

COUNTY COUNCIL

MICHAEL H. VINCENT, PRESIDENT
JOHN L. RIELEY, VICE PRESIDENT
CYNTHIA C. GREEN
DOUGLAS B. HUDSON
MARK G. SCHAEFFER



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

AGENDA

December 17, 2024

10:00 AM

Call to Order

Approval of Agenda

Approval of Minutes - December 10, 2024

Reading of Correspondence

Public Comments

Consent Agenda

1. **Proclamation Request – Cape Henlopen High School Field Hockey Division I State Champions**
2. **Proclamation Request – Delmar High School Field Hockey Division II State Champions**
3. **Proclamation Request – Sussex Academy High School Boys' Soccer Division II State Champions**
4. **Proclamation Request – Indian River High School Unified Flag Football Champions**
5. **Proclamation Request – Indian River High School Football Division 1A State Champions**

Recognition of Council Members Michael H. Vincent, Cynthia C. Green and Mark G. Schaeffer



Todd Lawson, County Administrator

1. **Appointment of Board of Adjustments and Appeals Member**
2. **Administrator's Report**

Gina Jennings, Finance Director

1. **Appointment of Board of Assessment Review Members**
[Board of Assessment](#)
2. **Concurrence on Finance Director's Referees Appointments**

Bill Pfaff, Economic Development Director

1. **Excite Sussex Loan Program Update**
[Excite Sussex Update](#)

Jamie Whitehouse, Planning & Zoning Director

1. **Recommendation and Approval of Contractors for On-Call Planning Services**
[On-Call Professional Planning Services RFP](#)

Mark Parker, Assistant County Engineer

1. **Peninsula Community Road Repairs, Project T24-12**
A. Change Order 1 and Substantial Completion
[Peninsula Road Repairs](#)

Hans Medlarz, Project Engineer

1. **Lagoon Solar - Lease Amendment for Phases 2 &3**
[Solar Lagoon Lease](#)

Old Business

1. [Conditional Use No. 2515 filed on behalf of Renewable Redevelopment, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A HI-1 HEAVY INDUSTRIAL DISTRICT FOR AN ELECTRIC SUBSTATION AND UTILITY USES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 140.25 ACRES, MORE OR LESS” (property lying on the northwest side of Gate A Road, located off Iron Branch Road [S.C.R. 331]) (911 Address: N/A) (Tax Map Parcel: 233-2.00-2.01)

[CU 2515](#)

2. [Conditional Use No. 2545 filed on behalf of J. G. Townsend Jr. & Co.](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION "H" AND THE AMENDMENT/DELETION OF CONDITION "R" CONTAINED WITHIN CONDITIONAL USE NO. 2359 (ORDINANCE NO. 2964) REGARDING THE REQUIREMENTS FOR LANDSCAPING, AND FOR THE INSTALLATION OF GATES ON STOCKLEY BLVD BETWEEN THE GOVERNORS COMMUNITY AND THE PROPOSED COTTAGES, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS” (property lying on the east side of Kings Highway [Rt. 9] and the south side of Gills Neck Road [S.C.R. 267] at the intersection of Kings Highway [Rt. 9] and Gills Neck Road [S.C.R. 267]) (911 Address: 16673 Kings Highway, Lewes) (Tax Parcel: 335-12.00-3.00 [p/o])

[CU 2545](#)

3. [Conditional Use No. 2454 filed on behalf of H&K Group LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 309.6 ACRES, MORE OR LESS” (property lying on northwest side of Shiloh Church Road [Rt. 74] approximately 0.38 mile west of East Trap Pond Road [Rt. 62]) (911 Address: N/A) (Tax Map Parcel: 232-8.00-44.01) (Zoning: AR-1 [Agricultural Residential District]) (TO ANNOUNCE NEW HEARING DATES)

[CU 2454](#)

4. [Conditional Use No. 2543 filed on behalf of Toney Floyd & Charletta Speaks-Floyd](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A COMMERCIAL HAULING, GOODS AND MATERIALS DELIVERY SERVICES, AND DRIVEWAY INSTALLATION BUSINESS TOGETHER WITH STORAGE OF VEHICLES, EQUIPMENT, AND MATERIALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.31 ACRES MORE OR LESS” (property lying on the northeast side of Hersel Davis Road approximately 0.42-mile northeast of Oak Orchard Road [Rt. 5]) (911 Address: 32404 Hersel Davis Road, Millsboro) (Tax Map Parcel: 234-29.00-274.02)

[CU 2543](#)

Introduction of Proposed Zoning Ordinances

[Ord Intros CZ2012 CU2449](#)

Council Members' Comments

Executive Session - Personnel pursuant to 29 Del.C.§10004(b)

Possible action on Executive Session Items

1:30 p.m. Public Hearings

1. [Conditional Use No. 2526 filed on behalf of Common Ground Hospitality](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RESTAURANT AND FARMERS MARKET TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 71.3 ACRES, MORE OR LESS” (properties are lying on the south side of Zion Church Road [Route 20], approximately 0.50 mile west of the intersection of Zion Church Road [Route 20] and New Road [Route 391]) (911 Address: 37051 Johnson Road, Selbyville) (Tax Map Parcels: 533-11.00-103.00 & 533-11.00-104.00)

[CU 2526](#)

2. [Conditional Use No. 2542 filed on behalf of Lauden Investments, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION “D” FOR C/U 2264 (ORDINANCE NO. 2813) RELATING TO THE PERMITTED DAYS AND HOURS OF OPERATION FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.68 ACRE, MORE OR LESS” (properties are lying on the southeastern side of Savannah Road [S.C.R. 443A], approximately 0.77 mile northeast of Westcoats Road [Rt. 12]) (911 Address: 1302 & 1304 Savannah Road, Lewes) (Tax Map Parcels: 335-8.18-15.00 & 16.00)

[CU 2542](#)

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on December 10, 2024 at 6:45 p.m. and at least seven (7) days in advance of the meeting.

This Agenda was prepared by the County Administrator and is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the meeting.

Agenda items may be considered out of sequence.

The meeting will be streamed live at <https://sussexcountyde.gov/council-chamber-broadcast>.

The County provides a dial-in number for the public to comment during the appropriate time of the meeting. **Note, the on-line stream experiences a 30-second delay.**

Any person who dials in should listen to the teleconference audio to avoid the on-line stream delay.

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

Members of the public joining the meeting on the telephone will be provided an opportunity to make comments under the Public Comment section of the meeting and during the respective Public Hearing.

The Council meeting materials, including the “packet”, are electronically accessible on the County’s website at: <https://sussexcountyde.gov/agendas-minutes/county-council>.

GINA A. JENNINGS, MBA, MPA
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Sussex County
DELAWARE
sussexcountyde.gov

MEMORANDUM:

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: Gina A. Jennings
Finance Director/Chief Operating Officer

RE: **Board of Assessment Appointments**

DATE: December 12, 2024

After the interviews last Tuesday, I tallied Council's ratings. Based on the scores, here is what I would recommend for the Board of Assessment:

3-year term: Eric Davis
Ashley Godwin
Thomas Roth

2-year term: Anne Angel
Karen Wahner

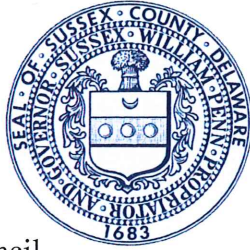
Alternates: Renee Edge
James O'Rourke
Irene Baxter-Plank

For the reassessment process, we have set up a referee process. Per the State Code, the Finance Director will appoint referees with the concurrence of County Council. The following people were interviewed and recommended from a pool of over 50 applications: Michael Bernhardt, Paula Damiano, Kelly DeMott, Renee Edge, James Galvin, Kelsey Gallo, David Hantman, Geoffrey Howard, Brian Mifflin, Trudina Mifflin, Michael Moyer, Barabara Newcomer, Doreen Irwin Polanco, Tiesha Walker, and Twyla Walker-King. I will be asking for your concurrence on these 15 appointments.

If you have any questions, please feel free to contact me.

WILLIAM PFAFF
ECONOMIC DEVELOPMENT DIRECTOR

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Sussex County
DELAWARE
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TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Douglas B. Hudson
The Honorable Cynthia C. Green
The Honorable Mark G. Schaeffer

FROM: William Pfaff
Economic Development

RE: *ExciteSussex Fund*

DATE: December 11, 2024

On the agenda for Tuesday's meeting is the Amended Agreement between Sussex County and Grow America Fund, Inc., which will allow for the expansion of the ExciteSussex Fund.

As you may recall, the ExciteSussex Fund was initially established through a partnership between Sussex County and Discover Bank, in collaboration with Grow America Fund. The partnership has been instrumental in leveraging the County's investment on a 3-to-1 basis. The original \$1 million investment from Sussex County, combined with Discover Bank's \$3 million contribution, created an initial \$4 million fund.

Following a second County investment, the fund has since grown to \$16 million. To date, the ExciteSussex Fund has funded nine projects totaling \$7.02 million, supporting the creation and retention of 286 jobs across Sussex County in Georgetown, Milford, Seaford, Millsboro, and Bethany.

Today, I am pleased to announce that we are seeking your approval to further increase the ExciteSussex Fund. With the additional County contribution of \$2,250,000, combined with the previous investment of \$4 million and Discover Bank's \$18,750,000 match, the ExciteSussex Fund would be expanded to **\$25 million**. This increased funding will significantly enhance our ability to support local businesses and drive economic growth across the County.

Importantly, for every dollar we lend to a business, Sussex County's exposure will remain at 25%. This leverage ensures that we are able to maximize the impact of the County's investment while maintaining a prudent risk profile.

I look forward to discussing this exciting opportunity and requesting your approval to move forward with this expanded commitment to economic growth in Sussex County.

Thank you for your consideration.

Attachment: Amended Agreement between Sussex County and Grow America Fund, Inc.



Small Business Lending Investment Agreement

SECOND AMENDED AND RESTATED AGREEMENT

TO ESTABLISH THE

EXCITESUSSEX COUNTY FUND

BY AND BETWEEN

SUSSEX COUNTY

AND

GROW AMERICA FUND, INC.

DECEMBER 10, 2024

SECOND AMENDED AND RESTATED AGREEMENT

**TO ESTABLISH THE
EXCITESUSSEX COUNTY FUND**

BY AND BETWEEN

SUSSEX COUNTY

AND

GROW AMERICA FUND, INC.

THIS AGREEMENT TO ESTABLISH THE EXCITESUSSEX COUNTY FUND (hereinafter referred as the “Agreement”) is entered into as of the 10th day of December, 2024 by and between Sussex County, a political subdivision of the State of Delaware with its principal offices at 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947 (hereinafter referred to as the “Client”), and the Grow America Fund, Inc. a nonprofit corporation organized and existing under the laws of the State of Delaware and having its mailing address at 633 Third Avenue, Floor 19, Suite J, New York, New York 10017 (hereinafter referred to as "GAF").

WITNESSETH:

WHEREAS, GAF is recognized and certified by the U.S. Treasury Department as a Community Development Financial Institution (“CDFI”) and Community Development Entity (“CDE”) as a domestic corporation having a primary mission of serving or providing investment capital for low-income communities or low-income persons; and

WHEREAS, GAF, the nation's only Small Business Lending Company devoted solely to economic and community development financing and as a licensed and regulated Small Business Lending Company, is entitled to make SBA 7(a) guaranteed loans to eligible small businesses.

WHEREAS, the Client desires to expand economic opportunity for residents of Sussex County so that these residents may become economically self-sufficient; and

WHEREAS, the Client desires to create a program called the “ExciteSussex County Program” to encourage sustainable community and economic development activities through

small business lending so that the economically disadvantaged neighborhoods within Sussex County, Delaware (the “Community”) can experience investment and job creation; and

WHEREAS, on or about February 20, 2018 the Client and GAF established a community and economic development lending program through an investment of \$1,000,000.00 in the GAF, hereinafter named the “ExciteSussex County Fund”, to achieve the Client’s goals; and

WHEREAS, on or about June 4, 2021 the Client and GAF amended the Agreement to allow for an additional Three Million Dollars (\$3,000,000) in the ExciteSussex County Fund; and

WHEREAS, the Client and GAF now desire to further amend this Agreement to allow the Client to make an additional Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) investment in the ExciteSussex County Fund on terms and conditions as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

A. GENERAL PROVISIONS AND RESPONSIBILITIES

1. The ExciteSussex County Fund will be capitalized with funds provided by the Client (as described in Section C below). During the term of this Agreement, these funds will be used solely for loans within the areas identified by the Client, which are sponsored by the Client and which meet the purposes of the ExciteSussex County Program as determined by GAF and the Client.
2. GAF and Client will jointly create a Small Business Financing Program that recognizes that the purpose of bringing the ExciteSussex County Fund to the community is to provide appropriately structured financing to healthy, growing small businesses, that will create and maintain living wage permanent jobs. As such, fully trained professional staff (referred to as “Economic Development Professionals” (hereinafter referred to as “EDPs”)) provided by the Client are essential to imbue the program with credibility in the local community and to complete the local component of the team necessary for the program’s success.
3. EDP’s will perform the following services:
 - a) Participate in developing a marketing program and establishing periodic performance goals;
 - b) Assist in establishing a database of potential referral sources for the ExciteSussex County Program;
 - c) Assist in preparation of marketing materials;
 - d) Disseminate the application package provided by GAF to potential

- borrowers;
 - e) Gather the application information and perform a review for package completeness and preliminary qualification of potential borrowers;
 - f) Assist GAF loan officers in scheduling meetings and site visits with potential borrowers at their places of business; and
 - g) Provide support to the GAF closing and servicing teams when needed and requested.
4. GAF will use its SBLC license to make SBA guaranteed loans referred by the Client and provide staff to operate the ExciteSussex County Fund in conjunction with the client's local staff provided by the Client to operate the fund in a prudent and businesslike manner.

Staff provided by GAF will perform the following services:

- a) Assist in marketing the ExciteSussex County Program;
 - b) Assist in originating and packaging loans;
 - c) Underwrite all loans;
 - d) Obtain GAF and SBA approvals;
 - e) Close, service, and collect loans;
 - f) Perform appropriate periodic reviews of each loan; and
 - g) Provide reporting as required by the Client in a form acceptable to Client. (The parties agree that acceptable form and format for this documentation is the complete GAF quarterly portfolio status report to the Client and the loan report for each ExciteSussex County borrower including all relevant information as provided by the borrower.)
5. GAF has a fiduciary responsibility and duty to act in good faith, exercise skill, due care and diligence, and to use its best efforts and judgment, to underwrite, approve, close, service all program loans, and otherwise operate the ExciteSussex County Fund in a reasonable, prudent and businesslike fashion. In addition, the SBA requires all SBLC's to follow SBA regulations and to use SBA documents and procedures in making and servicing loans. As an SBLC, GAF shall comply with all SBA requirements in its dealings with the ExciteSussex County Fund. These fiduciary responsibilities and SBA regulations cannot be delegated or waived and they are hereby incorporated by reference into this Agreement as if stated in full.
6. GAF and Client acknowledge that GAF operates other small business lending programs in the State of Delaware that are independent of this Agreement.

B. COMMENCEMENT, DURATION, COMPENSATION

1. GAF commenced services for Client effective February 20, 2018 and continues to provide services as provided herein.

2. GAF shall be compensated during the term of this Agreement from interest income generated from loans made to eligible businesses participating in the ExciteSussex County Fund, third-party grants, or other funds as outlined herein. Included are investment income and portions of the Client's Investment that are to be earned as the performance obligations described in Section D are met.

GAF acknowledges that, other than as specifically set forth herein, the Client shall have no financial obligation or responsibility to compensate GAF for any services it shall provide hereunder.

C. CAPITALIZING EXCITESUSSEX COUNTY FUND AND THE INVESTMENT PERIOD

1. The Parties agree that the ExciteSussex County Fund will be capitalized with Client funds as an investment structured as a performance-based grant (collectively, the "Investment"). During the term of this Agreement, this Investment will be used solely for funding eligible SBA-guaranteed loans within the targeted areas identified by the Client until such performance obligations are met as described in Section D. Client's targeted areas are set forth in Exhibit 1 which is attached hereto and incorporated herein by reference.
2.
 - a. The Client shall capitalize the Investment in multiple tranches. Since February 20, 2018, the Client has made (or is anticipated to make) contributions in the aggregate amount of Four Million Dollars (\$4,000,000). On or about the date hereof, the Client shall make additional contributions of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) which may be paid in one or more installments. It is anticipated that the Investment will be provided by Client, but the actual source, disbursement, and breakdown of the capitalization of the ExciteSussex County Fund is at the sole discretion of the Client. The Client and GAF agree that if economic conditions in the County deteriorate, the Client may request that GAF return any undeployed funds and the Client will not have a commitment to continue to fund any future contributions.
 - b. The Client may elect to engage the ExciteSussex County Fund to provide additional small business loan leverage in its Community by making additional investments each of which will be governed under a separate Small Business Lending Agreement.
 - c. The Client Investment will be applied by GAF to the "unguaranteed portion" of each outstanding loan funded under the program. The parties acknowledge that the Client Investment is therefore fully at risk of loss. It is anticipated that as principal is repaid by the small business borrowers, it will be relent under the same program guidelines to other eligible borrowers seeking access to appropriately structured and priced loan capital not otherwise available in the

market.

d. GAF, using its SBLC license, shall fund the “guaranteed portion” of each loan funded under the program. The parties acknowledge that the intent of the Client Investment is to achieve a goal of total loans funded of approximately four (4) times the amount of the Client’s Investment.

3. The Client’s Investment Period and term of this Agreement shall commence on the date first listed above. The Investment Period will remain in effect until the performance obligations outlined in section D (ii) herein are satisfied, or the receipt by GAF of the final payment of principal and interest from all outstanding loans in the ExciteSussex County Fund’s Loan Portfolio (the “Termination of the Investment Period”), whichever comes first.

D. RETURN OF INVESTMENT

The Client has elected, and GAF has agreed to accept, the Client’s Investment to capitalize the ExciteSussex County Fund allocated as follows:

1. Two Hundred Fifty Thousand Dollars (\$250,000.00) of the Client’s initial Investment has been designated an unrestricted grant on GAF’s accounting books.
2. a. Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00) of the Client’s previous Investment plus \$2,250,000 of the Client’s additional installment(s) of the Investment after the date hereof has been or will be used by GAF and allocated toward Seventy-Five Percent (75%) of the unguaranteed portion of SBA of each end loans made in the eligible lending area.
 - b. GAF will pay the Client a preferred return of One Percent (1%) on the net Client Investment held by GAF (exclusive of the \$250,000 grant) which has been used to make end loans in the eligible lending area.
 - c. The Client shall not be obligated to make payments to GAF beyond the Investment into GAF, and GAF shall not be obligated to return to the Client any portion of the Investment due beyond the actual principal repayments received from the borrowers (or collateral reductions in the event of a liquidation) under the ExciteSussex County Fund.

E. TERM; TERMINATION

1. Term.

The term of this Agreement will commence on the Effective Date and will

continue in effect unless earlier terminated pursuant to the terms of this Agreement.

2. Termination for Convenience.

Either party may terminate this Agreement upon sixty (60) calendar days' written notice to the other party. Unless otherwise agreed by the parties, termination pursuant to this provision will not relieve GAF of its obligations under any open ExciteSussex County Fund loans, which obligations will continue to be governed by this Agreement and shall survive termination under this provision.

3. Termination for Cause.

Either party may terminate this Agreement upon written notice if the other party has materially breached any provision of this Agreement and has not cured such breach within thirty (30) calendar days after receiving written notice from the non-breaching party describing such breach in reasonable detail and stating the non-breaching party's intent to terminate this Agreement.

4. Return of Materials.

Upon any expiration or termination of this Agreement, except as necessary to exercise the rights granted by Company to Client pursuant to Section 7.2, each party will return promptly or, at the other party's request, destroy all documents and other tangible objects containing or representing Confidential Information, exclusive of that which is related to end loans made by GAF, of the other party except to the extent that such documents must be retained to satisfy auditing or regulatory requirements. If requested by the other party, each party will provide the other party with written certification of compliance with the foregoing obligations under this provision.

F. MISCELLANEOUS PROVISIONS

1. Ownership of Material and Documents.

a. All final reports and other materials prepared by GAF for the Client shall be the property of the Client; however all work papers and other source materials not provided to the Client shall be the property of GAF. GAF shall deliver such materials to the Client in accordance with the terms and conditions of this Agreement.

b. The Client shall not, without GAF's written consent, associate GAF's name with the report/product, if a subsequent change is made in such report/product after submission to the Client.

2. Right to Audit.

GAF shall establish and maintain appropriate procedures, which will ensure the proper accounting of all funds paid to it under this Agreement. The Client or any of their duly authorized representatives shall have access to any books, documents, papers and records of GAF, which are directly pertinent to **THE EXCITESUSSEX COUNTY FUND** for making an audit, examination excerpts and transcriptions. All such books and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any short periods of retention, all books, records and supporting details shall be retained for period of at least three (3) years after the expiration of the term of this Agreement.

3. Equal Opportunity.

GAF shall comply with all federal, state and local non-discrimination statutes, ordinances and regulations, including, but not limited to, the provisions of Title VI of the Civil Rights Act of 1964 and the rules, regulations and relevant orders of the Secretary of Labor or other governing order regarding discrimination. In the event a party is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state, or local law, this Agreement may be cancelled, terminated or suspended in whole or in part by the Client, and that party may be declared ineligible for further Client Agreements.

4. Conflicts of Interest.

No board member, officer or employee of the Client or its designees or agents, and no other public official who exercises any functions or responsibilities with respect to any requested technical assistance, shall be permitted to financially benefit from this Agreement or have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with this Agreement.

5. Notices.

All notices shall be sent by certified mail, return receipt requested, hand-delivery or overnight mail and in all events with a written acknowledgment of receipt to the address set forth at the beginning of this Agreement.

6. Responsibility for Claims.

To the extent permitted by state statutes, the Client agrees to indemnify and save harmless GAF, their agents, officials, and employees from any liability, damage, expense, cause of action, suit, claim, judgment or expenses (including attorney's

fees) arising from injury to person, including death, or personal property or otherwise caused by or resulting from the bad faith, willful, negligent or unlawful act of the Client in its performance of this Agreement. Provided, however, that such indemnity shall not apply to any actions, claims or damages arising as a result of GAF's bad faith, willful misconduct or gross negligence.

- a. GAF agrees to indemnify, defend and hold the Client harmless from and against all losses, damages, claims, actions, causes of action, liabilities, obligations, judgments, penalties, fines, forfeitures, costs and expenses, including, without limitation, legal fees and expenses, that result from (i) its failure or purported failure in any way to perform its services and duties in connection with its management and administration of the ExciteSussex County Fund, or (ii) the actual or purported willful misfeasance, bad faith willful, intentional, negligent or unlawful act or omission of GAF in the performance of its obligations or duties under this Agreement, SBA requirements and guidelines, or other governing policies, laws, regulations, ordinances and the like, or the reckless disregard of such obligations or duties, or (iii) injury to person, (including death) or property (real or personal), or any injury otherwise caused by or resulting from the willful misfeasance, bad faith, willful, intentional, negligent or unlawful act or omission of GAF in its performance of this Agreement; provided, however, that such indemnity shall not apply to the extent that any actions, claims or damages arise or result from the Client's bad faith, willful misconduct or gross negligence. Such defense shall be conducted by counsel acceptable to the Client.
- b. GAF's obligations to indemnify, defend and hold Client harmless as set forth in 6a. herein shall survive termination of this Agreement.
- c. This indemnity provision shall not act as a waiver of, nor is it intended in any way to waive, alter, or otherwise amend, Client's immunity under the Delaware Code or otherwise, including but not limited to the County and Municipal Tort Claims Act.
- d. To the extent permitted by state statutes, the Client agrees to indemnify and save harmless GAF, their agents, officials, and employees from any liability, damage, expense, cause of action, suit, claim, judgment or expenses (including attorney's fees) arising from injury to person, including death, or personal property or otherwise caused by or resulting from the bad faith, willful, negligent or unlawful act of the Client in its performance of this Agreement. Provided, however, that such indemnity shall not apply to any actions, claims or damages arising as a result of GAF's bad faith, willful misconduct or gross negligence.

7. Compliance with Laws, Venue.

GAF agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder. This Agreement shall be construed, interpreted and the rights of the parties determined, in accordance with the laws of the State of Delaware. The parties hereby irrevocably and unconditionally consent to submit to the jurisdiction of the courts of the State of New York and of the United States of America located in Delaware which shall have the exclusive jurisdiction for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby. The parties agree not to commence any action, suit or proceeding relating thereto except in such courts.

8. Assignment.

Neither this Agreement nor any rights, duties or obligations described herein may be assigned by either party without the prior express written consent of the other party.

9. Severability.

A determination that any part of this Agreement is invalid shall not invalidate or impair the force of the remainder of this Agreement.

10. Disclaimer.

The Client is a sophisticated business enterprise and has retained GAF for the purposes set forth in this Agreement and the parties acknowledge and agree that their respective rights and obligations are contractual in nature. Each party disclaims an intention to impose fiduciary agency rights or obligations on the other party except as otherwise specifically stated in this Agreement

11. Entire Agreement.

This Agreement contains the final agreement between the parties regarding the matters covered and supersedes any and all other agreements, either oral or in writing regarding, the matters contained herein. No amendments to this Agreement shall be binding on either party unless in writing and signed by both parties.

12. No Partnership.

Nothing herein contained shall be construed as creating a partnership, joint venture or other similar relationship between the parties hereto.

13. Counterparts; Electronic Signatures.

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.

14. Waiver.

No failure by either party to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a breach of this Agreement shall constitute a waiver of any such breach or of any such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above

SUSSEX COUNTY

By: _____
Michael H. Vincent, President
Sussex County Council

Attest: _____
Tracy Torbert Clerk of the
Sussex County Council

GROW AMERICA FUND, INC.

By: _____ (SEAL)
Daniel Marsh III, Chairman

EXHIBIT 1

Eligible ExciteSussex County Lending Areas

The ExciteSussex County Fund loan program will be available to eligible businesses located throughout Sussex County.

Other eligibility criteria, if applicable, (job creation or retention, etc.) are to be determined and documented by the Client.

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
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jamie.whitehouse@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: December 13, 2024

RE: Recommendation to Award in Relation to Proposals for On-Call Planning Services

On August 1, 2024, the Planning & Zoning Department published a Request for Proposals (“RFP”) for on-call planning services for Sussex County. The purpose of the RFP was to seek multiple firms to provide on-call planning services for various projects for a six-year period. The anticipated scope of the services includes, but is not limited to:

1. Potential text and map amendments to the 2019 Sussex County Comprehensive Plan, including supporting work on the next 10-year Comprehensive Plan update.
2. Updates to existing Ordinances
3. Miscellaneous planning reports and advice

A total of five (5) consultant proposals were received. Based on the criteria established, an evaluation committee was selected to read, screen, and rank in writing all proposals. The criteria for evaluation included: experience, expertise, capacity to perform, credentials and certifications, and familiarity with Sussex County.

