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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**After Recording Return To:**

Lee Cissna  
763 S. Villa Dr.  
Evansville, IN 47714

**AMENDED AND RESTATED UTILITY EASEMENT**

THIS AMENDED AND RESTATED UTILITY EASEMENT ("**Amended and Restated Easement**") is made and entered into as of the 25<sup>th</sup> day of August, 2023, but made effective as of the Effective Date (as defined below) by and between **David J. Mattingly and Alice M. Mattingly**, husband and wife, having an address of 4000 Springfield Hwy, Lebanon, KY 40033 ("**Grantor**"), and **FRON Bn, LLC**, a Delaware limited liability company, having an address of 13123E Emerald Coast Parkway, Suite B#158, Inlet Beach, Florida 32461 ("**Grantee**"). Grantor and Grantee are sometimes individually referred to herein as a "**party**" and collectively referred to herein as the "**parties.**"

WITNESSETH:

WHEREAS, Grantor and Grantee entered into that certain Utility Easement Agreement ("**Original Easement**") dated December 30, 2021 ("**Effective Date**") affecting a certain parcel of land located in Marion County, Commonwealth of Kentucky, being more particularly described on **Exhibit A** attached hereto and incorporated by reference herein ("**Grantor Parcel**"); and

WHEREAS, Grantor and Grantee desire to execute this Amended and Restated Easement to amend and restate the Original Easement in its entirety with respect to the Grantor Parcel. The term of this Amended and Restated Easement shall be deemed to have commenced as of the Effective Date without interruption of or intervention by subsequent parties with an interest in the Grantor Parcel. The Original Easement as amended and restated by this Amended and Restated Easement, is herein referred to as the "**Easement**"; and

WHEREAS, Grantee desires to obtain certain easements and other rights permitting Grantee to access, construct, operate, and maintain certain facilities on a portion of the Grantor Parcel.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of Grantor and Grantee, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. Grant of Option:

- (a) Option. Grantor grants to Grantee an exclusive option ("**Option**") to acquire the Utility Easement (as defined below) on the following terms and conditions.
- (b) Option Term. The term of the Option shall begin on the Effective Date and expire [REDACTED] after the Effective Date ("**Option Term**").
- (c) Use of Grantor Parcel during Option Term. During the Option Term, Grantee and its employees, agents and contractors shall have a non-exclusive right to enter the Grantor Parcel and the right of ingress and egress over and across the Grantor Parcel for the purposes of (i) surveying the Grantor Parcel and (ii) performing such test and studies on, over, under, and across the Grantor Parcel as Grantee may desire in connection with the Option, including without limitation, environmental, avian and cultural resource assessments, and geotechnical, foundation and soil testing, provided that such activities do not unreasonably interfere with Grantor's use of the Grantor Parcel.
- (d) Exercise of Option. Grantee may exercise the Option by giving written notice to Grantor ("**Option Notice**") at any time during the Option Term. Upon delivery of the Option Notice, the Utility Easement shall automatically become effective, and Grantor and Grantee shall be subject to all of the terms and conditions of this Easement with respect to the Utility Easement and all related rights and obligations.

2. Grant of Utility Easement:

(a) Utility Easement. Upon Grantee's exercise of the Option, Grantor hereby grants and conveys unto Grantee (and Grantee's employees, contractors, agents, permitted successors, and permitted assigns), and Grantee hereby accepts from Grantor, a perpetual, exclusive right, privilege, and easement ("**Utility Easement**") over and across that certain portion of the Grantor Parcel more particularly shown on **Exhibit A-1** attached hereto and incorporated herein by reference ("**Easement Area**") for the installation, maintenance, repair, replacement, and removal of: underground and above-ground power and telecommunication lines and all infrastructure and facilities associated therewith including, but not limited to, collector station, poles, towers, foundations, wires, conduits, ducts, switches, transformers, and other structures and



apparatus necessary or convenient for the construction, operation, regulation, control, grounding and maintenance of electric lines and communication circuits, for the purpose of transmitting, distributing, regulating and controlling electric energy to be used for light, heat, power, communication, and other purposes, together with their strengthening supports, sufficient foundations and supports, to connect the electrical or energy generating facility contemplated to be constructed by Grantee now or in the future and other underground and above-ground fixtures, appliances and appurtenances connected therewith (collectively, "**Grantee's Facilities**"). The Easement Area shall include only that property lying along the fence/property line facing Highway 55 and shall not protrude into the actively cultivated field adjacent thereto without the express advance written consent of the Grantor. Without limiting the generality of the foregoing, such easement shall include, without limitation, the right to transmit electricity over said wires, cables, or apparatus to a substation and to clear and keep the Easement Area cleared of trees, undergrowth, and all other obstructions by any lawful means, and to construct any fencing or other protective measures desired within the Easement Area. Grantor acknowledges that the primary purpose of the Utility Easement is to connect to an electrical substation on the opposite side of Highway 55 from Grantor's Parcel. Notwithstanding anything herein to the contrary, Grantee's Facilities in the Easement Area shall not include solar panels or other apparatuses constituting a Solar Generating Facility. Notwithstanding anything to the contrary in the foregoing, Grantor hereby grants Grantee the right to amend the Easement Area to such other portion of Grantor's Parcel as the parties hereto may agree if Grantee determines in its sole discretion that it is necessary or appropriate for construction of Grantee's Facilities or to connection to the adjacent substation; provided, however, no such amendment of the Easement Area shall decrease its size to less than one (1) acre or increase its size to more than five (5) acres. Upon Grantee's decision to amend the Easement Area and the parties' agreement as to the location of said amended Easement Area, Grantor shall cooperate to execute any amendment or other instrument necessary to place such amendment of record.

(b) Compliance with Law. Grantee shall comply (and shall cause its officers, directors, employees, agents, contractors, permitted successors, and permitted assigns to comply) with all laws, regulations, ordinances, permits, and other legal requirements applicable to Grantee's exercise of its rights hereunder, including, without limitation, its use of, and activities within, the Easement Area and its use, maintenance, and repair of Grantee's Facilities. Grantee shall not use the Easement Area or exercise its rights under this Easement for any unlawful purposes or in such a manner as to constitute a nuisance.

(c) Temporary Construction Easement. Grantor hereby grants unto Grantee (and Grantee's employees, contractors, agents, permitted successors, and permitted assigns), and Grantee hereby accepts from Grantor, an exclusive right, privilege, and easement over and across the Grantor Parcel for use by Grantee, its successors and assigns for access to and for construction, maintenance, repair, replacement, and removal of roadway, utility and related improvements upon the Easement Area from time to time ("**Temporary Construction Easement**"). The Temporary Construction Easement includes, but is not limited to, the right and privilege by Grantee to go onto and to access the Grantor Parcel with vehicles, heavy equipment, machinery, construction supplies, and building materials in order to construct, maintain, repair, replace and remove a roadway, utilities and related improvements within the Easement Area. Following the construction activities described above, Grantee shall reasonably restore property disturbed by the construction activities outside the Easement Area, including reseeding and stabilizing such areas.



Grantee shall reimburse Grantor for any and all damage to Grantor's agricultural operations, including cattle and/or crops, which damage is generated by Grantee's activities upon the Grantor Parcel or Easement Area.

2. Payment. In consideration of the rights granted hereunder, Grantee agrees to pay Grantor during the Term the amounts set forth in the Fee Schedule attached hereto. The parties hereby agree that the Fee Schedule attached to this Easement shall be removed before the Easement is recorded and such removal shall not affect the validity of this Easement.

3. No Barriers. No barriers, fences, or other obstructions shall be erected by Grantor within the Easement Area so as to unreasonably interfere with the free flow of pedestrian and vehicular traffic or to unreasonably interfere with the utilities placed within the Easement Area. Conversely, no barriers, fences or other obstructions erected by Grantee on the Easement Area shall unreasonably interfere with the free flow of pedestrian or vehicular traffic or with utilities placed on the Grantor Parcel.

4. Construction Standards; Maintenance. Grantee has visited and inspected the Easement Area and, for purposes of this Easement, accepts the same in its "AS IS", "WHERE IS", "WITH ALL FAULTS" condition. Grantee acknowledges that no representations or warranties, express or implied, have been made to Grantee as to the condition of the Easement Area. Grantee shall perform all of its construction work at no expense to Grantor. In the event Grantee deems it necessary, in its sole discretion, to utilize the Temporary Construction Easement, Grantee shall give not fewer than seven (7) days prior notice (which may be telephonic or by electronic mail) to the other party of the date when any of Grantee's use thereof is to commence. After completion of the initial construction within the Easement Area, Grantee shall not unreasonably obstruct or interfere with Grantor's access to the Grantor Parcel. Grantor shall not, at any time, obstruct or interfere with Grantee's access to the Easement Area or, upon requisite notice, the Temporary Construction Easement. Grantee shall be responsible for obtaining, at its own expense, the requisite approvals and permits for the construction work from any appropriate governmental authorities; provided, however, Grantor shall provide all necessary cooperation during such approval and permitting processes. Grantor shall pay all ad valorem taxes assessed or levied against Grantor's Parcel, including, without limitation, the Easement Area, except that Grantee shall be responsible for any taxes or assessments levied for, or as a result of, the Grantee's Facilities or other future improvements placed on the Easement Area by, or at the request of, Grantee pursuant to its rights granted hereunder. Grantee shall maintain the Grantee's Facilities located in the Easement Area at Grantee's sole cost and expense.

5. Liens. Grantor shall not suffer or permit the Easement Area to be encumbered by any lien or encumbrance that has priority over this Easement. In the event of any liens or encumbrances burdening the Easement Area exist as of the Effective Date, Grantor shall, at its own cost and expense, cause the same to be cancelled, discharged, or subordinated to the rights of the Grantee hereunder within twenty (20) days. Grantee shall keep the Easement Area and Grantor Parcel free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Grantee or any Grantee Facility on the Grantor Parcel or Easement Area. Grantee may contest any such lien, whether filed against Grantor's interest in the Grantor Parcel or Grantee's easement interest, but shall post a bond or use other available means



to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Grantee decides not to contest such lien, Grantee agrees to otherwise remove such mechanic's lien that is caused by Grantee's use of the Grantor Parcel or Easement Area within sixty (60) calendar days of receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

6. Breach; No Waiver. The terms and conditions of this Easement shall be enforceable by either party (or its permitted successors or permitted assigns), by actions for specific performance or injunction, in addition to any other remedies available at law. No delay or omission by any party in exercising any right or power accruing upon any noncompliance or failure of performance by the other party under the provisions of this Easement shall impair any such right or power or be construed to be a waiver thereof.

7. No Public Dedication. Nothing contained in this Easement shall be deemed to be a gift or dedication to the general public or for any public use or purpose whatsoever or be deemed to create any rights or benefits in favor of any municipality, public authority, or official thereof, it being the intention of the parties hereto that this Easement be for the exclusive benefit of the parties and those claiming under them.

8. Termination. Grantee, or its successors and assigns, may terminate this Easement at any time upon written notice to Grantor. Except as provided herein, no act or failure to act on the part of Grantee or the holder of any interest in the Easement shall be deemed to constitute an abandonment, surrender or termination thereof, and shall not impair, terminate or otherwise affect the validity or effectiveness of such Easement, except upon recordation by such holder of a quitclaim deed specifically conveying such Easement back to Grantor. Nonuse of the Easement Area shall not prevent the future use of the entire scope thereof in the event the same is needed. In the event of termination of this Easement, Grantee shall peaceably and quietly vacate, surrender and return the Easement Area to Grantor. Subject to the rights of Grantor, Grantee agrees and hereby covenants to, within one hundred eighty (180) days from the date of termination: (i) dismantle and remove all equipment, improvements, fixtures, and other property owned or installed by Grantee on the Easement Area and (ii) restore the Easement Area to substantially its original condition (reasonable wear and tear and damage by condemnation or casualty excepted). Grantor shall provide Grantee access to the Grantor Parcel during such one hundred eighty (180) day period as reasonably necessary to effectuate such dismantling, removal, and restoration. Upon the termination of this Easement and at the request of either party, the parties shall enter into an instrument terminating this Easement (in recordable form) and such instrument shall be recorded with the Office of the Clerk of Marion County, Commonwealth of Kentucky.

9. Relationship of Parties. Nothing contained in this Easement shall be construed to make the parties partners or joint venturers or render either liable for the debts or obligations of the other.

10. Modification. This Easement may be modified, amended, or canceled only by written instrument executed by all parties in interest at the time of such amendment and recorded with the Office of the Clerk of Marion County, Commonwealth of Kentucky.



11. Benefits and Burdens Running with the Land. Grantor covenants with Grantee that Grantor is seized of the Grantor Parcel in fee simple, has the right to convey these easements, that title is marketable and free and clear of all encumbrances except those of record to which Grantee has agreed in writing to allow to remain, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever. The benefits and burdens, rights and obligations, easements and restrictions created by this Easement shall run with and burden and be binding upon the Grantor Parcel in perpetuity and shall inure to the benefit of and be binding upon the parties and those claiming by, through, or under them. The covenants, agreements, terms, provisions, and conditions of this Easement shall bind and benefit the successors in interest of the parties hereto with the same effect as if mentioned in each instance when a party hereto is named or referred to, it being understood and agreed that upon any transfer of ownership of all or any part of any of the parcels, each such successor in interest shall thereupon and thereafter assume, and perform and observe, any and all of the obligations of its predecessors in interest under this Easement.

