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CLERK OF THE BOURBON COUNTY DISTRICT COURT
CASE NUMBER: BB-2024-CV-000075
PII COMPLIANT

IN THE DISTRICT COURT OF BOURBON COUNTY, KANSAS
CIVIL DEPARTMENT

DAVID BEERBOWER, et. al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. BB-2024-CV-000075**
	)	
THE BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY KANSAS, et al.,	)	
	)	
Defendants.	)	
	)	
And	)	
	)	
TENNYSON CREEK SOLAR LLC and TENNYSON CREEK SOLAR II LLC	)	
	)	
Cross-Claim Plaintiffs,	)	
	)	
v.	)	
	)	
BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS,	)	
	)	
Cross-Claim Defendants.	)	

TENNYSON CREEK SOLAR LLC & TENNYSON CREEK SOLAR II LLC'S CROSS-CLAIM AGAINST BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS

Tennyson Creek Solar LLC and Tennyson Creek Solar II LLC (collectively "Tennyson Creek"), state and allege as follows:

NATURE OF THE CASE

1. This action concerns and arises out of the Board of County Commissioners of Bourbon County Kansas's (the "Commission") arbitrary, capricious, unreasonable, unlawful,

invalid and unenforceable moratorium on solar development that was designed and intended to function as a zoning decision prohibiting the development of solar projects in Bourbon County.

2. Bourbon County, however, is non-zoned.

3. Because a county's zoning power is derived solely from the grant in zoning statutes, the Commission has no inherent power to regulate land uses and it cannot pick and choose which land uses are lawful or acceptable in Bourbon County.

4. Bourbon County also has existing, valid, and enforceable contractual agreements with Tennyson Creek to effectuate two related solar generation projects.

5. Nevertheless, on January 13, 2025, the Commission adopted Resolution 07-25, titled "Moratorium on Commercial Solar Energy Projects", which suspends and prohibits land use for the development of commercial solar energy projects in unincorporated areas of Bourbon County until at least January 13, 2029 (the "Solar Moratorium", attached as **Exhibit A**).

6. The Solar Moratorium, though enacted under the guise of the County's police power and statutory authority, was enacted arbitrarily, capriciously, in bad faith, and with the improper and unlawful intent to target and ban Tennyson Creek from operating within Bourbon County.

7. The Solar Moratorium was also enacted arbitrarily, capriciously, in bad faith, and with the improper and unlawful intent to make zoning decisions in a non-zoned county.

8. As a result of the arbitrary, capricious, unreasonable, unlawful, invalid and unenforceable Solar Moratorium, Tennyson Creek now seeks this Court's intervention.

PARTIES, JURISDICTION AND VENUE

9. Tennyson Creek Solar LLC is a Delaware limited liability company authorized to do business in the State of Kansas.

10. Tennyson Creek Solar LLC II is a Delaware limited liability company authorized to do business in the State of Kansas.

11. Board of County Commissioners of Bourbon County Kansas (the "Commission") is the governing body of Bourbon County, Kansas and is the name in which the County shall be sued, pursuant to K.S.A. 19-105.

12. Jurisdiction and venue are proper in this Court pursuant to K.S.A. 12-760 and K.S.A. 19-223.

13. Jurisdiction and venue are also proper in this County because all actions giving rise to this action took place in Bourbon County.

FACTUAL ALLEGATIONS

14. Solar power is a clean, renewable energy source and one of the most affordable sources of electricity in America. In addition to creating vital environmental benefits, utility-scale solar generation creates substantial economic opportunities for landowners, local communities, and the State of Kansas through increased economic activity, direct infusions of capital to landowners, and substantial new tax revenue for local communities.

15. The Kansas Legislature has declared "that it is in the public interest to promote renewable energy development in order to best utilize the abundant natural resources found in this state." K.S.A. 66-1256.

16. Tennyson Creek Solar LLC and Tennyson Creek Solar II LLC are project companies for two related solar generation projects (the "Tennyson Creek Projects") being developed by Doral Renewables LLC in Bourbon County.

17. Representatives of the Tennyson Creek Projects have been working with Bourbon County landowners and elected officials since at least November 2022 to optimize the benefits of

the Tennyson Creek Projects to Bourbon County and to obtain all necessary approvals from Bourbon County.