In accordance with 29 Del. C. § 6982, the evaluation committee determined that all applicants met the minimum qualifications to perform the services. Having found that all five applicants met the minimum qualifications, the evaluation committee selected all five firms to interview.

Interviews were held with all five firms on December 3, 2024. Based on the rankings of the evaluation committee, the three highest-scoring firms were identified.

A summary of the services offered by each of the three firms is provided below (in no particular order):



COUNTY ADMINISTRATIVE OFFICES
2 THE CIRCLE | PO BOX 417
GEORGETOWN, DELAWARE

AECOM Technical Services, Inc.

The AECOM Team is located in Sussex County and provides Planning, Engineering and related services to multiple municipal clients. The Delaware AECOM offices do not undertake work for developers, so there is no possibility of conflicts of interest arising. The AECOM Team has experience in Comprehensive Planning work and Site Plan review across multiple municipalities including City of Rehoboth, Millville, Dagsboro, and Ocean View.

Century Engineering, Inc.

Century Engineering has offices located in Newark and Dover with access to over 500 employees. The Century Engineering team has an excellent understanding of transportation matters in Sussex County, having worked previously on the Sussex County/DelDOT Memorandum of Understanding. The Century Engineering team also has considerable experience in Comprehensive Planning, Transportation Improvement Districts, and Area Wide Masterplans. Team members within the Century Engineering team have previously worked on the Sussex County Comprehensive Plan, which was adopted in 2018 and certified by the Governor of Delaware in March 2019.

McCormick Taylor, Inc.

McCormick Taylor is a full-service consulting firm with over 400 staff throughout 17 offices. They have offices in Newark, Delaware, and Salisbury, Maryland. Through a prior on-call planning services contract, McCormick Taylor worked on the Sussex County Comprehensive Plan, which was adopted in 2018 and certified by the Governor of Delaware in March 2019. In addition to possessing significant experience in working with Ordinance updates and Comprehensive Plan updates, McCormick Taylor offers an ability to provide reports and advice across multiple disciplines, including economic development, market feasibility analysis, housing, and transportation. McCormick Taylor's Team also possesses significant experience in stakeholder engagement – particularly in relation to Comprehensive Planning work.

Recommendation

The Planning & Zoning Department hereby recommends that the County Council award six-year contracts to:

- i) AECOM Technical Services, Inc; and
- ii) Century Engineering, Inc.; and
- iii) McCormick Taylor, Inc.

ENGINEERING DEPARTMENT

J. MARK PARKER, P.E.
ASSISTANT COUNTY ENGINEER

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Sussex County

DELAWARE
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Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia Green
The Honorable Douglas B. Hudson
The Honorable Mark Schaeffer

FROM: J. Mark Parker, P.E., Assistant County Engineer

RE: ***Peninsula Community Road Repairs***
A. Change Order 1 & Substantial Completion

DATE: December 17, 2024

The Peninsula is a Medium Density Residential Planned Community located in the Long Neck area that was originally approved by Sussex County in 2002. Two sub-communities within the Peninsula, “The Conservancy” and “The Veranda”, have had been built out in phases over the past eighteen years or so with active homebuilding nearing completion in both communities.

As part of the phased build-out in the two sub-communities, portions of the street system were completed and accepted by the County including the top paving and related street infrastructure. However, two specific areas within each sub-community have been left in an unfinished state despite the continuation of homebuilding activities. The unfinished work essentially consists of the top paving course and missing sections of curbing; however, due to the amount of time that has passed with the street network being in an unfinished state there are various repairs needed to the road base, curbing, drainage structures and other miscellaneous work.

For over a year, the County has been working with the sub-community Homeowner Associations and the involved Developers responsible for street system infrastructure installation to develop an Agreement with a cost-share component that would facilitate the completion of the required street repairs. With a final Agreement in place, the Engineering Department crafted a Request for Proposals for the finish-out work required and publicly advertised the Contract on August 20, 2024. On September 17, 2024 a total of four (4) bids were received with the low bid submitted HCE LLC.



Based on the recommendation of the Engineering Department, Council approved award of the Contract on 9/24/24 to the low bidder HCE LLC in amount of \$272,287.00, which included a Bid Add Alternate in the Veranda Community.

During construction, some issues arose in connection with setting final elevations for drainage inlets that were to be reconstructed in the Veranda Community and achieving positive drainage conditions within one area of the street network. Due to constraints with existing curblin elevations and minimal elevation fall available on the street surface, concrete valley gutters needed to be added to the scope of repairs. A Linear Foot unit cost was negotiated with HCE and based on the final length of valley gutter installed, the total cost change was \$21,375.00.

In addition, a number of “as-constructed” quantities connected with Unit Bid Items were different than the original estimate and associated Bid. Based on field measurements, the final Balancing of Quantities resulted in an additional cost of \$14,752.26.

Substantial Completion was issued to HCE on 12/6/24 subject to punch list completion and final Council approval. At this point, the **Engineering Department recommends approval of Changer Order No. 1 which reflects valley gutter addition and final balancing of quantities, in the amount of \$36,127.26, and acceptance of Substantial Completion for the project.**



**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: Peninsula Community Road Repairs
2. Sussex County Contract No. T24-12
3. Change Order No. 1
4. Date Change Order Initiated November 22, 2024
5.
 - a. Original Contract Sum \$272,287.00
 - b. Net Change by Previous Change Orders N/A
 - c. Contract Sum Prior to Change Order \$272,287.00
 - d. Total Requested Change \$36,127.26
 - Valley Gutter Addition \$21,375.00
 - Balancing of Quantities \$14,752.26
 - e. Net Change (No. of days) 0
 - f. New Contract Amount \$308,414.26
6. Contact Person: Mark Parker, P.E.
Telephone No. (302) 855-7382

B. REASON FOR CHANGE ORDER (CHECK ONE)

1. Differing Site Conditions
2. Errors and Omissions in Construction Drawings and Specifications
3. Changes Instituted by Regulatory Requirements
4. Design Change
5. Overrun/Underrun in Quantity
6. Factors Affecting Time of Completion
7. Other (explain below):

C. **BRIEF DESCRIPTION OF CHANGE ORDER:**

Concrete valley gutters added to improve surface drainage and balancing of quantities based on actual work completed.

D. **JUSTIFICATION FOR CHANGE ORDER INCLUDED?**

Yes No

E. **APPROVALS:**

1. HCE, LLC – Owner


Signature _____ Date 12/12/24

RENNIE HUNT

Representative's Name in Block Letters

2. Sussex County - Assistant Engineer


Signature _____ Date 12/12/24

3. Sussex County Council President

Signature

Date

TO CONTRACTOR:

Sussex County
2 The Circle
Georgetown, DE 19947

PROJECT:

Peninsula Community Road Repairs

APPLICATION NO: 1

INVOICE NO: SC-PCRR-001

PERIOD: 9/24/2024 - 12/12/2024

PROJECT NO: T24-12

CONTRACT DATE: 9/24/2024

CERTIFICATE DATE:

SUBMITTED DATE: 12/12/2024

PURCHASE ORDER NO:

FROM SUBCONTRACTOR:

HCE, LLC
35094 Roxana Rd
Frankford, DE 19945

VIA Architect: J Mark Parker P.E.

SUBCONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Subcontract.
Continuation sheet is attached.

1.	Original Contract Sum		\$272,287.00
2.	Net change by change orders		\$36,127.26
3.	Contract Sum to date (Line 1 +/- 2)		\$308,414.26
4.	Total completed and stored to date <i>(Column G on detail sheet)</i>		\$308,414.26
5.	Retainage:		
	a. 0.00% of completed work	\$0.00	
	b. 0.00% of stored material	\$0.00	
	Total retainage		\$0.00
	<i>(Line 5a + 5b or total in column 1 of detail sheet)</i>		
6.	Total earned less retainage <i>(line 4 less Line 5 Total)</i>		\$308,414.26
7.	Less previous certificates for payment <i>(Line 6 from prior certificate)</i>		\$0.00
8.	Current payment due		\$308,414.26
9.	Balance to finish, including retainage <i>(Line 3 less Line 6)</i>		\$0.00

The undersigned certifies that to the best of the Subcontractor's knowledge, information and belief, the Work covered by this application for Payment has been completed in accordance with the Subcontract Documents, that all amounts have been paid by the Subcontractor for Work which previous Certificates for payment were issued and payments received from the Owner/Client, and that the current payments shown herein is now due.

SUBCONTRACTOR: HCE Site Maintenance, LLC

By: *Ran Hat*

Date: 12/12/2024

State of: Delaware

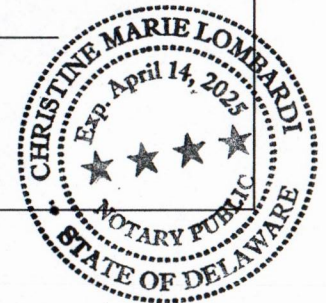
County of: Sussex

Subscribed and sworn to be before me this 12th day of December, 2024

Notary Public: Christine Marie Lombardi

My Commission Expires: April 14, 2025

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner/Client:		\$0.00	\$0.00
Total approved for this month:		\$36,127.26	\$0.00
Totals:		\$36,127.26	\$0.00
Net change by change orders:		\$36,127.26	



Document SUMMARY SHEET, APPLICATION AND CERTIFICATE FOR PAYMENT, containing

Contractor's signed Certification is attached.

Use Column I on Contracts where variable retainage for line items apply.

APPLICATION NO: 1

APPLICATION DATE: 12/12/2024

PERIOD: 9/24/2024 -12/12/2024

Contract Lines

ITEM NO	A BUDGET CODE	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D APPROVED WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)		H BALANCE TO FINISH (C-G)	I RETAINAGE (0.0%)
				FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD		% (G/C)			
1	C-A.1 Conservancy - Base	Mobilization	\$4,800.00	\$0.00	\$4,800.00	\$0.00	\$4,800.00	100.00%	\$0.00	\$0.00
2	C-A.2 Conservancy - Base	Maintenance of Traffic	\$7,200.00	\$0.00	\$7,200.00	\$0.00	\$7,200.00	100.00%	\$0.00	\$0.00
3	C-A.3 Conservancy - Base	Pavement Patching	\$5,360.00	\$0.00	\$5,768.70	\$0.00	\$5,768.70	107.63%	(\$408.70)	\$0.00
4	C-A.4 Conservancy - Base	Hot-Mix Pavement Milling	\$817.50	\$0.00	\$825.46	\$0.00	\$825.46	100.97%	(\$7.96)	\$0.00
5	C-A.5 Conservancy - Base	Type C Hot-Mix	\$78,966.75	\$0.00	\$80,101.98	\$0.00	\$80,101.98	101.44%	(\$1,135.23)	\$0.00
6	C-A.6 Conservancy - Base	Type B Hot-Mix	\$5,139.75	\$0.00	\$6,885.71	\$0.00	\$6,885.71	133.97%	(\$1,745.96)	\$0.00
7	C-A.7 Conservancy - Base	Type B Hot-Mix, Wedge	\$1,600.00	\$0.00	\$3,611.20	\$0.00	\$3,611.20	225.70%	(\$2,011.20)	\$0.00
8	C-A.8 Conservancy - Base	Driveway Repair	\$1,500.00	\$0.00	\$1,500.00	\$0.00	\$1,500.00	100.00%	\$0.00	\$0.00
9	C-A.9 Conservancy - Base	Drainage Inlet Repair	\$200.00	\$0.00	\$200.00	\$0.00	\$200.00	100.00%	\$0.00	\$0.00
10	C-A.10 Conservancy - Base	Drainage Inlet Apron	\$2,300.00	\$0.00	\$2,500.00	\$0.00	\$2,500.00	108.70%	(\$200.00)	\$0.00
11	C-A.11 Conservancy - Base	Manhole Adjustment	\$1,400.00	\$0.00	\$1,800.00	\$0.00	\$1,800.00	128.57%	(\$400.00)	\$0.00
12	C-A.12 Conservancy - Base	Valve Adjustment and Repair	\$1,200.00	\$0.00	\$900.00	\$0.00	\$900.00	75.00%	\$300.00	\$0.00
13	C-A.13 Conservancy - Base	Topsoil, Seed & Mulch	\$800.00	\$0.00	\$1,996.00	\$0.00	\$1,996.00	249.50%	(\$1,196.00)	\$0.00
14	C-B.1 Conservancy - Contingent	Undercut Excavation	\$1,100.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$1,100.00	\$0.00
15	C-B.2 Conservancy - Contingent	Graded Aggregate Base Course, Type B	\$1,350.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$1,350.00	\$0.00
16	V-A.1 Veranda - Base	Mobilization	\$4,800.00	\$0.00	\$4,800.00	\$0.00	\$4,800.00	100.00%	\$0.00	\$0.00

17	V-A.2 Veranda - Base	Maintenance of Traffic	\$7,200.00	\$0.00	\$7,200.00	\$0.00	\$7,200.00	100.00%	\$0.00	\$0.00
18	V-A.3 Veranda - Base	Pavement Patching	\$9,380.00	\$0.00	\$7,591.10	\$0.00	\$7,591.10	80.93%	\$1,788.90	\$0.00
19	V-A.4 Veranda - Base	Hot-Mix Pavement Milling	\$2,670.50	\$0.00	\$2,893.95	\$0.00	\$2,893.95	108.37%	(\$223.45)	\$0.00
20	V-A.5 Veranda - Base	Type C Hot-Mix	\$95,433.75	\$0.00	\$97,238.88	\$0.00	\$97,238.88	101.89%	(\$1,805.13)	\$0.00
21	V-A.6 Veranda - Base	Type B Hot-Mix	\$8,877.75	\$0.00	\$9,558.38	\$0.00	\$9,558.38	107.67%	(\$680.63)	\$0.00
22	V-A.7 Veranda - Base	Type B Hot-Mix, Wedge	\$1,600.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$1,600.00	\$0.00
23	V-A.8 Veranda - Base	Concrete Curbing Repair	\$920.00	\$0.00	\$940.00	\$0.00	\$940.00	102.17%	(\$20.00)	\$0.00
24	V-A.9 Veranda - Base	Concrete Curbing Replacement	\$14,760.00	\$0.00	\$28,413.00	\$0.00	\$28,413.00	192.50%	(\$13,653.00)	\$0.00
25	V-A.10 Veranda - Base	Drainage Inlet Repair	\$1,350.00	\$0.00	\$1,350.00	\$0.00	\$1,350.00	100.00%	\$0.00	\$0.00
26	V-A.11 Veranda - Base	Manhole Adjustment and Repair	\$2,000.00	\$0.00	\$800.00	\$0.00	\$800.00	40.00%	\$1,200.00	\$0.00
27	V-A.12 Veranda - Base	Valve Adjustment and Repair	\$1,500.00	\$0.00	\$1,650.00	\$0.00	\$1,650.00	110.00%	(\$150.00)	\$0.00
28	V-A.13 Veranda - Base	Pavement Striping, 4" White	\$986.00	\$0.00	\$844.90	\$0.00	\$844.90	85.69%	\$141.10	\$0.00
29	V-A.14 Veranda - Base	Sodding	\$600.00	\$0.00	\$870.00	\$0.00	\$870.00	145.00%	(\$270.00)	\$0.00
30	V-A.15 Veranda - Base	Topsoil, Seed & Mulch	\$800.00	\$0.00	\$1,900.00	\$0.00	\$1,900.00	237.50%	(\$1,100.00)	\$0.00
31	V-B.1 Veranda - Contingent	Undercut Excavation	\$1,650.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$1,650.00	\$0.00
32	V-B.2 Veranda - Contingent	Graded Aggregate Base Course, Type B	\$2,025.00	\$0.00	\$900.00	\$0.00	\$900.00	44.44%	\$1,125.00	\$0.00
33	V-C.1 Veranda - Add	Walking Path Repairs	\$2,000.00	\$0.00	\$2,000.00	\$0.00	\$2,000.00	100.00%	\$0.00	\$0.00
		TOTALS:	\$272,287.00	\$0.00	\$287,039.26	\$0.00	\$287,039.26	105.42%	(\$14,752.26)	\$0.00

Change Orders

A ITEM NO	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D APPROVED WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C-G)	I RETAINAGE
			FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G/C)		
CO-1	Valley Gutter Addition	\$21,375.00	\$0.00	\$21,375.00	\$0.00	\$21,375.00	100.00%	\$0.00	\$0.00
CO-1	Balancing Quantities	\$14,752.26	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$14,752.26	\$0.00
		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00
TOTALS:		\$36,127.26	\$0.00	\$21,375.00	\$0.00	\$21,375.00	100.00%	\$14,752.26	\$0.00

Grand Totals

A ITEM NO	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D APPROVED WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C-G)	I RETAINAGE
			FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G/C)		
TOTALS:		\$308,414.26	\$0.00	\$308,414.26	\$0.00	\$308,414.26	205.42%	\$0.00	\$0.00

ENGINEERING DEPARTMENT

MIKE HARMER, P.E.
SUSSEX COUNTY ENGINEER

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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: Hans Medlarz, P.E., County Engineer, ret.

RE: ***Wolfe Neck Regional Wastewater Facility***
A. Approval of Lagoon Solar Lease Amendments

DATE: December 17, 2024

County Council in cooperation with the Lewes Board of Public Works retained the professional engineering firm GHD to conduct a facility upgrade study for the Wolfe Neck WRF. It concluded that any treatment expansion can only occur in the location of the primary treatment lagoon requiring removal of the accumulated biosolids. As a precursor of the removal, all incoming flows must be transferred to treatment lagoons 2 & 3. The support of the biosolids removal and dewatering equipment required a new electrical service and power distribution center.

On August 15, 2023, Council awarded GHD's Amendment 22 – Advanced Electrical Design for the electrical design associated with both the immediate power needs of the biosolids project as well as the future plant expansion power load. Under any discharge scenario, the treated effluent must be stored prior to final discharge. The compliance point of the future discharge permit will be at the effluent pump station. In order to maintain compliance, the algae growth in the storage lagoon must be controlled by limiting the incoming light. A costly liner is one option, but research revealed a similar outcome can be achieved with floating solar panels. A floating lagoon solar facility is completely hidden from view below the embankment while providing the facility upgrade a “green” component in addition to an annual lease payment.

On October 23, 2023 Council approved the Engineering Department to request proposals from qualified solar developers to lease the effluent lagoon surface at the Wolfe Neck RWF. subsequently, a Request for Proposals (RFP) including a draft lease agreement was advertised and on December 6, 2023, four (4) fully compliant submittals were received.



The RFP review committee ranked the proposals based on lease payment, schedule to deliver the system, as well as local experience. The recommendation was presented to County Council on February 27, 2024, when the Engineering Department received authorization to finalize the lease terms with Noria-Chaberton JV LLC. Subsequently, all special arrangements such as the decommissioning, insurance coverage and minimum lease area were incorporated and on March 19, 2024 County Council approved the Solar Energy Lease and Easement Agreement.

In March of 2022 the Delaware Public Service Commission approved Order No. 9965 regulating community energy facilities. The County's RFP required that the respondents develop a solar system under the Commission's Community Energy Facility Program and Noria Chaberton JV LLC submitted the solar power co-location waiver to the Public Service Commission. It was heard by the Commission under Docket No. 24-0846 and approved during their August 21, 2024 meeting.

The incoming DP&L service currently does not support the simultaneous facility load in addition to the expected biosolids project load. Originally the Department envisioned a solar power contribution could possibly eliminate electric utility upgrades. However, in discussions with DP&L it was determined that a feeder upgrade between the Wolfe Neck Facility and the DP&L substation on SR-1 would allow the project to be expanded to 10MW AC power. Noria Chaberton JV LLC agreed to expand the solar facility to three (3) phases each one identified in a separate LLC. (Blacktail LLC I, II & III) Chaberton JV LLC will enter in an Interconnection Agreement with DP&L while the County will be responsible for the costs associated with the Interconnection Agreement. In return Noria Chaberton JV LLC offers at a minimum to maintain the phase I lease rate and escalate the lease rates for Blacktail II, and III.

In summary the project provides the following benefits:

- Eliminating the lagoon liner costs by now shading +/- 90% of light in storage lagoon no.4 reducing the County's capital costs by approximately \$1.5 million.
- Minimum lease payments of \$2,345,000 over 20-years initial service life per phase
- Established sinking funds for the equipment removal for each phase
- Utility scale "Green" project component addressing citizen comments.
- Project integration into new electrical building project via Change Order No.1

Therefore, the Engineering Department is requesting final approval of the Amended and Restated Solar Energy Lease and Easement Agreements for Blacktail I, II & III with Addenda, the Amended and Restated Memorandum of Solar Energy Lease and Easement Agreement (to be recorded) as well as the Amended and Restated Decommissioning Funding Agreement with Blacktail I, II & III LLC respectively as presented.

**AMENDED AND RESTATED SOLAR ENERGY LEASE AND EASEMENT AGREEMENT
(Delaware)**

THIS AMENDED AND RESTATED SOLAR ENERGY LEASE AND EASEMENT AGREEMENT (“**Lease**” or “**Agreement**”) is made and entered into on _____ (the “**Effective Date**”), by and between **Sussex County, Delaware**, a county and political subdivision of the State of Delaware, having an office at P.O. Box 589, Georgetown, Delaware 19947, United States, as “**Lessor**”, (whether one or more), and **Blacktail Solar I LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as “**Lessee**”. Lessor and Lessee are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

RECITALS

(a) Lessor is the owner of approximately 100 acres of real property located in Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware, as more particularly described in the vesting deed which is attached hereto as **Exhibit A** (the “**Property**”);

(b) Lessor is the owner of the effluent spray lagoon at the Wolfe Neck Treatment Facility, located on the Property, which lagoon is known as and identified as Lagoon 4 in the description attached hereto as Exhibit A-1 (the “**Lagoon**”);

(c) Lessor and Lessee desire that Lessee should lease the exclusive rights to use the surface of the Lagoon, lying within approximately up to 13 acres of the Property as preliminarily depicted on **Exhibit B**, together with all solar and air rights, improvements, fixtures, personal property and trade fixtures, appurtenances, tenements, hereditaments, ingress and egress rights, and other Easements (as defined in Section 14) pertaining to the Property (collectively, the “**Premises**”);

(d) Lessee desires to obtain from Lessor, and Lessor desires to grant to Lessee, an exclusive option to lease the Premises while Lessee undertakes due diligence and development activities, and upon the successful conclusion of such activities, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor the Premises for the construction and operation of a solar photovoltaic and/or energy storage project on the Premises, including all necessary equipment to deliver solar or stored energy from the Premises to the distribution grid (the “**Project**”);

(e) Lessor and Lessee (as successor in interest of Noria Chaberton JV LLC (“**NOCH**”) by virtue of that certain Assignment of Solar Energy Lease and Easement Agreement dated July 15, 2024) entered into that certain Solar Energy Lease and Easement Agreement dated March 19, 2024, the memorandum of which was recorded with the Registrar of Deeds of Sussex County, DE at BK: 6089 and PG: 144 on April 23, 2024 (“**Prior Agreement**”), which Prior Agreement was awarded to Lessee (as successor in interest of NOCH) under the Sussex County Council Request for Proposal dated October 26, 2023 and subsequent approval by the Sussex County Council on March 19, 2024 of Lessee’s Wolfe Neck Regional Wastewater Facility Floating Community Solar Proposal dated December 14, 2023;

(f) Lessee, concurrently with the execution of the Prior Agreement did timely pay to Lessor all required Option Period Fees (as defined in Section 5.1); and

(g) Pursuant to Section 11.4, Lessee bifurcated the Prior Agreement into two stand-alone new leases namely, this Agreement, and another solar energy lease and easement agreement of even date herewith to be executed by Lessee’s affiliate, Blacktail Solar II LLC;

(h) Lessor and Lessee desire to amend and restate the Prior Agreement as set forth herein to specify the Premises covered hereby.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND THE AGREEMENTS, COVENANTS AND PROMISES set forth in this Lease and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and agreed by the Parties, Lessor and Lessee, intending to be legally bound hereby, agree as follows:

1. Option to Lease; Lease and Grant of Easements. Lessor grants to Lessee, at any time during the Option Period (as defined in Section 4.1), an exclusive, irrevocable, and continuing right and option (the “**Option**”) to lease the Premises and obtain the Easements (as defined in Section 14) upon the terms and conditions set forth herein. Subject to Section 3, during the Option Period (as defined below in Section 4.1), Lessor shall grant no license, easement, option, leasehold, or other right in or affecting the Premises or any right related thereto, nor permit any third party to undertake any activities on the Premises without Lessee’s written consent. Effective as of the Construction Commencement Date (as defined in Section 4.1), Lessor hereby leases to Lessee the Premises, and grants to Lessee the Easements, upon and subject to the terms and conditions in this Lease. Lessee shall have the quiet use and enjoyment of the Premises in accordance with and subject to the terms of this Lease, without any manner of hindrance, interference, or molestation of any kind by Lessor or any person claiming through or under Lessor.

2. Purpose and Scope of Lease.

2.1 This Lease is for the uses set forth in this Agreement and Lessee will have the exclusive right to use the Premises for any and all uses related to the Project Activities (as defined in Section 2.2); provided that (a) during the Option Period, Lessee will have the right of access to and from the Premises from a public road through any easements, rights of way, or other access rights held by Lessor for the benefit of the Premises, and the rights to use the Premises on a non-exclusive basis for the purpose of carrying out due diligence and development activities consistent with the Project Activities, including the activities set forth in Section 2.2.2; and (b) during the Restoration Period (as defined in Section 4.3), Lessee shall have the exclusive right to access and use the Premises for the purpose of completing the Restoration Requirements set forth in Section 13.3. The rights hereby granted to Lessee in this Lease include, without limitation, the Easements and related rights more fully described in Section 14.

2.2 “**Project Activities**” means any and all activities related to developing, installing, constructing, interconnecting, owning, maintaining, and operating one or more solar photovoltaic electric generation systems and/or Energy Storage Technology (as such term is defined under Section 48(c)(6) of the Internal Revenue Code of 1986 and the Inflation Reduction Act of 2022), converting solar or stored energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related to such uses, including:

2.2.1 constructing, installing, using, replacing, relocating, repowering and removing from time to time, and maintaining and operating the following facilities (collectively, “**Project Facilities**”): (a) solar-powered electric generating facilities, including but not limited to modules, inverters, cables, foundations, panels, mounting units and all necessary ancillary improvements and equipment providing support or otherwise associated therewith; (b) photovoltaic solar power generating equipment or such other solar-powered generating equipment as determined in Lessee’s commercially reasonable judgment to be used to capture and convert solar radiation to produce electricity; (c) fences, gates and other safety and protection facilities; (d) utility installations; (e) Energy Storage Technology; (f) private stormwater management systems; and (g) overhead, submerged under water, and underground electrical transmission, collection and communications lines and cables, electric transformers, switching stations, substations, telecommunications

equipment, concrete batch plants, power generation facilities to be operated in conjunction with solar array installations, roads, control buildings, operation and maintenance buildings and yards, construction laydown and staging areas, security fencing and related facilities and equipment necessary or convenient for the construction, operation and maintenance of the Project;

2.2.2 any and all activities to determine the feasibility of the Premises for the Project including conducting surveys, soil or water sampling, studies of environmental, biological, cultural, and geotechnical conditions of the Premises, and other tests; and

2.2.3 all other activities on the Premises whether accomplished by Lessee or a third-party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.

