

DEVELOPMENT AGREEMENT

by and between

WEBB COUNTY, TEXAS,

And

BAYWA R.E. DEVELOPMENT LLC,

Dated as of May 26, 2020

CORAZON SOLAR PROJECT

in

WEBB COUNTY, TEXAS

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into effective as of May 26, 2020 (the "**Execution Date**") by and between the **WEBB COUNTY, TEXAS**, a Texas political subdivision ("**County**"), and **BAYWA R.E. DEVELOPMENT, LLC**, a Delaware limited liability company (hereinafter referred to as "**Company**" or "**BayWa**"). County and Company are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**".

RECITALS

WHEREAS, County regulates development of real property situated in the unincorporated areas of WEBB COUNTY, Texas;

WHEREAS, County desires to enter into this Agreement with Company and Company desires to enter into this Agreement with County;

WHEREAS, said development is set to be conducted in the unincorporated areas of Webb County, Texas, and further set out by metes and bounds as set out in Exhibit A which is attached and incorporated into this Agreement by reference (hereinafter referred to as "**Location**");

WHEREAS, in connection with its proposed development of the Location, Company desires to undertake the development, construction, operation and maintenance of a solar farm known as the Corazon Solar Project (hereinafter referred to as "**Project**") that will capture the photovoltaic energy of the sun and produce electricity for distribution;

WHEREAS, Company intends to meet, at a minimum, all County regulatory requirements for the development of the Project at the Location;

WHEREAS, in order to issue floodplain development permits for the construction and development of the Project prior to the issuance of a Letter of Map Revision ("**LOMR**") from the Federal Emergency Management Agency ("**FEMA**") for the Location, County intends to require Company to provide an irrevocable letter of credit in the amount of \$350,000.00 ("**Letter of Credit**"), with Webb County, Texas, as the sole beneficiary thereof, as a financial guarantee, the application and release of such Letter of Credit to be governed by the terms of this Agreement; and

WHEREAS, Company intends to provide the Letter of Credit, pursue the LOMR, and develop and construct the Project in accordance with the terms of this Agreement.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, County and Company,

intending to be legally bound, hereby agree as follows:

1. **Definitions and Usage.** The capitalized terms used in this Agreement shall have the meanings assigned to them in this Agreement.
2. **Company Obligations.**
 - a. **H&H and LOMR Application.** As of the Execution Date, BayWa has: (i) obtained from Wood PLC a detailed hydrologic and hydraulic engineering study (hereinafter referred to as "**H&H**") for the Location and provided same to County (which incorporates into the study area covered by such H&H that certain real property located south and southeast of the Location (locally described as WCAD Tax ID 199894), in order to provide for a transition into the existing study limits of the effective Flood Insurance Rate Map for the Location ("**FIRM**") adopted under LOMR Case No. 16-06-2463P (Becerra Creek LOMR); and (ii) a FEMA MT-2 application for a LOMR (the "**LOMR Application**") for the Location (Case Number 20-06-1953P (Corazon Ranch LOMR), each as required by Webb County's Flood Damage Prevention Order (herein referred to as "**FDPO**"), in order to determine the boundaries of the flood hazard area, establish base flood elevations, select a regulatory floodway and secure eventual FEMA approval of the LOMR.
 - b. **Letter of Credit.** In lieu of awaiting final FEMA approval of the LOMR Application and issuance of the LOMR in order to apply for and receive any required floodplain development permits relating to the Project, BayWa shall provide the Letter of Credit to serve as security for: (i) the approval of a LOMR; and (ii) the performance, or payment in lieu of performance, of any remediation of any portion of the Project that is not compliant with either (A) the FDPO or (B) the LOMR, at final completion thereof.
 - c. **Site Plan Submittal.** BayWa will submit to County a site plan of the proposed development of the Project with an overlay showing the flood hazards at the Location, as described in the H&H analysis and the LOMR Application, which site plan shall show block numbers of the various developmental units or activities for the ease of identifying development sites for the issuance of permits. The site plan will be utilized by the Floodplain Administrator (defined below) to review BayWa's permit applications and issue floodplain development permits. BayWa agrees to comply with all provisions of the FDPO and secure all local floodplain development permits before commencing any development with respect to the Project that is not exempt (as further provided hereinbelow). BayWa will make commercially reasonable efforts to work with the Floodplain Administrator to identify project phases to establish timing schedules for permitting needs.
 - d. **Remediation.** In the event, upon final completion of the Project, the Floodplain Administrator determines in its reasonable opinion that the Project is not compliant with either (A) the FDPO or (B) the LOMR, then BayWa agrees to remediate any such non-compliance within a reasonable time, and to the reasonable satisfaction of the