18. Tennyson Creek has invested substantial time and resources in developing the Tennyson Creek Projects with total expenditures exceeding $1.5 million.

19. Once operational, the Tennyson Creek Projects will generate more than $94.4 million in property taxes for all taxing districts over the life of the Tennyson Creek Projects.

20. The multi-year Tennyson Creek Projects will create several hundred jobs during peak construction as well as permanent jobs during operations.

21. Doral Renewables LLC has committed to setbacks from non-participating landowners to protect the landscape and neighboring property values.

22. Once construction begins, more than $1.5 million will go to the Fort Scott USD 234, Uniontown Unified School District 234 and Fort Scott Community College.

23. These efforts culminated in the consideration and execution of a Road Use and Maintenance Agreement, a Development Agreement, and a Decommissioning Agreement (together, the "Tennyson Creek Agreements") between Tennyson Creek and the Commission on October 31, 2024, attached as **Exhibit B**.

24. Developers and counties routinely enter road use, decommissioning, and development agreements like the Tennyson Creek Agreements. These agreements, specifically the Tennyson Creek Agreements, are intended to ensure that energy projects are developed, operated, and completed in ways that prioritize the safety, quality of life, and long-term well-being of the County and its citizens by protecting public infrastructure, managing the development process, defining responsibility, minimizing risk, and ensuring environmental and regulatory compliance.

25. On October 31, 2024, the Commission approved and executed the Tennyson Creek Agreements.

26. As a result of the November 2024 election, David Beerbower and LeRoy Kruger were elected to replace then-Commissioners Jim Harris and Clifton Beth.

27. Following their election, Beerbower and Kruger, along with Commissioner Brandon Whisenhunt (together, the "Commissioner Plaintiffs") and others filed this lawsuit seeking to set aside the Tennyson Creek Agreements.

28. Beerbower and Kruger took office on January 13, 2025.

29. That same day, the new Commission approved the Solar Moratorium.

30. The Commission did not provide public notice of its intent to discuss and/or adopt the Solar Moratorium. Instead, during the January 13, 2025 Commission meeting, the Solar Moratorium was discussed after an oral motion to amend the agenda was approved.

31. Commissioner Beerbower introduced a "rough draft" that would impose a "non-expiring moratorium on the construction and operation of solar projects commonly referred to as the Hinton Creek solar project, the Kingbird solar project, the Tennyson Creek solar project and all other developers planning similar projects…."

32. No evidence in support of the Solar Moratorium was presented at the January 13, 2025 meeting. Commissioner Beerbower stated that he did not intend to pass a moratorium at the January 13th meeting but wanted to get the process started.

33. After the Commission passed a motion to table the moratorium and scheduled a working session to discuss fire safety parameters for a solar project, a member of the audience provided a draft moratorium to the Commission.

34. After briefly reviewing the draft moratorium, the Commission voted to approve a resolution to adopt the moratorium.

35. The Commissioners subsequently signed the Solar Moratorium on January 20, 2025 but back-dated their signatures to January 13, 2025. [1]

36. The Solar Moratorium suspends and prohibits the construction or installation of roads, foundations, transmission poles, line, cables or wire, or other infrastructure intended for any "Commercial Solar Energy Project," defined as any improvement, facility, structure, or device upon real property intended to convert sunlight to electricity for off-site use or sale, in the unincorporated area of Bourbon County, Kansas.

37. The Solar Moratorium is effective for four years, expiring on January 13, 2029.

38. Upon information and belief, the Commission adopted the Solar Moratorium with the specific intent to target and ban the Tennyson Creek Projects and to interfere with the performance of the validly entered Tennyson Creek Agreements.

39. Importantly, the same three Commissioner Plaintiffs suing Tennyson Creek to set aside the Tennyson Creek Agreements in this litigation are the same three commissioners who adopted and signed the Solar Moratorium: Commissioners Whisenhunt, Beerbower, and Kruger.

40. The Solar Moratorium is an unlawful attempt to make zoning decisions in non-zoned Bourbon County by regulating lawful land uses in Bourbon County, specifically by

[1] According to the minutes of the Commission's January 13, 2025 and January 20, 2025 meetings, the Solar Moratorium was adopted on January 13, 2025 and signed on January 20, 2025. Pursuant to K.S.A. 19-101a(b), local legislation becomes effective "upon passage of a resolution of the board and publication in the official county newspaper." Though the Solar Moratorium has not yet been published as of the date of this filing, Tennyson Creek nonetheless brings this appeal in order to preserve and protect its rights to timely appeal the Commission's decision.

prohibiting the development of commercial solar energy projects on private land not subject to any zoning restrictions.