12. Assignment and Transfer. The easement rights set forth in this Easement may be assigned by Grantee, in whole or in part, without the need for Grantor's consent; provided, that, Grantee shall not be relieved from liability for any of its obligations under this Easement by virtue of the assignment or conveyance unless Grantee assigns or conveys all of its interests under this Easement to the assignee or transferee, in which event Grantee shall have no continuing liability. For the avoidance of doubt, entry into a mortgage or other financial instrument granting a third-party rights in the Easement shall not constitute an assignment or conveyance for purposes of this Section 12. Upon any assignment or transfer of any or all of Grantee's interests hereunder, Grantee shall provide notice of such assignment or transfer to Grantor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Grantor and Grantee and their respective legal representatives, successors and assigns. If Grantee fails to provide Grantor with contact information for the assignee or transferee, the assignee or transferee shall not declare Grantor in breach, nor penalize Grantor in any way, for any failure on Grantor's part to provide notice to assignee or transferee until such contact information has been properly provided to Grantor.

13. Exclusivity. Grantor may not grant rights within the Easement Area to any other party; provided, however, Grantor shall not be precluded from transferring its ownership interest in the Grantor Parcel, provided that such transfer is made subject to this Easement.

14. Notice. Any notice, demand, and other communications hereunder shall be in writing and shall be deemed properly given if served personally on the party to whom notice is to be given, or if mailed to the party to whom notice is to be given by (i) first class mail, postage prepaid, registered or certified, return receipt requested, or (ii) by nationally recognized overnight courier, addressed to the party to whom notice is to be given at the address set forth below and naming the individuals hereinafter set forth (as applicable). Any notice, demand, and other communications hereunder shall be deemed received upon actual receipt or refusal thereof. Either party may change its address and/or the names of such individuals for purposes hereof by giving the other party notice of the new address in the manner described herein.



Grantor: David J. Mattingly and Alice M. Mattingly  
4000 Springfield Hwy  
Lebanon, KY 40033

Grantee: FRON Bn, LLC  
13123E Emerald Coast Parkway, Suite B#158  
Inlet Beach, Florida 32461

15. No Strict Construction. The rule of strict construction does not apply to the grant of the easements contained herein. These grants shall be given a reasonable construction in order that the intention of the parties to confer a commercially useable right of enjoyment to Grantee with respect to such easements shall be effectuated. The parties acknowledge that the parties and their counsel have reviewed and revised this Easement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Easement or any exhibits or amendments hereto.

16. Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other party to effectuate the purposes and intention of this Easement.

17. Estoppel. Each party hereto shall from time to time as requested by the other party execute and deliver to the requesting party (or to a party designated), within fifteen (15) days of demand therefor, a written statement which shall confirm that there is no default under this Easement (or specifying any default) and which shall contain such other information or confirmations as may reasonably be required.

18. Miscellaneous. This Easement shall be construed under Kentucky law and supersedes all prior agreements and memoranda with respect to the subject matter hereof. The captions and headings are used only as a matter of convenience and are not to be considered a part of this Easement or to be used in determining the intent of the parties. All recitals contained at the beginning of this Easement are an integral part of this Easement and are fully incorporated into the body of this Easement. If any provision of this Easement shall be declared invalid or unenforceable, the remainder of this Easement shall continue in full force and effect. In any litigation arising out of this Easement,

[REDACTED]

[REDACTED] If the party that commenced or instituted the action, suit, or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party. Time is of the essence in this Easement. The persons executing this Easement on behalf of Grantor and Grantee warrant and represent that each of them is duly authorized to enter into this Easement, to grant the rights granted under this Easement, and that this Easement constitutes the valid and binding obligations of Grantor and Grantee, respectively, enforceable

against Grantor and Grantee in accordance with its terms. This Easement may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

19. No Interference with Easements. Grantor's activities and any grant of rights Grantor makes to any person or entity, whether located on the Grantor Parcel or elsewhere, shall not, currently or in the future, impede or interfere with the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Grantee's Facilities, whether located on the Grantor Parcel or elsewhere, or the exercise of Grantee's rights of access pursuant to this Easement. In furtherance of, but not in any way in limitation of the generality of the foregoing, Grantee and Grantor agree as follows:

(a) Grantee shall have the right, from time to time, to clear and to keep clear the Easement Area and the real property affected thereby, free from explosives, buildings, structures, equipment, trees, vines, brush, combustible materials and any and all other obstructions of any kind, including, but not in any way in limitation of the generality of the foregoing, swimming pools and appurtenances, fences, and the parking of automobiles, trucks or other mechanical equipment, for protection from fire and other hazards and from interference with ingress and egress and with the unobstructed use of the Easement and the Easement Area and every part thereof.

(b) In addition to the right of the Grantee to remove trees from the Easement Area, Grantee shall also have the right to trim or top and to keep trimmed or topped any and all trees and brush within the Easement Area, and any and all trees and brush on the Grantor Parcel along each side of the Easement Area, which now or hereafter in the judgment of Grantee shall be reasonably necessary for the proper construction, operation and maintenance of Grantee's Facilities, or as Grantee deems necessary to comply with applicable state or federal regulations.

(c) Grantor shall not exercise or authorize or permit the exercise of any surface or sub- surface rights affecting the Easement Area, including, without limitation, mineral, gas and oil resources, which might damage Grantee's Facilities or interfere or endanger in any material respect Grantee's use of the Easement. Grantor shall not deposit or permit or allow to be deposited, earth, rubbish, debris or any other substance or material, whether combustible or noncombustible, on the Easement Area, or so near thereto as to constitute, in the reasonable opinion of Grantee, a menace or danger to Grantee's Facilities. Grantor shall not increase or decrease the ground surface elevations nor allow the ground surface elevations to be increased or decreased in any manner within the Easement Area, nor shall the ground within the Easement Area be penetrated in any manner the prior written consent of Grantee.

(d) Grantor may use Easement Area for its own purposes so long as such uses do not interfere with Grantee's full enjoyment of the rights granted to Grantee under this Easement or damage any of Grantee's Facilities.

20. Indemnification. Grantee shall indemnify, defend, and save harmless Grantor, its officers, directors, employees, contractors, and agents from and against any and all claims, damages, demands, legal or administrative actions (formal or informal), expenses (including reasonable attorneys' fees and court costs), and liability (whether or not such liability has been



judicially determined) for loss of or damage to the Grantor Parcel, the Easement Area, or property of others (including environmental damages and hazardous or toxic waste clean-up) and injuries to or death of all persons, howsoever resulting, on account of or based upon the negligent or willful act or omission of Grantee (or any officer, director, employee, agent, or contractor of Grantee); provided, however, that if the loss of or damage to property, or injury to or death of persons, results from the negligent or willful act of Grantor (or any officer, director, employee, agent, or contractor of Grantor), then Grantee's indemnification, defense, and save harmless obligations shall not be applicable. Grantor shall indemnify, defend, and save harmless Grantee, its officers, directors, employees, contractors, and agents from and against any and all claims, damages, demands, legal or administrative actions (formal or informal), expenses (including reasonable attorneys' fees and court costs), and liability (whether or not such liability has been judicially determined) for loss of or damage to the Grantee Facilities, the Easement Area, or property of others (including environmental damages and hazardous or toxic waste clean-up) and injuries to or death of all persons, howsoever resulting, on account of or based upon the negligent or willful act or omission of Grantor (or any officer, director, employee, agent, or contractor of Grantor); provided, however, that if the loss of or damage to property, or injury to or death of persons, results from the negligent or willful act of Grantee (or any officer, director, employee, agent, or contractor of Grantee), then Grantor's indemnification, defense, and save harmless obligations shall not be applicable. The provisions of this Section 20 shall survive the expiration or termination of this Easement.

21. Improvements. All Grantee's Facilities constructed or placed upon the Easement Area by or on behalf of Grantee shall at all times remain the property of Grantee, and Grantor shall have no right, title or interest therein, whether or not such property shall be permanently affixed to the real estate. All Grantee's Facilities constructed or placed upon the Easement Area by or on behalf of Grantee may be removed, repaired, altered or replaced by Grantee at any time; and some or all of the Grantee's Facilities, as determined by Grantee, may be owned jointly among all Grantee entities or by individual Grantee entities.

22. Mortgagee Protection.

- (a) Grantee shall have the right, without Grantor's prior consent or approval, at any time and from time to time, to mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Easement, the Easement Area, or the Grantee's Facilities (holders of these various security interests are referred to as "**Mortgagees**") provided, in no event will such assignment, encumbrance or grant encumber Grantor's underlying fee interest in the Grantor Parcel. No liability for the performance of Grantee's obligations under this Easement shall attach to or be imposed upon any Mortgagee, unless such Mortgagee forecloses its interest and becomes the grantee under this Easement, following which the liability shall attach only during the term such Mortgagee directly holds the interest of the grantee under this Easement.
- (b) Grantor and Grantee agree that, once all or any part of Grantee's interests in the Easement are mortgaged or assigned to a Mortgagee, they will not modify or terminate this Easement without the prior written consent of the Mortgagee.

- (c) Grantor agrees that any Mortgagee shall have the right to make any payment and to do any other act or thing required to be performed by Grantee under this Easement, and any such payment, act or thing performed by the Mortgagee shall be effective to prevent a default under this Easement and any forfeiture of any of Grantee's rights under this Easement as if done by Grantee itself.
- (d) During the time all or any part of Grantee's interests in the Easement are mortgaged or assigned to any Mortgagee, if Grantee defaults under any of its obligations and Grantor is required to give Grantee notice of the default Grantor shall also be required to give Mortgagee notice of the default. If Grantor becomes entitled to terminate this Easement due to an uncured default by Grantee, Grantor will not terminate this Easement unless it has first given written notice of the uncured default and of its intent to terminate this Easement to the Mortgagee and has given the Mortgagee at least thirty (30) calendar days to cure the default to prevent termination of this Easement. If within such thirty (30) day period the Mortgagee notifies the Grantor that it must foreclose on Grantee's interest or otherwise take possession of Grantee's interest under this Easement in order to cure the default, Grantor shall not terminate this Easement and shall permit the Mortgagee a reasonable period of time necessary for the Mortgagee, with the exercise of due diligence, to foreclose or acquire Grantee's interest under this Easement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Grantee. The time within which the Mortgagee must foreclose or acquire Grantee's interest shall be extended to the extent the Mortgagee is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.
- (e) The acquisition of all or any part of Grantee's interests in the Easement by any Mortgagee through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Grantor nor constitute a breach or default of this Easement by Grantee, and upon the completion of the acquisition or conveyance Grantor shall acknowledge and recognize the Mortgagee as Grantee's proper successor under this Easement upon the Mortgagee's cure of any existing Grantee defaults and assumption of the obligations of Grantee under this Easement prospectively.
- (f) If this Easement is terminated or rejected in connection with a bankruptcy, insolvency, winding up or similar occurrence with respect to Grantee, then Grantor shall give prompt notice thereof to the Mortgagee. Grantor shall, upon written request of Mortgagee, enter a new easement agreement with the Mortgagee or its designee, within thirty (30) days after receipt of such request. Such new easement agreement shall be effective as of the date of such rejection, disaffirmation or termination, and shall be upon the same terms, covenants, conditions and agreements as contained in this Easement; and, until such time as such new easement agreement is executed and delivered, Mortgagee or its designee may enter, use and enjoy the Easement Area and



conduct operations thereon as if this Easement were still in effect. [REDACTED]

[REDACTED]

23. Attorney Fees. Grantee shall pay all attorney's fees incurred by Grantor for the review, negotiation, revision and execution of this Utility Easement.

*[Signature Page to Follow]*







# California All-Purpose Certificate of Acknowledgement

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

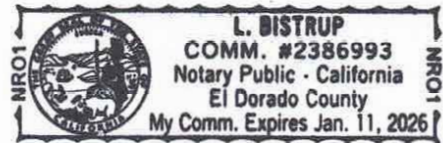
State of California  
County of: El Dorado

On August 25, 2023 before me, L. Bistrup, Notary Public, personally appeared  
Martin Hermann

who proved on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



*L. Bistrup*

(Notary Seal)


## ADDITIONAL OPTIONAL INFORMATION

Description of the Attached Document	Capacity Claimed by the Signer
<u>Amended and Restated</u> (Title or description of attached document)	<input checked="" type="checkbox"/> Individuals
<u>Utility Easement</u> (Title or description of attached document cont.)	<input type="checkbox"/> Corporate Officer
Number of pages: <u>17</u>	<input type="checkbox"/> Partner(s)
Document Date: <u>08/25/2023</u>	<input type="checkbox"/> Attorney-in-Fact
_____ (Additional Information)	<input type="checkbox"/> Trustee(s)
	<input type="checkbox"/> Other _____



This instrument was prepared by Anton Sergeevich Krayniy, Esq. of BrightNight, LLC

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

  
\_\_\_\_\_  
(Signature of Preparer)

Anton Sergeevich Krayniy  
\_\_\_\_\_  
(Printed name of Preparer)

BrightNight, LLC  
515 North Flagler Drive, Suite P-200  
West Palm Beach, FL 33401

**Exhibit A**

**Grantor Parcel**

Marion County, Kentucky

**County Parcel Number 055-052**

Being all of Tract 2 shown on the plat of record in Deed Book 140, at page 516 in the Office of the Marion County Court Clerk.