3. Uses Reserved by Lessor. During the Option Period, Lessor shall have the right to undertake agricultural activities on the Premises provided that any such activities shall be performed in such a manner so as not to adversely affect Lessee's ability to utilize the Premises for Lessee's intended purpose of constructing the Project Facilities from the Construction Commencement Date. The cost of any such activities undertaken by Lessor during the Option Period shall be the sole responsibility of Lessor, and the proceeds from the sale of any materials resulting from any such activities performed by Lessor prior to the Construction Commencement Date shall be for the sole benefit of Lessor. Effective as of the Construction Commencement Date (as defined in Section 4.1), Lessor acknowledges that neither Lessor nor Lessor's lessees or grantees (other than Lessee) shall have any right to occupy or use the Premises until this Lease terminates or expires. Lessor and any of its other lessees or grantees shall immediately cease all activity and presence on the Premises as of the Construction Commencement Date and clear any equipment, facilities or anything else from the Premises that would otherwise potentially interfere with the Project.

4. Option Period; Term of Lease. Subject to the other provisions contained herein, the term of this Lease and the Easements contained in this Lease shall be as follows:

4.1 Option Period. The "**Option Period**" of this Lease shall be in force for a period of one year, commencing on the Effective Date and expiring at 11:59 PM EST on the one-year anniversary of the Effective Date, unless otherwise extended pursuant to the provision in the immediately following sentence. At Lessee's option, upon notice to Lessor provided no later than the date that is one month prior to the end of the then-current Option Period or Option Period Extension (each such notice, a "**Option Period Extension Notice**"), and subject to other provisions contained herein, Lessee may extend the Option Period for up to two additional one-year periods (each additional one-year period, a "**Option Period Extension**"), up to a maximum Option Period of three years. Notwithstanding the provision in the preceding sentence, and subject to Section 4.2, if this Lease has not been terminated in accordance with the terms hereof and, by the date set forth in the preceding sentence, Lessee fails to (i) deliver the Option Period Extension Notice, or (ii) otherwise notify Lessor that Lessee will not be exercising its option to extend the Option Period, Lessee shall be deemed to have exercised its option to extend the Option Period to the next allowable Option Period Extension up to the expiration date of the second Option Period Extension. If during the Option Period, Lessee secures all approvals and permits necessary to initiate the Project Activities, and, at its sole discretion, finds the Property suitable for development of the Project Facilities, Lessee shall notify Lessor of its intent to commence construction of the Project Facilities (such notice, the "**Construction Notice**"). The Construction Notice shall: (a) set forth the date on which Lessee shall commence construction of the Project Facilities (the "**Construction Commencement Date**"); and (b) contain an ALTA-compliant and certified survey ("**Survey**") of the Premises and the Easement Areas (as defined in Section 14.1). Lessee shall deliver the Construction Notice no later than two weeks in advance of the Construction Commencement Date. The Survey shall show (i) a calculation of the actual number of acres contained within the Premises (each being a "**Premises Acre**"); and (ii) the final routing and delineation of the Access and Transmission Easements (as defined in Section 14.1), if any. Upon Lessee's delivery of the Construction Notice to Lessor, (A) Lessee shall be deemed to have exercised the Option; (B) **Exhibit B** and

Exhibit C shall each be deemed revised (without the need for any additional documentation) to reflect the Premises and Easement Areas as set forth in the Survey, *provided that* upon Lessee's request, Lessor and Lessee shall execute an amended memorandum of lease to give recordable notice of the revised Premises and Easement Areas and Lessee shall record said amended memorandum within the land records of Sussex County; and (C) such revised **Exhibit B** shall definitively establish the surveyed acreage of the Premises for purposes of calculating the Annual Rent (as defined in Section 5.2.1).

4.2 Lease Term. If this Lease has not been terminated in accordance with the terms hereof before the end of the Option Period (or any extension thereof), the "**Lease Term**" shall commence on the Construction Commencement Date and shall terminate on the 25th anniversary of the Operations Date (as defined in the provision in the immediately following sentence), unless otherwise extended pursuant to the provisions of this Section 4.2. The "**Operations Date**" means the date that is the earlier of (a) the date on which the Project has been completely constructed, has physically completed all performance tests, and has received the permission to operate from the local electric utility; and (b) two years after the Construction Commencement Date. At Lessee's option, upon notice to Lessor (each such notice, a "**Lease Term Extension Notice**") provided no later than six months prior to the end of the then-current Lease Term or Lease Term Extension, Lessee may extend the Lease Term for up to three additional five-year periods (each additional five-year extension period, a "**Lease Term Extension**"). Lessee shall pay to Lessor, the Annual Rent for the first year of such Lease Term Extension calculated in the manner, and by the date, set forth in Section 5.2.1. For the avoidance of doubt, the expression "**Lease Term**" means the Lease Term together with any Lease Term Extensions.

4.3 Restoration Period. "**Restoration Period**" means the period from the earlier termination or expiration date of the Lease until the last date of Lessee's completion of the Restoration Requirements under Section 13.3.

5. **Fees and Rent**. Lessee will pay Lessor the following amounts:

5.1 Option Period Fee. Within 30 calendar days of the date hereof, Lessee will tender a one-time nonrefundable payment to Lessor in the amount of \$10,000.00 (the "**Option Period Fee**"). In the event Lessee extends the then-current Option Period or Option Period Extension, Lessee shall pay to Lessor an additional payment in the amount of \$15,000.00 (the "**Option Period Extension Fee**") for each new Option Period Extension, payable no later than five days after the commencement of such Option Period Extension.

5.2 Rent.

5.2.1 During the Lease Term, and any extension thereof, Lessee shall pay to Lessor the Annual Rent (as defined in the immediately following sentence). The "**Annual Rent**" shall be in the amount of **\$6,500.00** per surveyed Premises Acre, payable within 45 days of the Construction Commencement Date and on each anniversary of the Construction Commencement Date. During the first anniversary of the Construction Commencement Date and each subsequent anniversary during the Lease Term, the Annual Rent shall increase by **2.5%** over the Annual Rent paid in the previous year.

5.2.2 "**Rent**" means, collectively, the Option Period Fee, Option Period Extension Fee, and the Annual Rent. Subject to Section 13.3, Lessee shall have no obligation to make any additional payments of Rent following the termination or expiration of this Lease.

5.3 Interest on Past Due Payments. All Rent and other fees not paid or tendered when due under this Lease shall bear simple interest at an annual rate equal to the lesser of (a) the Federal Reserve Bank Loan Prime Rate or (b) the maximum rate allowed by Applicable Law (as defined in Section 9.1).

5.4 Payment Adjustments; Partial Ownership; Change in Property Ownership.

5.4.1 Lessor shall provide Lessee with its certified taxpayer identification numbers simultaneously with the execution and delivery of this Lease via an Internal Revenue Service (IRS) Form W-9 (or its equivalent). No payments under this Lease shall be paid, but shall continue to accrue, until Lessee has

received such taxpayer identification information. Upon receipt of such taxpayer identification information, all accrued, but unpaid Rent shall be immediately due and payable by Lessee to Lessor. In the event of an assignment of this Lease or sale, assignment or transfer of Lessor's interest in the Premises, or any part thereof, to a third party, Rent shall be adjusted proportionately with respect to the fee interest in the Premises held by Lessor and said third party beginning with the first payment of Rent due subsequent to said sale, assignment, or transfer. No payments under this Lease shall be paid to said third-party, but shall continue to accrue, until Lessee has received certified taxpayer identification numbers from the third-party via an IRS Form W-9 (or its equivalent). Any Rent paid to Lessor for the year in which a sale, assignment, or transfer has occurred shall be allocated between Lessor and the third-party as determined between Lessor and the third-party but in no event shall Lessee be required to make any additional Rent payments or to otherwise compensate the third-party for its proportionate share of Rent for the year of sale, assignment, or transfer.

5.4.2 Notwithstanding anything to the contrary in this Lease or elsewhere, any obligation under this Lease for Lessee or any Assignee (as defined in Section 11.1) to pay Lessor any amount will be completely and unconditionally satisfied by payment of such amount by Lessee or Assignee, as applicable, to Lessor at the address for Lessor given in this Lease or such other single address designated by not less than 30 days' prior notice to Lessee and each such Assignee signed by Lessor. At Lessee's election, such payment may be by joint check or checks payable to any assignee(s) of Lessor under Section 11.5. Lessor shall be solely responsible to notify Lessee and each Assignee in writing of any change in ownership of the Property or any portion thereof.

6. Ownership of Project Facilities. Lessor shall have no ownership or other interest in any Project Facilities and Lessee may remove any or all Project Facilities at any time. No part of the Project Facilities or other equipment installed by Lessee on the Premises shall be considered part of the Property, or fixtures, or an improvement to real property. The Project Facilities shall at all times be considered tangible personal property owned exclusively by Lessee. Notwithstanding any provision herein to the contrary, Lessor acknowledges that Lessee shall have no obligation to construct any Project Facilities on the Premises.

7. Taxes and Assessments.

7.1 Responsibility of the Parties.

7.1.1 With the exception of the taxes and assessments set forth in Section 7.1.2, Lessor shall pay all taxes of every kind and nature (including real and personal property, income, gross receipts, franchise, profits, sales and withholding taxes), all general and special assessments, water and sewer rents and charges, and all levies, permits, inspection and license fees and other public charges now or hereafter levied or assessed against the Property as liens or assessments as the same shall become due and payable from time to time and before interest or penalties accrue thereon. Lessor shall under no circumstances permit the Property to be sold or advertised for sale for nonpayment of any tax. Lessor shall deliver to Lessee receipts evidencing the payment of such tax within 30 days after Lessee's demand therefor.

7.1.2 During the Lease Term, Lessee shall pay all taxes and assessments levied or assessed against its personal property located on the Leased Premises, including the Project Facilities and all other taxes (including property tax increases specifically triggered by development and build out of the Project Facilities, or applicable "roll back" taxes), assessments or other public charges assessed or imposed by reason of the Project Activities or the conduct of Lessee's business, including, but not limited to, sales and income taxes. Lessee shall have the right to enter into a payment in lieu of tax ("**PILOT**") agreement with the municipality or county in which the Premises are located for the taxation of Lessee's personal property located on the Premises. If requested by Lessee, Lessor shall, at the sole expense of Lessee, reasonably cooperate with Lessee in connection with a PILOT agreement.

7.1.3 Lessee may, in its sole discretion, but shall not be obligated to, pay directly to the relevant taxing authority, any taxes with respect to the Property which under this Lease are the responsibility

of the Lessor, in order to remove any tax lien or other restriction placed on the Property due to non-payment; in which case Lessee shall receive a credit on its Rent, of any amounts so paid plus an amount equivalent to interest at the rate provided for in Section 5.3 on the amount so paid from the date of payment to the time the Rent being credited is due. Furthermore, any such payment of taxes by Lessee which are the responsibility of Lessor under this Lease shall not obligate Lessee to make any further payments of such taxes.

7.2 Reimbursement. If any taxes payable by Lessee under this Lease are levied or assessed in the name of Lessor as part of the real property taxes payable by Lessor, then, promptly after Lessor timely submits the real property tax bill to Lessee, Lessee shall reimburse Lessor for all such taxes payable by Lessee under this Lease in the amount due without interest or penalties; provided, however, that if penalties and interest are incurred as a result of any failure or omission on Lessee's part, then Lessee shall be responsible for the same. It is a condition to Lessor's right to payment or reimbursement of any penalties or interest relating to taxes under this Lease that Lessor submit the real property tax bill (and any other communication from any government authority regarding the same) to Lessee at least 45 days before the tax bill is due.

7.3 Right to Contest. Lessee's obligations under this Lease are subject to Lessee's right to contest the same as hereinafter provided. Lessee shall have the right, in its sole discretion and at its sole expense, to contest by appropriate legal proceedings (which may be brought in the name(s) of Lessor or Lessee where appropriate or required), the validity or amount of any assessments or taxes for which Lessee is responsible under this Lease. Lessor shall in all respects cooperate with Lessee in any such contest.

8. Indemnities, Insurance, Safety Measures, and Environmental Matters.

8.1 Indemnity.

8.1.1 To the fullest extent permitted by law, Lessee shall defend, indemnify and hold harmless Lessor, and the elected and appointed officials, officers, directors, partners, employees, agents of each and any of them (each, a "**Lessor Party**", and collectively, the "**Lessor Parties**") from all claims, costs, losses, or damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, collectively, "**Losses**") arising out of or relating to the Project Activities, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom but only to the extent caused in whole or in part by any negligent act or omission of Lessee, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them (each, a "**Lessee Party**", and collectively, the "**Lessee Parties**") to perform any of the Project Activities or anyone for whose acts any of them may be liable. Lessee shall be liable, regardless of whether or not such claims, damages, losses, injuries, or expenses are caused in part by a party indemnified hereunder.

8.1.2 In any and all claims against Lessor or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Lessee, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

8.1.3 Lessee agrees to expressly waive its immunity, if any, as a complying employer under the Workers' Compensation law or statute, but only to the extent that such immunity would bar or affect recovery under or enforcement of any indemnification obligation contained herein. This waiver applies to Title 19, Chapter 23 of the Delaware Code, including amendments, or any other applicable state Workers' Compensation law or statute.

8.2 Limitation of Liability. **LESSEE SHALL IN NO CASE BE LIABLE FOR LOST BUSINESS OPPORTUNITIES, LOST PROFITS, OR ANY OTHER SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MAY RESULT FROM THE CONDUCT OF LESSEE'S PROJECT ACTIVITIES OR OTHERWISE AS A RESULT OF ANY EXERCISE BY LESSEE OF ITS RIGHTS UNDER THIS LEASE; PROVIDED, HOWEVER, THAT SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO: (A) THE FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSEE; OR (B) THE INDEMNIFICATION OBLIGATIONS OF LESSEE UNDER SECTION 8.1.**

8.3 Insurance. Lessee shall, at its expense, obtain and maintain throughout the Lease Term, (i) a broad form comprehensive coverage policy of public liability insurance insuring Lessee and Lessor against loss or liability caused by Lessee's activities on the Premises under this Lease, in an amount not less than \$2,000,000.00 of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible; (ii) commercial auto liability insurance with a combined single limit of not less than \$1,000,000.00, and (iii) umbrella liability insurance with a combined single limit of not less than \$5,000,000.00. Certificates of insurance identifying the required insurance must be provided to the Lessor and kept current. All required insurance policies shall be endorsed to provide that the policy is not subject to cancellation until thirty (30) days prior written notice has been given to Lessor (not less than ten (10) days' notice is required for non-payment of premium). If Lessor is damaged by the failure or neglect of Lessee to purchase and maintain required insurance, then Lessee shall bear all reasonable costs properly attributable thereto.

8.4 Safety Measures and Recognition of Dangers.

8.4.1 Lessor authorizes Lessee to take reasonable safety measures to reduce the risk of theft of or damage to the Project Facilities or the risk that the Project Facilities will cause damage, injury or death to people, livestock, other animals, and property. Lessee may construct fencing around the entire Premises and take other security precautions if Lessee determines, in its sole discretion, that such fencing or security measures will reduce such risks of theft, damage, death or injury. The expense for any and all fencing constructed by Lessee, or other security measures taken by Lessee, shall be borne solely by Lessee.

8.4.2 **LESSOR RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN CLOSE PROXIMITY TO ANY OF THE PROJECT FACILITIES. LESSOR AGREES TO EXERCISE CAUTION AT ALL TIMES AND TO ADVISE THE LESSOR PARTIES TO DO THE SAME. LESSOR SHALL TAKE REASONABLE MEASURES TO AVOID ALL RISKS ASSOCIATED WITH ELECTROMAGNETIC FIELDS RESULTING FROM THE PRODUCTION AND TRANSMISSION OF ELECTRICITY AND LESSOR WAIVES ANY AND ALL CLAIMS AND CAUSES OF ACTION WHATSOEVER (WHETHER CURRENTLY EXISTING OR THAT MAY OTHERWISE ARISE OR ACCRUE AT ANY TIME IN THE FUTURE) THAT LESSOR POSSESSES OR OTHERWISE MAY POSSESS AGAINST LESSEE PARTIES ARISING FROM OR RELATING TO SUCH RISKS; PROVIDED, HOWEVER, SUCH WAIVER SHALL NOT BE EFFECTIVE TO THE EXTENT LESSEE OR ANY LESSEE PARTY ENGAGES IN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

8.5 Environmental Matters; Hazardous Materials.

8.5.1 Lessee shall not violate, and shall indemnify Lessor Parties against any Losses arising from violation by Lessee or any Lessee Party of, any Environmental Law (as defined in Section 8.5.3) in connection with or related to Lessee's use of the Premises. Lessee's violation of the prohibition in the preceding sentence shall constitute a material breach and default under this Lease. In conformance with the requirements of applicable law, Lessee shall clean up, remove, remedy, repair, and shall have the right to register any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials (as defined in Section 8.5.4) by Lessee or any Lessee Parties in, on or under the Premises.

8.5.2 Lessor shall not violate, and shall indemnify Lessee Parties against any Losses arising from violation by Lessor or any Lessor Party of, any Environmental Law in connection with or related to Lessor's ownership or use of the Property, including without limitation any such violation which may have occurred by Lessor, Lessor Parties or any other person prior to the Effective Date. Lessor's violation of the prohibition in

the preceding sentence shall constitute a material breach and default under this Lease. In conformance with the requirements of applicable law, Lessor shall clean up, remove, remedy, and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials by Lessor or any Lessor Party in, on, under, or about the Premises or within 200 feet of the Premises.

8.5.3 **“Environmental Laws”** means any and all federal, state, local laws, ordinances, codes, and regulations relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Materials, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (**“CERCLA”**) and all laws referred to under the definition of “hazardous substance” in CERCLA.

8.5.4 **“Hazardous Materials”** means any hazardous or toxic material, substance or waste, pollutant, or contaminant as defined or regulated under Environmental Laws, including “hazardous substance” and “pollutant or contaminant” (as such terms are defined or used in CERCLA), petroleum, petroleum products, asbestos, polychlorinated biphenyls, and radioactive materials.

8.6 Brokerage Commissions. Lessee and Lessor agree to indemnify and defend the other Party against and hold the other party harmless from any and all claims with respect to any commission or equivalent compensation alleged to be owing on account of the indemnifying Party's dealings with any broker or agent. The terms of this Section 8 shall survive the expiration or earlier termination of the Term of this Lease.

9. Lessee’s Representations, Warranties, and Covenants. Lessee represents, warrants, and covenants to Lessor that:

9.1 Requirements of Governmental Agencies. Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders, rules and regulations of any governmental agency applicable to the Project Facilities (collectively, **“Applicable Law”**). Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, brought in the name of Lessee or in the names of both Lessee and Lessor, the validity or applicability to the Premises or Project Facilities of any Applicable Law. Lessor shall fully cooperate in such contest, so long as it is reimbursed for its out-of-pocket expenses incurred in such contest and cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee’s failure to observe or comply during the contest with the contested Applicable Law.

9.2 Liens. Lessee shall keep the Premises free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to the Premises for Lessee’s use or benefit; provided, however, that if such a lien does arise, Lessee has a right to contest such lien and Lessee, within 60 days after it receives notice of the filing of such lien, either bonds around such lien or establishes appropriate reserves therefore, or, otherwise, removes such lien from the Premises pursuant to Applicable Law, in which case Lessee shall not be deemed to have breached this Section 9.2. Nothing in this Section 9.2 or this Lease shall be construed to prohibit Lessee from granting one or more liens on all or any portion of Lessee’s right, title or interest under this Lease as security for the repayment of any indebtedness or the performance of any obligation relating in whole or in part to any of the Project Activities.

10. Lessor’s Representations, Warranties and Covenants. Lessor represents, warrants and covenants as follows:

10.1 Lessor’s Authority. Lessor is the sole owner of the Property and has the unrestricted right and authority to execute this Lease and to grant to Lessee the rights granted under this Lease. Each person signing this Lease on behalf of Lessor is authorized to do so, and all persons having any ownership interest in the Property are signing this Lease as Lessor. When signed by Lessor, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

10.2 No Interference. Lessor's activities and any grant of rights Lessor makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with the construction, installation, maintenance or operation of the Project, Project Facilities, whether located on the Property or elsewhere; access over the Property to the Project Facilities or the Project; any Project Activities; or the undertaking of any other activities permitted under this Lease.

10.3 Treatment of Liens; Third-Party Rights. If at any time during the Lease Term, any lien or any third-party right is found, exists or is claimed to exist against the Property or any portion thereof, that creates rights superior to those of Lessee, and Lessee determines that the existence, use, operation, implementation or exercise of such lien or such third-party right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Lessee's rights under this Lease or the financing of the Project, Lessee shall be entitled to obtain a recordable subordination and non-disturbance agreement (in form and substance reasonably acceptable to Lessee and any Financing Party (as defined in Section 12.1) from the holder of such lien or such third-party right, and Lessor shall use best efforts and diligence in helping Lessee obtain the same at no out of pocket expense to Lessor. Lessor agrees that any right, title, or interest created by Lessor from and after the Effective Date in favor of or granted to any third-party shall be subject to (a) this Lease and all of Lessee's rights, title and interests created in this Lease, and (b) any and all documents executed or to be executed by and between Lessee and Lessor in connection with this Lease.

10.4 Hazardous Materials. To the best of Lessor's knowledge, as of the Effective Date, there are no Hazardous Materials or Hazardous Substance located on the Premises or on the Property within 200 feet of the Premises, the Premises or the Property within 200 feet of the Premises has not been used for the generation, treatment, storage or disposal of Hazardous Materials or Hazardous Substance, no underground storage tanks have ever been located on the Property and there are no underground storage tanks presently located on the Premises or on the Property within 200 feet of the Premises. Lessor's breach of the foregoing representation shall constitute a material breach and default under this Lease.

10.5 Endangered Species. To the best of Lessor's knowledge, as of the Effective Date, there are no vertebrate, invertebrate or plant species located within the Premises that are in a protected category under federal or state law or would otherwise result in a mitigation obligation in connection with the development of the Project Facilities.

10.6 Access. The Premises are accessible by public roadways or through an Easement granted by Lessor to a public roadway. Lessor shall not interfere with and shall not allow any other party to interfere with, Lessee's use of the Easements for the purposes described in this Agreement, or Lessee's rights under this Agreement. Lessor shall not erect, install or maintain any barriers, fences, walls, ditches, barricades, docks or other structures or obstacles on or anywhere within the Easement Areas which would burden or interfere with, impede, slow, divert or in any way prevent pedestrian, vehicular or watercraft traffic from fully passing within, through or across the Easement Areas.

10.7 No Litigation and Liens.

10.7.1 Lessor is not a party to any, and to Lessor's actual knowledge, there are no pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Lessor (i) challenging the validity or propriety of this Lease, or transactions contemplated in this Lease or (ii) which could reasonably be expected to have a material adverse effect on the ownership or operation of the Property or any part thereof or interest therein. If Lessor learns that any such litigation, claim, action or investigation is threatened or has been initiated, Lessor shall promptly deliver notice thereof to Lessee. Lessor is not subject of any bankruptcy, insolvency or probate proceeding.

10.7.2 To Lessor's knowledge, there are no liens, covenants, restrictions, rights of way, easements or other encumbrances affecting the Premises, which will prevent or limit Lessee's use of the

Premises for the purposes permitted under this Agreement, or that are otherwise contrary to the terms of this Agreement.

10.8 Consents and Estoppel Certificates. Lessor shall cooperate with Lessee in the execution and delivery of such consents, estoppel certificates and other documents as a Financing Party, hedge provider, power purchaser, tax equity investor, title insurance company or any other party (collectively, “**Requestor**”) may request, including, without limitation, any instruments required to evidence such Requestor’s rights under this Lease. Within 15 days of actual receipt of a request to do so from Lessee or from any existing or proposed Requestor, Lessor shall execute an estoppel certificate (a) certifying that this Lease is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Lease), (b) certifying that to the best of Lessor’s knowledge there are no uncured events of default under this Lease (or, if any uncured events of default exist, stating with particularity the nature thereof) and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee or any Requestor. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Lease is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Lease.

10.9 Requirements of Governmental Agencies and Utilities. Lessor shall assist and fully and promptly cooperate with Lessee, so long as Lessor is reimbursed for its out-of-pocket expenses, in complying with or obtaining any land or water use permits and approvals, building permits, development permits, construction permits, interconnection applications and requirements of any utility or the owner of any transmission facilities, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Project (collectively the “**Permits**”), including execution of applications for such approvals. Lessor consents to and authorizes Lessee, as Lessor’s attorney-in-fact, with full authority in the place and stead of Lessor, to sign and file Permits on Lessor’s behalf so long as Lessor is given a copy of the Permits at least 10 days prior to such execution and Lessor does not give notice within those 10 days that Lessor believes a portion of such Permit is inaccurate.

10.10 Confidentiality. Lessor shall maintain in the strictest confidence, for the benefit of Lessee, all solar data, all information pertaining to the financial terms of or payments under this Lease, and any and all terms and conditions of this Lease, Lessee’s site or product design, methods of operation, methods of construction, power production or availability of the Project Facilities, and the like, whether disclosed by Lessee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or any Lessor Party, or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor’s lenders, attorneys, accountants, and other personal advisors; any prospective purchaser of the Property; or pursuant to lawful process, subpoena, or court order; provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

10.11 Waivers. To the extent that any Applicable Law establishes land or water use or zoning conditions, restrictions or requirements, including setbacks from the exterior boundaries of the Property for Project Facilities thereon, Lessor, to the extent permissible, waives any and all such conditions or requirements for the benefit of Lessee. Further, if so requested by Lessee, Lessor shall promptly, without demanding additional consideration therefore, execute, and if appropriate cause to be acknowledged and recorded, any waiver or other document or instrument required by any governmental authority. Lessor acknowledges that certain aspects inherent to the operation of the solar energy facilities may result in some nuisance, such as visual impacts, possible increased noise levels, possible glare, and other possible effects of electrical generation and transmission including without limitation potential interference with radio, television, telephone, mobile

telephone, or other electronic devices, within 200 feet of the Premises. Without limiting the grant of Easements made in Section 2 and Section 14, Lessor understands and has been informed by Lessee that the Project Facilities may result in some nuisance, and hereby accepts such nuisance, and Lessor waives its right to object to such nuisance.

10.12 No CRP. Lessor is not a party to a Conservation Reserve Program contract with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410 or any state-based conservation easement or reserve program regarding the Property.

10.13 Title Review. Lessor shall, within 10 days after receipt of Lessee's request to do so, deliver all documents related to the Property in Lessor's possession or control to Lessee for Lessee's review, including, without limitation, copies of the following: reports, site plans, surveys, soil studies, phase one, two, three or four environmental reports, other inspection reports, architectural drawings, plans and specifications, studies, and investigations, government notices or agreements, title policies, commitments and reports, abstracts, rent rolls, insurance policies, water rights and well agreements, instruments and agreements relating to oil, gas or mineral rights, mineral exceptions or reservations or conveyances, and mineral leases, agreements regarding third party rights and leases, surveys, loan agreements, lien documents, site assessments, ad valorem property tax applications, agreements, notices, invoices and receipts, appraisals, and any and all notices or correspondence from any governmental authority which indicates that the Property is not in compliance with any applicable ordinance. In addition, Lessee shall have the right to obtain, at Lessee's expense, a current title report relating to the Property to determine the condition of Lessor's title and all the recorded rights of way and easements benefiting or encumbering the Property, as well as all mineral rights encumbering the Property.