COUNT I – REVIEW AND DECLARATORY JUDGMENT UNDER K.S.A. 19-223

41. Tennyson Creek reasserts, realleges, and incorporates as if fully set forth herein all previous allegations.

42. K.S.A. 19-223 authorizes a person aggrieved by any decision of the County to appeal from the decision of such board to the district court of the same county.

43. The Commission's adoption of the Solar Moratorium is appealable under K.S.A. 19-223.

44. Tennyson Creek is an aggrieved party for purposes of K.S.A. 19-223. Specifically, Tennyson Creek is aggrieved because, at minimum, its rights and obligations under the Tennyson Creek Agreements are directly and adversely affected by the Solar Moratorium; Tennyson Creek has a substantial grievance and pecuniary interest related to its ability to carry out the Tennyson Creek Agreements and to continue developing its solar energy projects in Bourbon County; and the Solar Moratorium is a capricious, unreasonable, unlawful, invalid and unenforceable exercise of zoning power by the Commission where no such power exists.

45. The Commission's adoption of the Solar Moratorium was unreasonable, invalid and unlawful in that the Commission has acted unreasonably, arbitrarily, and capriciously. More specifically, the Commission's action is unreasonable, arbitrary and capricious because:

a) The Commission adopted the Solar Moratorium to specifically prohibit the Tennyson Creek Projects and to prevent Tennyson Creek from pursuing its lawful solar development interests under the pretext of protecting the health, safety, and general public welfare of Bourbon County citizens;

b) The Commission adopted the Solar Moratorium to regulate the conduct of solar development and land use, despite Bourbon County being non-zoned;

c) The Commission adopted the Solar Moratorium without *any* evidentiary basis or support;

d) The Solar Moratorium unreasonably and without a rational basis lasts for four years – which is the entire term for Commissioners Beerbower and Kruger;

e) The Commission adopted the Solar Moratorium without providing *any* notice that a moratorium would be discussed at the January 13, 2025 Commission meeting;

f) The Solar Moratorium exceeds the scope of the Commission's police powers by intentionally seeking to prohibit Tennyson Creek's solar projects;

g) The Solar Moratorium exceeds the scope of the Commission's police powers by intentionally seeking to impose conditions on solar projects that are not applied to any other commercial or industrial development in Bourbon County, Kansas;

h) The Solar Moratorium illegally attempts to use a moratorium to prohibit commercial development and circumvent Kansas zoning laws applicable to the Commission;

i) The Solar Moratorium unreasonably and without a rational basis contradicts, violates and undermines the declared public policy of the State of Kansas to promote renewable energy development;

j) The Solar Moratorium unreasonably and without a rational basis contradicts, violates, and undermines the validly entered Tennyson Creek Agreements by prohibiting acceptable land uses in Bourbon County;

k) The Solar Moratorium bears no reasonable or rational relationship to protecting the health, safety or general welfare of Bourbon County or its residents;

l) The Solar Moratorium is an unlawful attempt to regulate the business of a private commercial enterprise arbitrarily and unreasonably under the guise of promoting public health or public welfare of a community;

m) The Solar Moratorium functions as a zoning regulation by regulating acceptable land uses, which the Commission does not have the legal authority to do;

n) The subject properties are ripe for development as the Tennyson Creek Projects will provide substantial revenues, jobs and benefits to private landowners, benefits to the local school districts, Bourbon County, and its residents as a whole that would otherwise be unavailable under the Solar Moratorium;

o) Any relative gain to the public health, safety, and general welfare does not outweigh the hardship imposed upon Tennyson Creek and other solar energy developers by prohibiting and unreasonably restricting their ability to enter agreements with landowners to use private, non-zoned properties as those landowners see fit. The Tennyson Creek Projects do not adversely affect the public health, safety, morals and general welfare of the residents of Bourbon County; instead, the Tennyson Creek Projects specifically will enhance the public health, safety, morals and general welfare through the creation of jobs, economic activity, and public and private revenue while also benefitting the private landowners of the Tennyson Creek Projects' sites. Any concerns related to the Tennyson Creek Projects do not outweigh the value of the proposed

development to not only Tennyson Creek, the other solar Defendants, and other landowners, but to the County as a whole.

