



2023K024257

Sandy Wegman
RECORDER - KANE COUNTY, IL

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REC FEE: 59.00 RHSPS FEE: 18.00
PAGES: 10

MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT

THIS MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT (this "Memorandum"), is made, dated and effective as of October 30th, 2022 (the "Effective Date"), between **Blair H. Alexander and Richard F. Johnson**, (collectively "Owner"), and **KaneSolar02 LLC**, ("Grantee"), with regards to the following:

1. Solar Agreement. Owner and Grantee did enter into that certain Solar Energy Lease and Easement Agreement of even date herewith (the "Agreement"), which affects a portion of the real property located in Kane County, State of Illinois, as more particularly described in Exhibit A attached hereto (the "Overall Property"). Capitalized terms used and not defined herein have the meaning given the same in the Agreement.

2. Grant of Rights. The Agreement grants Grantee an exclusive leasehold interest in a portion of the Property, and grants (or shall grant) to Grantee the easements specified; such leasehold and easement rights include, without limitation:

- (i) the exclusive right to erect, construct, reconstruct, replace, relocate, remove, operate, maintain and use the following from time to time, on, under, over and across the Leased Property, in connection with Project Facilities, whether such Project Facilities are located on the Leased Property or elsewhere on one or more Solar Energy Projects (in such locations as Grantee shall determine from time to time in the exercise of its sole discretion after notice to Owner), all subject to the terms and limitations imposed on Grantee pursuant to this Agreement: (a) a line or lines of utility support poles, with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes related to energy production or solar power, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables (collectively "Transmission Facilities"); (b) facilities consisting of one or more substations for electrical collection, to step up the voltage, interconnect to transmission line or lines, and meter electricity, together with the right to perform all other ancillary activities normally associated with such a facility as may be necessary or appropriate to service Project Facilities, regardless where located, (collectively "Interconnection Facilities"); and (c) with all necessary easements therefore;

{the space below is reserved for recording information: this Memorandum continues on the following page}

- (ii) an easement and right over and across the Leased Property for any audio, visual, view, light, shadow, noise, vibration, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from the Project Activities, Project Facilities or the Solar Energy Projects, and/or any and all other related facilities, wherever located, subject to applicable federal, Illinois and local statutes, regulations and ordinances, now and as they may be created and/or amended;
- (iii) an exclusive easement and right to capture, use and convert the unobstructed solar resources over and across the Leased Property; any obstruction to the receipt of and access to sunlight throughout the entire area of the Leased Property is prohibited, though Owner and Grantee acknowledge neither party is able to control the acts of third parties, public or private, and Owner makes no guarantees or representations regarding obstruction not originating on the Leased Property;
- (iv) an exclusive right for the installation, use, repair, replacement and removal of Transmission Facilities over and across the Leased Property;
- (v) an exclusive right for the installation, use, operation, maintenance, repair, replacement and removal of Project Facilities on the Leased Property;
- (vi) an easement and right on the Leased Property to prevent measurable diminishment in output due to obstruction of the sunlight across the Leased Property including but not limited to an easement and right to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation now or hereafter existing on the Leased Property which might obstruct receipt of or access to sunlight throughout the Leased Property or interfere with or endanger the Project Facilities or Grantee's operations, as determined by Grantee;
- (vii) an exclusive easement and right to a "Solar Easement" on the Overall Property to prevent measurable diminishment in output from the Project due to obstruction of the sunlight across the Leased Property. Without limiting the generality of the foregoing, neither Owner nor any person claiming through Owner shall (i) engage in any activity on the Leased Property (whether by planting trees or other vegetation, constructing buildings or other structures, or otherwise) that obstructs or impairs the availability of sunlight to the Leased Property; or (ii) engage in any activity which would cause the introduction of excessive dust for continued and prolonged periods of time onto the Leased Property, as more particularly described in Section 10.2.
- (viii) the right of subjacent and lateral support on the Leased Property to whatever is necessary for the operation and maintenance of the Solar Energy Projects, including, without limitation, guy wires and supports;
- (ix) the right to undertake any such purposes or other activities, whether accomplished by Grantee or a third party authorized by Grantee, that Grantee determines are necessary, useful or appropriate to accomplish any of the purposes or uses set forth in this Agreement or that are compatible with such purposes or uses.

The foregoing easements described in Sections 2.1(i) – (ix), are collectively referred to herein as "Project Easements." The easement rights granted by Owner under this Agreement constitute Easements in Gross, personal to and for the benefit of Grantee, its successors and assigns, as owner of such easements, and the Parties expressly agree that such easement rights shall be transferable in accordance with the assignment provisions of this Agreement, and shall be terminated and released upon expiration or termination of this Agreement, including termination in the event of uncured default as outlined in Section 14. The Parties expressly intend for all easement rights herein to be, and for this Agreement to create, Easements in Gross

in Grantee, and neither such easements nor this Agreement shall be appurtenant to any other property or interest.