10.14 Ownership and Mineral Estate. Lessor represents that Lessor owns all of the fee simple interest in the Property. Except as set forth in any instrument with respect to the Property recorded among the land records of the county in which the Property is located, Lessor owns all of the rights and title to the oil, gas and other minerals in, on, under or that may be produced from the Property howsoever drilled, mined or produced (such right, collectively, "**Mineral Estate**"). If Lessee determines that any part of the Mineral Estate is not owned, leased or controlled by Lessor, then Lessor shall use its best efforts to obtain non-interference and waiver of surface rights agreements from all persons and entities that have any ownership, royalty or leasehold interest in the Mineral Estate. Notwithstanding anything to the contrary in this Lease, after the Effective Date, Lessor shall not utilize the surface of the Premises to explore for, develop, or produce oil, gas or other minerals from the Mineral Estate underlying the Premises nor enter into any agreement permitting a third party to utilize the surface of the Premises to explore for, develop, or produce oil, gas or other minerals from the Mineral Estate underlying the Premises.

11. Assignment; Right to Encumber; Division of Lease.

11.1 Assignment by Lessee. Lessor hereby consents and grants to Lessee the right to grant, sell, lease, convey or assign all or a portion of Lessee's interest in the Lease or the Project Facilities or to grant co-leases (including, without limitation, co-tenancy interests), separate leases, subleases, easements, sub-easements, licenses or similar rights to Lessee's interest in the Lease or the Project Facilities (collectively "**Assignment**") to one or more persons or entities (collectively "**Assignee**"). No Lessor consent shall be required for any change in ownership of Lessee. Lessor further hereby consents and grants to Lessee the right to encumber, hypothecate, mortgage or pledge (including by mortgage, or personal property security instrument) all or any portion of Lessee's right, title, or interest under this Lease or in any Project Facilities to any Financing Party as security for the repayment of any indebtedness or the performance of any Mortgage (as defined in Section 12.1). If any additional consent is needed, Lessor shall not unreasonably withhold, condition, or delay its consent to any assignment that is not allowed by the preceding sentences of this Section 11.1. All Assignees will be subject to all of the obligations, covenants and conditions applicable to the Lessee under this Lease. Upon Lessee's assignment of its entire interest under this Lease as to all or any portion of the Premises, or as may otherwise be provided in the applicable grant, sale, lease, conveyance or assignment document, Lessor

shall recognize the Assignee as Lessee's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Lessee under and pursuant to this Lease, and Lessee shall be relieved of all of its obligations relating to the assigned interests under this Lease that relate to acts or omissions which occur or accrue following the effective date of such grant, sale, lease, conveyance or assignment. As clarification, and without prejudice to Lessee's right to encumber its interest in the Lease and the Project Facilities, as permitted herein, Lessee shall have no right to mortgage or encumber the underlying Property.

11.2 Notice to Lessor. Following an Assignment or the granting of a Mortgage as contemplated by Section 11.1, Lessee or the Financing Party will give actual notice of the same (including the address of the Financing Party for notice purposes) to Lessor; provided, however, that the failure to give such notice shall not constitute a default but rather shall, solely with respect to the Mortgage, only have the effect of not binding Lessor hereunder with respect to such Financing Party until such notice is given.

11.3 Cure. Each Assignee that holds a full or partial interest in, or a sublease under this Lease, shall have the same amount of time following delivery of notice of a default, to cure said default as is given to Lessee pursuant to this Lease. If Lessee or an Assignee holds an interest in less than all of this Lease, the Premises or the Project Facilities, any default under this Lease shall be deemed remedied, as to Lessee's or such Assignee's partial interest only (and Lessor shall not disturb such partial interest), if Lessee or Assignee, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Lease, the Premises or Project Facilities in which Lessee or the Assignee, as the case may be, holds an interest.

11.4 Division into Separate Leases. Lessee may divide the Premises into two or more separate solar energy projects or phases of development if such division becomes necessary to further the development of the Project Facilities. If Lessee elects to divide the Premises into two or more solar energy projects or phases of development, then Lessor shall, within 20 days after written request from Lessee, and without demanding any additional consideration, bifurcate this Lease by entering into and delivering to Lessee two stand-alone new leases (which shall supersede and replace this Lease) that provide Lessee with separate leasehold estates in different portions of the Premises, as designated by Lessee. Each of such new leases shall: (i) specify the portion(s) of the Premises to be covered thereby (and the term "Premises", as used therein, shall refer only to such portion(s)), (ii) contain the same terms and conditions as this Lease (except for any requirements that have been fulfilled by Lessee, any Assignee, or any other person or entity prior to the execution of such new leases, and except for any modifications that may be required to ensure that Lessee's and Lessor's respective combined obligations under such new leases do not exceed their respective obligations under this Lease) and be in a form reasonably acceptable to Lessee and Lessor; (iii) be for a term equal to the then-remaining term of this Lease; (iv) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Premises as Lessee may designate (but only to the extent permitted in this Lease); (v) require payment to Lessor of only per acre amounts to be paid under this Lease for the acres lease under such new lease; and (vi) to the extent permitted by law, enjoy the same priority as this Lease over any lien, encumbrance or other interest against the Premises.

11.5 Assignments by Lessor. The burdens of this Lease, Easements and other rights contained in this Lease shall run with and against the Property and shall be a charge and burden thereon for the duration of the Lease Term and shall be binding upon and against Lessor and its successors and assigns. Lessor shall notify Lessee in writing of any sale, assignment or transfer of any of Lessor's interest in the Property, or any part thereof. Until such notice is received, along with proof of the successor Lessor's ownership interest, a completed IRS Form W-9, and a revised payment instructions, Lessee shall have no duty to any successor owner, and Lessee shall not be in default under this Lease if it continues to make all payments to the original Lessor before notice of sale, assignment or transfer is received. Lessor agrees it will not assign the rights to payments due to Lessor under this Agreement except to a successor owner of the Premises and, in no case, shall Lessor sever or attempt to sever the solar energy rights or interests from the fee title of the Premises or otherwise convey, assign or transfer or attempt to convey, assign or transfer this Agreement or any interest herein, except

to a successor owner of the Premises. Under no circumstances shall a transfer by Lessor include the Project or the Project Facilities.

12. Financing Party Protection.

12.1 Financing Parties. Lessor acknowledges that in order to finance the Project, Lessee may partner with various Financing Parties (as defined below). Without limiting the generality of the foregoing, Lessee may, at any time and from time to time, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its estate, right, title or interest in or under this Agreement or Lessee's interest in the Premises. Any party who is the mortgagee, beneficiary, or holder of any such security instrument or interest (a "**Secured Lender**") shall, for so long as its security instrument or interest is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 12. Lessee or any Secured Lender shall send written notice to Lessor of the name and address of any such Secured Lender. As used in this Lease, (a) the term "**Financing Party**" means any financial institution or other person or entity that from time to time (i) provides financing for some or all of the Project Facilities, any phase or constituent project thereof, or any operations of the foregoing, or otherwise holds a lien or security interest in this Agreement or any interest or estate hereunder, the Project Facilities or any phase or constituent project thereof, any components thereof, or any direct or indirect equity interest in Lessee or any holder of an interest in this Agreement or any interest or estate hereunder, by mortgage, deed of trust or other real or personal property security instrument (including any sale-leaseback arrangement entered into for financing purposes); (ii) provides tax credit financing with respect to some or all of the Project Facilities or any phase or constituent project thereof or any components thereof, including any party acquiring a direct or indirect interest in Lessee or any holder of an interest in this Agreement or any interest or estate hereunder or in any of their respective interest in or estate under this Agreement as a tax credit investor, including, in each case, any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders or investors involved in whole or in part in such financing, secured obligations or tax equity investment, and their respective representatives, successors and assigns; or (iii) any Secured Lender, (b) the term "**Mortgage**" refers to the mortgage, deed of trust or other security interest in this Lease or the Project Facilities given to a Secured Lender in connection with such financing, and (c) the term "**Mortgaged Interest**" refers to the interest in this Lease or the Project Facilities, that is held by the Secured Lender.

12.2 Protections. Any Financing Party, including each Secured Lender, and its respective successors and assigns, are hereby expressly made third party beneficiaries of this Agreement to the extent of their respective rights hereunder and shall be entitled to compel the performance of the obligations of Lessor under this Lease. Lessor and Lessee agree with respect to Financing Parties whose names and addresses have been provided to Lessor in writing that such Financing Parties shall be entitled to the protections in this Section 12.

12.3 Right to Possession, Right to Acquire and Right to Assign. A Financing Party shall have the absolute right (but not the obligation): (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Premises or any portion thereof and to perform all obligations to be performed by Lessee or Assignee under this Lease, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. Lessor's consent shall not be required for (a) the pledge, mortgage or hypothecation of Lessee's rights in the Lease, the Project Facilities, or Lessee or (b) the acquisition of Lessee's or Assignee's leasehold estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure. Lessor agrees to cooperate with Lessee and any of its Financing Parties. Lessor, at no cost thereto, shall execute and deliver all documents reasonably requested by a Financing Party in a form reasonably satisfactory to Lessor, Lessee and any Financing Party.

12.4 Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee or Assignee, Lessor shall give notice of the default to each Financing Party concurrently with delivery of such notice to Lessee or Assignee. Lessor shall not be entitled to exercise

any remedy for a default unless Lessor has given a written notice of such default to Lessee and to each Financing Party, specifying the nature of the default and the method of cure, and the expiration of the applicable grace periods provided in this Agreement (and such other applicable cure periods provided in this Agreement). In the event the Lessor gives such a notice of default, the following provisions shall apply:

12.4.1 A “**Monetary Default**” means failure to pay when due any rent or other monetary obligation of Lessee or Assignee to Lessor under this Lease, and such failure continues beyond the expiration of any applicable cure period provided hereunder; any other event of default is a “**Non-Monetary Default.**”

12.4.2 The Financing Party shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee or Assignee, plus, in each instance, the following additional time periods: (a) 60 days after receipt of the notice of default in the event of any Monetary Default; and (b) 90 days after receipt of the notice of default in the event of any Non-Monetary Default, provided that such period shall be extended for the time reasonably required to complete such cure, including the time required for any Secured Lender to perfect its right to cure such Non-Monetary Default by obtaining possession of the Premises (including possession by a receiver) or by instituting foreclosure proceedings, provided the Secured Lender acts with reasonable and continuous diligence. The Financing Party shall have the absolute right (but not the obligation) to substitute itself for Lessee or any Assignee and perform the duties of Lessee or any Assignee under this Lease for purposes of curing such defaults. Lessor expressly consents to such substitution, agrees to accept such performance, and authorizes the Financing Party (or its employees, agents, representatives, or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the Lessee or any Assignee. Lessor shall not terminate this Lease prior to expiration of the cure periods available to a Financing Party as set forth herein.

12.4.3 During any period of possession of the Mortgaged Interest by a Financing Party (or a receiver requested by such Financing Party) or during the pendency of any foreclosure proceedings instituted by a Financing Party, the Financing Party shall pay or cause to be paid the Rent and all other monetary charges payable by Lessee or any Assignee under this Lease which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee’s or any Assignee’s Mortgaged Interest by the Financing Party or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Lease shall continue in full force and effect and the Financing Party or party acquiring title to the Mortgaged Interest shall, as promptly as reasonably possible, commence the cure of all defaults outstanding under this Lease and thereafter diligently process such cure to completion, whereupon Lessor’s right to terminate this Lease based upon such defaults shall be deemed waived; provided, however, that the Financing Party or party acquiring title to the Mortgaged Interest shall not be required to cure those non-monetary defaults which are not capable of being cured or performed by such party (“**Non-Curable Defaults**”). Non-Curable Defaults shall be deemed waived by Lessor upon completion of foreclosure proceedings or acquisition of interest in this Lease by such party.

12.4.4 Any Financing Party or other party who acquires the Mortgaged Interest pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee or an Assignee by this Lease incurred or accruing after such party no longer has ownership of the leasehold estate or possession of the Premises.

12.4.5 Neither the bankruptcy nor the insolvency of Lessee or any Assignee shall be grounds for terminating this Lease as long as the Rent and all other monetary charges payable by Lessee or Assignee under this Lease are paid by the Financing Party in accordance with the terms of this Lease.

12.4.6 Nothing in this Lease shall be construed to extend this Lease beyond the Lease Term or to require a Financing Party to continue foreclosure proceedings after the default has been cured. If the default

is cured and the Financing Party discontinues foreclosure proceedings, this Lease shall continue in full force and effect.

12.5 New Lease to Financing Party. If this Lease terminates because of Lessee's or Assignee's default or if the Mortgaged Interest is foreclosed, or if this Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, then Lessor shall, give prompt notice to each Financing Party, and Lessor shall, promptly upon written request from any Financing Party if made within ninety (90) days after such termination, rejection or disaffirmance, without demanding additional consideration, enter into a new lease of the Premises in favor of such Financing Party, on the following terms and conditions:

12.5.1 The terms of the new lease shall commence on the date of termination, foreclosure, or rejection or disaffirmance and shall continue for the remainder of the Lease Term of this Lease, at the same Rent and subject to the same terms and conditions set forth in this Lease.

12.5.2 The new lease shall be executed within 30 days after receipt by Lessor of notice of the Financing Party's election to enter a new lease, provided said Financing Party: (a) pays to Lessor all Rent and other monetary charges payable by Lessee or Assignee, as applicable, under the terms of this Lease up to the date of execution of the new lease, as if this Lease had not been terminated, foreclosed, rejected or disaffirmed, less the Rent and other income actually collected by Lessor; and (b) performs all other obligations of Lessee or Assignee under the terms of this Lease, to the extent performance is then due and susceptible of being cured and performed by the Financing Party; (c) agrees in writing to timely perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee or any Assignee and would have accrued under this Lease up to the date of commencement of the new lease, except those obligations which constitute Non-Curable Defaults; and (d) reimburses Lessor for Lessor's reasonable attorney fees incurred in reviewing the same. Any new lease granted the Financing Party shall enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Lessor.

12.5.3 At the option of the Financing Party, the new lease may be executed by a designee of such Financing Party without the Financing Party assuming the burdens and obligations of the Assignee thereunder.

12.5.4 If more than one Financing Party makes a written request for a new lease pursuant hereto, then the new lease delivered to each will have priority consistent with those effective prior to the applicable termination, rejection or disaffirmance, such that, without limitation, the lease delivered to any Secured Lender whose security interest was senior shall retain senior priority. Lessor shall be reimbursed all reasonable expenses incurred in determining whose secured interest has senior priority.

12.5.5 Lessor hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent a Financing Party from the Premises for the purpose of inspecting the Project.

12.6 Financing Party's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Lease to the contrary, the Parties agree that this Lease shall not be modified or amended and Lessor shall not accept a surrender of the Premises or any part thereof or a cancellation or release of this Lease from Lessee or Assignee prior to expiration of the Lease Term without the prior written consent of each Financing Party. This provision is for the express benefit of and shall be enforceable by such Financing Party. In addition, and notwithstanding anything in this Agreement to the contrary, in the event that Lessee should fail to exercise its right to extend the Lease Term for a Lease Term Extension by the applicable date required in Section 4.2 above, Lessee's right to so extend the Lease Term shall nonetheless continue for an additional 30 days following Lessor's delivery of written notice of the failure of Lessee to timely exercise such right to Lessee and each Financing Party. If either Lessee or any Financing Party provides written notice to Lessor, within such 30 days, of its intent that such right to extend be exercised, then timely notice of the exercise of the right to extend the Lease Term for the applicable Lease Term Extension shall be deemed to have been given.

12.7 No Waiver. No payment made to Lessor by a Financing Party shall constitute an agreement that such payment was, in fact, due under the terms of this Lease; and a Financing Party having made any payment to Lessor pursuant to Lessor's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment.

12.8 Further Amendments. Provided that no material default in the performance of Lessee's obligations under this Lease shall have occurred and remain uncured after the expiration of all applicable notice and cure periods, at Lessee's request, Lessor shall (a) amend this Lease to include any provision that may reasonably be requested by an existing or proposed Financing Party, or by any entity that is proposing to directly or indirectly acquire the Project, and (b) shall execute such additional documents as may reasonably be required to evidence such Financing Party's or other entity's rights hereunder; provided, however, that such amendment shall not materially impair the rights of Lessor under this Lease, or extend the Lease Term of this Lease beyond the period of time stated in Section 4. Further, Lessor shall, within 10 days after notice from Lessee or any existing or proposed Financing Party, execute and deliver thereto a certificate to the effect that Lessor (i) recognizes a particular entity as a Financing Party under this Lease and (ii) will accord to such entity all the rights and privileges of a Financing Party hereunder.

13. Termination and Remedies.

13.1 Lessee's Rights. Lessee may, for any reason, by 30 days' notice to Lessor, terminate this Lease or a part hereof and surrender its interest in all or a portion of the Premises to the benefit of the Lessor, and upon delivery of such notice, all obligations of the Parties hereunder shall cease on the termination date specified in such notice to the extent of such termination; provided, however, that upon each surrender as to any part of the Lease, Lessee shall maintain such easements rights to the surrendered portion as may be appropriate to its enjoyment of the portion not surrendered. Lessee shall pay Lessor all amounts accrued under this Lease through the date of such termination and completion of any restoration pursuant to Section 13.3. Upon such termination, Lessee shall promptly record an appropriate instrument with the office of the County Recorder evidencing the termination of this Lease or a portion hereof. In no event shall Lessor have a right to seek damages against Lessee with respect to this Lease solely by reason of its termination excepting only the amounts accrued through the date of such termination. To compel compliance with this Lease, in the event of a default of any provision of this Lease by Lessor, Lessee shall be entitled to seek all remedies available at law and in equity, including specific performance. In the event Lessee terminates this Lease, neither Lessor nor Lessee shall have any further rights, liabilities, or obligations under this Lease except for any of same that expressly survives such termination.

13.2 Lessor's Rights. Notwithstanding anything to the contrary in the Lease, if Lessee is in default and fails to cure the default after all applicable notice and cure periods (including those contained in Sections 13.2.1 and 13.2.2), Lessor shall have the right and option to do any or all of the following:

13.2.1 If a Monetary Default occurs Lessor may terminate this Lease or pursue an action for damages (or in equity, as the case may be) under this Lease while such Monetary Default is continuing, if all of the following occur:

(a) Lessor simultaneously notifies Lessee and all Financing Parties in writing of such Monetary Default, which notice sets forth in detail the facts pertaining to the default;

(b) Lessee fails to cure such Monetary Default within 60 days after Lessee receives the notice from Lessor of such Monetary Default, or if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period, Lessee has not begun to diligently undertake the cure within the period provided herein or to thereafter prosecute such cure to completion; and

(c) all Financing Parties fail to cure such Monetary Default within the additional period permitted them under Section 12 of this Lease.

13.2.2 If a Non-Monetary Default occurs, subject to the provision in Section 13.2.3, Lessor may pursue an action for monetary damages (or in equity, as the case may be) under this Lease while such Non-Monetary Default is still continuing if all of the following occur:

(a) Lessor simultaneously notifies Lessee and all Financing Parties in writing of such Non-Monetary Default, which notice sets forth in detail the facts pertaining to the default;

(b) Lessee fails to cure such Non-Monetary Default within 60 days after Lessee receives the notice from Lessor of such Non-Monetary Default, or if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period, Lessee has not begun to diligently undertake the cure within the period provided herein or to thereafter prosecute such cure to completion; and

(c) all Financing Parties fail to cure such Non-Monetary Default within the additional period permitted them under Section 12 of this Lease.

13.2.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS LEASE OR ANY RIGHTS OR REMEDIES WHICH LESSOR MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY, WITH RESPECT TO ANY LESSEE NON-MONETARY DEFAULT THAT IS NOT CURED WITHIN THE TIME PERIOD CONTEMPLATED IN SECTION 13.2.2 ABOVE, LESSOR SHALL NOT (AND HEREBY WAIVES THE RIGHT TO) COMMENCE ANY ACTION OR PROCEEDING IN WHICH TERMINATION, CANCELLATION, RESCISSION OR REFORMATION OF THIS LEASE IS SOUGHT AS A REMEDY, AND LESSOR SHALL BE LIMITED TO SEEKING MONETARY DAMAGES FOR SUCH NON-MONETARY DEFAULT.

13.3 Restoration. Upon any surrender, termination or expiration of this Lease, Lessee shall, within twenty-four (24) months thereof, substantially complete the Restoration Requirements (as defined below). During the Restoration Period, Lessee shall continue to pay the applicable Rent paid immediately prior to the commencement of such Restoration Period, which shall be calculated on a monthly basis (i.e., such Rent divided by 12 months), and payable monthly in advance for each month during the Restoration Period. “**Restoration Requirements**” means (a) the decommissioning of the Project Facilities and restoration of the surface of the Premises to a condition and contour reasonably similar to that existing on the Property as of the Effective Date, wear and tear excepted, (b) removal of all of its above-grade and below-grade Project Facilities and other equipment located on the Premises, except those located 36 inches or more below-grade, (c) burying of all foundations below-grade with topsoil, (d) removal of all concrete, (e) reseeding areas where the pads were located with grasses or natural vegetation, and (f) any other requirements that may be imposed in connection with any land or water use permits issued in connection with the Project Facilities. Any access roads constructed by Lessee may remain on the Premises at Lessee’s option unless Lessor specifically requests their removal in writing. It is understood that it would not be reasonable to expect that any trees removed in conjunction with the Project be replaced.

13.4 Release of Lease. Upon termination, expiration or surrender of this Lease, in whole or in part, and upon written request by Lessor, Lessee shall provide Lessor with a copy of an appropriate release of Lease.

13.5 Termination of Option. Lessee may, for any reason, by 30 days’ notice to Lessor, terminate the Option granted in Section 1, and upon the effective date of such termination, neither Lessee, nor Lessor, shall have any further obligation to the other under this Lease except for Sections 8.1 and 10.10.

13.6 Injunctive Relief. Notwithstanding any provision to the contrary in this Agreement, in the event of any breach or threatened breach, either party shall have the right to apply for the entry of an immediate order to restrain or enjoin the breach and otherwise specifically to enforce the provisions of this Agreement.

14. Easements. Lessor hereby irrevocably grants and conveys to Lessee the following easements across the Property and any adjacent parcel of land outside the Property owned or controlled by Lessor (“**Adjacent Property**”), appurtenant to Lessee’s leasehold estate in the Premises (such easements set forth in Sections 14.1

to 14.3, collectively, “**Easements**”), which Easements shall run with the land and be binding upon Lessor’s successors and assigns:

14.1 Access and Transmission Easements. Lessor hereby grants to Lessee the following Easements across the Easement Areas (as defined below): (a) an exclusive easement for electrical interconnection purposes; (b) a non-exclusive easement for vehicular and pedestrian access, ingress or egress and access to and from the Premises and Easement Areas and to, across and through any portion of the Property outside the Premises and the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, waterways, lanes and rights-of-way on the Property and the Adjacent Property, and (ii) such additional roads, waterways, culverts, and bridges as Lessee or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads, culverts and bridges) from time to time; (c) an exclusive easement to install, maintain, repair, replace and operate on the Property and the Adjacent Property multiple (i) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Project, and (ii) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Project, and (iii) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing (the facilities in clauses (i) – (iii), collectively, the “**Interconnection Facilities**”); (d) a temporary easement on, over, across and under the Property or any Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Project Facilities (provided that Lessee shall restore any Adjacent Property to the same extent as Lessee shall restore the Property under Section 13.3); and (e) the right to remove fences, gates, cattle guards and any other improvements or structures on the Premises and Easement Areas which interfere with Lessee’s operations. The Easements granted in the immediately preceding clauses (a) to (e), are collectively referred to as the “**Access and Transmission Easements**”. Lessor shall execute and deliver to Lessee any documents or instruments reasonably requested by Lessee in recordable form to evidence the Access and Transmission Easements, including the applicability of such Access and Transmission Easements to any Adjacent Property, containing all the rights and privileges set forth herein, within 15 days following written request from Lessee. “**Easement Areas**” means those areas of any Adjacent Property or of the Property outside the Premises, which areas are preliminarily depicted in **Exhibit C**, including the Landscape Buffer Area and SWM Area (all as defined in Section 14.3) and the FC Area (as defined in Section 14.4).

14.2 Lessor Easements. To the extent that Lessor holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Property or the Adjacent Property (the “**Lessor Easements**”) on or after the date of this Lease, and such Lessor Easements are or could be used for the benefit of the Property, then the same are hereby included in this Lease, and Lessee shall be entitled to use such Lessor Easements, if such use is permitted under the Lessor Easements and provided that such use does not interfere with Lessor’s use of same. Upon the written request of Lessee, Lessor shall, within 15 days following such request, grant (in recordable form and containing such terms and provisions as may be reasonably requested by Lessee or any Financing Party), for no additional consideration, one or more sub-easements of Lessor Easements to run concurrently with the Lease Term (or for such shorter period as provided in the Lessor Easement).

14.3 Solar Easements. Lessor hereby grants to Lessee the following Easements across the Property and any Adjacent Property (such Easements, collectively, the “**Solar Easements**”): (a) direct access to sunlight and an exclusive easement and right to capture, use and convert the unobstructed solar resources over and across the Premises; (b) an easement 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, including but not limited to rights to cast shadows and reflect glare onto all of the Property or any Adjacent Property, from the Project Facilities or any and all other related facilities, wherever located; (c) the right to clear the Premises of trees and other vegetation as required for Lessee to fully utilize its Solar

Easements, and to retain the value of any timber removed; (d) the right, but not the obligation to cut and maintain trees and other landscaping features on the Property within 100 feet of the Premises in order to optimize the utilization of the Premises for Project Activities, provided that Lessor shall have the right to use or sell any timber cut or trimmed by Lessee on the Property outside of the Premises; and, if applicable, (e) the right, for no additional consideration, to plant, install, construct, or otherwise create and maintain landscaping features or other visual buffers on certain areas of the Property preliminarily depicted in Exhibit C as the “**Landscape Buffer Area**” when and only to the extent required by Lessee to comply with any conditions or requirements imposed by law or any other person, authority, or entity holding jurisdiction (“**AHJ**”), and, if so required, Lessor shall grant Lessee or the AHJ, within 15 days of Lessee’s request, a stand-alone, recordable, and assignable easement or other similar agreement describing such landscaping features or visual buffers in the Landscape Buffer Area; and (f) the right to construct private stormwater management systems on certain areas of the Property as shown on Exhibit C (the “**SWM Area**”).

