

## COMPLAINT RESOLUTION AGREEMENT

THIS COMPLAINT RESOLUTION AGREEMENT (this "Agreement") is made and entered into this <sup>13</sup>12th day of March, 2020 (the "Effective Date"), by and between the Board of County Commissioners for Bourbon County, Kansas ("County") and Jayhawk Wind, LLC, a Delaware limited liability company ("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 and operate a wind project, commonly referred to as the Jayhawk Wind Project, to be located on privately owned rural farmland and County and township rights of way within the County and consisting of wind turbine generators, meteorological towers, substations, collection lines, access roads, temporary construction areas, operation and maintenance facilities, and other infrastructures relating thereto (the "Wind Project");

WHEREAS, in connection with the construction, operation and maintenance of the Wind Project, the Parties have entered into a Development Agreement, Decommissioning Agreement, Road Use Agreement, and Contribution Agreement of even date herewith;

WHEREAS, Developer has and may enter into certain agreements with the participating landowners within the Wind Project area (the "Landowners") wherein Developer intends to make assurances related to the development, management, and the decommissioning of the Wind Project;

WHEREAS, the County has deemed the Wind Project to be in the best interest of the County and beneficial to the health, safety and welfare of the County and its residents;

WHEREAS, County and Developer are aware that Landowners, non-participating landowners, residents and businesses located within one-half mile of a Wind Project turbine ("Challenging Parties") may wish to raise a good faith concern regarding a potential default of the Development Agreement for the Wind Project that directly impacts such Challenging Party ("Concerns"); and

WHEREAS, the County and Developer intend, through this Agreement, to consider the methodology for addressing the good faith Concerns of the Challenging Parties regarding the Wind Project in the County, pursuant to the terms and conditions set forth in this 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 acknowledged, the Parties agree as follows:

## AGREEMENT

1. Complaint Resolution. Commencing as of the date the Wind Project goes into commercial operation, Developer or its affiliate, in order to address the Concerns of the Challenging Parties, will:
  - a. Establish a “24/7” single point of contact for fielding and addressing Wind Project claims or issues;
  - b. Provide notice of this single point of contact and post a complaint form in public locations, including but not limited to the Wind Project operation and maintenance building and the Wind Project website;
  - c. Make reasonable efforts to ensure a Wind Project representative responds to good faith inquiries from Challenging Parties within 5 business days (during normal business hours) of receipt of an inquiry;
  - d. Maintain a record, including any Concerns received, the resolution of such Concerns, and any unresolved Concerns. The record will include steps implemented to resolve Concerns;
  - e. Address, as soon as practical, any Concern that Developer determines in its reasonable discretion constitutes a default of the Development Agreement for the Wind Project (a “Confirmed Concern”). In cases where a resolution of a Confirmed Concern cannot be delivered within 30 days, a timeline and measures to be taken will be provided to the Challenging Party and a copy sent to the County;
  - f. Deliver to the County a report of all confirmed good faith Concerns on: (i) an annual basis; or (ii) within 30 days of a written request by the County; and
  - g. Provide notice to the County of any potential abuses of the processes contemplated in this Agreement by parties that appear to be making such claims of Concerns to harass or impede the Developer of the Wind Project (“Abusive Complaints”). County agrees that it will not assist such harm by furthering any such Abusive Complaints, if any.
2. County Action. Developer acknowledges and agrees that at the request and cost of the County, the County may order a review of the unresolved Concerns by a professional engineer licensed in the State of Kansas that has experience with wind turbines and wind projects, acceptable to the County (“Reviewing Engineer”), to review the unresolved Concerns and submit its report within 30 days. The Developer will reasonably cooperate with a requested review of an unresolved Concern. Provided there is no dispute with the Reviewing Engineer’s recommendation, requirement, action, or decision, the Developer will act in accordance with the direction of the Reviewing Engineer and County.
3. Engineering Disputes. In the event that Developer disputes any recommendation, requirement, action, or decision of the Reviewing Engineer, Developer shall notify the County and the Reviewing Engineer within 30 days of receipt of the recommendation of the Reviewing