Floodplain Administrator. In the event that BayWa fails to complete any such required remediation in accordance with the foregoing sentence, County's sole and exclusive remedy shall be to draw upon the Letter of Credit to complete, or pay for completion of, such remediation.

3. **County Obligations.**

a. **Approval and Issuance of Permits.** Upon Company's submission of the LOMR Application to FEMA and County's receipt of the Letter of Credit, the Webb County Floodplain Administrator ("**Floodplain Administrator**") shall review and approve Company's applications for any and all floodplain development permits that are required in order to authorize the Project's development and construction, while simultaneously processing the LOMR Application. County, during the pendency of the LOMR Application, shall issue all floodplain development permits required for the development and construction of the Project based upon all flood hazards identified on the existing FIRM for the Location, local regulatory buffers and the results of the H&H analysis shown in the LOMR Application, whichever is more restrictive. In no event shall a regulated flood hazard area identified by either the effective FIRM or the FDPO be removed from regulation based on the results of the H&H study until the FIRM for the Location is officially amended or revised by FEMA through the LOMR.

b. **Exemption Permit.** In an effort to expedite the development and construction of the Project, within ten (10) business days after the later of (i) BayWa's submittal of the LOMR Application for the Location, (ii) BayWa's submittal to County of a site plan for the Project as provided above, or (iii) the Execution Date of this Agreement, the Floodplain Administrator will identify all proposed development or construction activities which are not subject to regulation and do not require floodplain permits, and shall issue to BayWa one exemption permit for those activities. Certain development activities (i.e., site preparation, grading, etc.) which the Floodplain Administrator has determined do not result in the modification of ground elevations or impede natural drainage patterns, may be authorized under such single exemption permit. All other development shall require an individual permit for each type of development and each area of impact to the floodplain.

4. **Term.** The term of this Agreement (the "**Term**") shall commence at 12:00 a.m. on the day immediately following the Execution Date of this Agreement and expire upon the occurrence of all of the following: (i) County has received a finalized LOMR from FEMA regarding the Location; (ii) the Project has been completed; (iii) the Floodplain Administrator has inspected the completed Project and has determined in its reasonable opinion that the Project has been completed in compliance with the FDPO and the LOMR (expressly including any remediation required thereby); and (iv) the Letter of Credit has been released.

5. **Release of Letter of Credit.** Company will, upon issuance of the LOMR and completion of the Project, submit in writing to County a request to release the Letter of Credit. County shall have the right to verify compliance and conduct an inspection of the Location prior

to releasing the Letter of Credit. Additionally, County and/or its representative(s), including third parties contracted by County, shall have the right to request from Company and inspect, at County's sole expense, any documents of the Company as County reasonably determines to be necessary in connection with County's inspection of the Location for compliance with the FDPO and the LOMR. Company shall provide County with copies of any such documents within a reasonable time after request therefor; provided, however, Company shall have no obligation to provide copies of any requested documents that Company deems to be confidential or privileged.