14.4 Grant to Utility and AHJ. Lessee, in its sole discretion and without further act of Lessor, shall have the right to grant to the transmitting utility the right to construct, operate and maintain on the Premises or within the Easement Areas Interconnection Facilities, pursuant to any lease, easement or other agreement used or proposed by the utility. If requested by such utility or Lessee, Lessor shall, for no additional consideration other than the Rent and within 15 days after such request, grant such easement or enter into such other agreement, directly to or with such utility. If and only to the extent required by Lessee to comply with any conditions or requirements imposed by law or any AHJ, Lessor shall, upon payment by Lessee of a reasonable consideration to be agreed upon by the Parties, grant the AHJ, within 15 days of Lessee’s request, a stand-alone, recordable, and assignable easement or other similar agreement related to certain areas of the Property or Adjacent Property (“**FC Area**”) required by such AHJ for forest conservation purposes.

15. Miscellaneous Provisions.

15.1 Notice of Lease. Lessor and Lessee shall execute, in conjunction with this Lease, a recordable notice of the Lease and the Easements granted herein, in the form of a memorandum of lease attached hereto as Exhibit D. Lessee shall then record said memorandum within the land records of the applicable county or counties in which the Property is located. Lessor also consents to the recordation of the interest of an Assignee in the Premises.

15.2 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Leases shall be in writing and may be given by any of the following methods: (a) personal delivery, (b) a writing in portable document format (“**PDF**”) attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested, (c) overnight or certified mail, postage prepaid, return receipt requested, or (d) next day air courier service. Notices shall be sent to the appropriate party at its address or email address given below:

If to Lessor:	Sussex County, Delaware	If to Lessee:	Blacktail Solar I LLC
Name:	Mike Harmer	Attention:	Land Department
Address:	P.O. Box 589, Georgetown, Delaware 19947, United States	Address:	1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States
Email:	michael.harmer@sussexcountyde.gov	Email:	land@chaberton.com
Phone No.:	302-855-7370		443-914-4100

Any Party may change its address for purposes of this Section 15.2 by giving notice of such change to the other Party.

15.3 Entire Agreement; Amendments. This Lease, as amended and restated, including the exhibits, schedules, and any addendum attached hereto, constitutes the entire agreement between Lessor and Lessee

respecting its subject matter and supersedes the Prior Agreement in its entirety. In the event of conflict between this Lease and any addendum attached hereto, the express provisions of such addendum will prevail. Any other agreement, understanding or representation respecting the Premises, or any other matter not expressly set forth in this Lease or a subsequent writing signed by both Parties is null and void. Except as provided in Section 4.1, this Lease shall not be modified or amended except in a writing signed by both Parties, and no purported modifications or amendments, including any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

15.4 Legal Matters. This Lease shall be governed by and interpreted in accordance with the laws of the State of Delaware. Venue shall be in the county where the Property is located, or if in Federal Court as required by subject matter or personal jurisdiction, in the U.S. District Court for the District where the Property is located. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Lease and is waived. The prevailing Party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Lease or for the interpretation of this Lease shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing Party.

15.5 Severability. Should any provision of this Lease be held, in a final and un-appealable decision by a court of competent jurisdiction, to be either invalid, void, or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Lease, the Parties agree that in no event shall the Lease Term or any Easement term be longer than, respectively, the longest period permitted by Applicable Law.

15.6 Tax Credits. If under applicable law the holder of any interest under this Lease becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Lessor and Lessee shall amend this Lease or replace it with a different instrument so as to convert Lessee's interest in the Premises to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive; provided, however, that nothing in this Lease shall entitle Lessee to a fee interest in the Property, diminish Lessee's payment obligations under this Lease or extend the Lease Term of this Lease.

15.7 Counterparts. This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument. This Lease may be executed and transmitted via facsimile, PDF, or other similar electronic means complying with the U.S. federal ESIGN Act of 2000 (e.g. www.docusign.com) and a manual or electronic signature of the undersigned transmitted via such means shall have the same force and effect as a manually signed original.

15.8 Cooperation. Lessor shall cooperate with Lessee, and its permitted successor, assign or Affiliate, in the conduct of their operations consisting of the Project Facilities, Easements, or Transmission Facilities, and in otherwise giving effect to the purpose and intent of this Lease, including, without limitation, in Lessee's or any permitted successor, assign or Affiliate's efforts to obtain from any Governmental Authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with Lessee's Project Facilities, Access Rights, or Transmission Facilities; and Lessor shall promptly upon request, without demanding additional consideration therefore, execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, document or instrument that is reasonably requested by Lessee, its permitted successor, assign or Affiliate in connection therewith. Without limiting the generality of the foregoing, Lessor agrees (a) if requested by Lessee or its permitted successor, assign or Affiliate to support such application by filing a letter with the appropriate Governmental Authority in a form reasonably satisfactory to Lessee or its permitted successor, assign or Affiliate, and (b) not to oppose, in any way, whether directly or indirectly, any such valid, accurate application or approval at any administrative,

judicial or legislative level.

15.9 Relationship. Neither this Lease nor any other agreements or transactions contemplated in this Lease shall in any respect be interpreted, deemed or construed as constituting Lessor and Lessee as partners or joint venturers, or as creating any partnership, joint venture, association or other relationship other than of landlord and tenant; and Lessor and Lessee agree not to make any contrary assertion, contention, claim or counterclaim in any action, suit or other proceeding involving either Lessor or Lessee or the subject matter of this Lease.

15.10 Condemnation. If all or part of the Premises is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a "**Taking**"), Lessor shall provide Lessee with reasonable advance notice of any impending proceeding or meeting related to such Taking and shall not in the absence of Lessee's consent thereto settle with the Taking authority or agree on compensation for such Taking. This Lease shall terminate as to any portion of the Premises so condemned or taken (except in the case of a temporary Taking after the duration of which Lessee desires to continue this Lease, and the Lease Term shall be extended, in such event, by the duration of such temporary Taking). Subject to any applicable law or regulation, if any, any award or other compensation ("**Award**") payable as a consequence of such Taking shall be paid as follows: (a) Lessor shall first be entitled to receive out of the Award the value of Lessor's fee interest in the Property, valued as if no Project Facilities were on the Property; (b) Lessee shall next be entitled to receive out of the Award (i) the value of the Project Facilities, (ii) any other compensation or benefits payable by law as a consequence of the loss or interruption of Lessee's business and the other costs and expenses incurred by Lessee as consequence of the Taking, and (iii) the remaining present value of Lessee's interest in the Property (determined at the time of the Taking), including the value of Lessee's interests under this Lease; (c) Lessor shall then be entitled to receive out of the Award, taking into account the leasehold and easement estates created by this Lease, the estimated amounts that would have been paid to date of condemnation by Lessee hereunder; and (d) Lessor shall be entitled to any remainder of the Award.

15.11 Joint and Several Liability. If applicable, the obligations under this Lease imposed upon Lessor shall be joint and several obligations of the individuals or entities comprising Lessor.

15.12 Force Majeure. If performance of this Lease or of any obligation under this Lease is prevented, restricted or interfered with by reason of an event of "**Force Majeure**" (as defined in the immediately following sentence), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference and the Lease Term shall be extended for the duration of the Force Majeure event; provided, however, that nothing in this Section 15.12 shall relieve Lessee of its obligations to pay Rent or other monetary obligation payable to Lessor pursuant to this Lease. The affected Party shall use its reasonable efforts to avoid or remove such causes of non-performance and shall continue performance under this Lease whenever such causes are removed. "**Force Majeure**" means flood, drought, earthquake, storm, fire, tornado, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God, casualty or accident; war, sabotage, vandalism, civil strife, civil unrest or other violence; strikes or labor disputes; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; a Regulatory Suspension (as defined in the immediately following sentence); litigation challenging the validity or content of any permit or approval necessary for the construction or operation of the Project; litigation by Lessor, nearby landowners or third party interest groups challenging the validity or content of this Lease or any aspect of the Project; or any other act or condition beyond the reasonable control of a party hereto. A "**Regulatory Suspension**" shall mean the application of any local, state or federal law, order, rule or regulation which results in the delay, interruption, or suspension of the: (i) construction of the Project; or (ii) transmission, production or sale of electricity from the Project.

15.13 Certain Matters of Construction. The terms "herein", "hereof", and "hereunder" and words of

similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. The section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. References in this Agreement to "Sections", "Schedules" or "Exhibits" shall be to Sections, Schedules or Exhibits of or to this Agreement unless otherwise specifically provided. All references in this Agreement to statutes shall include all amendments of same and implementing regulations and any successor statutes and regulations; to any instrument or agreement (including this Agreement) shall include any and all addendums, modifications and supplements thereto and any and all restatements, extensions or renewals thereof to the extent such modifications, supplements, restatements, extensions or renewals of any such documents are permitted by the terms thereof; to any person shall mean and include the successors, affiliates and permitted assigns of such person; to "including" shall be understood to mean "including, without limitation"; or to the time of day shall mean the time of day on the day in question in the State of Delaware, unless otherwise provided in this Agreement. Unless the context of this Agreement clearly requires otherwise, the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or".

*****SEE ADDENDUM ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF*****

(Signature Page follows)

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Effective Date.

LESSOR(S): Sussex County, Delaware

By:

Name: Michael H. Vincent

Title: President of County Council

Attest: (SEAL)

Clerk of Council

LESSEE: Blacktail Solar I LLC

By:

Name: Ron Stimmel

Title: Manager

ADDENDUM

Attached to and made a part of that certain Amended and Restated Solar Energy Lease and Easement Agreement (the "Lease"),

dated _____,

by and between **Sussex County, Delaware,**

and

Blacktail Solar I LLC,

In addition to the provisions previously set forth in the Lease and effective as of the date first written above, it is hereby agreed that:

1. **Conflict of Terms.** Capitalized terms not otherwise defined in this Addendum have the meanings ascribed to them in the Lease. In the event of a conflict or inconsistency between the printed terms of the Lease and this Addendum, the printed terms of this Addendum shall control and be deemed to supersede the printed terms of the Lease.
2. **County Decommissioning Requirements.** Notwithstanding anything to the contrary contained in the Lease, particularly in Section 13.3 thereof, Lessee shall comply with the requirements of the Zoning Ordinance for Sussex County, Delaware (the "**Ordinance**"), with respect to decommissioning of the Project, and the Restoration Requirements shall be as set forth in the decommissioning plan agreed to by the Parties prior to the Construction Commencement Date (the "**Decommissioning Plan**"). After Lessee's delivery of the Construction Notice, but prior to the Construction Commencement Date, the Parties shall execute a Decommissioning Funding Agreement, in substantially the form attached to the Lease as Exhibit E, which shall become effective as of the Construction Commencement Date, and pursuant to which the Parties shall establish and maintain a sinking fund account with a financial institution, counterparty to the DFA, as security to cover the costs of completing the Restoration Requirements under the Decommissioning Plan.
3. **Lessor Option to Purchase.**
 - (a) Upon expiration of the Lease Term or earlier termination of the Lease under Section 13.1 of the Lease, notwithstanding anything to the contrary contained in the Lease, particularly in Section 13.3 thereof, Lessor may elect to purchase the Project Facilities by notice to Lessee delivered by Lessor not later than 30 days after the expiration or earlier termination of this Lease. The Parties agree that Lessee shall not be obligated to commence decommissioning of the Project under Section 13.3 of the Lease and Paragraph 2 of this Addendum unless such 30-day period has elapsed and Lessor either fails to deliver the notice in the immediately preceding sentence or notifies Lessee in writing of Lessor's election not to purchase the Project Facilities. If Lessor elects to purchase the Project Facilities in accordance with the provision in this Paragraph 3(a), the purchase price for the Project Facilities (the "**Purchase Price**") shall be the fair market value of the Project Facilities at the time of purchase (the "**FMV**"), which value shall be determined in accordance with the valuation procedures set forth in Paragraph Error! Reference source not found. below.
 - (b) Upon Lessor's exercise of the option to purchase the Project Facilities as set forth in Paragraph 3(a) of this Addendum, the Parties shall within 30 days of such Lessor election negotiate in good faith and agree upon the selection of a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the FMV. If the Parties cannot reach an agreement on an appraiser, each Party shall select one appraiser, and the two appraiser shall select a third appraiser to determine the FMV. The appraiser agreed to by the

Parties, or otherwise selected by the other two appraisers, shall act reasonably and in good faith to determine the FMV and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be shared by the Parties equally. Upon determination of the FMV, the Parties shall use good faith efforts to negotiate and execute a definitive agreement, pursuant to which Lessee shall sell to Lessor, and Lessor shall purchase from Lessee the Project Facilities in accordance with the terms and conditions set forth in such definitive agreement and at the Purchase Price in an amount equal to the FMV.

4. **Premises; Minimum Premises Acres.** In the event the total Premises Acres set forth in the Survey attached to the Construction Notice amount to an acreage equal to or less than 11 acres (the "**Minimum Acreage**"), then solely for the purposes of calculating the Annual Rent, the acreage of the Premises shall be deemed to be equal to the Minimum Acreage. Lessee shall design the Project to, as much as is practicable, maximize the amount of surface area covered by Project Facilities within the Premises.

This Addendum shall not affect the terms and conditions set forth in the Lease in any manner except as set forth herein.

(Signature Page Follows)

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto set their hands and official seals the date first written above.

LESSOR: Sussex County, Delaware

By:

Name: Michael H. Vincent

Title: President of County Council

Attest: (SEAL)

Clerk of Council

LESSEE: Blacktail Solar 1 LLC

By:

Name: Ron Stimmel

Title: Manager

Exhibit A
LEGAL DESCRIPTION OF PROPERTY

Parcel ID Number: 334-7.00-30.01

That certain real property in the County of Sussex, State of Delaware, described as follows:

15674

101987 2008

This Deed was prepared by WILSON, HALSBROOK & BAYARD, P.A.
Georgetown, Delaware

DEED

THIS DEED made this 21st day of June, A.D. 1994,

BETWEEN,

J.G. TOWNSEND, JR. & CO. of P.O. Box 430, Georgetown, Delaware 19947, hereinafter referred to as "Grantor",

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, of P.O. Box 589, Georgetown, Delaware 19947, party of the second part, hereinafter referred to as the "Grantee".

WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), Current Lawful Money of the United States of America and other good and valuable considerations, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns forever,

ALL that certain piece or parcel of land situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, being more particularly described as follows to wit:

BEGINNING at a set concrete monument in the northwesterly right-of-way line of Sussex County Road 270 at its intersection with the former center line of the Penn Central Railroad; thence by and with the aforesaid former center line of the Penn Central Railroad North 32 degrees 02 minutes 59 seconds West 1032.463 feet to a set concrete monument; thence turning and running North 58 degrees 00 minutes 00 seconds East 1488.382 feet to a set concrete monument; thence turning and running North 32 degrees 00 minutes 00 seconds West 404.998 feet to a set concrete monument; thence turning and running North 57 degrees 59 minutes 58 seconds East 1044.130 feet to a set concrete monument; thence turning and running South 32 degrees 00 minutes 00 seconds East 944.668 feet to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 269.690 feet to a set concrete monument; thence South 32 degrees 00 minutes 00 seconds East 1210.420 to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 2021.920 feet to a set concrete monument; thence turning and running North 31 degrees 58 minutes 26 seconds West 709.956 feet to a set concrete monument thence turning and running South 59 degrees 49 minutes 34 seconds West 240.449 feet to the place of beginning said to contain 100.00 acres, more or less and as more particularly shown on the survey thereof and defined as lands to be conveyed to: SUSSEX COUNTY COUNCIL and Lands of J.G. TOWNSEND, JR. & CO. Prepared by Charles D. Murphy Associates, Inc., Land Surveyors, dated May 17, 1994, revised May 31, 1994, revised on June 2, 1994, and revised on June 16, 1994 said plot being of record in the Office of the Recorder of Deeds in and for Sussex County in Plot Book 52, page 328.

BEING a portion of those lands conveyed unto this Grantor by deed of Sally W. Thompson, et al., dated August _____, 1946 and of record in the Office of the Recorder of Deeds in and for

07:13 333 6/22/94 TX-EX ST .00

3436 111 6/22/94 CTX-EX SU .00

DLM

Sussex County in Deed Book 361, page 409.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Jacob M. Moore, et al., dated July 9, 1946 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 366, page 26.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Frank Martin, et al., dated March 24, 1951 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 398, page 147.

THIS conveyance is subject to the following covenants which are incorporated herein and made a part hereof:

By accepting title to the above-described premises, Sussex County hereby covenants on behalf of itself, its heirs, successors and assigns to State of Delaware, Division of Historical and Cultural Affairs, State Historic Preservation Office (DE SHPO) or its successor agency, to maintain and preserve that archaeological site data which qualified 78-D-65 and 78-D-60 for inclusion in the National Register of Historic Places as follows:

1. The County shall preserve and maintain the real property containing geological sites 78-D-65 and 78-D-60. Said sites are as shown and designated on the plot of lands referred to herein.
2. No construction or disturbance of the ground surface may take place without the express prior written permission of the DE SHPO signed by a fully authorized representative thereof. If the County proposes to undertake ground disturbing activities on the property, it may be necessary for the County to undertake data recovery in accordance with 36 CFR 800 prior to initiating the proposed activity. Maintenance activities such as grass mowing shall not be subject to this clause.
3. The DE SHPO shall be permitted at all reasonable times to inspect the aforementioned sites on land owned by the County to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant and in addition to any remedy now or hereafter provided by law, the DE SHPO may, following reasonable notice to the County, institute to enjoin said violation or require mitigation for said violation. The successful party shall be entitled to recover all costs or expenses incurred with such a suit, including all court costs and attorney's fees.
5. The County agrees that the DE SHPO may, at its discretion without prior notice to the County, convey and assign all or part of its rights and responsibilities to any successor agency.
6. This covenant is binding on the County, its heirs, successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the County verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the property as described in the above sites and bounds.
7. The failure of the DE SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

#01987 2010

8. The DE SHPO may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the County, its heirs, successors or assigns. The DE SHPO may also make application to the County to modify or cancel this covenant.

9. This covenant shall be a binding servitude upon the County and shall be deemed to run with the land. Acceptance of this Deed and its recordation shall constitute conclusive evidence that the County agrees to be bound to the foregoing conditions and restrictions and to conform to obligations herein set forth.

IN WITNESS WHEREOF, the said J.G. TOWNSEND, JR. & CO. has caused its name to be hereunto set by its President and the common and corporate seal of this said corporation shall be hereunto affixed, duly attested to by its Secretary, the day and year first above written.



J.G. TOWNSEND, JR. & CO.

BY: [Signature]
President

ATTEST: [Signature]
Secretary

STATE OF Delaware
COUNTY OF Sussex

BE IT REMEMBERED that on this 21st day of

June, A.D. 1984, personally came before me,

the Subscriber, a Notary Public for the State and County aforesaid, Paul G. Townsend, President of J.G. TOWNSEND, JR. & CO., a corporation of the State of Delaware, party to this indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

[Signature]
Notary Public

DALLAS D. GREEN

04 JUN 22 PM 2:09

RECORDED OF DEEDS
SUSSEX COUNTY

FRANK J. STRAUBE
NOTARIAL OFFICER, ALTERNATE TO
BY DEL. CODE SECT. 432
ATTORNEY AT LAW
DELAWARE

PURCHASERS REPORT
MADE THIS DATE

JUN 23 1984

ASSESSMENT DIVISION
OF SUSSEX CTY.

Sussex County Engineering 7/17/94

EXHIBIT A-1

LAGOON 4



**Exhibit B
PREMISES**

Attached to and made a part of that certain Amended and Restated Solar Energy Lease and Easement Agreement (the "Lease")

And Amended and Restated Memorandum of Lease Agreement (the "Memorandum"),


dated _____,


by and between **Sussex County, Delaware**


and

Blacktail Solar I LLC,

Blacktail Solar I - Parcel
Boundary, Premise and
Equipment Pad

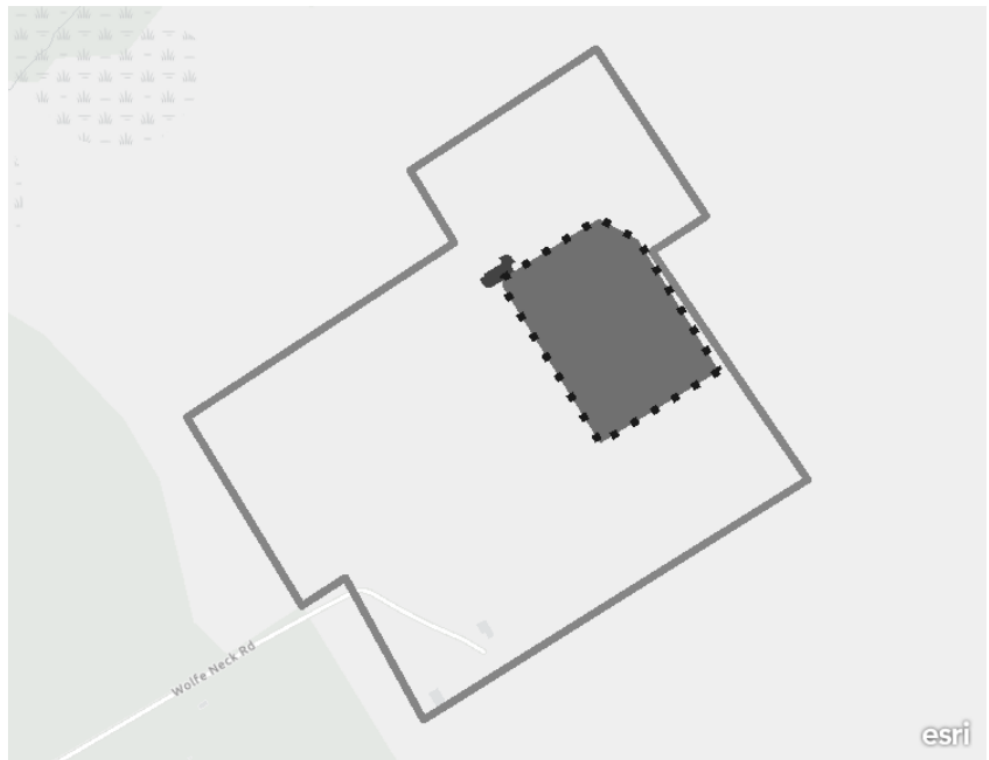
 Parcel Boundary +/-
100 ac

 Premises +/- 13
ac

 Equipment Pad



 600ft



THE DEPICTION CONTAINED IN THIS EXHIBIT IS INTENDED TO BE FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT CONSTITUTE A SURVEYED REPRESENTATION OF THE BOUNDARIES DEPICTED THEREIN. PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE PREMISES DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE PREMISES IS AT THE SOLE DISCRETION OF LESSEE BUT WILL REMAIN WITHIN THE AREA DEPICTED HEREIN.

Exhibit C
EASEMENT AREAS

Attached to and made a part of that certain Amended and Restated Solar Energy Lease and Easement Agreement (the "Lease")
and Amended and Restated Memorandum of Lease Agreement (the "Memorandum"),

dated _____,
by and between **Sussex County**,
and
Blacktail Solar I LLC,

PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE EASEMENT AREAS DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE EASEMENT AREAS IS AT THE SOLE DISCRETION OF LESSEE.

Exhibit D
MEMORANDUM OF LEASE
(Attached)

MEMORANDUM OF LEASE
Parcel ID No.: 334-7.00-30.0

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
Blacktail Solar I LLC
Attn: Land Department
1700 Rockville Pike, Suite 305
Rockville, MD 20852

(SPACE ABOVE FOR RECORDER'S USE ONLY)

AMENDED AND RESTATED MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT

THIS AMENDED AND RESTATED MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT ("Memorandum") has been made to indicate the existence of a Solar Energy Lease and Easement Agreement ("Lease") dated _____, by and between **Sussex County, Delaware** a county and political subdivision of the State of Delaware of/having an office at P.O. Box 589, Georgetown, Delaware 19947, United States as "**Lessor**", (whether one or more), and **Blacktail Solar I LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as "**Lessee**".

Lessor and Lessee entered into that certain Solar Energy Lease and Easement Agreement dated March 19, 2024, the memorandum of which was recorded with the Registrar of Deeds of Sussex County, DE at BK: 6089 and PG: 144 on April 23, 2024 ("**Prior Agreement**").

Lessor did grant demise, lease, and let the Premises (as defined below) exclusively unto Lessee, its successors and assigns, the right to develop a solar photovoltaic project or projects and grants certain easements associated therewith, on the lands described below and subject to the provisions contained in the Lease including the following:

1. The Option Period of the Lease is for a period of one year, commencing on the date immediately set forth above and may be incrementally extended, provided certain conditions are met, for up to a maximum of three (3) years in total thereby, continuing the term of the Lease to the end of the "extended" Option Period.
2. The Lease Term of the Lease comprises (a) a construction period of up to two years commencing on the Construction Commencement Date, and (b) an operations period of 25 years, commencing on the Operations Date, as defined in the Lease, and may be incrementally extended, provided certain conditions are met, for up to three additional five-year periods up to a maximum of 15 additional years, thereby continuing the term of the Lease to the end of the "extended" Lease Term.
3. The Property is described in the vesting deed attached hereto as **Exhibit "A"** and includes effluent spray lagoons constituting the Wolfe Neck Treatment Facility located at Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware.
4. The Premises containing up to 20 acres, more or less, is defined as being that portion of the Property comprising of an effluent spray lagoon surface at the Wolfe Neck Treatment Facility located on the Property, which lagoon is known as and identified as Lagoon 4 in the description attached hereto as

Exhibit "A-1", and which Premises is more fully described on **Exhibit "B"**, attached hereto and made a part hereof.

5. The Easement Area is defined as being that portion of the Property outside of the Premises which is more fully described on **Exhibit "C"**, attached hereto and made a part hereof, and the term of any such Easements is coterminous with the term of the Lease.

This Memorandum has been executed for the purpose of providing notice of the existence of the Lease and shall not be considered in any way a modification or alteration of the Lease. All terms and conditions of the Lease are hereby incorporated herein by reference as if fully set forth herein. This Memorandum has been entered into for the sole purpose of placing the Lease of record and shall not be deemed to amend, modify, supplement, or change any of the terms and conditions of the Lease in any respect whatsoever. To the extent of any conflict between this Memorandum and the Lease, the terms of the Lease shall govern and control.

(SIGNATURE PAGE(S) TO FOLLOW)

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto set their hands and official seals the date first written above.

