

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording, Return To:
KCE TX 31, LLC
25 Monroe St., Suite 300
Albany, NY 12210

MEMORANDUM OF ENERGY STORAGE LEASE AND EASEMENT AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF KENDALL §

THIS MEMORANDUM OF ENERGY STORAGE LEASE AND EASEMENT AGREEMENT (this “Memorandum”), is made, dated and effective as of April 12, 2023 (the “Effective Date”), between **Carlton Biermann and Anita Biermann Revocable Trust** (collectively “Owner”), and **KCE TX 31, LLC**, a Delaware limited liability company (“Lessee”), with regards to the following:

1. Energy Storage Agreement. Owner and Lessee did enter into that certain Energy Storage Lease and Easement Agreement of even date herewith (the “Agreement”), which affects the real property located in **Kendall** County, State of Texas, as more particularly described in Exhibit A attached hereto (the “Property”). Capitalized terms used and not defined herein have the meaning given the same in the Agreement.

2. Grant of Rights. The Agreement grants Lessee an exclusive leasehold interest in the Property, and grants (or shall grant) to Lessee the easements specified; such leasehold and easement rights include, without limitation, (a) the exclusive right to access, relocate and maintain Project Facilities located on the Property; (b) the exclusive right to use the Property for collecting, receiving, storing and transmitting electrical energy; (c) an exclusive easement to utilize and operate energy storage resources over and across the Property; (d) an easement and right to prevent measurable diminishment in output due to obstruction on the Property; (e) the right to subjacent and lateral support for the Project Facilities; (f) the right to undertake any other activities necessary to accomplish the purposes of the Agreement. The Agreement also prohibits Owner from engaging in any activity on the Property that might cause a decrease in the output or efficiency of any of the Project Facilities. Lessee shall have the right to remove any obstructions that materially and adversely affect its operations if this covenant is violated. Owner further agrees to undertake reasonable efforts to prevent, or failing that, to minimize, the introduction of continuous dust onto the Project Facilities. Owner shall not and shall not allow any other person to use the Property, nor any adjacent property owned by Owner, for Energy Storage Purposes, as that term is defined in the Agreement (which rights and uses are exclusively granted to Lessee in the Agreement throughout the term of the Agreement).

3. Term. The Agreement shall be for an initial Development Term of up to **three (3) years**, a subsequent Construction Term of up to **twelve (12) months**, a subsequent Construction Extension Term of up to **twelve (12) months**, a subsequent Operations Term of up to **twenty (20) years**, and **two (2)** subsequent Extended Operations Terms of up to **five (5) years** each. 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 Lessee or Lessee’s assignees has certain rights regarding notice and right to cure any default of Lessee 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.

ELW

5. Assignment. Lessee's rights and obligations under the Agreement shall be assignable without Owner's prior written consent provided that such assignment is in furtherance of the provisions of the development of the Energy Project contemplated by the Agreement.

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 Lessee, 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 Lessee. Owner shall not utilize the surface of the Property to explore for, develop, or produce oil, gas, or other minerals from the Mineral Estate underlying the Property nor enter into any agreement permitting a third party to utilize the surface of the Property to explore for, develop, or produce, oil, gas or other minerals from the Mineral Estate underlying the Property. Lessee shall have the quiet use and enjoyment of the Property in accordance with and subject to the terms of this Agreement, without any interference of any kind by Owner or any person claiming through Owner.

7. No Liens; Subordination. Owner shall not, without the prior written consent of Lessee, create or permit to be created or to remain, any liens, encumbrances, leases, mortgages, deeds of trust, security interests, licenses or other exceptions with respect to the Property or any part thereof. Any such rights granted without Lessee's consent are void ab initio. 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 and subordinate to (i) the Agreement and all of Lessee's rights, title and interests created thereby, including any and all documents executed or to be executed by and between Lessee and Owner in connection with this Agreement, (ii) any lien of any lender of Lessee's then in existence on the leasehold estate created by the Agreement, and (iii) Lessee's right to create a lien in favor of any lender of Lessee'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 Lessee executed and are recording this Memorandum solely for the purpose of providing constructive notice of the Agreement and Lessee's rights thereunder. The terms, conditions and covenants of the Agreement are incorporated in this Memorandum by reference as though fully set forth herein.

9. No Ownership. Owner shall have no ownership, lien, security or other interest in any Project Facilities installed on the Property, or any profits derived therefrom, and Lessee 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]

ELW

OWNER:
Carlton Biermann and Anita Biermann Revocable Trust

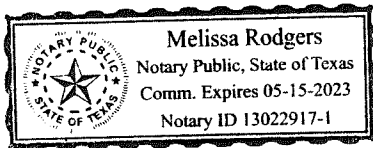
By: *Greg W Biermann*
PRINT NAME: GREGORY W. BIERMANN
PRINT TITLE: TRUSTEE

STATE OF TEXAS)
)
COUNTY OF Herrin)

This instrument was acknowledged before me on this 7th day of April, 2023 by GREGORY W. BIERMANN, Trustee of Carlton Biermann and Anita Biermann Revocable Trust, on behalf of such Trust.