Engineer, and shall retain at its own expense a third-party engineer licensed in the State of Kansas with knowledge of the operation of wind farms (the "Appealing Engineer") to review such recommendation, requirement, action, or decision. The Reviewing Engineer and the Appealing Engineer shall meet within 30 days of such notice and shall employ good faith efforts to try to resolve such dispute. If the Reviewing Engineer and the Appealing Engineer are unable to resolve such dispute within 90 days of such notice, the Reviewing Engineer and the Appealing Engineer shall agree upon a third engineer licensed in the State of Kansas with knowledge of the operation of wind farms (the "Deciding Engineer"), to be paid for equally by the County and Developer, who shall have a maximum of 90 days to review such recommendation, requirement, action, or decision and render a commercially reasonable decision which shall be binding upon the Parties. In the event the Deciding Engineer agrees with the Reviewing Engineer, then the Developer will reimburse the County for its reasonable expenses related to the engagement of the Deciding Engineer. Developer shall then be given the longer of 60 days or such other period as may be determined by the Deciding Engineer to act on such final decision. For the avoidance of doubt, neither the Wind Project nor any individual wind turbine will be required to cease operation due to any disputed condition until the full completion of the process described in this Section 3; however, the Developer agrees to comply with the decision of the Deciding Engineer. Notwithstanding any other provision of this Agreement, Developer shall have no obligation to comply with any recommendation, requirement, action or decision of the Reviewing Engineer, the Appealing Engineer or the Deciding Engineer that expands the scope of Developer's obligations under the Development Agreement.

4. Developer Default. If Developer fails to address any Concerns pursuant to Section 3 above within 60 days after receiving written notice of such failure from the County, then it will constitute a default by the Developer of this Agreement and the County shall have the right to pursue any remedy available to it under this Agreement and at law or in equity; provided however, that for so long as the Developer is diligently attempting to cure such failure and the failure is, in the Developer's reasonable discretion, reasonably capable of being cured, a default under this Agreement shall not be deemed to have occurred.

Notwithstanding the foregoing, Developer'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, 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, health issues, including a pandemic concern, 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 Wind 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 Wind Project), or any other cause beyond the reasonable control of Developer which affects development, construction, maintenance, operation, repair, replacement or decommissioning of the Wind Project (including, without limitation, any of the foregoing which affect Developer's contractors or subcontractors).

5. Term. Unless extended by mutual agreement of the Parties, earlier terminated, or the Wind Project ceases to be in commercial operation, the terms set forth in this Agreement shall extend for a period of 30 years from the Effective Date, at which point the Parties shall enter into good faith negotiations to extend the terms of this Agreement, if and as necessary.

6. 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:

Apex Clean Energy, Inc.  
310 4th St. NE, Suite 300  
Charlottesville, VA 22902  
Attention: General Counsel  
Email: [legal@apexcleanenergy.com](mailto:legal@apexcleanenergy.com)

With a 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](mailto:aanderson@polsinelli.com)

To County:

Bourbon County Counselor  
210 S. National Ave.  
Fort Scott, KS 66701  
Email: [jmeeks@bourboncountyks.org](mailto:jmeeks@bourboncountyks.org)

7. Recording. This Agreement may be recorded by the County at its own cost and expense.

8. Miscellaneous.

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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.

h. Assignment. Developer (or the then current owner of the Wind Project) may assign or partially assign its rights, obligations, and interests pursuant to this Agreement without the County's consent upon written notice to the County. If requested by either Party or any assignee thereof, each Party hereto agrees to provide such further assurances and execute such additional documents as may be reasonably requested by the other Party to give effect to the foregoing assignment.

i. 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.


j. Time is of the Essence. Time is of the essence with 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 officers and dated their signatures as of the Effective Date.

**DEVELOPER:**


Jayhawk Wind, LLC,  
a Delaware limited liability company

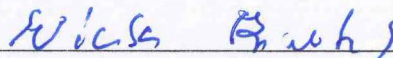
By:  3/16/2020  
Printed Name: Ken Young Date  
Title: COO and Authorized Signatory of Apex Clean Energy Holdings, LLC, in its capacity as Manager of Apex GBR, LLC, the Sole Member of Apex Clean Energy Finance, LLC, the Sole Member of Jayhawk Wind, LLC

**THE COUNTY:**


THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

By:   
Name: Lynn D. Okarah  
County Commissioner

By:   
Name: JEFF FISCHER  
County Commissioner

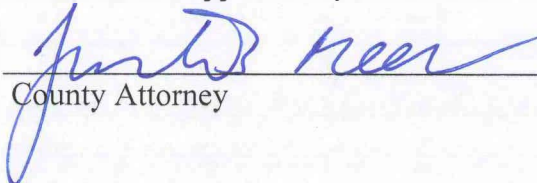
By:   
Name: Vicki Bush  
County Commissioner

ATTEST:

By:   
County Clerk



Reviewed and approved by:

  
County Attorney