6. **Non-Compliance.** After final completion of the Project, in the event that Company fails to complete, to the Floodplain Administrator's reasonable satisfaction, any remediation of the Location required by the FDPO or the LOMR, County shall have the right to draw upon the Letter of Credit in order to use said funds to complete any work to bring the Location into compliance with the FDPO or the LOMR, or to cover the costs of any expenses that Company fails to pay for work relating to any remediation of the Location required by the FDPO or the LOMR. The Floodplain Administrator, after inspection of the completed Project, shall provide notice to Company regarding any determined non-compliance and shall provide Company a reasonable opportunity to complete such work as is necessary to bring the Project into compliance, prior to drawing upon the Letter of Credit.
7. **Disclaimer of Representations and Warranties.** COMPANY ACKNOWLEDGES AND AGREES THAT AS BETWEEN COMPANY AND COUNTY:

EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER COUNTY NOR ANY RELATED PARTY OF COUNTY MAKES OR HAS MADE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AND COUNTY HEREBY DISCLAIMS AND COMPANY WAIVES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, CONCERNING (i) THE PHYSICAL CONDITION OF THE LOCATION (INCLUDING THE GEOLOGY OR THE CONDITION OF THE SOILS OR OF ANY AQUIFER UNDERLYING THE LOCATION AND ANY ARCHEOLOGICAL OR HISTORICAL ASPECT OF LOCATION), (ii) THE SUITABILITY OF THE LOCATION OR THEIR FITNESS FOR A PARTICULAR PURPOSE AS TO ANY USES OR ACTIVITIES WHICH COMPANY MAY MAKE THEREOF OR CONDUCT THEREON AT ANY TIME DURING THE DEVELOPMENT.

THE LOCATION HOWEVER, IS SUBJECT TO THE REGULATORY AUTHORITY OF WEBB COUNTY AND MAY ALSO BE SUBJECT TO STATE AND FEDERAL REGULATORY REQUIREMENTS. THE COMPLIANCE OF THE LOCATION WITH ANY APPLICABLE LAWS IS STILL REQUIRED AND THEREFORE, NO REVIEW, APPROVAL OR OTHER ACTION BY COUNTY UNDER THIS AGREEMENT SHALL BE DEEMED OR CONSTRUED TO BE A PERMIT OR APPROVAL OF OTHER STATE OR FEDERAL REQUIREMENTS.

8. **Company's Risks.** COMPANY AGREES THAT, AS BETWEEN COUNTY AND COMPANY, COUNTY SHALL HAVE NO RESPONSIBILITY FOR ANY OF THE FOLLOWING (COLLECTIVELY, THE "**COMPANY'S RISKS**"):

THE FEASIBILITY OF THE PROJECT, PROJECT WORK OR ANY ADDITIONAL WORK;

THE EXISTENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS OR ENVIRONMENTAL CLAIMS RELATING TO THE LOCATION OR THE PROJECT;

THE CONSTRUCTION OF ANY IMPROVEMENTS ON THE LOCATION OR ANY ADJACENT PROPERTY SHALL COMPLY WITH ENVIRONMENTAL REGULATORY REQUIREMENTS.

COUNTY SHALL NOT BE LIABLE AS A RESULT OF THE FAILURE BY ANY PERSON (OTHER THAN COUNTY OR ITS AFFILIATES) TO ACT OR PERFORM THEIR OBLIGATIONS. IT IS UNDERSTOOD AND AGREED BY COMPANY (FOR ITSELF OR ANY PERSON CLAIMING BY, THROUGH OR UNDER IT, INCLUDING ITS RELATED PARTIES) THAT IT HAS ITSELF BEEN, AND WILL CONTINUE TO BE, SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF, AND INVESTIGATION INTO, THE CONDITION, STATUS AND NATURE OF THE LOCATION.

9. **Suitability: Governmental Authorization.** Company has determined that the Location is suitable for development as contemplated hereunder and has obtained lawfully any other authorizations, including any permits from regulatory agencies, commissions, and/or districts (hereinafter referred to as “**Governmental Authorization**”) other than the County that are necessary to permit commencement of construction of the Project, including (if required) building permits, engineering certifications, and land use approvals necessary for the commencement of development and construction of the Project, provided, however, to the extent permitted by applicable laws, the construction permits and authorizations may be procured in stages and need not be obtained before the deadline that is required to finalize the LOMR. In the event that Governmental Authorization prior to commencing work is required then Company shall provide a certified copy of said Governmental Authorization to County for documenting the compliance with this Agreement; as set out in paragraph 17.
10. **Project Start Date.** Company is expected to commence construction of the Project on or before December 31, 2020. However, it is expressly acknowledged and agreed by the Parties that said date is merely an estimate, and failure of Company to commence construction of the Project on or before said date shall not constitute a breach of this Agreement.
11. **Agreement to Consult.** At any reasonable time, prior to the completion of the Project the Company may from time to time reasonably request, to meet and consult with the Floodplain Administrator on County’s regulatory requirements or Company’s obligations hereunder. Meetings should be made by appointment when practical and may be conducted over the internet. Company should make efforts in advance to send digitally large files through a secure and encrypted program to prevent infecting the County Server

or Network System.