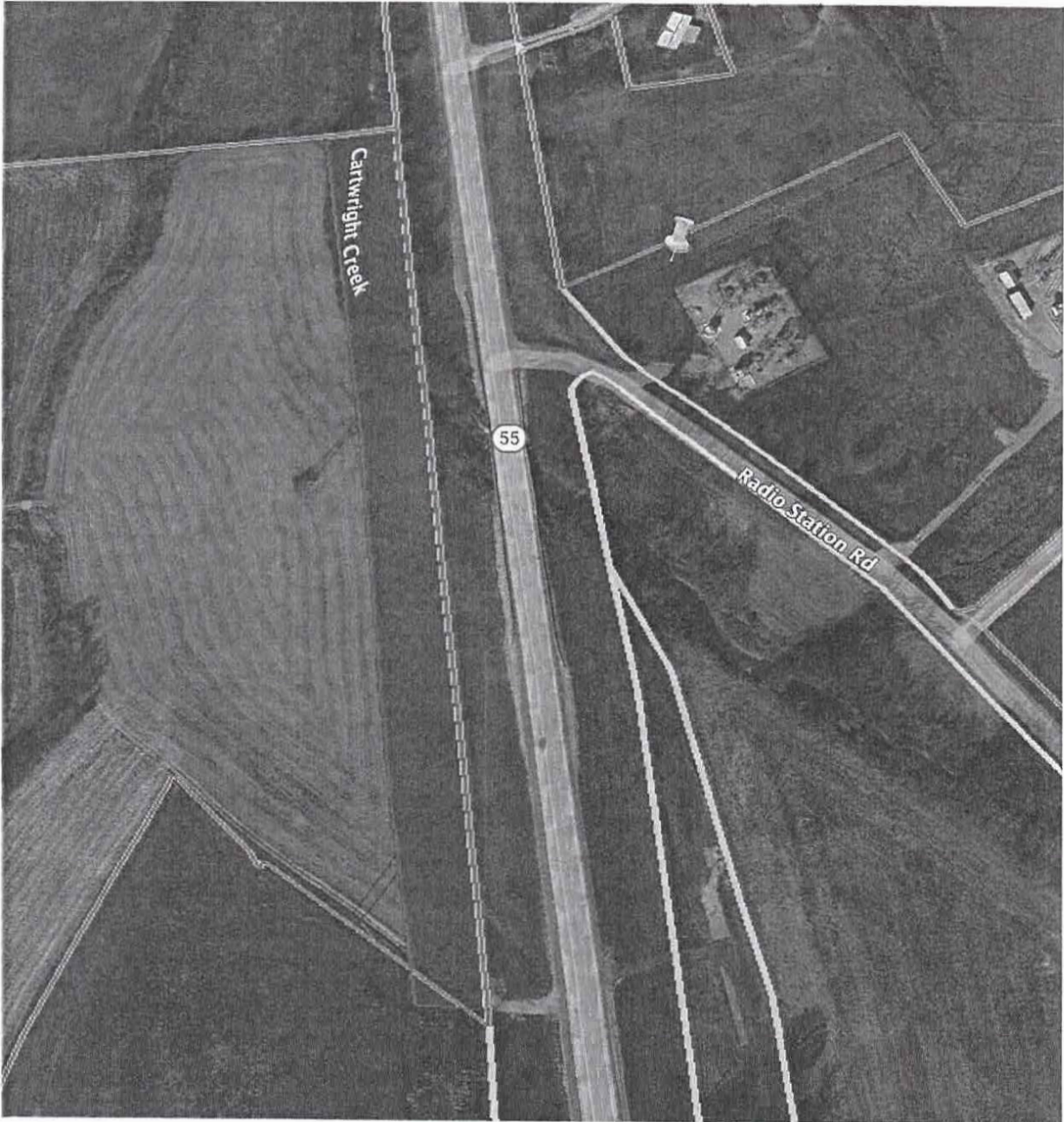
Being the same property conveyed to David Jerome Mattingly by Deed dated April 30<sup>st</sup> 1991 in Deed Book 158, at page 455.



**Exhibit A-1**

**Easement Area**

The approximately 2.8 acres highlighted in blue below to be surveyed at a later date:



[CONFIDENTIAL – DO NOT RECORD]

Fee Schedule  
To  
Utility Easement

Grantee shall pay an amount equal to \$ [REDACTED], which shall be payable in two installments as set forth below. For purposes of the Execution Payment, the acreage of the Easement Area shall be deemed to be 2.8 acres.

<u>Payment</u>	<u>Timing</u>
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]



---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**After Recording Return To:**

Lee Cissna  
763 S. Villa Dr.  
Evansville, IN 47714

**AMENDED AND RESTATED UTILITY EASEMENT**

THIS AMENDED AND RESTATED UTILITY EASEMENT ("**Amended and Restated Easement**") is made and entered into as of the 25<sup>th</sup> day of August, 2023, but made effective as of the Effective Date (as defined below) by and between **David J. Mattingly and Alice M. Mattingly**, husband and wife, having an address of 4000 Springfield Hwy, Lebanon, KY 40033 ("**Grantor**"), and **FRON Bn, LLC**, a Delaware limited liability company, having an address of 13123E Emerald Coast Parkway, Suite B#158, Inlet Beach, Florida 32461 ("**Grantee**"). Grantor and Grantee are sometimes individually referred to herein as a "**party**" and collectively referred to herein as the "**parties**."

WITNESSETH:

WHEREAS, Grantor and Grantee entered into that certain Utility Easement Agreement ("**Original Easement**") dated November 8, 2022 ("**Effective Date**") affecting a certain parcel of land located in Washington County, Commonwealth of Kentucky, being more particularly described on Exhibit A attached hereto and incorporated by reference herein ("**Grantor Parcel**"); and

WHEREAS, Grantor and Grantee desire to execute this Amended and Restated Easement to amend and restate the Original Easement in its entirety with respect to the Grantor Parcel. The term of this Amended and Restated Easement shall be deemed to have commenced as of the Effective Date without interruption of or intervention by subsequent parties with an interest in the Grantor Parcel. The Original Easement as amended and restated by this Amended and Restated Easement, is herein referred to as the "**Easement**"; and

WHEREAS, Grantee desires to obtain certain easements and other rights permitting Grantee to access, construct, operate, and maintain certain facilities on a portion of the Grantor Parcel.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of Grantor and Grantee, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. Grant of Option:

- (a) Option. Grantor grants to Grantee an exclusive option (“**Option**”) to acquire the Utility Easement (as defined below) on the following terms and conditions.
- (b) Option Term. The term of the Option shall begin on the Effective Date and expire [REDACTED] after the Effective Date (“**Option Term**”).
- (c) Use of Grantor Parcel during Option Term. During the Option Term, Grantee and its employees, agents and contractors shall have a non-exclusive right to enter the Grantor Parcel and the right of ingress and egress over and across the Grantor Parcel for the purposes of (i) surveying the Grantor Parcel and (ii) performing such test and studies on, over, under, and across the Grantor Parcel as Grantee may desire in connection with the Option, including without limitation, environmental, avian and cultural resource assessments, and geotechnical, foundation and soil testing, provided that such activities do not unreasonably interfere with Grantor’s use of the Grantor Parcel.
- (d) Exercise of Option. Grantee may exercise the Option by giving written notice to Grantor (“**Option Notice**”) at any time during the Option Term. Upon delivery of the Option Notice, the Utility Easement shall automatically become effective, and Grantor and Grantee shall be subject to all of the terms and conditions of this Easement with respect to the Utility Easement and all related rights and obligations.

2. Grant of Utility Easement:

- (a) Utility Easement. Upon Grantee’s exercise of the Option, Grantor hereby grants and conveys unto Grantee (and Grantee’s employees, contractors, agents, permitted successors, and permitted assigns), and Grantee hereby accepts from Grantor, a perpetual, exclusive right, privilege, and easement (“**Utility Easement**”) over and across that certain portion of the Grantor Parcel more particularly shown on Exhibit A-1 attached hereto and incorporated herein by reference (“**Easement Area**”) for the installation, maintenance, repair, replacement, and removal of: underground and above-ground power and telecommunication lines and all infrastructure and facilities associated therewith including, but not limited to,



collector station, poles, towers, foundations, wires, conduits, ducts, switches, transformers, and other structures and apparatus necessary or convenient for the construction, operation, regulation, control, grounding and maintenance of electric lines and communication circuits, for the purpose of transmitting, distributing, regulating and controlling electric energy to be used for light, heat, power, communication, and other purposes, together with their strengthening supports, sufficient foundations and supports, to connect the electrical or energy generating facility contemplated to be constructed by Grantee now or in the future and other underground and above-ground fixtures, appliances and appurtenances connected therewith (collectively, “**Grantee’s Facilities**”). The Easement Area shall include (i) approximately one (1) acre of land seventy-five (75) feet in width lying along Grantor’s property line (DB 215, PG 57, records of the Washington County Court Clerk and Boundary Line Agreement of record at DB 258, PG 448, records of the Marion County Court Clerk) with the adjoining Morris and Mackin Farms, Inc. property on the northeast side and running from the Morris’ cellphone tower (once installed) for, a length to be determined and (ii) approximately one (1) acre of land seventy-five (75) feet in width lying along the eastern fence line of Grantor’s property (DB 305, PG 222, records of the Washington County Clerk) where it meets the property of Austin Spalding and shall not protrude into the actively cultivated field adjacent thereto without the express advanced written consent of Grantor. Without limiting the generality of the foregoing, such easement shall include, without limitation, the right to transmit electricity over said wires, cables, or apparatus to a substation and to clear and keep the Easement Area cleared of trees, undergrowth, and all other obstructions by any lawful means, and to construct any fencing or other protective measures desired within the Easement Area. Grantor acknowledges that the primary purpose of the Utility Easement is to connect two neighboring parcels of the solar facility of Grantee. Notwithstanding anything herein to the contrary, Grantee's Facilities in the Easement Area shall not include solar panels or other apparatuses constituting a Solar Generating Facility. Notwithstanding anything to the contrary in the foregoing, Grantor hereby grants Grantee the right to amend the description of the Easement Area after a surveyor has determined the exact area of the Easement Area. For purposes of this Easement, approximately a total of two (2) acres of aggregate area will be used. Upon Grantee’s decision to amend the Easement Area, Grantor shall cooperate with Grantee to execute any amendment or other instrument necessary to place such amendment of record; particularly in light of the fact that the Morris’ cellphone tower location is yet to be determined, which will dictate the necessary length of the Easement Area on the Northeast side of the Grantor’s property.

(b) Compliance with Law. Grantee shall comply (and shall cause its officers, directors, employees, agents, contractors, permitted successors, and permitted assigns to comply) with all laws, regulations, ordinances, permits, and other legal requirements applicable to Grantee's exercise of its rights hereunder, including, without limitation, its use of, and activities within, the Easement Area and its use, maintenance, and repair of Grantee's Facilities. Grantee shall not use the Easement Area or exercise its rights under this Easement for any unlawful purposes or in such a manner as to constitute a nuisance.

(c) Temporary Construction Easement. Grantor hereby grants unto Grantee (and Grantee's employees, contractors, agents, permitted successors, and permitted assigns), and Grantee hereby accepts from Grantor, an exclusive right, privilege, and easement over and across the Grantor Parcel for use by Grantee, its successors and assigns for access to and for



construction, maintenance, repair, replacement, and removal of roadway, utility and related improvements upon the Easement Area from time to time (“**Temporary Construction Easement**”). The Temporary Construction Easement includes, but is not limited to, the right and privilege by Grantee to go onto and to access the Grantor Parcel with vehicles, heavy equipment, machinery, construction supplies, and building materials in order to construct, maintain, repair, replace and remove a roadway, utilities and related improvements within the Easement Area. Following the construction activities described above, Grantee shall reasonably restore property disturbed by the construction activities outside the Easement Area, including reseeding and stabilizing such areas. Grantee shall reimburse Grantor for any and all damage to Grantor's agricultural operations, including cattle and/or crops, which damage is generated by Grantee's activities upon the Grantor Parcel or Easement Area.

2. Payment. In consideration of the rights granted hereunder, Grantee agrees to pay Grantor during the Term the amounts set forth in the Fee Schedule attached hereto. The parties hereby agree that the Fee Schedule attached to this Easement shall be removed before the Easement is recorded and such removal shall not affect the validity of this Easement.