p) The Tennyson Creek Projects will not adversely affect the properties in the vicinity of the sites of the Tennyson Creek Projects;

q) The Tennyson Creek Projects advance the goals and objectives associated with reducing carbon emissions and promoting renewable energy that benefits all residents of Bourbon County, the State of Kansas, and the United States;

r) The Tennyson Creek Projects benefit and advance the solar energy industry in the State of Kansas;

s) The Commission had no legal, reasonable or rational basis for adoption of the Solar Moratorium;

t) As a result of the Commission's unreasonable and unlawful adoption of the Solar Moratorium, the Commission's actions should be reversed, enjoined and restrained; and

u) As a result of the Commission's unreasonable and unlawful adoption of the Solar Moratorium, this Court should declare that the Commission's adoption of the Solar Moratorium was unreasonable, arbitrary, capricious and unlawful.

COUNT II – REVIEW AND DECLARATORY JUDGMENT UNDER K.S.A. 12-760

46. Tennyson Creek reasserts, realleges, and incorporates as if fully set forth herein all previous allegations.

47. The Kansas Zoning Enabling Act, K.S.A. 12-741 *et seq.*, and specifically K.S.A. 12-760, authorizes a person aggrieved by a final decision of the County to bring an action in the

District Court within 30 days of the County's decision to determine the legality and reasonableness of such decision.

48. The Commission's adoption of the Solar Moratorium is a final decision and appealable under K.S.A. 12-760.

49. Tennyson Creek is an aggrieved party for purposes of K.S.A. 12-760. Specifically, Tennyson Creek is aggrieved because, at a minimum, its rights and obligations under the Tennyson Creek Agreements are directly and adversely affected by the Solar Moratorium; Tennyson Creek has a substantial grievance and pecuniary interest related to its ability to carry out the Tennyson Creek Agreements and to continue developing its solar energy projects in Bourbon County; and the Solar Moratorium is a capricious, unreasonable, unlawful, invalid and unenforceable exercise of zoning power by the Commission where no such power exists.

50. The Commission's adoption of the Solar Moratorium was unreasonable, invalid and unlawful in that the Commission has acted unreasonably, arbitrarily, and capriciously. More specifically, the Commission's action is unreasonable, arbitrary and capricious because:

a) The Commission adopted the Solar Moratorium to specifically prohibit the Tennyson Creek Projects and to prevent Tennyson Creek from pursuing its lawful solar development interests, under the pretext of protecting the health, safety, and general public welfare of Bourbon County citizens;

b) The Commission adopted the Solar Moratorium to regulate the conduct of solar development and land use, despite Bourbon County being non-zoned;

c) The Commission adopted the Solar Moratorium without *any* evidentiary basis or support;

d) The Solar Moratorium unreasonably and without a rational basis lasts for four years – which is the entire term for Commissioners Beerbower and Kruger;

e) The Commission adopted the Solar Moratorium without providing *any* notice that a moratorium would be discussed at the January 13, 2025 Commission meeting;

f) The Solar Moratorium exceeds the scope of the Commission's police powers by intentionally seeking to prohibit Tennyson Creek's solar projects;

g) The Solar Moratorium exceeds the scope of the Commission's police powers by intentionally seeking to impose conditions on solar projects that are not applied to any other commercial or industrial development in Bourbon County, Kansas;

h) The Solar Moratorium illegally attempts to use a moratorium to prohibit commercial development and circumvent Kansas zoning laws applicable to the Commission;

i) The Solar Moratorium unreasonably and without a rational basis contradicts, violates and undermines the declared public policy of the State of Kansas to promote renewable energy development;

j) The Solar Moratorium unreasonably and without a rational basis contradicts, violates, and undermines the validly entered Tennyson Creek Agreements by prohibiting acceptable land uses in Bourbon County;

k) The Solar Moratorium bears no reasonable or rational relationship to protecting the health, safety or general welfare of Bourbon County or its residents;

l) The Solar Moratorium is an unlawful attempt to regulate the business of a private commercial enterprise arbitrarily and unreasonably under the guise of promoting public health or public welfare of a community;