12. **Termination of the Project.** Termination of the Project for any reason does not constitute an automatic release of the Letter of Credit. The County at its sole discretion will determine the steps needed to mitigate said Location prior to considering any request to return the Letter of Credit, in the event of termination of the Project.
13. **Effect of Termination of Agreement.** Upon any termination of this Agreement, the Parties hereto shall have no further rights, obligations or liabilities under this Agreement (except with respect to the provisions of this Agreement which expressly survive such termination). In such event, however, if Company has failed to complete any remediation of the Location as required by the FDPO or the LOMR, County may draw upon the Letter of Credit in order to correct any non-compliance that County has a right to remediate pursuant to and in accordance with the terms of this Agreement. Subsequently, any remaining funds available pursuant to the Letter of Credit shall be released to Company.
14. **Cessation of Work for an Extended Period.** In the event of a suspension of the construction of the Project by Company for (A) longer than ninety (90) consecutive days or (B) one hundred eighty (180) days in any three hundred sixty-five (365) day period for any reason other than an emergency disaster declaration order by either the federal government, state government or local government, or by virtue of a force majeure event (expressly including a global pandemic, whether existing on the Execution Date or not, or foreseeable or unforeseeable), then within thirty (30) days after Company's receipt of notice from County informing Company that a cessation of work has occurred, Company shall submit to County a written notice of its intent to complete the Project. The Company may, at its discretion, designate such reasonable major milestones as are reasonably appropriate in the circumstances as proof of the Company's progress in completing the Project. It is expressly understood by the Parties that any cessation of work for an extended period, as described in this paragraph, shall not constitute a breach of Company's obligations under this Agreement.
15. **Excusable Company Delay.** Regardless of the existence or absence of references to a global pandemic as an excusable delay elsewhere in this Agreement, the deadlines of Company set forth in this Agreement and all other deadlines and time periods within which Company must fulfill the obligations of Company elsewhere in this Agreement shall each be adjusted as appropriate to include delay due to federal, state and local orders (including those due to any global pandemic) that are causing the delay of the Project. Such notice may be submitted pursuant to paragraph 17.
16. **Continued Performance: Exceptions.** Upon the occurrence of any excusable company delay as provided in paragraph 15, the Parties shall endeavor to continue to perform their obligations under this Agreement so far as reasonably practical. Toward that end, Company and County each hereby agrees that each shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any such excusable company delay and shall use its commercially reasonable efforts to ensure resumption of performance of its obligations under this Agreement after the occurrence of any delay. The Parties shall use

and continue to use all commercially reasonable efforts to prevent, avoid, overcome and minimize any company delay to obtain a finalized LOMR.