3. No Barriers. No barriers, fences, or other obstructions shall be erected by Grantor within the Easement Area so as to unreasonably interfere with the free flow of pedestrian and vehicular traffic or to unreasonably interfere with the utilities placed within the Easement Area. Conversely, no barriers, fences or other obstructions erected by Grantee on the Easement Area shall unreasonably interfere with the free flow of pedestrian or vehicular traffic or with utilities placed on the Grantor Parcel.

4. Construction Standards; Maintenance. Grantee has visited and inspected the Easement Area and, for purposes of this Easement, accepts the same in its “AS IS”, “WHERE IS”, “WITH ALL FAULTS” condition. Grantee acknowledges that no representations or warranties, express or implied, have been made to Grantee as to the condition of the Easement Area. Grantee shall perform all of its construction work at no expense to Grantor. In the event Grantee deems it necessary, in its sole discretion, to utilize the Temporary Construction Easement, Grantee shall give not fewer than seven (7) days prior notice (which may be telephonic or by electronic mail) to the other party of the date when any of Grantee's use thereof is to commence. After completion of the initial construction within the Easement Area, Grantee shall not unreasonably obstruct or interfere with Grantor's access to the Grantor Parcel. Grantor shall not, at any time, obstruct or interfere with Grantee's access to the Easement Area or, upon requisite notice, the Temporary Construction Easement. Grantee shall be responsible for obtaining, at its own expense, the requisite approvals and permits for the construction work from any appropriate governmental authorities; provided, however, Grantor shall provide all necessary cooperation during such approval and permitting processes. Grantor shall pay all ad valorem taxes assessed or levied against Grantor's Parcel, including, without limitation, the Easement Area, except that Grantee shall be responsible for any taxes or assessments levied for, or as a result of, the Grantee's Facilities or other future improvements placed on the Easement Area by, or at the request of, Grantee pursuant to its rights granted hereunder. Grantee shall maintain the Grantee's Facilities located in the Easement Area at Grantee's sole cost and expense.



5. Liens. Grantor shall not suffer or permit the Easement Area to be encumbered by any lien or encumbrance that has priority over this Easement. In the event of any liens or encumbrances burdening the Easement Area exist as of the Effective Date, Grantor shall, at its own cost and expense, cause the same to be cancelled, discharged, or subordinated to the rights of the Grantee hereunder within twenty (20) days. Grantee shall keep the Easement Area and Grantor Parcel free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Grantee or any Grantee Facility on the Grantor Parcel or Easement Area. Grantee may contest any such lien, whether filed against Grantor's interest in the Grantor Parcel or Grantee's easement interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Grantee decides not to contest such lien, Grantee agrees to otherwise remove such mechanic's lien that is caused by Grantee's use of the Grantor Parcel or Easement Area within sixty (60) calendar days of receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

6. Breach; No Waiver. The terms and conditions of this Easement shall be enforceable by either party (or its permitted successors or permitted assigns), by actions for specific performance or injunction, in addition to any other remedies available at law. No delay or omission by any party in exercising any right or power accruing upon any noncompliance or failure of performance by the other party under the provisions of this Easement shall impair any such right or power or be construed to be a waiver thereof.

7. No Public Dedication. Nothing contained in this Easement shall be deemed to be a gift or dedication to the general public or for any public use or purpose whatsoever or be deemed to create any rights or benefits in favor of any municipality, public authority, or official thereof, it being the intention of the parties hereto that this Easement be for the exclusive benefit of the parties and those claiming under them.

8. Termination. Grantee, or its successors and assigns, may terminate this Easement at any time upon written notice to Grantor. Except as provided herein, no act or failure to act on the part of Grantee or the holder of any interest in the Easement shall be deemed to constitute an abandonment, surrender or termination thereof, and shall not impair, terminate or otherwise affect the validity or effectiveness of such Easement, except upon recordation by such holder of a quitclaim deed specifically conveying such Easement back to Grantor. Nonuse of the Easement Area shall not prevent the future use of the entire scope thereof in the event the same is needed. In the event of termination of this Easement, Grantee shall peaceably and quietly vacate, surrender and return the Easement Area to Grantor. Subject to the rights of Grantor, Grantee agrees and hereby covenants to, within one-hundred eighty (180) days from the date of termination: (i) dismantle and remove all equipment, improvements, fixtures, and other property owned or installed by Grantee on the Easement Area and (ii) restore the Easement Area to substantially its original condition (reasonable wear and tear and damage by condemnation or casualty excepted). Grantor shall provide Grantee access to the Grantor Parcel during such one-hundred eighty (180) day period as reasonably necessary to effectuate such dismantling, removal, and restoration. Upon the termination of this Easement and at the request of either party, the parties shall enter into an instrument terminating this Easement (in recordable form)



and such instrument shall be recorded with the Office of the Clerk of Washington County, Commonwealth of Kentucky.

9. Relationship of Parties. Nothing contained in this Easement shall be construed to make the parties partners or joint venturers or render either liable for the debts or obligations of the other.

10. Modification. This Easement may be modified, amended, or canceled only by *written instrument* executed by all parties in interest at the time of such amendment and recorded with the Office of the Clerk of Washington County, Commonwealth of Kentucky.

11. Benefits and Burdens Running with the Land. Grantor covenants with Grantee that Grantor is seized of the Grantor Parcel in fee simple, has the right to convey these easements, that title is marketable and free and clear of all encumbrances except those of record to which Grantee has agreed in writing to allow to remain, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever. The benefits and burdens, rights and obligations, easements and restrictions created by this Easement shall run with and burden and be binding upon the Grantor Parcel in perpetuity and shall inure to the benefit of and be binding upon the parties and those claiming by, through, or under them. The covenants, agreements, terms, provisions, and conditions of this Easement shall bind and benefit the successors in interest of the parties hereto with the same effect as if mentioned in each instance when a party hereto is named or referred to, it being understood and agreed that upon any transfer of ownership of all or any part of any of the parcels, each such successor in interest shall thereupon and thereafter assume, and perform and observe, any and all of the obligations of its predecessors in interest under this Easement.

12. Assignment and Transfer. The easement rights set forth in this Easement may be assigned by Grantee, in whole or in part, without the need for Grantor's consent; provided, that, Grantee shall not be relieved from liability for any of its obligations under this Easement by virtue of the assignment or conveyance unless Grantee assigns or conveys all of its interests under this Easement to the assignee or transferee, in which event Grantee shall have no continuing liability. For the avoidance of doubt, entry into a mortgage or other financial instrument granting a third-party rights in the Easement shall not constitute an assignment or conveyance for purposes of this Section 12. Upon any assignment or transfer of any or all of Grantee's interests hereunder, Grantee shall provide notice of such assignment or transfer to Grantor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder. This Agreement shall be binding upon and enforceable against, and shall *inure to the benefit of*, Grantor and Grantee and their respective legal representatives, successors and assigns. If Grantee fails to provide Grantor with contact information for the assignee or transferee, the assignee or transferee shall not declare Grantor in breach, nor penalize Grantor in any way, for any failure on Grantor's part to provide *notice to assignee or transferee* until such contact information has been properly provided to Grantor.



13. Exclusivity. Grantor may not grant rights within the Easement Area to any other party; provided, however, Grantor shall not be precluded from transferring its ownership interest in the Grantor Parcel, provided that such transfer is made subject to this Easement.

14. Notice. Any notice, demand, and other communications hereunder shall be in writing and shall be deemed properly given if served personally on the party to whom notice is to be given, or if mailed to the party to whom notice is to be given by (i) first class mail, postage prepaid, registered or certified, return receipt requested, or (ii) by nationally recognized overnight courier, addressed to the party to whom notice is to be given at the address set forth below and naming the individuals hereinafter set forth (as applicable). Any notice, demand, and other communications hereunder shall be deemed received upon actual receipt or refusal thereof. Either party may change its address and/or the names of such individuals for purposes hereof by giving the other party notice of the new address in the manner described herein.

Grantor: David J. Mattingly and Alice M. Mattingly  
4000 Springfield Hwy  
Lebanon, KY 40033

Grantee: FRON Bn, LLC  
13123E Emerald Coast Parkway, Suite B#158  
Inlet Beach, Florida 32461

15. No Strict Construction. The rule of strict construction does not apply to the grant of the easements contained herein. These grants shall be given a reasonable construction in order that the intention of the parties to confer a commercially useable right of enjoyment to Grantee with respect to such easements shall be effectuated. The parties acknowledge that the parties and their counsel have reviewed and revised this Easement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Easement or any exhibits or amendments hereto.

16. Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other party to effectuate the purposes and intention of this Easement.

17. Estoppel. Each party hereto shall from time to time as requested by the other party execute and deliver to the requesting party (or to a party designated), within fifteen (15) days of demand therefor, a written statement which shall confirm that there is no default under this Easement (or specifying any default) and which shall contain such other information or confirmations as may reasonably be required.

18. Miscellaneous. This Easement shall be construed under Kentucky law and supersedes all prior agreements and memoranda with respect to the subject matter hereof. The captions and headings are used only as a matter of convenience and are not to be considered a part of this Easement or to be used in determining the intent of the parties. All recitals contained at the beginning of this Easement are an integral part of this Easement and are fully incorporated into the body of this Easement. If any provision of this Easement shall be declared invalid or

unenforceable, the remainder of this Easement shall continue in full force and effect. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] If the party that commenced or instituted the action, suit, or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party. Time is of the essence in this Easement. The persons executing this Easement on behalf of Grantor and Grantee warrant and represent that each of them is duly authorized to enter into this Easement, to grant the rights granted under this Easement, and that this Easement constitutes the valid and binding obligations of Grantor and Grantee, respectively, enforceable against Grantor and Grantee in accordance with its terms. This Easement may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

19. No Interference with Easements. Grantor's activities and any grant of rights Grantor makes to any person or entity, whether located on the Grantor Parcel or elsewhere, shall not, currently or in the future, impede or interfere with the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Grantee's Facilities, whether located on the Grantor Parcel or elsewhere, or the exercise of Grantee's rights of access pursuant to this Easement. In furtherance of, but not in any way in limitation of the generality of the foregoing, Grantee and Grantor agree as follows:

(a) Grantee shall have the right, from time to time, to clear and to keep clear the Easement Area and the real property affected thereby, free from explosives, buildings, structures, equipment, trees, vines, brush, combustible materials and any and all other obstructions of any kind, including, but not in any way in limitation of the generality of the foregoing, swimming pools and appurtenances, fences, and the parking of automobiles, trucks or other mechanical equipment, for protection from fire and other hazards and from interference with ingress and egress and with the unobstructed use of the Easement and the Easement Area and every part thereof.

(b) In addition to the right of the Grantee to remove trees from the Easement Area, Grantee shall also have the right to trim or top and to keep trimmed or topped any and all trees and brush within the Easement Area, and any and all trees and brush on the Grantor Parcel along each side of the Easement Area, which now or hereafter in the judgment of Grantee shall be reasonably necessary for the proper construction, operation and maintenance of Grantee's Facilities, or as Grantee deems necessary to comply with applicable state or federal regulations.

(c) Grantor shall not exercise or authorize or permit the exercise of any surface or sub-surface rights affecting the Easement Area, including, without limitation, mineral, gas and oil resources, which might damage Grantee's Facilities or interfere or endanger in any material respect Grantee's use of the Easement. Grantor shall not deposit or permit or allow to be deposited, earth, rubbish, debris or any other substance or material, whether combustible or noncombustible, on the Easement Area, or so near thereto as to constitute, in the



reasonable opinion of Grantee, a menace or danger to Grantee's Facilities. Grantor shall not increase or decrease the ground surface elevations nor allow the ground surface elevations to be increased or decreased in any manner within the Easement Area, nor shall the ground within the Easement Area be penetrated in any manner the prior written consent of Grantee.

(d) Grantor may use Easement Area for its own purposes so long as such uses do not interfere with Grantee's full enjoyment of the rights granted to Grantee under this Easement or damage any of Grantee's Facilities.

20. Indemnification. Grantee shall indemnify, defend, and save harmless Grantor, its officers, directors, employees, contractors, and agents from and against any and all claims, damages, demands, legal or administrative actions (formal or informal), expenses (including reasonable attorneys' fees and court costs), and liability (whether or not such liability has been judicially determined) for loss of or damage to the Grantor Parcel, the Easement Area, or property of others (including environmental damages and hazardous or toxic waste clean-up) and injuries to or death of all persons, howsoever resulting, on account of or based upon the negligent or willful act or omission of Grantee (or any officer, director, employee, agent, or contractor of Grantee); provided, however, that if the loss of or damage to property, or injury to or death of persons, results from the negligent or willful act of Grantor (or any officer, director, employee, agent, or contractor of Grantor), then Grantee's indemnification, defense, and save harmless obligations shall not be applicable. Grantor shall indemnify, defend, and save harmless Grantee, its officers, directors, employees, contractors, and agents from and against any and all claims, damages, demands, legal or administrative actions (formal or informal), expenses (including reasonable attorneys' fees and court costs), and liability (whether or not such liability has been judicially determined) for loss of or damage to the Grantee Facilities, the Easement Area, or property of others (including environmental damages and hazardous or toxic waste clean-up) and injuries to or death of all persons, howsoever resulting, on account of or based upon the negligent or willful act or omission of Grantor (or any officer, director, employee, agent, or contractor of Grantor); provided, however, that if the loss of or damage to property, or injury to or death of persons, results from the negligent or willful act of Grantee (or any officer, director, employee, agent, or contractor of Grantee), then Grantor's indemnification, defense, and save harmless obligations shall not be applicable. The provisions of this Section 20 shall survive the expiration or termination of this Easement.