The following provisions shall apply to each Easement: (a) Each Easement shall be for a term that is coterminous with the Lease Term. Notwithstanding any other provision of this Agreement, no Easement shall be terminable by Owner upon a default under this Agreement, unless there is also an uncured default by the holder of the Easement under such Easement; (b) Each Easement shall be a charge and burden against the Overall Property, and shall inure to the benefit of and be binding upon Owner and the holder of such Easement, and their respective transferees, successors and assigns, and all persons claiming under them; and (c) The holder of each Easement shall have the right, without the need for Owner's consent, and Owner hereby grants consent to Grantee, to freely hypothecate, mortgage, or finance such Easement on an exclusive or non-exclusive basis (including by mortgage, deed of trust or personal property security instrument) to any Mortgagee as security for the repayment of any indebtedness and/or the performance of any Mortgage, grant co-tenancy interests in such Easement, grant sub-easements under such Easement, or sell, convey, lease, assign, mortgage, encumber or transfer such Easement.

The Agreement also provides a right of first refusal to purchase the Property from Owner.

The Agreement grants the aforementioned rights on a portion of the Overall Property, more specifically described in Exhibit A-1 ("**Leased Property**").

3. Term. The Agreement shall be for an initial Development Term of up to forty-eight (48) months (with a right to extend), a subsequent Construction Term of up to **twelve (12) months** (with a right to extend), and a subsequent Operations Term of up to **thirty-five (35) years**. The easements granted pursuant to the Agreement are for a term coterminous with the Agreement.

4. Rights of Mortgagees. Pursuant to the Agreement, any Mortgagee of Grantee or Grantee's assignees has certain rights regarding notice and right to cure any default of Grantee under the Agreement, and the right to take possession of the Property, and to acquire the leasehold estate by foreclosure, as well as other rights as set forth in the Agreement.

5. Assignment. Grantee's rights and obligations under the Agreement shall be assignable provided that such assignment is in furtherance of the provisions of the development of the Solar Energy Project contemplated by the Agreement. Owner shall not transfer the Leased Property until Owner notifies Grantee in writing of any such sale, assignment or transfer of any of Owner's interest in the Leased Property, the Project Easements, or any portions thereof, and provides to Grantee written evidence of the express assumption by the transferee of the Owner's obligations hereunder.

6. Non-Interference and Setbacks. To the extent permitted by law Owner has waived any and all setbacks and setback requirements, whether imposed by applicable law or by any person or entity, including any setback requirements described in the zoning ordinance of the County or in any governmental entitlement or permit heretofore or hereafter issued to Grantee, such Sublessee or such Affiliate. Owner has agreed not to engage in any activity that might cause a decrease in the output or efficiency of any Project Facilities without the prior written consent of Grantee.

7. Subordination. The Agreement provides that from and after its effective date, any right, title or interest created by Owner in favor of or granted to any third party shall be subject to (i) the Agreement and all of Grantee's rights, title and interests created thereby, (ii) any lien of any lender of Grantee's then in existence on the leasehold estate created by the Agreement, and (iii) Grantee's right to create a lien in favor of any lender of Grantee's.

8. Agreement Controls. This Memorandum does not supersede, modify, amend or otherwise change the terms, conditions or covenants of the Agreement, and Owner and Grantee executed and are recording this Memorandum solely for the purpose of providing constructive notice of the Agreement and Grantee's rights thereunder. The terms, conditions and covenants of the Agreement are incorporated in this Memorandum by reference as though fully set forth herein. To the extent the terms of the Agreement and this Memorandum cannot be easily reconciled, the terms of and within the Agreement shall control.

9. No Ownership. Owner shall have no ownership, lien, security or other interest in any Project Facilities installed on the Property, or except for as otherwise provided in the Agreement, any profits derived therefrom, and Grantee may remove any or all Project Facilities at any time.

10. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Memorandum to be effective as of the date first written above.

[signatures appear on following pages]

Owner:

Blair H. Alexander and Richard F. Johnson

By: [Signature]

Name: Blair H. Alexander

STATE OF Illinois

COUNTY OF Kane

§
§
§

This instrument was acknowledged before me on this 12th day of October, 2021 by Blair H. Alexander.

[SEAL]



[Signature]

Notary Public
State of Illinois

My commission expires: 3/24/2023

By: [Signature]

Name: Richard F. Johnson

STATE OF Illinois

COUNTY OF Kane

§
§
§

This instrument was acknowledged before me on this 12th day of October, 2021 by Richard F. Johnson.

[SEAL]



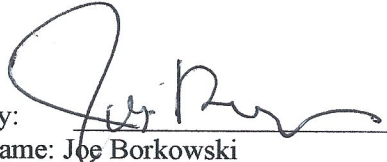
[Signature]

Notary Public
State of Illinois

My commission expires: 3/24/2023

GRANTEE:
KaneSolar02 LLC

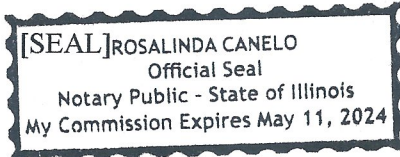
By: Horizon Solar Power LLC, Manager

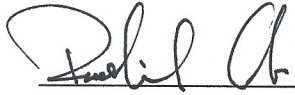
By: 
Name: Joe Borkowski
Title: Managing Director

STATE OF Illinois
COUNTY OF Cook

§
§
§

This instrument was acknowledged before me on this 30th day of June, 2023 by Joe Borkowski, as Manager of KaneSolar02 LLC, on behalf of said company.