17. **Informational Purposes Only: No Approval Required.** Information that is submitted to County for informational purposes only shall require no approval by County; provided, however, such information may be used by County for confirming that Company has complied with its obligations under this Agreement including its obligations to meet the timetables and deadlines set forth in this Agreement or other applicable Governmental Authorization.
18. **Governmental Rule.** No approvals or confirmations by County under this Agreement shall relieve Company from any other applicable laws relating to the design, construction, development, operation or occupancy of the Project (including applicable laws that are procedural, as well as or rather than, substantive in nature). The approval by County of any matter submitted to County pursuant to this Agreement, which matter is specifically provided herein to be approved by County shall not constitute a replacement or substitute for, or otherwise excuse Company from, such permitting, licensing or approval processes under other Governmental Authorizations; and, conversely, no permit or license so obtained shall constitute a replacement or substitute for, or otherwise excuse Company from, any requirement hereunder for the approval of County. County shall cooperate reasonably in connection with Company's efforts to pursue any necessary Governmental Authorizations required for the development of the Project.
19. **Litigation and Mutual Settlement Agreement.** In the event of a dispute or controversy, including a dispute or controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Agreement, the Parties shall first attempt in good faith to settle and resolve such dispute or controversy by mutual agreement. Within fifteen (15) days after delivery of any such notice by one Party to the other Party regarding a dispute or controversy, County and Company shall meet at a mutually agreed time and place to attempt, with diligence and in good faith, to resolve and settle the dispute or controversy. If a mutual resolution and settlement are not obtained at the meeting of County and Company then either Party may pursue legal action in a Webb County, Texas, District Court. Any resolution reached shall be reduced to writing and reference this Agreement for documentation purposes.
20. **Access to Location by County.** Without limiting County's rights to inspect the Location, the County and its authorized representatives shall have the right of access for inspection and verification of development, and shall: (i) provide notice to Company at least twenty-four (24) hours in advance of such proposed entry and such proposed entry shall be during normal business hours, (ii) not materially hinder or interfere with the Project or the activities of Company's contractors, (iii) take such reasonable protective caution or measures as Company may reasonably request, given the stage of the Project at the time of such entry, (iv) use commercially reasonable efforts to minimize interference with Company's use and operation of the Location then being undertaken by Company which is identified in this Agreement, and (v) be accompanied by a representative of Company if required by Company. Nothing in this paragraph, however, shall be interpreted to impose

an obligation upon County to conduct any inspections.

21. **Indemnification**. COMPANY HEREBY INDEMNIFIES COUNTY FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT COMPANY MAY HAVE WITH RESPECT TO THE LOCATION RESULTING FROM, ARISING UNDER OR RELATED TO THE EXISTENCE OF ANY HAZARDOUS MATERIALS ON THE LOCATION AS A DIRECT RESULT OF COMPANY'S DEVELOPMENT AND CONSTRUCTION OF THE PROJECT, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ., 44 CFR §§59-80 AND THE TEXAS SOLID WASTE DISPOSAL ACT, THE TEXAS HEALTH AND SAFETY CODE, CHAPTER 361, AS AMENDED AND/OR THE TEXAS WATER CODE CHAPTER 16.
22. **Amendments**. Any and all amendments to this Agreement shall be made by written amendment to this Agreement signed by the Parties, and may require Webb County Commissioner Court's approval prior to execution of such amendment.
23. **Open Records**. If County receives a request under the Texas Public Information Act (Tex. Gov't Code Ann. Sec. 552.001 et seq.), or any equivalent or successor statute (the "**Open Records Act**"), to disclose information of a confidential, proprietary or trade secret nature related to this Agreement and such information is subject to, or potentially subject to, an exception under the Open Records Act, then County shall send prompt written notice to Company of such request and the details of such request. Prior to releasing the requested information, County shall give Company a reasonable opportunity to request a determination from the Texas Attorney General (an "**Opinion Request**") as to whether the requested information must be disclosed pursuant to the Open Records Act. Each Party shall also cooperate with each other and use reasonable efforts to promptly identify any possible third Person whose privacy or property interests may be compromised by any such information request in order to enable County to timely furnish to any such third Person any statutory notice required by the Open Records Act and to seek any applicable exceptions from disclosure under the Open Records Act.
24. **Notices**. All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice delivered in accordance with this paragraph, from time to time, to the other party, and (b) be delivered by U.S. mail, registered or certified, return receipt requested, postage prepaid, by nationally recognized overnight courier or delivered personally, or delivered by fax. Notices shall be sent to the following addresses:

EXHIBIT A

WEBB COUNTY

Tano E. Tijerina
Webb County Judge

ATTESTED:

Margie Ramirez-Ibarra
Webb County Clerk

**APPROVED AS TO
FORM:**

Jorge L. Treviño
Assistant General Counsel
Civil Legal Division *

*The General Counsel, Civil Legal Division's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

*Passed and approved by the Webb County
Commissioners Court On
2020; item no*






BayWa RE - Corazon - Webb County Development Agreement

Final Audit Report

2020-05-12

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