21. Improvements. All Grantee's Facilities constructed or placed upon the Easement Area by or on behalf of Grantee shall at all times remain the property of Grantee, and Grantor shall have no right, title or interest therein, whether or not such property shall be permanently affixed to the real estate. All Grantee's Facilities constructed or placed upon the Easement Area by or on behalf of Grantee may be removed, repaired, altered or replaced by Grantee at any time; and some or all of the Grantee's Facilities, as determined by Grantee, may be owned jointly among all Grantee entities or by individual Grantee entities.

22. Mortgagee Protection.

(a) Grantee shall have the right, without Grantor's prior consent or approval, at any time and from time to time, to mortgage, collaterally assign, or otherwise encumber and



grant security interests in all or any part of its interest in this Easement, the Easement Area, or the Grantee's Facilities (holders of these various security interests are referred to as "Mortgagees") provided, in no event will such assignment, encumbrance or grant encumber Grantor's underlying fee interest in the Grantor Parcel. No liability for the performance of Grantee's obligations under this Easement shall attach to or be imposed upon any Mortgagee, unless such Mortgagee forecloses its interest and becomes the grantee under this Easement, following which the liability shall attach only during the term such Mortgagee directly holds the interest of the *grantee under this Easement*.

- (b) Grantor and Grantee agree that, once all or any part of Grantee's interests in the Easement are mortgaged or assigned to a Mortgagee, they will not modify or terminate this Easement without the prior written consent of the Mortgagee.
- (c) Grantor agrees that any Mortgagee shall have the right to make any payment and to do any other act or thing required to be performed by Grantee under this Easement, and any such payment, act or thing performed by the Mortgagee shall be effective to prevent a default under this Easement and any forfeiture of any of Grantee's rights under this Easement as if done by Grantee itself.
- (d) During the time all or any part of Grantee's interests in the Easement are mortgaged or assigned to any Mortgagee, if Grantee defaults under any of its obligations and Grantor is required to give Grantee notice of the default Grantor shall also be required to give Mortgagee notice of the default. If Grantor becomes entitled to terminate this Easement due to an uncured default by Grantee, Grantor will not terminate this Easement unless it has first given written notice of the uncured default and of its intent to terminate this Easement to the Mortgagee and has given the Mortgagee at least thirty (30) calendar days to cure the default to prevent termination of this Easement. If within such thirty (30) day period the Mortgagee notifies the Grantor that it must foreclose on Grantee's interest or otherwise take possession of Grantee's interest under this Easement in order to cure the default, Grantor shall not terminate this Easement and shall permit the Mortgagee a reasonable period of time necessary for the Mortgagee, with the exercise of due diligence, to foreclose or acquire Grantee's interest under this Easement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Grantee. The time within which the Mortgagee must foreclose or acquire Grantee's interest shall be extended to the extent the Mortgagee is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.
- (e) The acquisition of all or any part of Grantee's interests in the Easement by any Mortgagee through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Grantor nor constitute a breach or default of this Easement by Grantee, and upon the completion of the acquisition or conveyance Grantor shall acknowledge



and recognize the Mortgagee as Grantee's proper successor under this Easement upon the Mortgagee's cure of any existing Grantee defaults and assumption of the obligations of Grantee under this Easement prospectively.

- (f) If this Easement is terminated or rejected in connection with a bankruptcy, insolvency, winding up or similar occurrence with respect to Grantee, then Grantor shall give prompt notice thereof to the Mortgagee. Grantor shall, upon written request of Mortgagee, enter a new easement agreement with the Mortgagee or its designee, within thirty (30) days after receipt of such request. Such new easement agreement shall be effective as of the date of such rejection, disaffirmation or termination, and shall be upon the same terms, covenants, conditions and agreements as contained in this Easement; and, until such time as such new easement agreement is executed and delivered, Mortgagee or its designee may enter, use and enjoy the Easement Area and conduct operations thereon as if this Easement were still in effect. [REDACTED]

[REDACTED]

23. Attorney Fees. Grantee shall pay all attorney's fees incurred by Grantor for the review, negotiation, revision and execution of this Utility Easement.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Utility Easement as of the date first written above, but made effective as of the Effective Date.

GRANTOR:

David J. Mattingly  
David J. Mattingly

Alice M. Mattingly  
Alice M. Mattingly

COMMONWEALTH OF KENTUCKY )  
 )SS:  
COUNTY OF Marion )

The foregoing instrument was acknowledged before me this 25<sup>TH</sup> day of July, 2023 by David J. Mattingly and Alice M. Mattingly, husband and wife.

JOANN CARDELLO  
NOTARY PUBLIC  
STATE AT LARGE  
KENTUCKY  
COMMISSION # KYNP64727  
MY COMMISSION EXPIRES JANUARY 9, 2027

Joann Cardello  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

My appointment expires: \_\_\_\_\_





# California All-Purpose Certificate of Acknowledgement

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

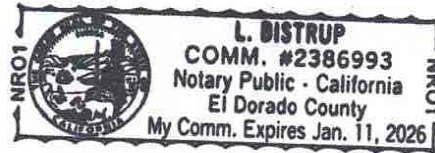
State of California  
County of: El Dorado

On August 25, 2023 before me, L. Bistrup, Notary Public, personally appeared  
Martin Hermann

who proved on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



L Bistrup

(Notary Seal)

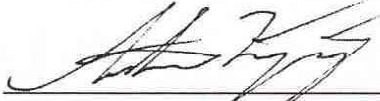
## ADDITIONAL OPTIONAL INFORMATION

Description of the Attached Document	Capacity Claimed by the Signer
<u>Amended &amp; Restated</u> (Title or description of attached document)	<input checked="" type="checkbox"/> Individuals
<u>Utility Agreement</u> (Title or description of attached document cont.)	<input type="checkbox"/> Corporate Officer
Number of pages: <u>18</u>	<input type="checkbox"/> Partner(s)
Document Date: <u>08/25/2023</u>	<input type="checkbox"/> Attorney-in-Fact
_____ (Additional Information)	<input type="checkbox"/> Trustee(s)
	<input type="checkbox"/> Other _____



This instrument was prepared by Anton Sergeyevich Krayniy, Esq. of BrightNight, LLC

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.



\_\_\_\_\_  
(Signature of Preparer)

Anton Sergeyevich Krayniy

\_\_\_\_\_  
(Printed name of Preparer)

BrightNight, LLC  
515 North Flagler Drive, Suite P-200  
West Palm Beach, FL 33401

## Exhibit A

### Grantor Parcel

Washington County, Kentucky:

#### County Parcel Number 19-024

A certain tract of land located on the west side of Ky. Hwy. 55 about 4.5 miles south of U.S. Hwy. 150 at Springfield, near the Marion County line in Washington County, Kentucky, and more particularly described as follows:

BEGINNING at a R/W post, corner to Tract 2 in the west R/W line of Ky. Hwy. 55, said post being on the south side of a drain; thence with the R/W of Ky. 55 as fenced through the following calls; S. 36-49-41 W. 49.45 ft. to a R/W post; thence S. 18-20-22 W. 587.55 ft. to a R/W post; thence S. 06-45-16 W. 9.86 ft. to a R/W post in the west line of Ky. 55, corner to Mackin; thence leaving the road with Mackin along the north side of a dirt road S. 81-49-24 W. 913.39 ft. to a gate post, corner to Mackin; thence with Mackin as fenced through the following calls; N. 50-47-08 W. 70.33 ft. to a steel post; thence N. 30-56-56 W. 71.89 ft. to a post; thence N. 62-09-03 W. 474.22 ft. to a post; thence N. 62-03-19 W. 332.25 ft. to a post; thence N. 63-02-58 W. 13.27 ft. to a post; thence N. 77-54-30 W. 425.87 ft. to a post; thence N. 77-28-56 W. 532.26 ft. to a 10 inch maple; thence N. 77-35-54 W. 375.39 ft. to a post corner to Mackin; thence with Mackin along a fence N. 04-47-53 E. 435.09 ft. to a post, corner to Mackin and Blandford; thence with Blandford as fenced through the following calls; N. 85-37-19 E. 12.22 ft. to a 4 inch maple; thence N. 54-12-56 E. 24.63 ft. to a 3 inch maple; thence N. 26-53-10 E. 445.19 ft. to a 20 inch walnut; thence N. 05-18-17 E. 394.75 ft. to an iron pin (set) in the fence, in the east line of Blandford, corner to Moraja; thence with Moraja along a fence N. 89-12-27 E. 521.78 ft. to a post; thence N. 89-26-53 E. 228.50 ft. to an iron pin (set), in the south line of Moraja, corner to Tract 2; thence with Tract 2; S. 13-17-43 W. 921.07 ft. to an iron pin, corner to Tract 2; thence with Tract 2 S. 75-11-08 E. 1200.00 ft., crossing Cartwright Creek at about 1120 ft., to a square iron pipe

in a fence, corner to Tract 2; thence with Tract 2 along a fence N. 18-33-50 E. 217.08 ft. to a square iron pipe on the south side of a drain, corner to Tract 2; thence with Tract 2 along the south side of said drain S. 53-09-00 E. 196.65 ft. to an iron pin (set); thence S. 80-23-01 E. 1021.50 ft. to the point of beginning, containing 59.28 acres by survey of Stephen W. Hibbs, PLS 2981, dated 28 February 1991.

Being the same property conveyed to David Jerome Mattingly by Deed dated March 6, 1991, in Deed Book 215, at page 57.

#### County Parcel Number 19-013.02

Tract 6 of the Mackin Farms, Inc. Division as per plat of record in Plat Cabinet A, Slide 552, in the office of the Washington County Court Clerk and dually recorded at Plat Cabinet 3, Slide 433 in the office of the Marion County Court Clerk.

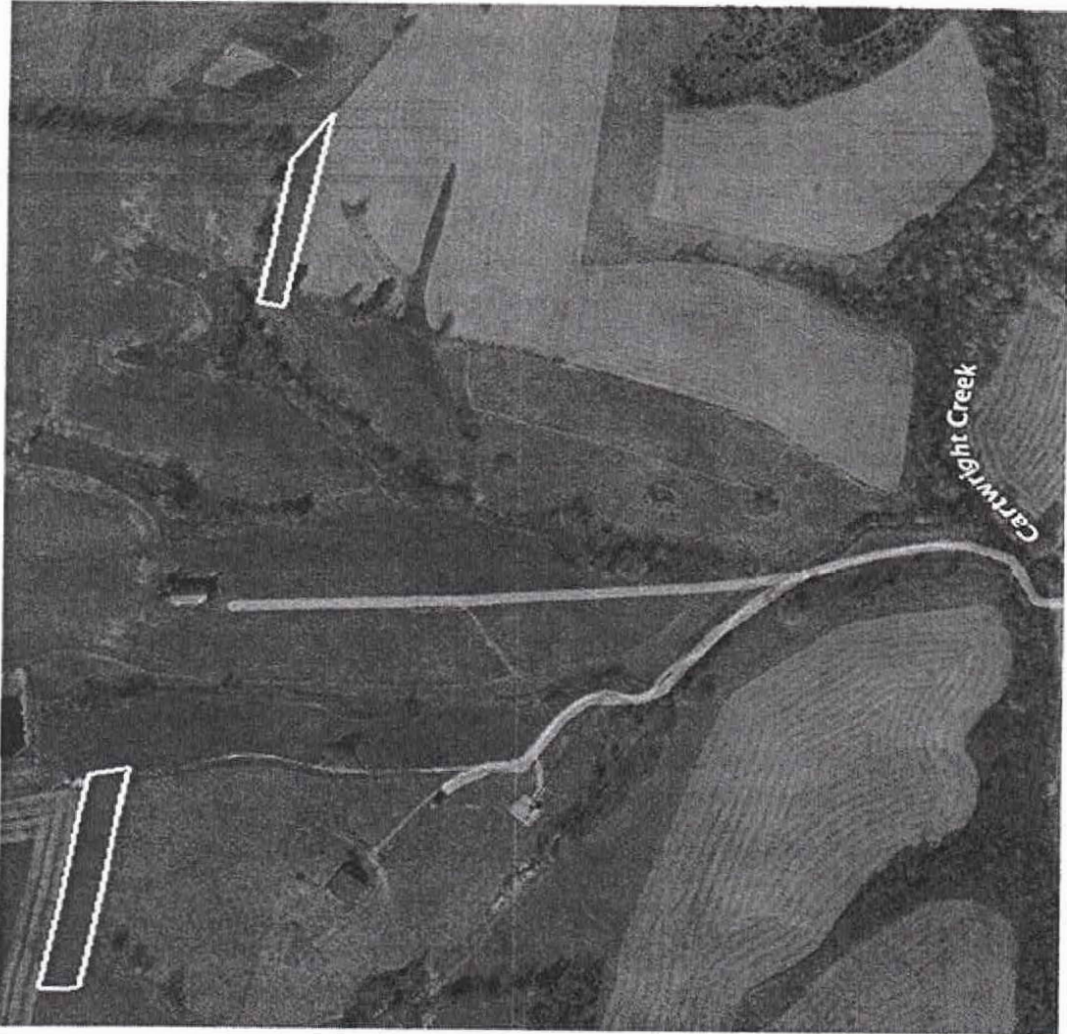


Being the same property conveyed to David Jerome Mattingly and Alice M. Mattingly, husband and wife, by Deed dated July 13, 2006, in Deed Book 305, at page 322.