Notary Public
State of Illinois

My commission expires: May 11, 2024

red
Prepared by and after recording return to:
Horizon Solar Power
330 W Goethe St
Chicago IL 60610

Exhibit "A" to

MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT

Description of the Property

The following described land located in Kane County, State of Illinois, containing 38.01 acres, more or less:

THAT PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHWEST FRACTIONAL QUARTER; THENCE NORTHERLY ALONG THE EAST LINE OF SAID QUARTER 1334.26 FEET TO THE NORTHEAST CORNER OF GOVERNMENT LOT NO. 1 OF SAID QUARTER; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOT 1322.83 FEET FOR A POINT OF BEGINNING; THENCE EASTERLY ALONG THE LAST DESCRIBED COURSE 90 FEET; THENCE NORTHERLY ALONG A LINE FORMING AN ANGLE OF 88 DEGREES 08 MINUTES 03 SECONDS WITH THE PROLONGATION OF THE LAST DESCRIBED COURSE (MEASURED COUNTERCLOCKWISE THEREFROM) 1301.81 FEET TO A LINE DRAWN PARALLEL WITH AND 50 FEET SOUTHERLY OF THE CENTER LINE MEASURED AT RIGHT ANGLES THERETO) OF ILLINOIS STATE ROUTE NO. 38; THENCE WESTERLY ALONG SAID PARALLEL LINE FORMING AN ANGLE OF 87 DEGREES 48 MINUTES 12 SECONDS WITH THE LAST DESCRIBED COURSE (MEASURED CLOCKWISE THEREFROM) 761.74 FEET TO THE WEST LINE OF THE EAST THREE-FOURTHS OF SAID NORTHWEST FRACTIONAL QUARTER; THENCE SOUTHERLY ALONG SAID WEST LINE 2637.51 FEET TO THE SOUTH LINE OF SAID QUARTER; THENCE EASTERLY ALONG THE SOUTH LINE OF SAID QUARTER 666.12 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3; THENCE NORTHERLY ALONG A LINE FORMING AN ANGLE OF 92 DEGREES 14 MINUTES 01 SECONDS WITH THE LAST DESCRIBED COURSE (MEASURED CLOCKWISE THEREFROM) 1338.38 FEET TO THE POINT OF BEGINNING, IN KANEVILLE TOWNSHIP, KANE COUNTY, ILLINOIS.

EXCEPTING THEREFROM:

THAT PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 3, TOWNSHIP 39 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SECTION OF SAID NORTHWEST FRACTIONAL QUARTER; THENCE NORTHERLY ALONG THE EAST LINE OF SAID QUARTER 1334.26 FEET TO THE NORTHEAST CORNER OF GOVERNMENT LOT 1 OF SAID QUARTER; THENCE WESTERLY ALONG THE NORTH LINE OF SAID LOT, 1232.83 FEET; THENCE NORTHERLY ALONG A LINE FORMING AN ANGLE OF 88 DEGREES 08 MINUTES 03 SECONDS MEASURED COUNTERCLOCKWISE FROM SAID NORTH LINE, 1301.81 FEET TO A LINE DRAWN PARALLEL WITH AND 50 FEET SOUTHERLY OF THE CENTER LINE OF ILLINOIS STATE ROUTE 38; THENCE WESTERLY ALONG SAID PARALLEL LINE FORMING AN ANGLE OF 87 DEGREES 48 MINUTES 12 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 60.04 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUING WESTERLY ALONG SAID PARALLEL LINE 701.66 FEET TO THE WEST LINE OF THE EAST THREE-FORTHS OF SAID NORTHWEST FRACTIONAL QUARTER; THENCE SOUTHERLY AT AN ANGLE OF 92 DEGREES 11 MINUTES 07 SECONDS MEASURED CLOCKWISE FROM SAID PARALLEL LINE AND ALONG SAID WEST LINE, 330.00 FEET; THENCE EASTERLY, AT AN ANGLE OF 87 DEGREES 48 MINUTES 53 SECONDS MEASURED CLOCKWISE FROM SAID WEST LINE AND PARALLEL TO SAID CENTERLINE, 701.55 FEET; THENCE NORTHERLY AT AN ANGLE OF 92 DEGREES 12

MINUTES 14 SECONDS MEASURED CLOCK WISE FROM THE LAST DESCRIBED COURSE,
330.00 FEET TO THE POINT OF BEGINNING, ALL IN KANEVILLE TOWNSHIP, KANE
COUNTY, ILLINOIS, CONTAINING 5.3 ACRES MORE OR LESS.

Exhibit "A-1" to

MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT

Description of the Leased Property

The following described land located in Kane County, State of Illinois, containing 38.01 acres, more or less:

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