m) The Solar Moratorium functions as a zoning regulation by regulating acceptable land uses, which the Commission does not have the legal authority to do;

n) The subject properties are ripe for development as the Tennyson Creek Projects will provide substantial revenues, jobs and benefits to the private landowners, benefits to the local school districts, Bourbon County, and its residents as a whole that would otherwise be unavailable under the Solar Moratorium;

o) Any relative gain to the public health, safety, and general welfare does not outweigh the hardship imposed upon Tennyson Creek and other solar energy developers by prohibiting and unreasonably restricting their ability to enter agreements with landowners to use private, non-zoned properties as seen fit. The Tennyson Creek Projects do not adversely affect the public health, safety, morals and general welfare of the residents of Bourbon County; instead, the Tennyson Creek Projects specifically will enhance the public health, safety, morals and general welfare through the creation of jobs, economic activity, and public and private revenue while also benefitting the private landowners of the Tennyson Creek Projects sites. Any concerns related to the Tennyson Creek Projects do not outweigh the value of the proposed development to not only Tennyson Creek, the other solar Defendants, and other landowners, but to the County as a whole.

p) The Tennyson Creek Projects will not adversely affect the properties in the vicinity of the sites of the Tennyson Creek Projects;

q) The Tennyson Creek Projects advance the goals and objectives associated with reducing carbon emissions and promoting renewable energy that benefits all residents of Bourbon County, the State of Kansas, and the United States;

r) The Tennyson Creek Projects benefit and advance the solar energy industry in the State of Kansas;

s) The Commission had no legal, reasonable or rational basis for adoption of the Solar Moratorium;

t) As a result of the Commission's unreasonable and unlawful adoption of the Solar Moratorium, the Commission's actions should be reversed, enjoined and restrained;

u) As a result of the Commission's unreasonable and unlawful adoption of the Solar Moratorium, this Court should declare that the Commission's adoption of the Solar Moratorium was unreasonable, arbitrary, capricious and unlawful.

COUNT III – DECLARATORY JUDGMENT

51. Tennyson Creek reasserts, realleges, and incorporates as if fully set forth herein all previous allegations.

52. Pursuant to K.S.A. 60-1701, the Court may "declare the rights, status, and other legal relations whether or not further relief is, or could be, sought."

53. This case involves an actual controversy between Tennyson Creek and the County regarding the enforceability and validity of the Solar Moratorium with respect to Tennyson Creek.

54. On October 31, 2024, Tennyson Creek entered into the Tennyson Creek Agreements and have expended at least $1.5 million on the Tennyson Creek Projects.

55. The Solar Moratorium purports to suspend and prohibit any “Commercial Solar Energy Project” in the unincorporated area of Bourbon County until January 13, 2029.

56. This suspension and prohibition includes "any construction or installation of roads, foundations, transmission poles, line, cables or wires, or other infrastructure intended to be used for any Commercial Solar Energy Project in the unincorporated area of Bourbon County, Kansas."

57. Tennyson Creek seeks a declaration from the Court that the Solar Moratorium is arbitrary, capricious, unreasonable, unlawful, invalid and unenforceable.

58. In the alternative, Tennyson Creek seeks a declaration from the Court that the Solar Moratorium does not apply to the Tennyson Creek Projects that were already underway when the moratorium was passed.

RELIEF SOUGHT

WHEREFORE, for the foregoing reasons, Tennyson Creek respectfully requests the Court:

A. Grant preliminary and permanent injunctive relief enjoining the Commission and their related entities, agents, servants, employees, successors, and assigns, and all those in privity, acting in concert, or in participation with them, from enforcing the Solar Moratorium;

B. Declare the Solar Moratorium void *ab initio*;

C. Declare the Solar Moratorium unenforceable as to Tennyson Creek;

D. Grant all other relief the Court deems just and proper.

JURY DEMAND

Tennyson Creek demands a trial by jury on all issues so triable.

Dated: February 12, 2025

Respectfully submitted,

POLSINELLI PC

By: */s/ Seth C. Wright*
SETH C. WRIGHT (#20981)
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(816) 572-4464
(800) 886-4064 (Fax)

ATTORNEYS FOR TENNYSON CREEK SOLAR LLC AND TENNYSON CREEK SOLAR II LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of February, 2025 the above and foregoing was filed with the Court using the Court's electronic filing system, which will send a notice of said filing to all counsel of record.