[SEAL]

Melissa Rodgers
Notary Public State of Texas
My commission expires: 5-15-23



ELW

LESSEE:
KCE TX 31, LLC

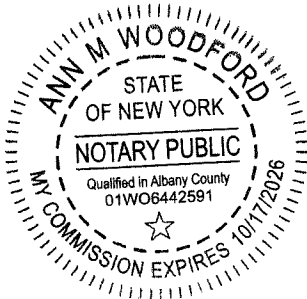
By: [Signature]
PRINT NAME: Taylor Quarles
PRINT TITLE: authorized Rep

STATE OF NEW YORK)
)
COUNTY OF ALBANY)

This instrument was acknowledged before me on this 12 day of April, 2023 by Taylor Quarles, Authorized Rep of KCE TX 31, LLC, a Delaware limited liability company, on behalf of such company.

[SEAL]

[Signature]
Notary Public State of New York
My commission expires: 10/17/2026



ELW

Exhibit A to
MEMORANDUM OF ENERGY STORAGE LEASE AND EASEMENT AGREEMENT

Description of Property

[Pursuant to the terms of the Agreement and upon request by Lessee, a more particular legal description of the Property shall be added to this Exhibit A]

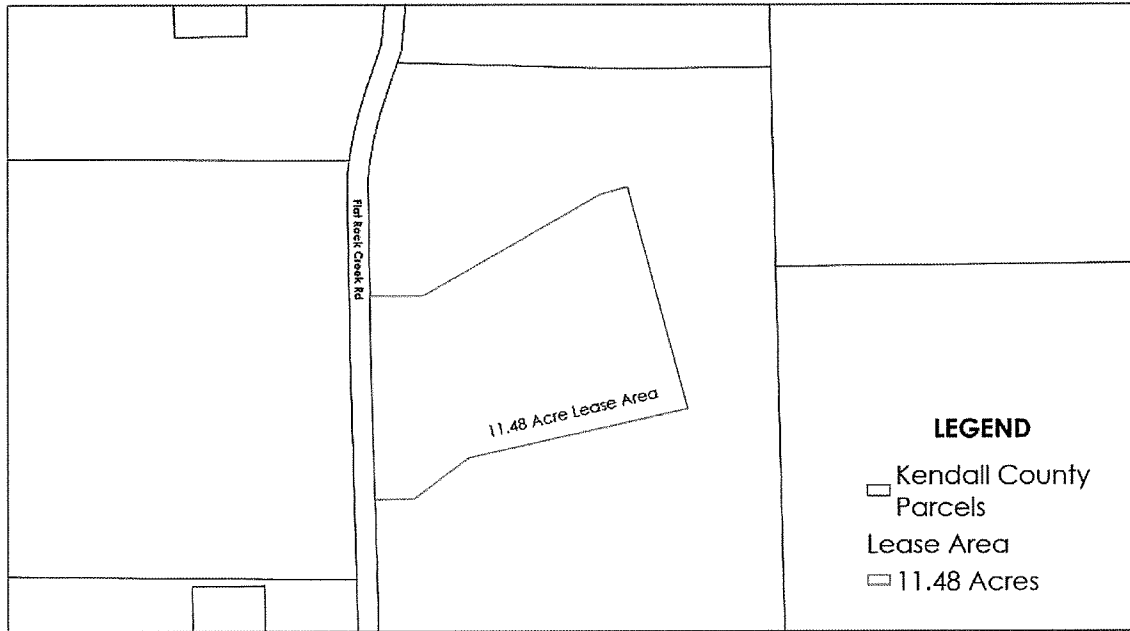
Approximately 11.48 acres, more or less, in the area generally shown below out of the below described land:

Being an approximate 125.785 acre tract of land, more or less, situated in the Justo Esqueda Survey No. 25, Abstract No. 157, Kendall County, Texas, and being the remaining portion of a 158.6 acre tract of land as described in that certain General Warranty Deed filed for record in Volume 1409, Page 1019, Official Public Records of Kendall County, Texas LESS AND EXCEPT the following two (2) tracts of land: 1) a 15.654 acre tract of land set forth in Special Warranty Gift Deed filed for record in Volume 1602, Page 196, as re-filed in Volume 1602, Page 859, Official Public Records of Kendall County, Texas; and 2) 16.141 acre tract of land set forth in Special Warranty Gift Deed filed for record in Volume 1716, Page 554, Official Public Records of Kendall County, Texas.

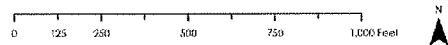
KCE TX 31, LLC



61 Flat Rock Creek Rd, Comfort, TX 78013
Kendall County
29.986957, -98.883926



Proposed Project Area



ELW

**Kendall County
Denise Maxwell
Kendall County
Clerk**

Instrument Number: 379215

eRecording - Real Property

MEMORANDUM

Recorded On: April 17, 2023 01:54 PM

Number of Pages: 6

" Examined and Charged as Follows: "

Total Recording: \$42.00

******* THIS PAGE IS PART OF THE INSTRUMENT *******

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

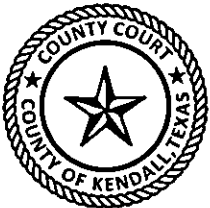
File Information:

Document Number: 379215
Receipt Number: 20230417000039
Recorded Date/Time: April 17, 2023 01:54 PM
User: Paula P
Station: cclerk06

Record and Return To:

Simplifile
5072 North 300 West

PROVO UT



**STATE OF TEXAS
COUNTY OF**

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Kendall County, Texas.

Denise Maxwell
Kendall County Clerk
Kendall County, TX

Denise Maxwell