Exhibit A-1

Easement Area

The area outlined below to be surveyed at a later date:







## ACCESS AND UTILITY EASEMENT

THIS ACCESS AND UTILITY EASEMENT (this "**Easement**") is made and entered into as of this 9 day of DEC, 2021 (the "**Effective Date**") by and between Adam Gootee and Krystal Gootee, husband and wife, having an address of 2270 Springfield Hwy, Lebanon, KY 21155 ("**Grantor**"), and FRON BN LLC, a Delaware limited liability company, having an address of 13123E Emerald Coast Parkway, Suite B#158, Inlet Beach, Florida 32461 ("**Grantee**"). Grantor and Grantee are sometimes individually referred to herein as a "**party**" and collectively referred to herein as the "**parties.**"

### WITNESSETH:

WHEREAS, Grantor is the fee simple owner of that certain parcel of land located in Marion County, Commonwealth of Kentucky, being more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "**Grantor Parcel**"); and

WHEREAS, Grantee desires certain easements permitting Grantee to access, construct, operate, and maintain certain facilities on a portion of the Grantor Parcel;

NOW, THEREFORE, Grantor and Grantee agree as follows:

1. Construction Notice; Construction Payment:

(a) Grantee shall provide Grantor notice of its intent to commence construction on the Grantor Parcel (the "**Construction Notice**"). The Construction Notice shall include the date on which Grantee intends to commence construction ("**Construction Start Date**"). Grantee shall deliver the Construction Notice [REDACTED] and shall provide evidence to Grantor of the construction plan impacting Grantor's Premises. For purposes of this Section 1(a), "construction" shall be defined as Grantee taking any of the following actions: i) issuing unlimited notice to proceed to the general contractor, ii) mobilization of machinery, equipment, or personal property onto the Premises for the purpose of building the improvements, or iii) the installation of permanent improvements upon the Premises.

(b) Upon Grantee's notice of its intent to commence construction, Grantee shall pay Grantor the amount allocated per the Fee Schedule attached hereto.

2. Grant of Utility and Driveway Easement:

(a) Utility Easement. Grantor hereby grants and conveys unto Grantee (and Grantee's employees, contractors, agents, permitted successors, and permitted assigns), and Grantee hereby accepts from Grantor, a perpetual, exclusive right, privilege, and easement over and across that certain portion of the Grantor Parcel that is 75 feet wide along the eastern and northern boundary of Grantor's Parcel as further depicted in the blue area shown on Exhibit B attached hereto and incorporated herein by reference (the "**Easement Area**") for the installation, maintenance, repair, replacement, and removal of: underground and



above-ground power and telecommunication lines and all infrastructure and facilities associated therewith including, but not limited to, collector station, poles, towers, foundations, wires, conduits, ducts, switches, transformers, and other structures and apparatus necessary or convenient for the construction, operation, regulation, control, grounding and maintenance of electric lines and communication circuits, for the purpose of transmitting, distributing, regulating and controlling electric energy to be used for light, heat, power, communication, and other purposes, together with their strengthening supports, sufficient foundations and supports, to connect the electrical or energy generating facility contemplated to be constructed by Grantee now or in the future and other underground and above-ground fixtures, appliances and appurtenances connected therewith (collectively, "**Grantee's Facilities**"). Without limiting the generality of the foregoing, such easement shall include, without limitation, the right to transmit electricity over said wires, cables, or apparatus to a substation and to clear and keep the Easement Area cleared of trees, undergrowth, and all other obstructions by any lawful means, and to construct any fencing or other protective measures desired within the Easement Area.

(b) Driveway Easement. Grantor hereby grants unto Grantee (and Grantee's employees, contractors, agents, permitted successors, and permitted assigns), and Grantee hereby accepts from Grantor, the non-exclusive right, privilege, and easement over and across the Easement Area for access, ingress, egress, and regress for pedestrian and vehicular traffic (including construction vehicles, machinery, and equipment). Grantee shall have the right, upon written consent of Grantor, which shall not be unreasonably withheld or delayed, to create and maintain roadways and a slope adjoining the actual improved roadway within the Easement Area and the right to grade, construct, reconstruct, upgrade, replace, repair, maintain and use such roads as Grantee may deem necessary. Without limiting the generality of the foregoing, the rights granted herein shall entitle Grantee to use and improve any existing and future roads and access routes located on the Easement Area, including, without limitation, the right to construct, reconstruct, upgrade, replace, repair, maintain bridges or other means of crossing any irrigation, drainage or other ditches located in the Easement Area. Grantee's rights hereunder include the right of Grantee to allow its contractors, subcontractors, agents, employees, lessees, invitees, licensees, and any public utility providers to use the Easement Area in accordance with the terms of this Easement.

(c) Compliance with Law. Grantee shall comply (and shall cause its officers, directors, employees, agents, contractors, permitted successors, and permitted assigns to comply) with all laws, regulations, ordinances, permits, and other legal requirements applicable to Grantee's exercise of its rights hereunder, including, without limitation, its use of, and activities within, the Easement Area and its use, maintenance, and repair of Grantee's Facilities. Grantee shall not use the Easement Area or exercise its rights under this Easement for any unlawful purposes or in such a manner as to constitute a nuisance.

(d) Temporary Construction Easement. Grantor hereby grants unto Grantee (and Grantee's employees, contractors, agents, permitted successors, and permitted assigns), and Grantee hereby accepts from Grantor, an exclusive right, privilege, and easement over and across the 25-foot area adjacent to the Easement Area for use by Grantee, its successors and assigns for access to and for construction, maintenance, repair, replacement, and removal of roadway, utility and related improvements upon the Easement Area from time to time upon written consent of Grantor, which shall not be unreasonable withheld or delayed (the "**Temporary Construction Easement**"). The Temporary Construction Easement includes, but is not limited to, the right and privilege by Grantee to go onto and to access the Grantor Parcel with vehicles, heavy equipment, machinery, construction supplies, and building materials in order to construct, maintain, repair, replace and remove a roadway, utilities and related improvements within the Easement Area. Following the construction activities described above, Grantee shall reasonably restore property disturbed by the construction activities outside the Easement Area, including reseeding and stabilizing such areas.



3. Payment. In consideration of the rights granted hereunder, Grantee agrees to pay Grantor during the Term the amounts set forth in the Fee Schedule attached hereto.

4. No Barriers. No barriers, fences, or other obstructions shall be erected by Grantor within the Easement Area so as to unreasonably interfere with the free flow of pedestrian and vehicular traffic or to unreasonably interfere with the utilities placed within the Easement Area.

5. Construction Standards; Maintenance. Grantee has visited and inspected the Easement Area and, for purposes of this Easement, accepts the same in its "AS IS", "WHERE IS", "WITH ALL FAULTS" condition. Grantee acknowledges that no representations or warranties, express or implied, have been made to Grantee as to the condition of the Easement Area. Grantee shall perform all of its construction work at no expense to Grantor. In the event Grantee deems it necessary to utilize the Temporary Construction Easement, upon obtaining written consent of Grantor, which shall not be unreasonably withheld or delayed, as stated in numerical paragraph 2(d) hereinabove, Grantee shall give not fewer than two (2) days prior notice (which may be telephonic or by electronic mail) to Grantor of the date when any of Grantee's use thereof is to commence. After completion of the initial construction within the Easement Area, Grantee shall not unreasonably obstruct or interfere with Grantor's access to the Grantor Parcel. Grantor shall not, at any time, obstruct or interfere with Grantee's Access to the Easement Area or, upon requisite notice, the Temporary Construction Easement. Grantee shall be responsible for obtaining, at its own expense, the requisite approvals and permits for the construction work from any appropriate governmental authorities; provided, however, Grantor shall provide all necessary cooperation during such approval and permitting processes. Grantor shall pay all ad valorem taxes assessed or levied against Grantor's Parcel, except that Grantee shall be responsible for any taxes or assessments levied for, or as a result of, Grantee's Facilities or other future improvements placed on the Easement Area by Grantee pursuant to its rights granted hereunder. Grantee shall maintain the Grantee's Facilities located in the Easement Area at Grantee's sole cost and expense.

6. Liens. Grantor shall not suffer or permit the Easement Area to be encumbered by any lien or encumbrance that has priority over this Easement. In the event of any liens or encumbrances burdening the Easement Area exist as of the Effective Date, Grantor shall, at its own cost and expense, cause the same to be cancelled, discharged, or subordinated to the rights of the Grantee hereunder within twenty (20) days. Grantee shall not suffer or permit the Driveway Easement Area or the Temporary Construction Easement Area to be encumbered by any lien or encumbrance without prior, written consent of Grantor, which shall not be unreasonable withheld or delayed.

7. Breach; No Waiver. The terms and conditions of this Easement shall be enforceable by either party (or its permitted successors or permitted assigns), by actions for specific performance or injunction, in addition to any other remedies available at law. No delay or omission by any party in exercising any right or power accruing upon any noncompliance or failure of performance by the other party under the provisions of this Easement shall impair any such right or power or be construed to be a waiver thereof.

8. No Public Dedication. Nothing contained in this Easement shall be deemed to be a gift or dedication to the general public or for any public use or purpose whatsoever or be deemed to create any rights or benefits in favor of any municipality, public authority, or official thereof, it being the intention of the parties hereto that this Easement be for the exclusive benefit of the parties and those claiming under them.

9. Termination. Grantee, or its successors and assigns, may terminate this Easement [REDACTED]. Grantor shall have the right to terminate this Easement, [REDACTED].



██████████ Upon a termination of this Easement by Grantor permitted hereunder, this Easement shall terminate and become null and void, and neither Grantor nor Grantee shall have any further obligations hereunder. Except as provided herein, no act or failure to act on the part of Grantee or the holder of any interest in the Easement shall be deemed to constitute an abandonment, surrender or termination thereof, and shall not impair, terminate or otherwise affect the validity or effectiveness of such Easement, except upon recordation by such holder of a quitclaim deed specifically conveying such Easement back to Grantor. Nonuse of the Easement Area shall not prevent the future use of the entire scope thereof in the event the same is needed. ██████████

██████████ In the event of termination of this Easement, Grantee shall peaceably and quietly vacate, surrender, and return the Easement Area to Grantor. Subject to the rights of Grantor, Grantee agrees and hereby covenants to, ██████████ (i) dismantle and remove all equipment, improvements, fixtures, and other property owned or installed by Grantee on the Easement Area and (ii) restore the Easement Area to substantially its original condition (reasonable wear and tear and damage by condemnation or casualty excepted); ██████████

██████████ Grantor shall provide Grantee access to the Grantor Parcel during such ██████████ period as reasonably necessary to effectuate such dismantling, removal, and restoration. Upon the termination of this Easement and at the request of either party, the parties shall enter into an instrument terminating this Easement (in recordable form) and such instrument shall be recorded with the Office of the Clerk of Marion County, Commonwealth Kentucky.

10. Relationship of Parties. Nothing contained in this Easement shall be construed to make the parties partners or joint venturers or render either liable for the debts or obligations of the other.

11. Modification. This Easement may be modified, amended, or canceled only by written instrument executed by all parties in interest at the time of such amendment and recorded with the Office of the Clerk of Marion County, Commonwealth Kentucky.

12. Benefits and Burdens Running with the Land. Grantor covenants with Grantee that Grantor is seized of the Grantor Parcel in fee simple, has the right to convey these easements, that title is marketable and free and clear of all encumbrances except those of record to which Grantee has agreed in writing to allow to remain, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever. The benefits and burdens, rights and obligations, easements and restrictions created by this Easement shall run with and burden and be binding upon the Grantor Parcel in perpetuity and shall inure to the benefit of and be binding upon the parties and those claiming by, through, or under them. The covenants, agreements, terms, provisions, and conditions of this Easement shall bind and benefit the successors in interest of the parties hereto with the same effect as if mentioned in each instance when a party hereto is named or referred to, it being understood and agreed that upon any transfer of ownership of all or any part of any of the parcels, each such successor in interest shall thereupon and thereafter assume, and perform and observe, any and all of the obligations of its predecessors in interest under this Easement.

13. Assignment and Transfer. The easement rights set forth in this Easement may be assigned by Grantee, in whole or in part. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Grantor and Grantee and their respective legal representatives, successors and assigns.

