa Robertson with



Healthy Bourbon County Action Team and Lea Kay Karleskint with CHC and K-State Extension brought information about a countywide food drive into her office and asked if Bourbon County would like to participate and be a drop off location. The Commissioners stated they have no problem with the county participating and the courthouse being a drop off location. Jennifer presented a real property relief application for Ian and Brandee Peery at 660 N. Main Street in Mapleton. Jennifer said the applicants told her they had previously applied when their home was destroyed by fire on 3-10-2020, however; Jennifer looked in her records and could not find an application and she checked with Matt Quick, Appraiser, and he could not find an application either. The application presented today is for the 2020 tax year. Clifton made a motion to approve the relief property relief application for 660 N. Main Street in Mapleton. Brandon seconded the motion and all approved. Jennifer said that Tri-Valley sent her a letter of support for their transportation services that they would like the Commissioners to sign. Jennifer said this is the same letter of support the Commissioners signed last week for Building Health for their KDOT grant application. Clifton made a motion to approve and sign the transportation support letter for Tri-Valley.

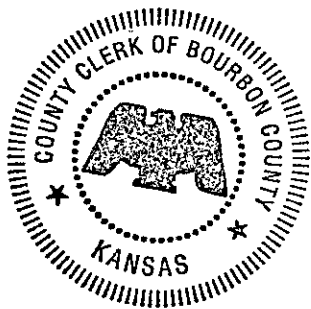
Brandon presented and made a motion to approve Resolution 13-24 which is in support of Operation Greenlight. Brandon explained this is stating that Bourbon County supports our Veterans and encourages citizens to replace their porch light with a green bulb to show support for Veterans. Operation Greenlight is November 4 through November 11. Clifton seconded the motion and all approved. Jim said we can't do enough for our Veterans. Jennifer said the Courthouse has green bulbs along the front of the building and have green covers for our flood lights.

Jim presented Resolution 14-24 which is a resolution rescinding the moratorium on solar projects and terminating current agreements with Hinton Creek Solar. Jim explained they put the moratorium in place several months ago at the urging of the citizens and he feels it is time to rescind and move forward. Jim said he thinks they have done everything they have been asked to. Jim made a motion to adopt resolution 14-24. Jim explained that Hinton Creek is agreeing to our setbacks so we have to terminate prior agreements. An audience member asked about the short notice of the amended agenda. Jim said he sent the information to the Clerk at 4:00. The County Clerk said she received the first email at 4:00 however she had left early to take her child to the doctor and amended the agenda at 6:30 this morning when she saw the email. Clifton asked if terminating the agreements and rescinding the moratorium are in the same motion. Jim said it is all in the resolution. Clifton seconded the motion. Brandon said he doesn't think we are ready to lift moratorium and that more research is needed. Brandon stated he has not read the agreements as he did not receive them until 5:30 last night while he was at work but he thinks it is ok to scrap the original Hinton Creek agreements. Jim asked Alan Anderson, an attorney representing a solar company, to come speak. Mr. Anderson said that Hinton Creek revised their agreement to include setbacks that are further than the committee recommended. Mr. Anderson said it is giving people the choice of land use and allowing people to use their land. Doral executed four donation agreements with Fort Scott Community College, USD 234, and USD 235 and the other two companies will do that as well. Jim said he is aware of the donation agreements and we desperately need this in Bourbon County. Jim asked Justin Meeks, County Counselor, if he had any additional questions. Justin stated he had two other attorneys look at the agreements and they have

strengthened the decommissioning agreements and there is a 3300-foot setback with barrier near homes. Jim said this has been a controversial subject and they are trying to protect existing homes. Jim said he suggested citizens get legal advice and there is always civil action. Jim made a motion to adopt all three agreements with all three companies. Clifton seconded the motion. Brandon said it is funny how last week we changed the meetings to 9:00 and the first meeting that can't be on YouTube is when this is brought up. Brandon said overwhelmingly the people of Bourbon County don't want solar. Clifton disagreed with that and Brandon asked if solar was going in by Jim or Clifton's homes. Audience members asked many questions including how many signatures were needed to pass the agreements. Jim said only two signatures. Jim and Clifton agreed to the motion while Brandon was opposed. The motion carried 2-1. Anne Dare asked if the public can know the donation amounts. Clifton said we couldn't have stopped solar even if we wanted to. Brandon asked then why we instated the moratorium?

Brandon asked how much time he had during his comments section and Jim said he had all the time he needed. Brandon said he would like to use his comments section to allow the public to speak. Jim said he would not allow that. Several audience members started asking questions. Clifton said the burn ban is still in effect and that violation of that ban is a civil matter not criminal and that the Sheriff cannot give tickets.

Clifton made a motion to adjourn the meeting at 9:26 and Jim seconded the motion.



THE BOARD OF COMMISSIONERS  
OF BOURBON COUNTY, KANSAS

[Signature], Chairman

[Signature], Commissioner

\_\_\_\_\_, Commissioner

ATTEST:

[Signature: Jennifer Hawkins]

Jennifer Hawkins, Bourbon County Clerk

11-7-2024 Approved Date