

After Recording, Return To:  
Key Capture Energy  
Attn: Legal Dept  
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 December 14, 2020 (the "Effective Date"), between **BIERMANN CARLTON & ANITA REVOCABLE TRUST** ("Owner"), and **KCE TX 26, LLC** ("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.

3. Term. The Agreement shall be for an initial Development Term of up to two (2) 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.

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]

OWNER:

BIERMANN CARLTON & ANITA REVOCABLE TRUST

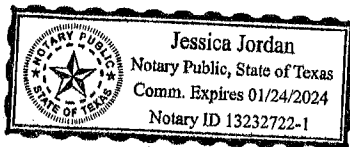
By: Anita Biermann  
PRINT NAME: CARLTON & ANITA BIERMANN  
PRINT TITLE: OWNER

STATE OF TEXAS )  
COUNTY OF Kerr )

This instrument was acknowledged before me on this 14 day of December 2020 by Carlton & Anita Biermann  
Owners of \_\_\_\_\_, on behalf of such trust.  
Biermann Carlton & Anita Revocable Trust

[SEAL]

Jessica Jordan  
Notary Public State of Texas  
My commission expires: 01/24/2024

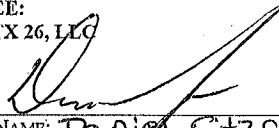


*[Handwritten mark]*

Firefox

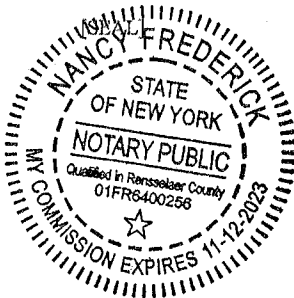
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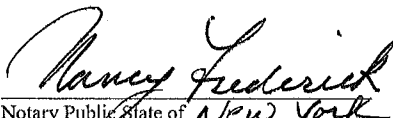
LESSEE:  
KCE TX 26, LLC

By:   
PRINT NAME: Daniel Fitzgerald  
PRINT TITLE: Authorized Representative

STATE OF NEW YORK )  
COUNTY OF ~~ALBANY~~ )  
Rensselaer

This instrument was acknowledged before me on this 22 day of December, 2020 by Daniel Fitzgerald of KCE TX 26, LLC, a Authorized Representative behalf of such



  
Notary Public State of New York  
My commission expires: 11-12-2023

After recording return to:

KCE TX 26, LLC  
Attn: Legal Dept.  
25 Monroe St., Suite 300  
Albany, NY 12210

Exhibit A to  
MEMORANDUM OF ENERGY STORAGE LEASE AND EASEMENT AGREEMENT

Depiction 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 8 acres out of the property located in Kendall County, State of Texas, described below in the approximate location shown below:

A10157 - SURVEY 25 J ESQUEDA 125.785 ACRES

Property ID 300577



**Kendall County  
Darlene Herrin  
Kendall County  
Clerk**

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**Instrument Number:** 351144

eRecording - Real Property

AGREEMENT

Recorded On: January 11, 2021 11:38 AM

Number of Pages: 6

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**" Examined and Charged as Follows: "**

Total Recording: \$42.00

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

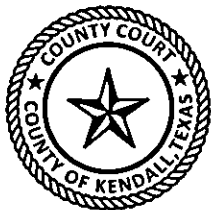
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 351144  
Receipt Number: 20210111000020  
Recorded Date/Time: January 11, 2021 11:38 AM  
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.**

Darlene Herrin  
Kendall County Clerk  
Kendall County, TX

*Darlene Herrin*