14. Exclusivity. Grantor may not grant rights within the Easement Area to any other party; provided, however, Grantor shall not be precluded from transferring its ownership interest in the Grantor Parcel, provided that such transfer is made subject to this Easement.



15. Notice. Any notice, demand, and other communications hereunder shall be in writing and shall be deemed properly given if served personally on the party to whom notice is to be given, or if mailed to the party to whom notice is to be given by (i) first class mail, postage prepaid, registered or certified, return receipt requested, or (ii) by nationally recognized overnight courier, addressed to the party to whom notice is to be given at the address set forth above and naming the individuals hereinafter set forth (as applicable). Any notice, demand, and other communications hereunder shall be deemed received upon actual receipt or refusal thereof. Either party may change its address and/or the names of such individuals for purposes hereof by giving the other party notice of the new address in the manner described herein.

16. Further Assurances. Each party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other party to effectuate the purposes and intention of this Easement.

17. Estoppel. Each party hereto shall from time to time as requested by the other party execute and deliver to the requesting party (or to a party designated), within fifteen (15) days of demand therefor, a written statement which shall confirm that there is no default under this Easement (or specifying any default) and which shall contain such other information or confirmations as may reasonably be required.

18. Miscellaneous. This Easement shall be construed under Kentucky law and supersedes all prior agreements and memoranda with respect to the subject matter hereof. The captions and headings are used only as a matter of convenience and are not to be considered a part of this Easement or to be used in determining the intent of the parties. All recitals contained at the beginning of this Easement are an integral part of this Easement and are fully incorporated into the body of this Easement. If any provision of this Easement shall be declared invalid or unenforceable, the remainder of this Easement shall continue in full force and effect.

As used in this Easement: The term "reasonable attorneys' fees" and any similar phrases shall mean the fees actually incurred at standard hourly rates. Time is of the essence in this Easement. The persons executing this Easement on behalf of Grantor and Grantee warrant and represent that each of them is duly authorized to enter into this Easement, to grant the rights granted under this Easement, and that this Easement constitutes the valid and binding obligations of Grantor and Grantee, respectively, enforceable against Grantor and Grantee in accordance with its terms. This Easement may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

19. No Interference with Easements. Grantor's activities and any grant of rights Grantor makes to any person or entity on the Easement Area or Temporary Construction Easement, shall not, currently or in the future, impede or interfere with the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Grantee's Facilities, or elsewhere, or the exercise of Grantee's rights of access pursuant to this Easement. In furtherance of, but not in any way in limitation of the generality of the foregoing, Grantee and Grantor agree as follows:

(a) Grantee shall have the right, from time to time, to clear and to keep clear the Easement Area and, upon written consent of Grantor, which shall not be unreasonable withheld or delayed, the real property affected thereby, free from explosives, buildings, structures, equipment, trees, vines, brush, combustible materials and any and all other obstructions of any kind, including, but not in any way in limitation of the generality of the foregoing, swimming pools and appurtenances, fences, and the parking of automobiles, trucks or other mechanical equipment, for protection from fire and other hazards and from interference with ingress and egress and with the unobstructed use of the Easement and the Easement Area and every part thereof.



(b) In addition to the right of the Grantee to remove trees from the Easement Area, Grantee shall also have the right to trim or top and to keep trimmed or topped any and all trees and brush within the Easement Area, and, upon written consent of Grantor, which shall not be unreasonable withheld or delayed, any and all trees and brush on the Grantor Parcel along each side of the Easement Area, which now or hereafter in the judgment of Grantee shall be reasonably necessary for the proper construction, operation and maintenance of Grantee's Facilities, or as Grantee deems necessary to comply with applicable state or federal regulations.

(c) Grantor shall not exercise or authorize or permit the exercise of any surface or sub-surface rights affecting the Easement Area, including, without limitation, mineral, gas and oil resources, which might damage Grantee's Facilities or interfere or endanger in any material respect Grantee's use of the Easement. Grantor shall not deposit or permit or allow to be deposited, earth, rubbish, debris or any other substance or material, whether combustible or noncombustible, on the Easement Area, or so near thereto as to constitute, in the reasonable opinion of Grantee and Grantor, a menace or danger to Grantee's Facilities. Grantor shall not increase or decrease the ground surface elevations nor allow the ground surface elevations to be increased or decreased in any manner within the Easement Area, nor shall the ground within the Easement Area be penetrated in any manner the prior written consent of Grantee.

(d) Grantor may use Easement Area for its own purposes so long as such uses do not interfere with Grantee's full enjoyment of the rights granted to Grantee under this Easement or damage any of Grantee's Facilities.

20. Indemnification. Grantee shall indemnify, defend, and save harmless Grantor, its officers, directors, employees, contractors, and agents from and against any and all claims, damages, demands, legal or administrative actions (formal or informal), expenses (including reasonable attorneys' fees and court costs), and liability (whether or not such liability has been judicially determined) for loss of or damage to the Grantor Parcel, the Easement Area, or property of others (including environmental damages and hazardous or toxic waste clean-up) and injuries to or death of all persons, howsoever resulting, on account of or based upon the negligent or willful act or omission of Grantee (or any officer, director, employee, agent, or contractor of Grantee); provided, however, that if the loss of or damage to property, or injury to or death of persons, results from the negligent or willful act of Grantor (or any officer, director, employee, agent, or contractor of Grantor), then Grantee's indemnification, defense, and save harmless obligations shall not be applicable. Grantor shall indemnify, defend, and save harmless Grantee, its officers, directors, employees, contractors, and agents from and against any and all claims, damages, demands, legal or administrative actions (formal or informal), expenses (including reasonable attorneys' fees and court costs), and liability (whether or not such liability has been judicially determined) for loss of or damage to the Grantee Facilities, the Easement Area, or property of others (including environmental damages and hazardous or toxic waste clean-up) and injuries to or death of all persons, howsoever resulting, on account of or based upon the negligent or willful act or omission of Grantor (or any officer, director, employee, agent, or contractor of Grantor); provided, however, that if the loss of or damage to property, or injury to or death of persons, results from the negligent or willful act of Grantee (or any officer, director, employee, agent, or contractor of Grantee), then Grantor's indemnification, defense, and save harmless obligations shall not be applicable. The provisions of this Section 20 shall survive the expiration or termination of this Easement.

21. Improvements. All Grantee's Facilities constructed or placed upon the Easement Area by or on behalf of Grantee shall at all times remain the property of Grantee, and Grantor shall have no right, title or interest therein, whether or not such property shall be permanently affixed to the real estate unless Grantee defaults upon the Fee Schedule attached hereto. All Grantee's Facilities constructed or placed upon the Easement Area by or on behalf of Grantee may be removed, repaired, altered or replaced by Grantee at any time; and some or all of the Grantee's Facilities, as determined by Grantee, may be owned



jointly among all Grantee entities or by individual Grantee entities. All road facilities and other improvements that Grantee constructs, installs or places within the Easement Area shall be entirely at Grantee's expense.

22. Mortgagee Protection. Except as provided for in Section 6, Liens, Grantee shall have the right, without Grantor's prior consent or approval, at any time and from time to time, to mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Easement Area (excluding the Driveway Easement Area or the Temporary Construction Easement Area), (holders of these various security interests are referred to as "**Mortgagees**") provided, in no event will such assignment, encumbrance or grant encumber Grantor's underlying fee interest in the Grantor Parcel. No liability for the performance of Grantee's obligations under this Easement shall attach to or be imposed upon any Mortgagee, unless such Mortgagee forecloses its interest and becomes the grantee under this Easement, following which the liability shall attach only during the term such Mortgagee directly holds the interest of the grantee under this Easement. If this Easement is terminated or rejected in connection with a bankruptcy, insolvency, winding up or similar occurrence with respect to Grantee, then Grantor shall give prompt notice thereof to the Mortgagee. Grantor shall, upon written request of Mortgagee, enter a new easement agreement, with terms no less favorable to Grantor, with the Mortgagee or its designee, within thirty (30) days after receipt of such request. Such new easement agreement shall be effective as of the date of such rejection, disaffirmation or termination, and shall be upon the same terms, covenants, conditions and agreements as contained in this Easement; and, until such time as such new easement agreement is executed and delivered, Mortgagee or its designee may enter, use and enjoy the Easement Area and conduct operations thereon as if this Easement were still in effect. As a condition to the execution of such new easement agreement, the Mortgagee or its designee shall (i) pay Grantor any amounts which are due to Grantor from Grantee; (ii) pay Grantor any and all amounts which would have been due under this Easement had it not been terminated, from the date of termination to the date of the new agreement; and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements set forth in this Easement to be performed by Grantee, to the extent that Grantee failed to perform the same prior to execution and delivery of the new agreement. In the event the new easement is not executed within 90 days after such rejection, disaffirmation or termination, Grantor may within 30 days after such 90 days period provide notice to Mortgagee of Grantor's intent to terminate this Easement, which termination will be effective 30 days after delivery of such notice; provided, however, if Mortgagee delivers a signed easement within such 30 day period, the termination notice shall be null and void and this Easement shall remain in full force and effect.

*[Signature Page to Follow]*









Prepared by:



---

Brian Zoeller  
Frost Brown Todd LLC  
400 W. Market St., 32nd Floor  
Louisville, KY 40202

EXHIBIT A

Property Description

Marion County, Kentucky

County Parcel Number 055-006

LOCATED in Marion County, Kentucky on the Lebanon-Springfield Highway approximately three (3) miles North of Lebanon, Kentucky, being more particularly described as follows:

BEGINNING at the Southeast corner of the tract and in the middle of the Lebanon-Springfield Turnpike, and thence with said Turnpike N.  $23\frac{1}{2}$  W. 30- $\frac{1}{3}$  poles, N. 16 W. 21- $\frac{1}{5}$  poles, N.  $12\frac{1}{2}$  W. 45 poles to a corner of Humphrey land, thence N.  $72\frac{1}{2}$  W. 29- $\frac{2}{3}$  poles to a stone on East bank of Cartwright's Creek, thence S. 47 $^{\circ}$ 8 W. 7 $^{\circ}$ 5 poles to stone on West side of said Creek, thence S. 79 W. 147 poles to stone, thence S. 10 E. 64 poles to stone, thence S. 61 W. 77 $\frac{1}{2}$  poles to stone in Paul I. McElroy's line, thence with said line S. 29 E. 67 $\frac{1}{2}$  poles to stone, thence N. 44 E. 81 $\frac{1}{2}$  poles to stone, N. 78- $\frac{3}{4}$  poles to stone, thence N. 80 E. 139- $\frac{3}{4}$  poles to a stone, N. 77 $\frac{1}{2}$  E. 15 $\frac{1}{2}$  poles to stone, N. 77 $\frac{1}{2}$  E. 15 $\frac{1}{2}$  poles to the place of beginning.

HOWEVER, THERE IS EXCEPTED from the foregoing that portion thereof conveyed the Commonwealth of Kentucky, Department of Highways, by deed dated January 25, 1927 of record in Deed Book 47, page 275 in the Marion County Court Clerk's office, and by deed dated October 27, 1978 of record in Deed Book 116, page 622 therein.

Being the real estate conveyed to Michael A. Gootee and Krystal B. Gootee, husband and wife, Deed Book 326, Page 114, filed in the Register of Deeds Office of Marion County, KY.

Containing 147 acres, more or less



Exhibit B  
To  
Access and Utility Easement

**Easement Area**



[CONFIDENTIAL - DO NOT RECORD]

Fee Schedule  
To  
Access and Utility Easement

<u>Payment</u>	<u>Amount</u>	<u>Timing</u>
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]



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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**After Recording Return To:**  
BrightNight, LLC  
515 N Flagler Drive  
Suite P-200  
West Palm Beach, FL 33401  
Attn: Legal

**FIRST AMENDMENT TO ACCESS AND UTILITY EASEMENT**

THIS FIRST AMENDMENT TO ACCESS AND UTILITY EASEMENT (“**First Amendment**”) is made and entered into as of the 12<sup>th</sup> day of January, 2024 (“**First Amendment Effective Date**”) by Adam Gootee and Krystal Gootee, husband and wife (“**Grantor**”), and FRON bn, LLC, a Delaware limited liability company (“**Grantee**”). Grantor and Grantee may hereafter be referred to as, together, the “**Parties**”.

**RECITALS:**

A. Grantor and Grantee entered into that certain Access and Utility Easement dated December 9, 2021, and recorded December 8, 2023, in the real property records of Marion County, Kentucky in Deed Book 360, Page 601 (“**Easement**”).