LESSOR(S): Sussex County, Delaware

By:

Name: Michael H. Vincent

Title: President of County Council

Attest: (SEAL)

Clerk of Council

Corporate Acknowledgement

STATE OF _____)

)§:

COUNTY OF _____)

On the _____ day of _____ in the year 20____ before me, the undersigned, a notary public in and for said state, personally appeared _____, who holds the capacity of _____, for _____, a _____, and that he/she/they in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself/themselves in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

LESSEE: Blacktail Solar I LLC

By:

Name: Ron Stimmel

Title: Manager

Corporate Acknowledgement

COMMONWEALTH/STATE OF _____)
)§:
COUNTY/PARISH OF _____)

On the _____ day of _____ in the year 20____ before me, the undersigned, a notary public in and for said state/commonwealth, personally appeared Ron Stimmel, who holds the capacity of Manager, for Blacktail Solar I LLC, a **Delaware limited liability company**, and that he/she/they in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself/themselves in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Exhibit A to Memorandum
LEGAL DESCRIPTION OF PROPERTY

Parcel ID Number: 334-7.00-30.01

That certain real property in the County of Sussex, State of Delaware, described as follows:

15674

101987 2008

This Deed was prepared by WILSON, HALSBROOK & BAYARD, P.A.
Georgetown, Delaware

DEED

THIS DEED made this 21st day of June, A.D. 1994,

BETWEEN,

J.G. TOWNSEND, JR. & CO. of P.O. Box 430, Georgetown, Delaware 19947, hereinafter referred to as "Grantor",

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, of P.O. Box 589, Georgetown, Delaware 19947, party of the second part, hereinafter referred to as the "Grantee".

W I T N E S S E T H:

That the said parties of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), Current Lawful Money of the United States of America and other good and valuable considerations, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns forever,

ALL that certain piece or parcel of land situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, being more particularly described as follows to wit:

BEGINNING at a set concrete monument in the northwesterly right-of-way line of Sussex County Road 270 at its intersection with the former center line of the Penn Central Railroad; thence by and with the aforesaid former center line of the Penn Central Railroad North 32 degrees 02 minutes 59 seconds West 1032.463 feet to a set concrete monument; thence turning and running North 58 degrees 00 minutes 00 seconds East 1488.382 feet to a set concrete monument; thence turning and running North 32 degrees 00 minutes 00 seconds West 404.998 feet to a set concrete monument; thence turning and running North 57 degrees 59 minutes 58 seconds East 1044.130 feet to a set concrete monument; thence turning and running South 32 degrees 00 minutes 00 seconds East 944.668 feet to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 269.690 feet to a set concrete monument; thence South 32 degrees 00 minutes 00 seconds East 1210.420 to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 2021.920 feet to a set concrete monument; thence turning and running North 31 degrees 58 minutes 26 seconds West 709.956 feet to a set concrete monument thence turning and running South 59 degrees 49 minutes 34 seconds West 240.449 feet to the place of beginning said to contain 100.00 acres, more or less and as more particularly shown on the survey thereof and defined as lands to be conveyed to: SUSSEX COUNTY COUNCIL and Lands of J.G. TOWNSEND, JR. & CO. Prepared by Charles D. Murphy Associates, Inc., Land Surveyors, dated May 17, 1994, revised May 31, 1994, revised on June 2, 1994, and revised on June 16, 1994 said plot being of record in the Office of the Recorder of Deeds in and for Sussex County in Plot Book 52, page 328.

BEING a portion of those lands conveyed unto this Grantor by deed of Sally W. Thompson, et al., dated August , 1946 and of record in the Office of the Recorder of Deeds in and for

07:13 333 6/22/94 TX-EX ST .00

3436 111 6/22/94 CTX-EX SU .00

DUM

Sussex County in Deed Book 361, page 409.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Jacob M. Moore, et al., dated July 9, 1946 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 366, page 26.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Frank Martin, et al., dated March 24, 1951 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 398, page 147.

THIS conveyance is subject to the following covenants which are incorporated herein and made a part hereof:

By accepting title to the above-described premises, Sussex County hereby covenants on behalf of itself, its heirs, successors and assigns to State of Delaware, Division of Historical and Cultural Affairs, State Historic Preservation Office (DE SHPO) or its successor agency, to maintain and preserve that archaeological site data which qualified 78-D-65 and 78-D-60 for inclusion in the National Register of Historic Places as follows:

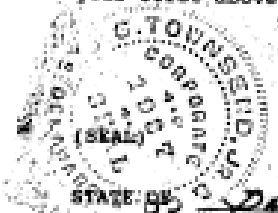
1. The County shall preserve and maintain the real property containing geological sites 78-D-65 and 78-D-60. Said sites are as shown and designated on the plot of lands referred to herein.
2. No construction or disturbance of the ground surface may take place without the express prior written permission of the DE SHPO signed by a fully authorized representative thereof. If the County proposes to undertake ground disturbing activities on the property, it may be necessary for the County to undertake data recovery in accordance with 36 CFR 800 prior to initiating the proposed activity. Maintenance activities such as grass mowing shall not be subject to this clause.
3. The DE SHPO shall be permitted at all reasonable times to inspect the aforementioned sites on land owned by the County to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant and in addition to any remedy now or hereafter provided by law, the DE SHPO may, following reasonable notice to the County, institute to enjoin said violation or require mitigation for said violation. The successful party shall be entitled to recover all costs or expenses incurred with such a suit, including all court costs and attorney's fees.
5. The County agrees that the DE SHPO may, at its discretion without prior notice to the County, convey and assign all or part of its rights and responsibilities to any successor agency.
6. This covenant is binding on the County, its heirs, successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the County verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the property as described in the above sites and bounds.
7. The failure of the DE SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

201987 2010

8. The DE SHPO may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the County, its heirs, successors or assigns. The DE SHPO may also make application to the County to modify or cancel this covenant.

9. This covenant shall be a binding servitude upon the County and shall be deemed to run with the land. Acceptance of this Deed and its recordation shall constitute conclusive evidence that the County agrees to be bound to the foregoing conditions and restrictions and to conform to obligations herein set forth.

IN WITNESS WHEREOF, the said J.G. TOWNSEND, JR. & CO. has caused its name to be hereunto set by its President and the common and corporate seal of this said corporation shall be hereunto affixed, duly attested to by its Secretary, the day and year first above written.



J.G. TOWNSEND, JR. & CO.

BY: [Signature]
President

ATTEST: [Signature]
Secretary

STATE OF Delaware
COUNTY OF Sussex

BE IT REMEMBERED that on this 21st day of

June, A.D. 1984, personally came before me,

the Subscriber, a Notary Public for the State and County aforesaid, Paul G. Townsend, President of J.G. TOWNSEND, JR. & CO., a corporation of the State of Delaware, party to this indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

[Signature]
Notary Public

DALLAS D. GREEN
My commission expires:

04 JUN 22 PM 2:09

RECORDED OF DEEDS
SUSSEX COUNTY

FRANK J. STRAUBE
NOTARIAL OFFICER ALTERNATE TO
BY DEL. CODE SECT. 402
ATTORNEY AT LAW
DELAWARE

PURCHASERS REPORT
MADE THIS DATE

JUN 23 1984

ASSESSMENT DIVISION
OF SUSSEX CTY.

Sussex County Engineering 7/17/94

EXHIBIT A-1 to Memorandum

LAGOON 4





**Exhibit B to Memorandum
PREMISES**


Attached to and made a part of that certain Amended and Restated Solar Energy Lease and Easement Agreement (the "Lease")
and Amended and Restated Memorandum of Lease Agreement (the "Memorandum"),

dated _____, 2024,
by and between **Sussex County, Delaware**
and
Blacktail Solar I LLC

Blacktail Solar I - Parcel
Boundary, Premise and
Equipment Pad

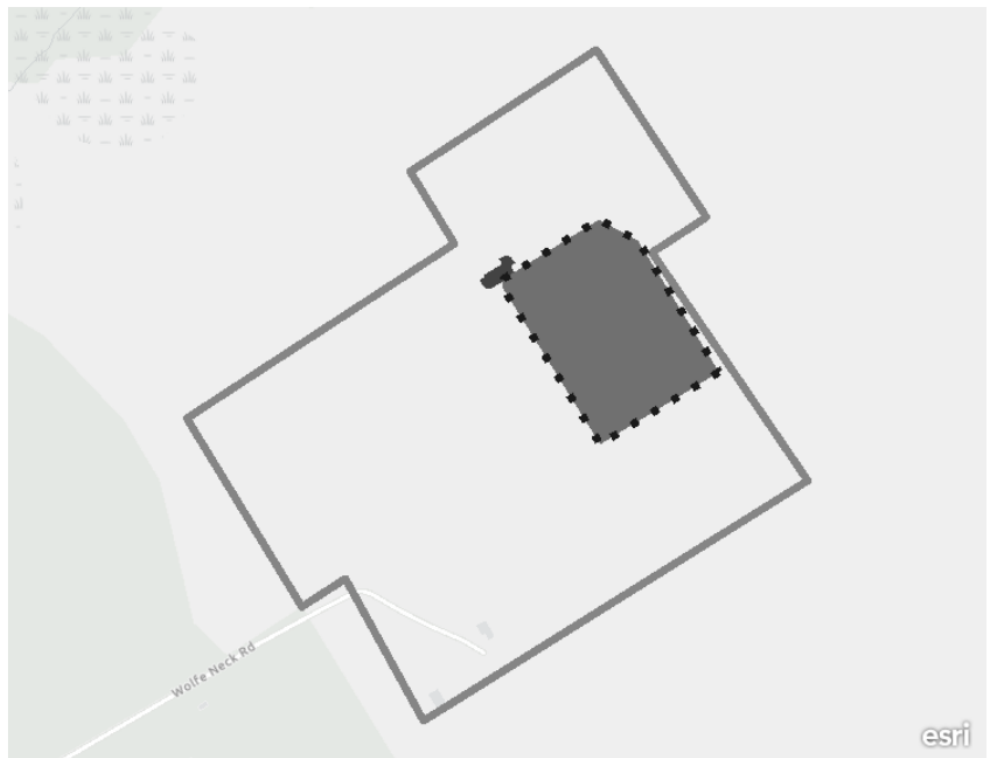
 Parcel Boundary +/-
100 ac

 Premises +/- 13
ac

 Equipment Pad



 600ft



THE DEPICTION CONTAINED IN THIS EXHIBIT IS INTENDED TO BE FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT CONSTITUTE A SURVEYED REPRESENTATION OF THE BOUNDARIES DEPICTED THEREIN. PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE PREMISES DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE PREMISES IS AT THE SOLE DISCRETION OF LESSEE BUT WILL REMAIN WITHIN THE AREA DEPICTED HEREIN.

**Exhibit C to Memorandum
EASEMENT AREAS**

Attached to and made a part of that certain Amended and Restated Solar Energy Lease and Easement Agreement (the "Lease")
and Amended and Restated Memorandum of Lease Agreement (the "Memorandum"),

dated _____, 2024,
by and between **Sussex County, Delaware**
and
Blacktail Solar I LLC

PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE EASEMENT AREAS DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE EASEMENT AREAS IS AT THE SOLE DISCRETION OF LESSEE.

EXHIBIT E to LEASE
DECOMMISSIONING FUNDING AGREEMENT
(Attached)

AMENDED AND RESTATED DECOMMISSIONING FUNDING AGREEMENT

THIS AMENDED AND RESTATED DECOMMISSIONING FUNDING AGREEMENT (this “**DFA**”) dated as of _____ and to be effective as of the Construction Commencement Date (as defined in the Lease (defined below)) is made by and among **Sussex County, Delaware**, a county and political subdivision of the State of Delaware, having an office at P.O. Box 589, Georgetown, Delaware 19947, United States, as “**Lessor**”, (whether one or more), **Blacktail Solar I LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as “**Lessee**”, and M&T Bank, having an office at 2205 DuPont Blvd., Georgetown, DE 19947, as “**Bank**”. Lessor and Lessee are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

RECITALS

(a) Lessor is the owner of approximately 100 acres of real property located in Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware, as more particularly described in the vesting deed which is attached hereto as **Exhibit A** (the “**Property**”);

(b) Lessor is the owner of the effluent spray lagoon at the Wolfe Neck Treatment Facility, located on the Property, which lagoon is known as and identified as Lagoon 4 in the description attached hereto as Exhibit A-1 (the “**Lagoon**”);

(c) Lessor and Lessee have entered into that certain Amended and Restated Solar Energy Lease and Easement Agreement of even date herewith, as modified by that certain Addendum to Amended and Restated Solar Energy Lease and Easement Agreement of even date herewith (the “**Addendum**”) (and as further amended, restated, modified, and supplemented from time to time, the “**Lease**”);

(d) Lessor and Lessee entered into that certain Solar Energy Lease and Easement Agreement dated March 19, 2024, the memorandum of which being recorded with the Registrar of Deeds of Sussex County, DE at BK: 6089 and PG: 144 on April 23, 2024 (“**Prior Agreement**”)

(d) Pursuant to the Lease, as of the Effective Date (as defined below) of this DFA, Lessee has leased from Lessor and Lessor has leased to Lessee the Premises for the construction and operation of a solar photovoltaic and/or energy storage project on the Premises, including all necessary equipment to deliver solar or stored energy from the Premises to the distribution grid (the “**Project**”);

(e) Lessor and Lessee desire to open and maintain an interest bearing certificate of deposit account with Bank to be known as the Sinking Fund Account, for depositing of sums to cover the costs of decommissioning the Project, and the Parties desire to enter this Agreement to set forth their agreements related to operation and maintenance of the Sinking Fund Account.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND THE AGREEMENTS, COVENANTS AND PROMISES set forth in this DFA and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and agreed by the Parties, Lessor and Lessee, intending to be legally bound hereby, agree as follows:

1. **Definitions.** Capitalized terms in this DFA which are defined in the Lease but not otherwise defined in this DFA have the same meanings herein as in the Lease.

2. **Effective Date.** This DFA shall become effective as of the Construction Commencement Date (the “Effective Date”).

3. **Sinking Fund.**

- (a) Within five (5) days after the Effective Date, Lessor and Lessee shall establish a special purpose interest-bearing certificate of deposit account with Bank (the “**Sinking Fund Account**”), and upon such establishment, Lessee shall deposit the sum of \$145,625 into the Sinking Fund Account. The initial deposit into the Sinking Fund Account, together with additional sums deposited therein in accordance with the provision in the immediately following sentence are hereinafter collectively referred to as the “**Sinking Fund**”. At the end of each calendar year after the Effective Date, Bank shall distribute to Lessee in accordance with Lessee’s written directions any amount in the Sinking Fund Account consisting solely of interest, dividends, income, capital gains and other amounts earned on or derived from the sums deposited by Lessee into the Sinking Fund Account under this DFA.
- (b) Commencing on the first anniversary of the Operations Date and on each subsequent anniversary of the Operations Date during the Lease Term, Lessee shall deposit into the Sinking Fund Account an additional sum equal to 2.5% of the then-existing amount in the Sinking Fund, as described in greater detail on Schedule I attached hereto. The Parties agree that the Sinking Fund shall be used solely to pay for any costs of decommissioning the Project under the Lease. Provided Lessee complies with its obligations to deposit funds into the Sinking Fund Account in accordance with this DFA, Lessee shall have no further payment obligation in connection with funding the DFA during the Lease Term; *provided, however*, that in the event the actual costs of decommissioning the Project exceed the amount of the Sinking Fund, Lessee shall be responsible for any such excess costs, provided such excess costs are not as a result of Lessor using any portion of the Sinking Fund for any reason other than to pay for decommissioning costs of the Project in accordance with this DFA.
- (c) In the event Lessor uses any amount in the Sinking Fund for any reason other than to pay for decommissioning costs in accordance with this DFA, Lessor shall be responsible to pay for such amount used and shall indemnify and hold harmless Lessee from any claim, loss, damage, liability or costs (including any reasonable attorney costs) arising from such use of funds for reasons other than to pay for decommissioning costs in accordance with this DFA.
- (d) Until Bank is notified in accordance with the provision in Section 4, and except to the extent permitted by the provision in Section 3(a), neither Lessor nor Lessee may withdraw any amount from the Sinking Fund Account.

4. **Decommissioning Process.**

- (a) Upon expiration or earlier termination of the Lease in accordance with Section 13.1 of the Lease, Lessee shall give notice to Bank of such expiration or earlier termination, which notice shall set forth: (a) the expiration date or termination date of the Lease, and (b) that Lessor has 30 days from such expiration date or termination date (the “**Purchase Option Exercise Period**”) to exercise its option to purchase the Project Facilities as set forth in the Lease (the “**Lessor Purchase Option**”).
- (b) If Lessor exercises its Purchase Option, Lessor shall deliver a notice to Lessee and Bank of such exercise. Pursuant to such exercise, on the date Lessee and Lessor consummate the purchase and sale of the Project Facilities from Lessee to Lessor (such consummation, the “**Closing**”), the Parties

shall jointly notify Bank in writing of the Closing, and Bank shall, within five days thereof, distribute all amounts in the Sinking Fund Account to Lessee.

- (c) In the event Lessor does not deliver the notice exercising its Purchase Option during the Purchase Option Exercise Period or notifies Lessee and Bank in writing of Lessor's election not to purchase the Project Facilities, Lessee shall immediately commence the decommissioning of the Project Facilities in accordance with the Lease. Upon Lessee's completion of the Restoration Requirements in accordance with the Decommissioning Plan, Lessee and Lessor shall jointly notify Bank in writing of such completion of the Restoration Requirements, and Bank shall, within five days of receipt of such notice, distribute all amounts in the Sinking Fund Account to Lessee.
- (d) If (i) Lessee fails to complete the Restoration Requirements within eight months after the expiration date of the Purchase Option Exercise Period, or (ii) the Project ceases to produce electrical energy for a period of 12 consecutive months, Lessor shall give Lessee and Bank notice of its intent to commence decommissioning of the Project (the "**Lessor Decommissioning Notice**"). In the event Lessee fails to respond to Lessor with a reasonable explanation for the delay in the restoration or cessation of operation of the Project within 30 days after delivery of the Lessor Decommissioning Notice, Lessor may commence the decommissioning of the Project. Upon request by Lessor to Bank at any time after expiration of the 30-day period after delivery of the Lessor Decommissioning Notice, Bank shall distribute 100% of the Sinking Fund to Lessor or its designee in accordance with Lessor's written instructions.

5. Miscellaneous.

- (a) Lessor and Lessee agree to indemnify and hold harmless Bank, its officers, directors, employees and agents, against claims, liabilities or expenses (including reasonable attorney's fees) arising out of Bank's compliance with any requirements of this DFA with respect to the Sinking Fund Account, except if such claims, liabilities or expenses are caused by Bank's negligence or willful misconduct.
- (b) This DFA shall not create any obligation or duty of Bank except as expressly set forth herein.
- (c) As to the matters specifically subject of the DFA, in the event of any conflict between this DFA and the Lease or any other agreement among the parties or between any of them, the terms of the DFA shall control.
- (d) All notices, requests, demands, waivers and other communications required or permitted to be given under this Leases shall be in writing and may be given by any of the following methods: (a) personal delivery, (b) a writing in portable document format ("**PDF**") attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested, (c) overnight or certified mail, postage prepaid, return receipt requested, or (d) next day air courier service. Notices shall be sent to the appropriate party at its address or email address given below, provided that any Party may change its address for purposes of this Section (d) by giving notice of such change to the other Parties:

If to Lessor: Sussex County, Delaware

Name: Mike Harmer
Address: P.O. Box 589, Georgetown, Delaware
19947, United States
Email: mike.harmer@sussexcountyde.gov

If to Lessee: Blacktail Solar I LLC

Attention: Land Department
Address: 1700 Rockville Pike, Suite 305,
Rockville, MD 20852, United States
Email: land@chaberton.com

Phone No.: +1-3028557370

If to Bank: M&T Bank

Attention:

Address: 22205 DuPont Blvd
Georgetown, DE 19947

Email:

- (e) This DFA shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the Parties. This DFA may not be amended or modified except by written instrument signed and delivered by the Parties. Lessee may assign this DFA to any subsidiary, or purchaser or transferee of the Project. The Parties agree to execute and deliver any additional document or take any further action as reasonably requested by the other party to effectuate the purpose of this DFA.
- (f) This DFA shall be construed and enforced in accordance with the laws of the State of Delaware.
- (g) This DFA shall terminate upon distribution of 100% of the Sinking Fund to Lessee or Lessor in accordance with the provisions of this DFA, whereupon the Sinking Fund Account shall also be terminated and closed.
- (h) This DFA may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument. This DFA may be executed and transmitted via facsimile, PDF, or other similar electronic means complying with the U.S. federal E-SIGN Act of 2000 (e.g. www.docusign.com) and a manual or electronic signature of the undersigned transmitted via such means shall have the same force and effect as a manually signed original.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Decommissioning Funding Agreement as of the date set forth above.

LESSOR: Sussex County, Delaware

By:

Name: Michael H. Vincent

Title: President of County Council

Attest: (SEAL)

Clerk of Council

LESSEE: Blacktail Solar I LLC

By:

Name: Ron Stimmel

Title: Manager

BANK: M&T Bank

By:

Name:

Title:

SCHEDULE I
SINKING FUND DEPOSIT SCHEDULE

Sinking Fund (Deposits)		
Timeframe	Amount (\$)	Cumulative
Construction Commencement Date	145,625	145,625
Yr 1 of Operations Date	\$3,640.61	\$149,265.61
Yr 2	\$3,731.62	\$152,997.23
Yr 3	\$3,824.91	\$156,822.15
Yr 4	\$3,920.54	\$160,742.68
Yr 5	\$4,018.55	\$164,761.23
Yr 6	\$4,119.01	\$168,880.24
Yr 7	\$4,221.99	\$173,102.23
Yr 8	\$4,327.54	\$177,429.77
Yr 9	\$4,435.72	\$181,865.49
Yr 10	\$4,546.62	\$186,412.11
Yr 11	\$4,660.28	\$191,072.39
Yr 12	\$4,776.79	\$195,849.18
Yr 13	\$4,896.21	\$200,745.39
Yr 14	\$5,018.61	\$205,764.00
Yr 15	\$5,144.08	\$210,908.08
Yr 16	\$5,272.68	\$216,180.75
Yr 17	\$5,404.49	\$221,585.25
Yr 18	\$5,539.61	\$227,124.86
Yr 19	\$5,678.10	\$232,802.95
Yr 20	\$5,820.05	\$238,623.00
Yr 21	\$5,965.55	\$244,588.55
Yr 22	\$6,114.69	\$250,703.23
Yr 23	\$6,267.55	\$256,970.79
Yr 24	\$6,424.24	\$263,395.03
Yr 25	\$6,584.85	\$269,979.88

Exhibit A
AMENDED AND RESTATED DECOMMISSIONING FUNDING AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

Parcel ID Number: 334-7.00-30.01

That certain real property in the County of Sussex, State of Delaware, described as follows:

15674

101987 2008

This Deed was prepared by WILSON, HALSBROOK & BAYARD, P.A. ^{TM#3-34-7-part of 30}
Georgetown, Delaware

DEED

THIS DEED made this 21st day of June, A.D. 1994,

BETWEEN,

J.G. TOWNSEND, JR. & CO. of P.O. P.O. Box 430, Georgetown, Delaware 19947, hereinafter referred to as "Grantor",

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, of P.O. Box 589, Georgetown, Delaware 19947, party of the second part, hereinafter referred to as the "Grantee".

WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), Current Lawful Money of the United States of America and other good and valuable considerations, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns forever,

ALL that certain piece or parcel of land situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, being more particularly described as follows to wit:

BEGINNING at a set concrete monument in the northwesterly right-of-way line of Sussex County Road 270 at its intersection with the former center line of the Penn Central Railroad; thence by and with the aforesaid former center line of the Penn Central Railroad North 32 degrees 02 minutes 59 seconds West 1032.463 feet to a set concrete monument; thence turning and running North 58 degrees 00 minutes 00 seconds East 1488.382 feet to a set concrete monument; thence turning and running North 32 degrees 00 minutes 00 seconds West 404.998 feet to a set concrete monument; thence turning and running North 57 degrees 59 minutes 58 seconds East 1044.130 feet to a set concrete monument; thence turning and running South 32 degrees 00 minutes 00 seconds East 944.668 feet to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 269.690 feet to a set concrete monument; thence South 32 degrees 00 minutes 00 seconds East 1210.420 to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 2021.920 feet to a set concrete monument; thence turning and running North 31 degrees 58 minutes 26 seconds West 709.956 feet to a set concrete monument thence turning and running South 59 degrees 49 minutes 34 seconds West 240.449 feet to the place of beginning said to contain 100.00 acres, more or less and as more particularly shown on the survey thereof and defined as lands to be conveyed to: SUSSEX COUNTY COUNCIL and Lands of J.G. TOWNSEND, JR. & CO. prepared by Charles D. Murphy Associates, Inc., Land Surveyors, dated May 27, 1994, revised May 31, 1994, revised on June 2, 1994, and revised on June 16, 1994 said plot being of record in the Office of the Recorder of Deeds in and for Sussex County in Plot Book 52, page 328.

BEING a portion of those lands conveyed unto this Grantor by deed of Sally W. Thompson, et al., dated August _____, 1946 and of record in the Office of the Recorder of Deeds in and for

3713 333 6/22/94 TX-EX ST .00

3436 111 6/22/94 CTX-EX SU .00

DLM

Sussex County in Deed Book 361, page 409.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Jacob M. Moore, et al., dated July 9, 1946 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 366, page 26.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Frank Martin, et al., dated March 24, 1951 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 398, page 147.

THIS conveyance is subject to the following covenants which are incorporated herein and made a part hereof:

By accepting title to the above-described premises, Sussex County hereby covenants on behalf of itself, its heirs, successors and assigns to State of Delaware, Division of Historical and Cultural Affairs, State Historic Preservation Office (DE SHPO) or its successor agency, to maintain and preserve that archaeological site data which qualified 78-D-65 and 78-D-60 for inclusion in the National Register of Historic Places as follows:

1. The County shall preserve and maintain the real property containing geological sites 78-D-65 and 78-D-60. Said sites are as shown and designated on the plot of lands referred to herein.
2. No construction or disturbance of the ground surface may take place without the express prior written permission of the DE SHPO signed by a fully authorized representative thereof. If the County proposes to undertake ground disturbing activities on the property, it may be necessary for the County to undertake data recovery in accordance with 36 CFR 800 prior to initiating the proposed activity. Maintenance activities such as grass mowing shall not be subject to this clause.
3. The DE SHPO shall be permitted at all reasonable times to inspect the aforementioned sites on land owned by the County to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant and in addition to any remedy now or hereafter provided by law, the DE SHPO may, following reasonable notice to the County, institute to enjoin said violation or require mitigation for said violation. The successful party shall be entitled to recover all costs or expenses incurred with such a suit, including all court costs and attorney's fees.
5. The County agrees that the DE SHPO may, at its discretion without prior notice to the County, convey and assign all or part of its rights and responsibilities to any successor agency.
6. This covenant is binding on the County, its heirs, successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the County verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the property as described in the above sites and bounds.
7. The failure of the DE SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

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8. The DE SHPO may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the County, its heirs, successors or assigns. The DE SHPO may also make application to the County to modify or cancel this covenant.

9. This covenant shall be a binding servitude upon the County and shall be deemed to run with the land. Acceptance of this Deed and its recordation shall constitute conclusive evidence that the County agrees to be bound to the foregoing conditions and restrictions and to conform to obligations herein set forth.

IN WITNESS WHEREOF, the said J.G. TOWNSEND, JR. & CO. has caused its name to be hereunto set by its President and the common and corporate seal of this said corporation shall be hereunto affixed, duly attested to by its Secretary, the day and year first above written.



J.G. TOWNSEND, JR. & CO.