/s/ Seth C. Wright
Attorney for Tennyson Creek Solar LLC and Tennyson Creek Solar II LLC

RESOLUTION 07-25

BOURBON COUNTY, KANSAS
MORATORIUM ON COMMERCIAL SOLAR ENERGY PROJECTS

WHEREAS, Bourbon County, pursuant to K.S.A. 19-101 et seq., has the authority to determine its local affairs and to establish such regulations as are necessary for the protection of the public health, safety, and welfare;

WHEREAS, Bourbon County does not presently provide regulations or standards that are specific to Commercial Solar Energy Projects;

WHEREAS, Kansas statutes authorize counties to establish land development regulations to address their local development concerns and needs;

WHEREAS, due to the number of impacts that Commercial Solar Energy Projects have or might have on both nearby property owners and also future development, the Board of County Commissioners recognize that a need exists to develop, consider, and potentially adopt land development regulations and/or standards that may pertain to such property uses; and

WHEREAS, the Board requires additional time to complete the task of developing, considering and potentially adopting any regulations and/or standards; and

WHEREAS, the time necessary to adopt any regulations and or standards for Commercial Solar Projects could result in an influx of such projects that may not be in the best interests of Bourbon County; that could be detrimental to the health, safety, and general public welfare of the citizens of Bourbon County; and, that might be inspired to occur only in an attempt to become established before any new land development regulations and or standards are adopted which might limit, restrict, or prohibit such development; and

WHEREAS, pursuant to K.S.A. 19-101 et seq., Bourbon County has the police power and statutory authority to regulate the conduct of development through this resolution;

NOW THEREFORE be it resolved by the Bourbon County Kansas Board of Commissioners:

Section1. Definitions

(a) "Commercial Solar Energy Project" means the construction or installation of any improvement, facility, structure, or device upon real property intended to convert sunlight to electricity for off-site use or sale.

Section 2. Temporary Prohibition and Suspension

EXHIBIT A

(a) Any Commercial Solar Energy Project in the unincorporated area of Bourbon County is hereby suspended and prohibited and the same is declared to be a violation of the public interest of Bourbon County so long as this resolution shall remain in effect.

(b) The suspension and prohibition of commercial solar energy projects includes any construction or installation of roads, foundations, transmission poles, line, cables or wires, or other infrastructure intended to be used for any Commercial Solar Energy Project in the unincorporated area of Bourbon County, Kansas.

Section 3. Prohibition and Suspension Period

(a) Effective date. The prohibition and suspension of Commercial Solar Energy Projects shall be effective upon adoption by the Bourbon County Board of Commissioners and publication in the official county newspaper.

(b) Expiration. The prohibition and suspension of Commercial Solar Energy Projects shall expire on January 13, 2029.

(c) Extension, Termination, or Amendment. The prohibition and suspension of Commercial Solar Energy Projects may be extended, terminated earlier than the expiration date stated herein, or otherwise amended by subsequent resolution of this Board of County Commissioners.

BE IT RESOLVED this 13th day of January, 2025 by the BOURBON COUNTY COMMISSIONERS.

Attest:

Susan E. Walker, County Clerk

Brandon Whisenhunt, Chairman

David Beerbower, Vice-Chairman

Leroy Kruger, Commissioner

DECOMMISSIONING AGREEMENT

THIS DECOMMISSIONING 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"). 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 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 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: _____ 11/8/2024
Printed Name: Nick Cohen _____ Date
Title: President

And

Tennyson Creek Solar II LLC
a Delaware limited liability company

By: _____ 11/8/2024
Printed Name: Nick Cohen _____ Date
Title: President

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:

_____

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 loses, 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 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

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: _____ 11/8/2024

Printed Name: Nick Cohen Date

Title: President

And

Tennyson Creek Solar II LLC

a Delaware limited liability company

By: _____ 11/8/2024

Printed Name: Nick Cohen Date

Title: President

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:

_____

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 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 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: _____ 11/8/2024
Printed Name: Nick Cohen Date
Title: President

And

Tennyson Creek Solar II LLC
a Delaware limited liability company

By: _____ 11/8/2024
Printed Name: Nick Cohen Date
Title: President

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:

_____