B. Grantor and Grantee desire to amend the Easement as provided below.

**AMENDMENT:**

NOW THEREFORE, in consideration of the covenants, agreements and for other good and valuable consideration herein contained, Landlord and Lessee agree as follows:

1. Utility Easement. The first sentence of Section 2(a) of the Easement is revised as follows:

Grantor hereby grants and conveys unto Grantee (and Grantee’s employees, contractors, agents, permitted successors, and permitted assigns), and Grantee hereby accepts from Grantor a seventy-five feet (75’) wide, perpetual, exclusive right, privilege, and easement over

and across that certain portion of the Grantor Parcel outlined in yellow or shown in hashmarks on the attached Exhibit B attached hereto and incorporated by this reference (the “**Easement Area**”) for the installation, maintenance, repair, replacement, and removal of: underground and above-ground power and telecommunication lines and all infrastructure and facilities associated therewith, including, but not limited to, collector station, poles, towers, foundations, wires, conduits, ducts, switches, transformers, and other structures and apparatus necessary or convenient for the construction, operation, regulation, control, grounding and maintenance of electric lines and communication circuits, for the purpose of transmitting, distributing, regulating and controlling electric energy to be used for light, heat, power, communication, and other purposes, together with their strengthening supports, sufficient foundations and supports, to connect the electrical or energy generating facility contemplated to be constructed by Grantee now or in the future and other underground and above-ground fixtures, appliances and appurtenances connected therewith (collectively, “**Grantee’s Facilities**”). Grantor and Grantee shall work together on the final, approved design of the Easement Area to ensure constructability and acceptability of Grantee’s Facilities by both Parties, within the described parameters herein, and said approval shall not to be unreasonably withheld by either Party.

It is hereby mutually understood and agreed upon that the remainder Section 2(a) of the Easement shall remain unchanged and shall continue in full force and effect.

2. Exhibit B. Exhibit B of the Easement is hereby deleted in its entirety and replaced with the Exhibit B attached to this First Amendment.

3. Fee Schedule. The Fee Schedule is hereby deleted in its entirety and replaced with the Fee Schedule attached to this First Amendment (the “**Revised Fee Schedule**”), which Revised Fee Schedule shall be removed prior to the recording of this First Amendment.

4. Liens. Section 6 of the Easement is hereby deleted in its entirety and replaced with the following:

“Liens. Grantor shall not suffer or permit the Easement Area to be encumbered by any lien or encumbrance that has priority over this Easement. In the event that there are any liens or encumbrances burdening the Easement Area as of the Effective Date, Grantor shall, at its own cost and expense, cause the same to be cancelled, discharged, or subordinated to the rights of the Grantee hereunder within twenty (20) days. Grantee shall keep the Easement Area, Temporary Easement Area, and Grantor Parcel free and clear of all mechanics’ liens for labor, materials, services, supplies and equipment performed on or furnished to Grantee or any Grantee Facility on the Grantor Parcel or Easement Area. Grantee shall not suffer or permit the Temporary Construction Easement Area to be encumbered by any lien or encumbrance without prior, written consent of Grantor, which shall not be unreasonably withheld or delayed.”

5. Termination. Section 9 of the Easement is hereby deleted in its entirety and replaced with the following:

“Grantee, or its successors and assigns, may terminate this Easement at any time [REDACTED]  
[REDACTED] Grantor shall have the right to terminate this Easement,



[REDACTED] Upon a termination of this Easement by Grantor permitted hereunder, this Easement shall terminate and become null and void, and neither Grantor nor Grantee shall have any further obligations hereunder. Except as provided herein, no act or failure to act on the part of Grantee or the holder of any interest in the Easement shall be deemed to constitute an abandonment, surrender or termination thereof, and shall not impair, terminate or otherwise affect the validity or effectiveness of such Easement, except upon recordation by such holder of a quitclaim deed specifically conveying such Easement back to Grantor, [REDACTED]

[REDACTED] In the event of termination of this Easement, Grantee shall peaceably and quietly vacate, surrender, and return the Easement Area to Grantor. Subject to the rights of Grantor, Grantee agrees and hereby covenants to, [REDACTED]: (i) dismantle and remove all equipment, improvements, fixtures, and other property owned or installed by Grantee on the Easement Area and (ii) restore the Easement Area to substantially its original condition (reasonable wear and tear and damage by condemnation or casualty excepted);

[REDACTED] Grantor shall provide Grantee access to the Grantor Parcel during such [REDACTED] period as reasonably necessary to effectuate such dismantling, removal, and restoration. Upon the termination of this Easement and at the request of either party, the parties shall enter into an instrument terminating this Easement (in recordable form) and such instrument shall be recorded with the Office of the Clerk of Marion County, Commonwealth of Kentucky.”

6. Assignment and Transfer. Section 13 of the Easement is hereby deleted in its entirety and replaced with the following:

“The easement rights set forth in this Easement may be assigned by Grantee, in whole or in part, without Grantor's prior consent or approval, *provided however*, (i) there is no default hereunder beyond applicable notice and cure periods and (ii) Grantee shall not be relieved from liability for any of its obligations under this Easement by virtue of the assignment or conveyance unless Grantee assigns or conveys all of its interests under the Easement to the assignee or transferee that has (a) demonstrated experience in developing, managing and operating commercial energy facilities reasonably similar to Grantee's Facilities and (b) adequate financial resources to perform Grantee's payment and other obligations under this Easement, in which event Grantee shall have no continuing liability and (iii) Grantor receives all remaining payments due herein, in full, including, but not limited to the Construction Start Payment and Construction Completion Payment prior to the assignment and transfer. Grantor's consent, if required hereunder, shall not be unreasonably withheld, conditioned, or delayed. If Grantor fails to respond to any such request for Grantor's consent within thirty (30) days, Grantor shall be deemed to have granted its consent. This Easement shall be binding upon and enforceable against, and shall inure to the benefit of, Grantor and Grantee and their respective legal representatives, successors and assigns.”

7. Further Assurances. Section 16 of the Easement is hereby deleted in its entirety and replaced with the following:

“Each party agrees that it will execute and deliver such other documents and take such other action as may be reasonably requested by the other party to effectuate the purposes and intention of this Easement. Provided that no material default in the performance of Grantee’s obligations under this Easement shall have occurred and remain uncured, Grantor shall cooperate with Grantee in amending this Easement from time to time to include any provision that may be reasonably requested by Grantee, conditioned on said provision(s) being acceptable by the Grantor, for the purpose of implementing the provisions contained in this Easement or for the purpose of preserving the security interest of any transferee of Grantee or Mortgagee.”

8. Improvements. The first sentence of Section 21 of the Easement is hereby deleted in its entirety and replaced with the following:

“All Grantee’s Facilities constructed or placed upon the Easement Area by or on behalf of Grantee shall at all times remain the property of Grantee, and Grantor shall have no right, title or interest therein, whether or not such property shall be permanently affixed to the real estate.”

9. Mortgagee Protection. The first sentence of Section 22 of the Easement is hereby deleted in its entirety and replaced with the following:

“Mortgagee Protection. “Grantee shall have the right, without Grantor's prior consent or approval, at any time and from time to time, to mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in the Easement Area (excluding the Temporary Construction Easement Area), (holders of these various security interests are referred to as “Mortgagees”) provided, in no event will such assignment, encumbrance or grant encumber Grantor's underlying fee interest in the Grantor Parcel.”

It is hereby mutually understood and agreed upon that the remainder Section 22 of the Easement shall remain unchanged and shall continue in full force and effect.

10. Compensation. As consideration for Grantor’s execution of this First Amendment, Grantee shall pay Grantor the “**Amendment Execution Payment**” as set forth on the Revised Fee Schedule, as well as all other payments set forth therein.

11. Capitalized Terms. Capitalized terms not defined herein shall have the meaning ascribed to them in the Easement.

12. No Modification. Except as specifically set forth in this First Amendment, all terms and conditions of the Easement shall remain in full force and effect. In the event of any inconsistency between the terms of the Easement and this First Amendment, the terms of this First Amendment, shall prevail.

13. Counterparts. This First Amendment may be executed in separate counterparts, each of which will be deemed an original, and all of which together will constitute one and the same agreement.



IN WITNESS WHEREOF, each of the Parties hereto has caused this First Amendment to be executed as of the day and year first above written.

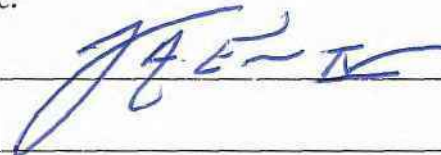
GRANTOR:

  
Adam Gootee

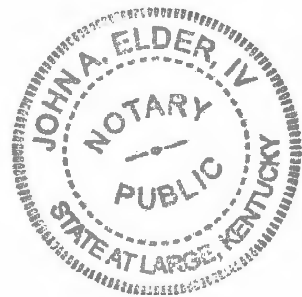
  
Krystal Gootee

COMMONWEALTH OF KENTUCKY )  
 )SS:  
COUNTY OF MARION )

The foregoing instrument was acknowledged before me this 12<sup>TH</sup> day of January, 2024, by Adam Gootee and Krystal Gootee, husband and wife.

  
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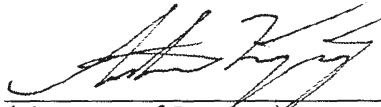
Name: JOHN A. ELDER, IV  
Title: NOTARY PUBLIC; KYNP36975  
My appointment expires: 10/04/2025





This instrument was prepared by Anton Sergeyevich Krayniy, Esq. of BrightNight, LLC.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.



\_\_\_\_\_  
(Signature of Preparer)

Anton Sergeyevich Krayniy

\_\_\_\_\_  
(Printed name of Preparer)

BrightNight, LLC  
515 North Flagler Drive, Suite P-200  
West Palm Beach, FL 33401



[CONFIDENTIAL - DO NOT RECORD]

Revised Fee Schedule To  
Access and Utility Easement

<u>Payment</u>	<u>Amount</u>	<u>Timing</u>
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

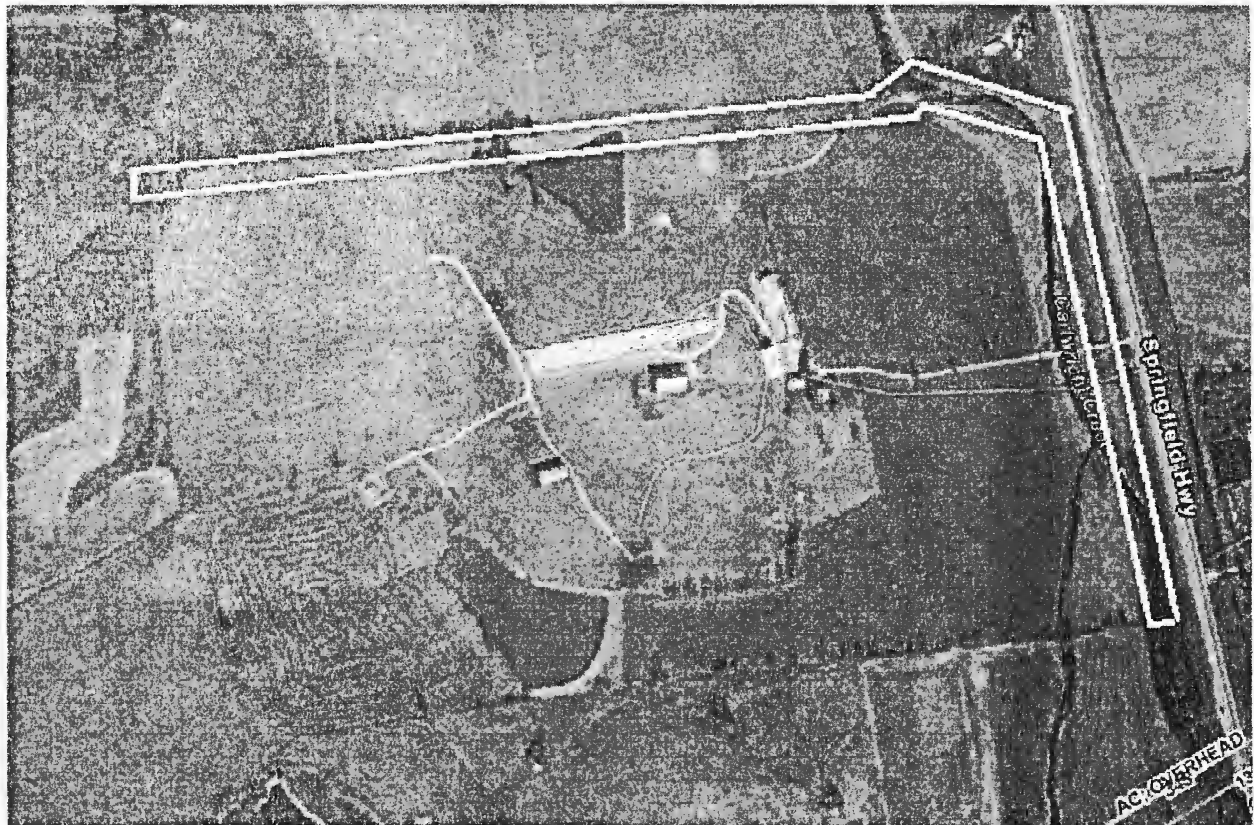
[REMOVE PRIOR TO RECORDING]

**Exhibit B  
To  
Access and Utility Easement**

Intent

The Parties understand and agree that the final width of the Easement Area will be no more than seventy-five feet (75') wide and will be located inside of the Anticipated Easement Area shown below outlined in yellow.

Easement Area



**Exhibit B**  
**To**  
**Access and Utility Easement**

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Easement Area