BY: [Signature]
President

ATTEST: [Signature]
Secretary

STATE OF Delaware
COUNTY OF Sussex

BE IT REMEMBERED that on this 21st day of

June, A.D. 1984, personally came before me,

the Subscriber, a Notary Public for the State and County aforesaid, Paul G. Townsend, President of J.G. TOWNSEND, JR. & CO., a corporation of the State of Delaware, party to this indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

[Signature]
Notary Public

DALLAS D. GREEN

04 JUN 22 PM 2:09

RECORDED OF DEEDS
SUSSEX COUNTY

FRANK J. STRAUBE
NOTARIAL OFFICER ALTERNATE TO
BY DEL. CODE SECT. 422
ATTORNEY AT LAW
DELAWARE

PURCHASERS REPORT
MADE THIS DATE

JUN 23 1984

ASSESSMENT DIVISION
OF SUSSEX CTY.

Sussex County Engineering 7/17/94

EXHIBIT A-1 to Memorandum

LAGOON 4



**SOLAR ENERGY LEASE AND EASEMENT AGREEMENT
(Delaware)**

THIS SOLAR ENERGY LEASE AND EASEMENT AGREEMENT (“**Lease**” or “**Agreement**”) is made and entered into on _____ (the “**Effective Date**”), by and between **Sussex County, Delaware**, a county and political subdivision of the State of Delaware, having an office at P.O. Box 589, Georgetown, Delaware 19947, United States, as “**Lessor**”, (whether one or more), and **Blacktail Solar II LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as “**Lessee**”. Lessor and Lessee are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

RECITALS

(a) Lessor is the owner of approximately 100 acres of real property located in Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware, as more particularly described in the vesting deed which is attached hereto as **Exhibit A** (the “**Property**”);

(b) Lessor is the owner of the effluent spray lagoon at the Wolfe Neck Treatment Facility, located on the Property, which lagoon is known as and identified as Lagoon 4 in the description attached hereto as Exhibit A-1 (the “**Lagoon**”);

(c) Lessor and Lessee desire that Lessee should lease the exclusive rights to use the surface of the Lagoon, lying within approximately up to 13 acres of the Property as preliminarily depicted on **Exhibit B**, together with all solar and air rights, improvements, equipment pads, fixtures, personal property and trade fixtures, appurtenances, tenements, hereditaments, ingress and egress rights, and other Easements (as defined in Section 14) pertaining to the Property (collectively, the “**Premises**”); and

(d) Lessee desires to obtain from Lessor, and Lessor desires to grant to Lessee, an exclusive option to lease the Premises while Lessee undertakes due diligence and development activities, and upon the successful conclusion of such activities, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor the Premises for the construction and operation of a solar photovoltaic and/or energy storage project on the Premises, including all necessary equipment to deliver solar or stored energy from the Premises to the distribution grid (the “**Project**”);

(e) Lessor and Lessee’s affiliate, Blacktail Solar I LLC (as successor in interest of Noria Chaberton JV LLC (“**NOCH**”) by virtue of that certain Assignment of Solar Energy Lease and Easement Agreement dated July 15, 2024) entered into that certain Solar Energy Lease and Easement Agreement dated March 19, 2024, the memorandum of which was recorded with the Registrar of Deeds of Sussex County, DE at BK: 6089 and PG: 144 on April 23, 2024 (“**Prior Agreement**”), which Prior Agreement was awarded to Lessee (as successor in interest of NOCH) under the Sussex County Council Request for Proposal dated October 26, 2023 and subsequent approval by the Sussex County Council on March 19, 2024 of Lessee’s Wolfe Neck Regional Wastewater Facility Floating Community Solar Proposal dated December 14, 2023;

(f) Pursuant to Section 11.4, Lessee’s affiliate, Blacktail Solar I LLC (“**BSI**”), bifurcated the Prior Agreement into two stand-alone new leases namely, this Agreement, and another solar energy lease and easement agreement of even date herewith to be executed by BSI;

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND THE AGREEMENTS, COVENANTS AND PROMISES set forth in this Lease and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and agreed by the Parties, Lessor and Lessee, intending to be legally bound hereby, agree as follows:

1. Option to Lease; Lease and Grant of Easements. Lessor grants to Lessee, at any time during the Option Period (as defined in Section 4.1), an exclusive, irrevocable, and continuing right and option (the “**Option**”) to lease the Premises and obtain the Easements (as defined in Section 14) upon the terms and conditions set forth herein. Subject to Section 3, during the Option Period (as defined below in Section 4.1), Lessor shall grant no license, easement, option, leasehold, or other right in or affecting the Premises or any right related thereto, nor permit any third party to undertake any activities on the Premises without Lessee’s written consent. Effective as of the Construction Commencement Date (as defined in Section 4.1), Lessor hereby leases to Lessee the Premises, and grants to Lessee the Easements, upon and subject to the terms and conditions in this Lease. Lessee shall have the quiet use and enjoyment of the Premises in accordance with and subject to the terms of this Lease, without any manner of hindrance, interference, or molestation of any kind by Lessor or any person claiming through or under Lessor.

2. Purpose and Scope of Lease.

2.1 This Lease is for the uses set forth in this Agreement and Lessee will have the exclusive right to use the Premises for any and all uses related to the Project Activities (as defined in Section 2.2); provided that (a) during the Option Period, Lessee will have the right of access to and from the Premises from a public road through any easements, rights of way, or other access rights held by Lessor for the benefit of the Premises, and the rights to use the Premises on a non-exclusive basis for the purpose of carrying out due diligence and development activities consistent with the Project Activities, including the activities set forth in Section 2.2.2; and (b) during the Restoration Period (as defined in Section 4.3), Lessee shall have the exclusive right to access and use the Premises for the purpose of completing the Restoration Requirements set forth in Section 13.3. The rights hereby granted to Lessee in this Lease include, without limitation, the Easements and related rights more fully described in Section 14.

2.2 “**Project Activities**” means any and all activities related to developing, installing, constructing, interconnecting, owning, maintaining, and operating one or more solar photovoltaic electric generation systems and/or Energy Storage Technology (as such term is defined under Section 48(c)(6) of the Internal Revenue Code of 1986 and the Inflation Reduction Act of 2022), converting solar or stored energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related to such uses, including:

2.2.1 constructing, installing, using, replacing, relocating, repowering and removing from time to time, and maintaining and operating the following facilities (collectively, “**Project Facilities**”): (a) solar-powered electric generating facilities, including but not limited to modules, inverters, cables, foundations, panels, mounting units and all necessary ancillary improvements and equipment providing support or otherwise associated therewith; (b) photovoltaic solar power generating equipment or such other solar-powered generating equipment as determined in Lessee’s commercially reasonable judgment to be used to capture and convert solar radiation to produce electricity; (c) fences, gates and other safety and protection facilities; (d) utility installations; (e) Energy Storage Technology; (f) private stormwater management systems; and (g) overhead, submerged under water, and underground electrical transmission, collection and communications lines and cables, electric transformers, switching stations, substations, telecommunications equipment, concrete batch plants, power generation facilities to be operated in conjunction with solar array installations, roads, control buildings, operation and maintenance buildings and yards, construction laydown and staging areas, security fencing and related facilities and equipment necessary or convenient for the construction, operation and maintenance of the Project;

2.2.2 any and all activities to determine the feasibility of the Premises for the Project including conducting surveys, soil or water sampling, studies of environmental, biological, cultural, and geotechnical conditions of the Premises, and other tests; and

2.2.3 all other activities on the Premises whether accomplished by Lessee or a third-party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.

3. Uses Reserved by Lessor. During the Option Period, Lessor shall have the right to undertake agricultural activities on the Premises provided that any such activities shall be performed in such a manner so as not to adversely affect Lessee’s ability to utilize the Premises for Lessee’s intended purpose of constructing the Project Facilities from the Construction Commencement Date. The cost of any such activities undertaken by Lessor during the Option Period shall be the sole responsibility of Lessor, and the proceeds from the sale of any materials resulting from any such activities performed by Lessor prior to the Construction Commencement Date shall be for the sole benefit of Lessor. Effective as of the Construction Commencement Date (as defined in Section 4.1), Lessor acknowledges that neither Lessor nor Lessor’s lessees or grantees (other than Lessee) shall have any right to occupy or use the Premises until this Lease terminates or expires. Lessor and any of its other lessees or grantees shall immediately cease all activity and presence on the Premises as of the Construction Commencement Date and clear any equipment, facilities or anything else from the Premises that would otherwise potentially interfere with the Project.

4. Option Period; Term of Lease. Subject to the other provisions contained herein, the term of this Lease and the Easements contained in this Lease shall be as follows:

4.1 Option Period. The “**Option Period**” of this Lease shall be in force for a period of one year, commencing on the Effective Date and expiring at 11:59 PM EST on the one-year anniversary of the Effective Date, unless otherwise extended pursuant to the provision in the immediately following sentence. At Lessee’s option, upon notice to Lessor provided no later than the date that is one month prior to the end of the then-current Option Period or Option Period Extension (each such notice, a “**Option Period Extension Notice**”), and subject to other provisions contained herein, Lessee may extend the Option Period for up to two additional one-year periods (each additional one-year period, a “**Option Period Extension**”), up to a maximum Option Period of three years. Notwithstanding the provision in the preceding sentence, and subject to Section 4.2, if this Lease has not been terminated in accordance with the terms hereof and, by the date set forth in the preceding sentence, Lessee fails to (i) deliver the Option Period Extension Notice, or (ii) otherwise notify Lessor that Lessee will not be exercising its option to extend the Option Period, Lessee shall be deemed to have exercised its option to extend the Option Period to the next allowable Option Period Extension up to the expiration date of the second Option Period Extension. If during the Option Period, Lessee secures all approvals and permits necessary to initiate the Project Activities, and, at its sole discretion, finds the Property suitable for development of the Project Facilities, Lessee shall notify Lessor of its intent to commence construction of the Project Facilities (such notice, the “**Construction Notice**”). The Construction Notice shall: (a) set forth the date on which Lessee shall commence construction of the Project Facilities (the “**Construction Commencement Date**”); and (b) contain an ALTA-compliant and certified survey (“**Survey**”) of the Premises and the Easement Areas (as defined in Section 14.1). Lessee shall deliver the Construction Notice no later than two weeks in advance of the Construction Commencement Date. The Survey shall show (i) a calculation of the actual number of acres contained within the Premises (each being a “**Premises Acre**”); and (ii) the final routing and delineation of the Access and Transmission Easements (as defined in Section 14.1), if any. Upon Lessee’s delivery of the Construction Notice to Lessor, (A) Lessee shall be deemed to have exercised the Option; (B) **Exhibit B** and **Exhibit C** shall each be deemed revised (without the need for any additional documentation) to reflect the Premises and Easement Areas as set forth in the Survey, *provided that* upon Lessee’s request, Lessor and Lessee shall execute an amended memorandum of lease to give recordable notice of the revised Premises and Easement Areas and Lessee shall record said amended memorandum within the land records of Sussex County;

and (C) such revised **Exhibit B** shall definitively establish the surveyed acreage of the Premises for purposes of calculating the Annual Rent (as defined in Section 5.2.1).

4.2 Lease Term. If this Lease has not been terminated in accordance with the terms hereof before the end of the Option Period (or any extension thereof), the “**Lease Term**” shall commence on the Construction Commencement Date and shall terminate on the 25th anniversary of the Operations Date (as defined in the provision in the immediately following sentence), unless otherwise extended pursuant to the provisions of this Section 4.2. The “**Operations Date**” means the date that is the earlier of (a) the date on which the Project has been completely constructed, has physically completed all performance tests, and has received the permission to operate from the local electric utility; and (b) two years after the Construction Commencement Date. At Lessee’s option, upon notice to Lessor (each such notice, a “**Lease Term Extension Notice**”) provided no later than six months prior to the end of the then-current Lease Term or Lease Term Extension, Lessee may extend the Lease Term for up to three additional five-year periods (each additional five-year extension period, a “**Lease Term Extension**”). Lessee shall pay to Lessor, the Annual Rent for the first year of such Lease Term Extension calculated in the manner, and by the date, set forth in Section 5.2.1. For the avoidance of doubt, the expression “**Lease Term**” means the Lease Term together with any Lease Term Extensions.

4.3 Restoration Period. “**Restoration Period**” means the period from the earlier termination or expiration date of the Lease until the last date of Lessee’s completion of the Restoration Requirements under Section 13.3.

5. **Fees and Rent**. Lessee will pay Lessor the following amounts:

5.1 Intentionally Deleted.

5.2 Rent.

5.2.1 During the Lease Term, and any extension thereof, Lessee shall pay to Lessor the Annual Rent (as defined in the immediately following sentence). The “**Annual Rent**” shall be in the amount of **\$6,500.00** per surveyed Premises Acre, payable within 45 days of the Construction Commencement Date and on each anniversary of the Construction Commencement Date. During the first anniversary of the Construction Commencement Date and each subsequent anniversary during the Lease Term, the Annual Rent shall increase by **2.5%** over the Annual Rent paid in the previous year.

5.2.2 “**Rent**” means the Annual Rent. Subject to Section 13.3, Lessee shall have no obligation to make any additional payments of Rent following the termination or expiration of this Lease.

5.3 Interest on Past Due Payments. All Rent and other fees not paid or tendered when due under this Lease shall bear simple interest at an annual rate equal to the lesser of (a) the Federal Reserve Bank Loan Prime Rate or (b) the maximum rate allowed by Applicable Law (as defined in Section 9.1).

5.4 Payment Adjustments; Partial Ownership; Change in Property Ownership.

5.4.1 Lessor shall provide Lessee with its certified taxpayer identification numbers simultaneously with the execution and delivery of this Lease via an Internal Revenue Service (IRS) Form W-9 (or its equivalent). No payments under this Lease shall be paid, but shall continue to accrue, until Lessee has received such taxpayer identification information. Upon receipt of such taxpayer identification information, all accrued, but unpaid Rent shall be immediately due and payable by Lessee to Lessor. In the event of an assignment of this Lease or sale, assignment or transfer of Lessor’s interest in the Premises, or any part thereof, to a third party, Rent shall be adjusted proportionately with respect to the fee interest in the Premises held by Lessor and said third party beginning with the first payment of Rent due subsequent to said sale, assignment, or transfer. No payments under this Lease shall be paid to said third-party, but shall continue to accrue, until Lessee has received certified taxpayer identification numbers from the third-party via an IRS Form W-9 (or its equivalent). Any Rent paid to Lessor for the year in which a sale, assignment, or transfer has occurred shall be allocated between Lessor and the third-party as determined between Lessor and the third-party but in no event

shall Lessee be required to make any additional Rent payments or to otherwise compensate the third-party for its proportionate share of Rent for the year of sale, assignment, or transfer.

5.4.2 Notwithstanding anything to the contrary in this Lease or elsewhere, any obligation under this Lease for Lessee or any Assignee (as defined in Section 11.1) to pay Lessor any amount will be completely and unconditionally satisfied by payment of such amount by Lessee or Assignee, as applicable, to Lessor at the address for Lessor given in this Lease or such other single address designated by not less than 30 days' prior notice to Lessee and each such Assignee signed by Lessor. At Lessee's election, such payment may be by joint check or checks payable to any assignee(s) of Lessor under Section 11.5. Lessor shall be solely responsible to notify Lessee and each Assignee in writing of any change in ownership of the Property or any portion thereof.

6. Ownership of Project Facilities. Lessor shall have no ownership or other interest in any Project Facilities and Lessee may remove any or all Project Facilities at any time. No part of the Project Facilities or other equipment installed by Lessee on the Premises shall be considered part of the Property, or fixtures, or an improvement to real property. The Project Facilities shall at all times be considered tangible personal property owned exclusively by Lessee. Notwithstanding any provision herein to the contrary, Lessor acknowledges that Lessee shall have no obligation to construct any Project Facilities on the Premises.

7. Taxes and Assessments.

7.1 Responsibility of the Parties.

7.1.1 With the exception of the taxes and assessments set forth in Section 7.1.2, Lessor shall pay all taxes of every kind and nature (including real and personal property, income, gross receipts, franchise, profits, sales and withholding taxes), all general and special assessments, water and sewer rents and charges, and all levies, permits, inspection and license fees and other public charges now or hereafter levied or assessed against the Property as liens or assessments as the same shall become due and payable from time to time and before interest or penalties accrue thereon. Lessor shall under no circumstances permit the Property to be sold or advertised for sale for nonpayment of any tax. Lessor shall deliver to Lessee receipts evidencing the payment of such tax within 30 days after Lessee's demand therefor.

7.1.2 During the Lease Term, Lessee shall pay all taxes and assessments levied or assessed against its personal property located on the Leased Premises, including the Project Facilities and all other taxes (including property tax increases specifically triggered by development and build out of the Project Facilities, or applicable "roll back" taxes), assessments or other public charges assessed or imposed by reason of the Project Activities or the conduct of Lessee's business, including, but not limited to, sales and income taxes. Lessee shall have the right to enter into a payment in lieu of tax ("**PILOT**") agreement with the municipality or county in which the Premises are located for the taxation of Lessee's personal property located on the Premises. If requested by Lessee, Lessor shall, at the sole expense of Lessee, reasonably cooperate with Lessee in connection with a PILOT agreement.

7.1.3 Lessee may, in its sole discretion, but shall not be obligated to, pay directly to the relevant taxing authority, any taxes with respect to the Property which under this Lease are the responsibility of the Lessor, in order to remove any tax lien or other restriction placed on the Property due to non-payment; in which case Lessee shall receive a credit on its Rent, of any amounts so paid plus an amount equivalent to interest at the rate provided for in Section 5.3 on the amount so paid from the date of payment to the time the Rent being credited is due. Furthermore, any such payment of taxes by Lessee which are the responsibility of Lessor under this Lease shall not obligate Lessee to make any further payments of such taxes.

7.2 Reimbursement. If any taxes payable by Lessee under this Lease are levied or assessed in the name of Lessor as part of the real property taxes payable by Lessor, then, promptly after Lessor timely submits the real property tax bill to Lessee, Lessee shall reimburse Lessor for all such taxes payable by Lessee under this Lease in the amount due without interest or penalties; provided, however, that if penalties and interest

are incurred as a result of any failure or omission on Lessee's part, then Lessee shall be responsible for the same. It is a condition to Lessor's right to payment or reimbursement of any penalties or interest relating to taxes under this Lease that Lessor submit the real property tax bill (and any other communication from any government authority regarding the same) to Lessee at least 45 days before the tax bill is due.

7.3 Right to Contest. Lessee's obligations under this Lease are subject to Lessee's right to contest the same as hereinafter provided. Lessee shall have the right, in its sole discretion and at its sole expense, to contest by appropriate legal proceedings (which may be brought in the name(s) of Lessor or Lessee where appropriate or required), the validity or amount of any assessments or taxes for which Lessee is responsible under this Lease. Lessor shall in all respects cooperate with Lessee in any such contest.

8. Indemnities, Insurance, Safety Measures, and Environmental Matters.

8.1 Indemnity.

8.1.1 To the fullest extent permitted by law, Lessee shall defend, indemnify and hold harmless Lessor, and the elected and appointed officials, officers, directors, partners, employees, agents of each and any of them (each, a "**Lessor Party**", and collectively, the "**Lessor Parties**") from all claims, costs, losses, or damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, collectively, "**Losses**") arising out of or relating to the Project Activities, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom but only to the extent caused in whole or in part by any negligent act or omission of Lessee, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them (each, a "**Lessee Party**", and collectively, the "**Lessee Parties**") to perform any of the Project Activities or anyone for whose acts any of them may be liable. Lessee shall be liable, regardless of whether or not such claims, damages, losses, injuries, or expenses are caused in part by a party indemnified hereunder.

8.1.2 In any and all claims against Lessor or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Lessee, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

8.1.3 Lessee agrees to expressly waive its immunity, if any, as a complying employer under the Workers' Compensation law or statute, but only to the extent that such immunity would bar or affect recovery under or enforcement of any indemnification obligation contained herein. This waiver applies to Title 19, Chapter 23 of the Delaware Code, including amendments, or any other applicable state Workers' Compensation law or statute.

8.2 Limitation of Liability. **LESSEE SHALL IN NO CASE BE LIABLE FOR LOST BUSINESS OPPORTUNITIES, LOST PROFITS, OR ANY OTHER SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MAY RESULT FROM THE CONDUCT OF LESSEE'S PROJECT ACTIVITIES OR OTHERWISE AS A RESULT OF ANY EXERCISE BY LESSEE OF ITS RIGHTS UNDER THIS LEASE; PROVIDED, HOWEVER, THAT SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO: (A) THE FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSEE; OR (B) THE INDEMNIFICATION OBLIGATIONS OF LESSEE UNDER SECTION 8.1.**

8.3 Insurance. Lessee shall, at its expense, obtain and maintain throughout the Lease Term, (i) a broad form comprehensive coverage policy of public liability insurance insuring Lessee and Lessor against loss or liability caused by Lessee's activities on the Premises under this Lease, in an amount not less than \$2,000,000.00 of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible; (ii) commercial auto liability insurance with a combined single limit of not

less than \$1,000,000.00, and (iii) umbrella liability insurance with a combined single limit of not less than \$5,000,000.00. Certificates of insurance identifying the required insurance must be provided to the Lessor and kept current. All required insurance policies shall be endorsed to provide that the policy is not subject to cancellation until thirty (30) days prior written notice has been given to Lessor (not less than ten (10) days' notice is required for non-payment of premium). If Lessor is damaged by the failure or neglect of Lessee to purchase and maintain required insurance, then Lessee shall bear all reasonable costs properly attributable thereto.

8.4 Safety Measures and Recognition of Dangers.

8.4.1 Lessor authorizes Lessee to take reasonable safety measures to reduce the risk of theft of or damage to the Project Facilities or the risk that the Project Facilities will cause damage, injury or death to people, livestock, other animals, and property. Lessee may construct fencing around the entire Premises and take other security precautions if Lessee determines, in its sole discretion, that such fencing or security measures will reduce such risks of theft, damage, death or injury. The expense for any and all fencing constructed by Lessee, or other security measures taken by Lessee, shall be borne solely by Lessee.

8.4.2 LESSOR RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN CLOSE PROXIMITY TO ANY OF THE PROJECT FACILITIES. LESSOR AGREES TO EXERCISE CAUTION AT ALL TIMES AND TO ADVISE THE LESSOR PARTIES TO DO THE SAME. LESSOR SHALL TAKE REASONABLE MEASURES TO AVOID ALL RISKS ASSOCIATED WITH ELECTROMAGNETIC FIELDS RESULTING FROM THE PRODUCTION AND TRANSMISSION OF ELECTRICITY AND LESSOR WAIVES ANY AND ALL CLAIMS AND CAUSES OF ACTION WHATSOEVER (WHETHER CURRENTLY EXISTING OR THAT MAY OTHERWISE ARISE OR ACCRUE AT ANY TIME IN THE FUTURE) THAT LESSOR POSSESSES OR OTHERWISE MAY POSSESS AGAINST LESSEE PARTIES ARISING FROM OR RELATING TO SUCH RISKS; PROVIDED, HOWEVER, SUCH WAIVER SHALL NOT BE EFFECTIVE TO THE EXTENT LESSEE OR ANY LESSEE PARTY ENGAGES IN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8.5 Environmental Matters; Hazardous Materials.

8.5.1 Lessee shall not violate, and shall indemnify Lessor Parties against any Losses arising from violation by Lessee or any Lessee Party of, any Environmental Law (as defined in Section 8.5.3) in connection with or related to Lessee's use of the Premises. Lessee's violation of the prohibition in the preceding sentence shall constitute a material breach and default under this Lease. In conformance with the requirements of applicable law, Lessee shall clean up, remove, remedy, repair, and shall have the right to register any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials (as defined in Section 8.5.4) by Lessee or any Lessee Parties in, on or under the Premises.

8.5.2 Lessor shall not violate, and shall indemnify Lessee Parties against any Losses arising from violation by Lessor or any Lessor Party of, any Environmental Law in connection with or related to Lessor's ownership or use of the Property, including without limitation any such violation which may have occurred by Lessor, Lessor Parties or any other person prior to the Effective Date. Lessor's violation of the prohibition in the preceding sentence shall constitute a material breach and default under this Lease. In conformance with the requirements of applicable law, Lessor shall clean up, remove, remedy, and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials by Lessor or any Lessor Party in, on, under, or about the Premises or within 200 feet of the Premises.

8.5.3 "**Environmental Laws**" means any and all federal, state, local laws, ordinances, codes, and regulations relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Materials, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**") and all laws referred to under the definition of "hazardous substance" in CERCLA.

8.5.4 "**Hazardous Materials**" means any hazardous or toxic material, substance or waste, pollutant, or contaminant as defined or regulated under Environmental Laws, including "hazardous substance"

and “pollutant or contaminant” (as such terms are defined or used in CERCLA), petroleum, petroleum products, asbestos, polychlorinated biphenyls, and radioactive materials.

8.6 Brokerage Commissions. Lessee and Lessor agree to indemnify and defend the other Party against and hold the other party harmless from any and all claims with respect to any commission or equivalent compensation alleged to be owing on account of the indemnifying Party's dealings with any broker or agent. The terms of this Section 8 shall survive the expiration or earlier termination of the Term of this Lease.

9. **Lessee’s Representations, Warranties, and Covenants.** Lessee represents, warrants, and covenants to Lessor that:

9.1 Requirements of Governmental Agencies. Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders, rules and regulations of any governmental agency applicable to the Project Facilities (collectively, “**Applicable Law**”). Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, brought in the name of Lessee or in the names of both Lessee and Lessor, the validity or applicability to the Premises or Project Facilities of any Applicable Law. Lessor shall fully cooperate in such contest, so long as it is reimbursed for its out-of-pocket expenses incurred in such contest and cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee’s failure to observe or comply during the contest with the contested Applicable Law.

9.2 Liens. Lessee shall keep the Premises free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to the Premises for Lessee’s use or benefit; provided, however, that if such a lien does arise, Lessee has a right to contest such lien and Lessee, within 60 days after it receives notice of the filing of such lien, either bonds around such lien or establishes appropriate reserves therefore, or, otherwise, removes such lien from the Premises pursuant to Applicable Law, in which case Lessee shall not be deemed to have breached this Section 9.2. Nothing in this Section 9.2 or this Lease shall be construed to prohibit Lessee from granting one or more liens on all or any portion of Lessee’s right, title or interest under this Lease as security for the repayment of any indebtedness or the performance of any obligation relating in whole or in part to any of the Project Activities.

10. **Lessor’s Representations, Warranties and Covenants.** Lessor represents, warrants and covenants as follows:

10.1 Lessor’s Authority. Lessor is the sole owner of the Property and has the unrestricted right and authority to execute this Lease and to grant to Lessee the rights granted under this Lease. Each person signing this Lease on behalf of Lessor is authorized to do so, and all persons having any ownership interest in the Property are signing this Lease as Lessor. When signed by Lessor, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

10.2 No Interference. Lessor’s activities and any grant of rights Lessor makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with the construction, installation, maintenance or operation of the Project, Project Facilities, whether located on the Property or elsewhere; access over the Property to the Project Facilities or the Project; any Project Activities; or the undertaking of any other activities permitted under this Lease.

10.3 Treatment of Liens; Third-Party Rights. If at any time during the Lease Term, any lien or any third-party right is found, exists or is claimed to exist against the Property or any portion thereof, that creates rights superior to those of Lessee, and Lessee determines that the existence, use, operation, implementation or exercise of such lien or such third-party right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Lessee’s rights under this Lease or the financing of the Project, Lessee shall be entitled to obtain a recordable subordination and non-disturbance agreement (in form and substance reasonably acceptable to Lessee and any Financing Party (as defined in Section 12.1) from the holder of such lien or such third-party right, and Lessor shall use best efforts and diligence in helping Lessee obtain the same

at no out of pocket expense to Lessor. Lessor agrees that any right, title, or interest created by Lessor from and after the Effective Date in favor of or granted to any third-party shall be subject to (a) this Lease and all of Lessee's rights, title and interests created in this Lease, and (b) any and all documents executed or to be executed by and between Lessee and Lessor in connection with this Lease.

10.4 Hazardous Materials. To the best of Lessor's knowledge, as of the Effective Date, there are no Hazardous Materials or Hazardous Substance located on the Premises or on the Property within 200 feet of the Premises, the Premises or the Property within 200 feet of the Premises has not been used for the generation, treatment, storage or disposal of Hazardous Materials or Hazardous Substance, no underground storage tanks have ever been located on the Property and there are no underground storage tanks presently located on the Premises or on the Property within 200 feet of the Premises. Lessor's breach of the foregoing representation shall constitute a material breach and default under this Lease.

10.5 Endangered Species. To the best of Lessor's knowledge, as of the Effective Date, there are no vertebrate, invertebrate or plant species located within the Premises that are in a protected category under federal or state law or would otherwise result in a mitigation obligation in connection with the development of the Project Facilities.

10.6 Access. The Premises are accessible by public roadways or through an Easement granted by Lessor to a public roadway. Lessor shall not interfere with and shall not allow any other party to interfere with, Lessee's use of the Easements for the purposes described in this Agreement, or Lessee's rights under this Agreement. Lessor shall not erect, install or maintain any barriers, fences, walls, ditches, barricades, docks or other structures or obstacles on or anywhere within the Easement Areas which would burden or interfere with, impede, slow, divert or in any way prevent pedestrian, vehicular or watercraft traffic from fully passing within, through or across the Easement Areas.

10.7 No Litigation and Liens.

10.7.1 Lessor is not a party to any, and to Lessor's actual knowledge, there are no pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Lessor (i) challenging the validity or propriety of this Lease, or transactions contemplated in this Lease or (ii) which could reasonably be expected to have a material adverse effect on the ownership or operation of the Property or any part thereof or interest therein. If Lessor learns that any such litigation, claim, action or investigation is threatened or has been initiated, Lessor shall promptly deliver notice thereof to Lessee. Lessor is not subject of any bankruptcy, insolvency or probate proceeding.

10.7.2 To Lessor's knowledge, there are no liens, covenants, restrictions, rights of way, easements or other encumbrances affecting the Premises, which will prevent or limit Lessee's use of the Premises for the purposes permitted under this Agreement, or that are otherwise contrary to the terms of this Agreement.

10.8 Consents and Estoppel Certificates. Lessor shall cooperate with Lessee in the execution and delivery of such consents, estoppel certificates and other documents as a Financing Party, hedge provider, power purchaser, tax equity investor, title insurance company or any other party (collectively, "**Requestor**") may request, including, without limitation, any instruments required to evidence such Requestor's rights under this Lease. Within 15 days of actual receipt of a request to do so from Lessee or from any existing or proposed Requestor, Lessor shall execute an estoppel certificate (a) certifying that this Lease is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Lease), (b) certifying that to the best of Lessor's knowledge there are no uncured events of default under this Lease (or, if any uncured events of default exist, stating with particularity the nature thereof) and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee or any Requestor. The failure of Lessor to deliver such statement within such time shall be conclusive evidence

upon Lessor that this Lease is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Lease.

10.9 Requirements of Governmental Agencies and Utilities. Lessor shall assist and fully and promptly cooperate with Lessee, so long as Lessor is reimbursed for its out-of-pocket expenses, in complying with or obtaining any land or water use permits and approvals, building permits, development permits, construction permits, interconnection applications and requirements of any utility or the owner of any transmission facilities, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Project (collectively the “Permits”), including execution of applications for such approvals. Lessor consents to and authorizes Lessee, as Lessor’s attorney-in-fact, with full authority in the place and stead of Lessor, to sign and file Permits on Lessor’s behalf so long as Lessor is given a copy of the Permits at least 10 days prior to such execution and Lessor does not give notice within those 10 days that Lessor believes a portion of such Permit is inaccurate.

10.10 Confidentiality. Lessor shall maintain in the strictest confidence, for the benefit of Lessee, all solar data, all information pertaining to the financial terms of or payments under this Lease, and any and all terms and conditions of this Lease, Lessee’s site or product design, methods of operation, methods of construction, power production or availability of the Project Facilities, and the like, whether disclosed by Lessee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or any Lessor Party, or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor’s lenders, attorneys, accountants, and other personal advisors; any prospective purchaser of the Property; or pursuant to lawful process, subpoena, or court order; provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

10.11 Waivers. To the extent that any Applicable Law establishes land or water use or zoning conditions, restrictions or requirements, including setbacks from the exterior boundaries of the Property for Project Facilities thereon, Lessor, to the extent permissible, waives any and all such conditions or requirements for the benefit of Lessee. Further, if so requested by Lessee, Lessor shall promptly, without demanding additional consideration therefore, execute, and if appropriate cause to be acknowledged and recorded, any waiver or other document or instrument required by any governmental authority. Lessor acknowledges that certain aspects inherent to the operation of the solar energy facilities may result in some nuisance, such as visual impacts, possible increased noise levels, possible glare, and other possible effects of electrical generation and transmission including without limitation potential interference with radio, television, telephone, mobile telephone, or other electronic devices, within 200 feet of the Premises. Without limiting the grant of Easements made in Section 2 and Section 14, Lessor understands and has been informed by Lessee that the Project Facilities may result in some nuisance, and hereby accepts such nuisance, and Lessor waives its right to object to such nuisance.

10.12 No CRP. Lessor is not a party to a Conservation Reserve Program contract with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410 or any state-based conservation easement or reserve program regarding the Property.

10.13 Title Review. Lessor shall, within 10 days after receipt of Lessee’s request to do so, deliver all documents related to the Property in Lessor’s possession or control to Lessee for Lessee’s review, including, without limitation, copies of the following: reports, site plans, surveys, soil studies, phase one, two, three or four environmental reports, other inspection reports, architectural drawings, plans and specifications, studies, and investigations, government notices or agreements, title policies, commitments and reports, abstracts, rent

rolls, insurance policies, water rights and well agreements, instruments and agreements relating to oil, gas or mineral rights, mineral exceptions or reservations or conveyances, and mineral leases, agreements regarding third party rights and leases, surveys, loan agreements, lien documents, site assessments, ad valorem property tax applications, agreements, notices, invoices and receipts, appraisals, and any and all notices or correspondence from any governmental authority which indicates that the Property is not in compliance with any applicable ordinance. In addition, Lessee shall have the right to obtain, at Lessee's expense, a current title report relating to the Property to determine the condition of Lessor's title and all the recorded rights of way and easements benefiting or encumbering the Property, as well as all mineral rights encumbering the Property.

10.14 Ownership and Mineral Estate. Lessor represents that Lessor owns all of the fee simple interest in the Property. Except as set forth in any instrument with respect to the Property recorded among the land records of the county in which the Property is located, Lessor owns all of the rights and title to the oil, gas and other minerals in, on, under or that may be produced from the Property howsoever drilled, mined or produced (such right, collectively, "**Mineral Estate**"). If Lessee determines that any part of the Mineral Estate is not owned, leased or controlled by Lessor, then Lessor shall use its best efforts to obtain non-interference and waiver of surface rights agreements from all persons and entities that have any ownership, royalty or leasehold interest in the Mineral Estate. Notwithstanding anything to the contrary in this Lease, after the Effective Date, Lessor shall not utilize the surface of the Premises to explore for, develop, or produce oil, gas or other minerals from the Mineral Estate underlying the Premises nor enter into any agreement permitting a third party to utilize the surface of the Premises to explore for, develop, or produce oil, gas or other minerals from the Mineral Estate underlying the Premises.

11. Assignment; Right to Encumber; Division of Lease.

11.1 Assignment by Lessee. Lessor hereby consents and grants to Lessee the right to grant, sell, lease, convey or assign all or a portion of Lessee's interest in the Lease or the Project Facilities or to grant co-leases (including, without limitation, co-tenancy interests), separate leases, subleases, easements, sub-easements, licenses or similar rights to Lessee's interest in the Lease or the Project Facilities (collectively "**Assignment**") to one or more persons or entities (collectively "**Assignee**"). No Lessor consent shall be required for any change in ownership of Lessee. Lessor further hereby consents and grants to Lessee the right to encumber, hypothecate, mortgage or pledge (including by mortgage, or personal property security instrument) all or any portion of Lessee's right, title, or interest under this Lease or in any Project Facilities to any Financing Party as security for the repayment of any indebtedness or the performance of any Mortgage (as defined in Section 12.1). If any additional consent is needed, Lessor shall not unreasonably withhold, condition, or delay its consent to any assignment that is not allowed by the preceding sentences of this Section 11.1. All Assignees will be subject to all of the obligations, covenants and conditions applicable to the Lessee under this Lease. Upon Lessee's assignment of its entire interest under this Lease as to all or any portion of the Premises, or as may otherwise be provided in the applicable grant, sale, lease, conveyance or assignment document, Lessor shall recognize the Assignee as Lessee's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Lessee under and pursuant to this Lease, and Lessee shall be relieved of all of its obligations relating to the assigned interests under this Lease that relate to acts or omissions which occur or accrue following the effective date of such grant, sale, lease, conveyance or assignment. As clarification, and without prejudice to Lessee's right to encumber its interest in the Lease and the Project Facilities, as permitted herein, Lessee shall have no right to mortgage or encumber the underlying Property.

11.2 Notice to Lessor. Following an Assignment or the granting of a Mortgage as contemplated by Section 11.1, Lessee or the Financing Party will give actual notice of the same (including the address of the Financing Party for notice purposes) to Lessor; provided, however, that the failure to give such notice shall not constitute a default but rather shall, solely with respect to the Mortgage, only have the effect of not binding Lessor hereunder with respect to such Financing Party until such notice is given.

11.3 Cure. Each Assignee that holds a full or partial interest in, or a sublease under this Lease, shall have the same amount of time following delivery of notice of a default, to cure said default as is given to Lessee pursuant to this Lease. If Lessee or an Assignee holds an interest in less than all of this Lease, the Premises or the Project Facilities, any default under this Lease shall be deemed remedied, as to Lessee's or such Assignee's partial interest only (and Lessor shall not disturb such partial interest), if Lessee or Assignee, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Lease, the Premises or Project Facilities in which Lessee or the Assignee, as the case may be, holds an interest.

11.4 Division into Separate Leases. Lessee may divide the Premises into two or more separate solar energy projects or phases of development if such division becomes necessary to further the development of the Project Facilities. If Lessee elects to divide the Premises into two or more solar energy projects or phases of development, then Lessor shall, within 20 days after written request from Lessee, and without demanding any additional consideration, bifurcate this Lease by entering into and delivering to Lessee two stand-alone new leases (which shall supersede and replace this Lease) that provide Lessee with separate leasehold estates in different portions of the Premises, as designated by Lessee. Each of such new leases shall: (i) specify the portion(s) of the Premises to be covered thereby (and the term "Premises", as used therein, shall refer only to such portion(s)), (ii) contain the same terms and conditions as this Lease (except for any requirements that have been fulfilled by Lessee, any Assignee, or any other person or entity prior to the execution of such new leases, and except for any modifications that may be required to ensure that Lessee's and Lessor's respective combined obligations under such new leases do not exceed their respective obligations under this Lease) and be in a form reasonably acceptable to Lessee and Lessor; (iii) be for a term equal to the then-remaining term of this Lease; (iv) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Premises as Lessee may designate (but only to the extent permitted in this Lease); (v) require payment to Lessor of only per acre amounts to be paid under this Lease for the acres lease under such new lease; and (vi) to the extent permitted by law, enjoy the same priority as this Lease over any lien, encumbrance or other interest against the Premises.

11.5 Assignments by Lessor. The burdens of this Lease, Easements and other rights contained in this Lease shall run with and against the Property and shall be a charge and burden thereon for the duration of the Lease Term and shall be binding upon and against Lessor and its successors and assigns. Lessor shall notify Lessee in writing of any sale, assignment or transfer of any of Lessor's interest in the Property, or any part thereof. Until such notice is received, along with proof of the successor Lessor's ownership interest, a completed IRS Form W-9, and a revised payment instructions, Lessee shall have no duty to any successor owner, and Lessee shall not be in default under this Lease if it continues to make all payments to the original Lessor before notice of sale, assignment or transfer is received. Lessor agrees it will not assign the rights to payments due to Lessor under this Agreement except to a successor owner of the Premises and, in no case, shall Lessor sever or attempt to sever the solar energy rights or interests from the fee title of the Premises or otherwise convey, assign or transfer or attempt to convey, assign or transfer this Agreement or any interest herein, except to a successor owner of the Premises. Under no circumstances shall a transfer by Lessor include the Project or the Project Facilities.

12. Financing Party Protection.

12.1 Financing Parties. Lessor acknowledges that in order to finance the Project, Lessee may partner with various Financing Parties (as defined below). Without limiting the generality of the foregoing, Lessee may, at any time and from time to time, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its estate, right, title or interest in or under this Agreement or Lessee's interest in the Premises. Any party who is the mortgagee, beneficiary, or holder of any such security instrument or interest (a "**Secured Lender**") shall, for so long as its security instrument or interest is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 12. Lessee or any Secured Lender shall send written notice to Lessor of the name and address of any such Secured Lender. As used in this

Lease, (a) the term “**Financing Party**” means any financial institution or other person or entity that from time to time (i) provides financing for some or all of the Project Facilities, any phase or constituent project thereof, or any operations of the foregoing, or otherwise holds a lien or security interest in this Agreement or any interest or estate hereunder, the Project Facilities or any phase or constituent project thereof, any components thereof, or any direct or indirect equity interest in Lessee or any holder of an interest in this Agreement or any interest or estate hereunder, by mortgage, deed of trust or other real or personal property security instrument (including any sale-leaseback arrangement entered into for financing purposes); (ii) provides tax credit financing with respect to some or all of the Project Facilities or any phase or constituent project thereof or any components thereof, including any party acquiring a direct or indirect interest in Lessee or any holder of an interest in this Agreement or any interest or estate hereunder or in any of their respective interest in or estate under this Agreement as a tax credit investor, including, in each case, any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders or investors involved in whole or in part in such financing, secured obligations or tax equity investment, and their respective representatives, successors and assigns; or (iii) any Secured Lender, (b) the term “**Mortgage**” refers to the mortgage, deed of trust or other security interest in this Lease or the Project Facilities given to a Secured Lender in connection with such financing, and (c) the term “**Mortgaged Interest**” refers to the interest in this Lease or the Project Facilities, that is held by the Secured Lender.

12.2 Protections. Any Financing Party, including each Secured Lender, and its respective successors and assigns, are hereby expressly made third party beneficiaries of this Agreement to the extent of their respective rights hereunder and shall be entitled to compel the performance of the obligations of Lessor under this Lease. Lessor and Lessee agree with respect to Financing Parties whose names and addresses have been provided to Lessor in writing that such Financing Parties shall be entitled to the protections in this Section 12.

12.3 Right to Possession, Right to Acquire and Right to Assign. A Financing Party shall have the absolute right (but not the obligation): (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Premises or any portion thereof and to perform all obligations to be performed by Lessee or Assignee under this Lease, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. Lessor’s consent shall not be required for (a) the pledge, mortgage or hypothecation of Lessee’s rights in the Lease, the Project Facilities, or Lessee or (b) the acquisition of Lessee’s or Assignee’s leasehold estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure. Lessor agrees to cooperate with Lessee and any of its Financing Parties. Lessor, at no cost thereto, shall execute and deliver all documents reasonably requested by a Financing Party in a form reasonably satisfactory to Lessor, Lessee and any Financing Party.

12.4 Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee or Assignee, Lessor shall give notice of the default to each Financing Party concurrently with delivery of such notice to Lessee or Assignee. Lessor shall not be entitled to exercise any remedy for a default unless Lessor has given a written notice of such default to Lessee and to each Financing Party, specifying the nature of the default and the method of cure, and the expiration of the applicable grace periods provided in this Agreement (and such other applicable cure periods provided in this Agreement). In the event the Lessor gives such a notice of default, the following provisions shall apply:

12.4.1 A “**Monetary Default**” means failure to pay when due any rent or other monetary obligation of Lessee or Assignee to Lessor under this Lease, and such failure continues beyond the expiration of any applicable cure period provided hereunder; any other event of default is a “**Non-Monetary Default**.”

12.4.2 The Financing Party shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee or Assignee, plus, in each instance, the following additional time periods: (a) 60 days after receipt of the notice of default in the event of any Monetary Default; and (b) 90 days after receipt of the notice of default in the event of any Non-Monetary

Default, provided that such period shall be extended for the time reasonably required to complete such cure, including the time required for any Secured Lender to perfect its right to cure such Non-Monetary Default by obtaining possession of the Premises (including possession by a receiver) or by instituting foreclosure proceedings, provided the Secured Lender acts with reasonable and continuous diligence. The Financing Party shall have the absolute right (but not the obligation) to substitute itself for Lessee or any Assignee and perform the duties of Lessee or any Assignee under this Lease for purposes of curing such defaults. Lessor expressly consents to such substitution, agrees to accept such performance, and authorizes the Financing Party (or its employees, agents, representatives, or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the Lessee or any Assignee. Lessor shall not terminate this Lease prior to expiration of the cure periods available to a Financing Party as set forth herein.

12.4.3 During any period of possession of the Mortgaged Interest by a Financing Party (or a receiver requested by such Financing Party) or during the pendency of any foreclosure proceedings instituted by a Financing Party, the Financing Party shall pay or cause to be paid the Rent and all other monetary charges payable by Lessee or any Assignee under this Lease which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee's or any Assignee's Mortgaged Interest by the Financing Party or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Lease shall continue in full force and effect and the Financing Party or party acquiring title to the Mortgaged Interest shall, as promptly as reasonably possible, commence the cure of all defaults outstanding under this Lease and thereafter diligently process such cure to completion, whereupon Lessor's right to terminate this Lease based upon such defaults shall be deemed waived; provided, however, that the Financing Party or party acquiring title to the Mortgaged Interest shall not be required to cure those non-monetary defaults which are not capable of being cured or performed by such party ("**Non-Curable Defaults**"). Non-Curable Defaults shall be deemed waived by Lessor upon completion of foreclosure proceedings or acquisition of interest in this Lease by such party.

12.4.4 Any Financing Party or other party who acquires the Mortgaged Interest pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee or an Assignee by this Lease incurred or accruing after such party no longer has ownership of the leasehold estate or possession of the Premises.

12.4.5 Neither the bankruptcy nor the insolvency of Lessee or any Assignee shall be grounds for terminating this Lease as long as the Rent and all other monetary charges payable by Lessee or Assignee under this Lease are paid by the Financing Party in accordance with the terms of this Lease.

12.4.6 Nothing in this Lease shall be construed to extend this Lease beyond the Lease Term or to require a Financing Party to continue foreclosure proceedings after the default has been cured. If the default is cured and the Financing Party discontinues foreclosure proceedings, this Lease shall continue in full force and effect.

12.5 New Lease to Financing Party. If this Lease terminates because of Lessee's or Assignee's default or if the Mortgaged Interest is foreclosed, or if this Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, then Lessor shall, give prompt notice to each Financing Party, and Lessor shall, promptly upon written request from any Financing Party if made within ninety (90) days after such termination, rejection or disaffirmance, without demanding additional consideration, enter into a new lease of the Premises in favor of such Financing Party, on the following terms and conditions:

12.5.1 The terms of the new lease shall commence on the date of termination, foreclosure, or rejection or disaffirmance and shall continue for the remainder of the Lease Term of this Lease, at the same Rent and subject to the same terms and conditions set forth in this Lease.

12.5.2 The new lease shall be executed within 30 days after receipt by Lessor of notice of the Financing Party's election to enter a new lease, provided said Financing Party: (a) pays to Lessor all Rent and other monetary charges payable by Lessee or Assignee, as applicable, under the terms of this Lease up to the date of execution of the new lease, as if this Lease had not been terminated, foreclosed, rejected or disaffirmed, less the Rent and other income actually collected by Lessor; and (b) performs all other obligations of Lessee or Assignee under the terms of this Lease, to the extent performance is then due and susceptible of being cured and performed by the Financing Party; (c) agrees in writing to timely perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee or any Assignee and would have accrued under this Lease up to the date of commencement of the new lease, except those obligations which constitute Non-Curable Defaults; and (d) reimburses Lessor for Lessor's reasonable attorney fees incurred in reviewing the same. Any new lease granted the Financing Party shall enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Lessor.

12.5.3 At the option of the Financing Party, the new lease may be executed by a designee of such Financing Party without the Financing Party assuming the burdens and obligations of the Assignee thereunder.

12.5.4 If more than one Financing Party makes a written request for a new lease pursuant hereto, then the new lease delivered to each will have priority consistent with those effective prior to the applicable termination, rejection or disaffirmance, such that, without limitation, the lease delivered to any Secured Lender whose security interest was senior shall retain senior priority. Lessor shall be reimbursed all reasonable expenses incurred in determining whose secured interest has senior priority.

12.5.5 Lessor hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent a Financing Party from the Premises for the purpose of inspecting the Project.

12.6 Financing Party's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Lease to the contrary, the Parties agree that this Lease shall not be modified or amended and Lessor shall not accept a surrender of the Premises or any part thereof or a cancellation or release of this Lease from Lessee or Assignee prior to expiration of the Lease Term without the prior written consent of each Financing Party. This provision is for the express benefit of and shall be enforceable by such Financing Party. In addition, and notwithstanding anything in this Agreement to the contrary, in the event that Lessee should fail to exercise its right to extend the Lease Term for a Lease Term Extension by the applicable date required in Section 4.2 above, Lessee's right to so extend the Lease Term shall nonetheless continue for an additional 30 days following Lessor's delivery of written notice of the failure of Lessee to timely exercise such right to Lessee and each Financing Party. If either Lessee or any Financing Party provides written notice to Lessor, within such 30 days, of its intent that such right to extend be exercised, then timely notice of the exercise of the right to extend the Lease Term for the applicable Lease Term Extension shall be deemed to have been given.

12.7 No Waiver. No payment made to Lessor by a Financing Party shall constitute an agreement that such payment was, in fact, due under the terms of this Lease; and a Financing Party having made any payment to Lessor pursuant to Lessor's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment.

12.8 Further Amendments. Provided that no material default in the performance of Lessee's obligations under this Lease shall have occurred and remain uncured after the expiration of all applicable notice and cure periods, at Lessee's request, Lessor shall (a) amend this Lease to include any provision that may reasonably be requested by an existing or proposed Financing Party, or by any entity that is proposing to directly or indirectly acquire the Project, and (b) shall execute such additional documents as may reasonably be required to evidence such Financing Party's or other entity's rights hereunder; provided, however, that such amendment shall not materially impair the rights of Lessor under this Lease, or extend the Lease Term of this Lease beyond the period of time stated in Section 4. Further, Lessor shall, within 10 days after notice from

Lessee or any existing or proposed Financing Party, execute and deliver thereto a certificate to the effect that Lessor (i) recognizes a particular entity as a Financing Party under this Lease and (ii) will accord to such entity all the rights and privileges of a Financing Party hereunder.

13. Termination and Remedies.

13.1 Lessee's Rights. Lessee may, for any reason, by 30 days' notice to Lessor, terminate this Lease or a part hereof and surrender its interest in all or a portion of the Premises to the benefit of the Lessor, and upon delivery of such notice, all obligations of the Parties hereunder shall cease on the termination date specified in such notice to the extent of such termination; provided, however, that upon each surrender as to any part of the Lease, Lessee shall maintain such easements rights to the surrendered portion as may be appropriate to its enjoyment of the portion not surrendered. Lessee shall pay Lessor all amounts accrued under this Lease through the date of such termination and completion of any restoration pursuant to Section 13.3. Upon such termination, Lessee shall promptly record an appropriate instrument with the office of the County Recorder evidencing the termination of this Lease or a portion hereof. In no event shall Lessor have a right to seek damages against Lessee with respect to this Lease solely by reason of its termination excepting only the amounts accrued through the date of such termination. To compel compliance with this Lease, in the event of a default of any provision of this Lease by Lessor, Lessee shall be entitled to seek all remedies available at law and in equity, including specific performance. In the event Lessee terminates this Lease, neither Lessor nor Lessee shall have any further rights, liabilities, or obligations under this Lease except for any of same that expressly survives such termination.

13.2 Lessor's Rights. Notwithstanding anything to the contrary in the Lease, if Lessee is in default and fails to cure the default after all applicable notice and cure periods (including those contained in Sections 13.2.1 and 13.2.2), Lessor shall have the right and option to do any or all of the following:

13.2.1 If a Monetary Default occurs Lessor may terminate this Lease or pursue an action for damages (or in equity, as the case may be) under this Lease while such Monetary Default is continuing, if all of the following occur:

(a) Lessor simultaneously notifies Lessee and all Financing Parties in writing of such Monetary Default, which notice sets forth in detail the facts pertaining to the default;

(b) Lessee fails to cure such Monetary Default within 60 days after Lessee receives the notice from Lessor of such Monetary Default, or if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period, Lessee has not begun to diligently undertake the cure within the period provided herein or to thereafter prosecute such cure to completion; and

(c) all Financing Parties fail to cure such Monetary Default within the additional period permitted them under Section **Error! Reference source not found.** of this Lease.

13.2.2 If a Non-Monetary Default occurs, subject to the provision in Section 13.2.3, Lessor may pursue an action for monetary damages (or in equity, as the case may be) under this Lease while such Non-Monetary Default is still continuing if all of the following occur:

(a) Lessor simultaneously notifies Lessee and all Financing Parties in writing of such Non-Monetary Default, which notice sets forth in detail the facts pertaining to the default;

(b) Lessee fails to cure such Non-Monetary Default within 60 days after Lessee receives the notice from Lessor of such Non-Monetary Default, or if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period, Lessee has not begun to diligently undertake the cure within the period provided herein or to thereafter prosecute such cure to completion; and

(c) all Financing Parties fail to cure such Non-Monetary Default within the additional period permitted them under Section 12 of this Lease.

13.2.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS LEASE OR ANY RIGHTS OR REMEDIES WHICH LESSOR MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY, WITH RESPECT TO ANY LESSEE NON-MONETARY DEFAULT THAT IS NOT CURED WITHIN THE TIME PERIOD CONTEMPLATED IN SECTION 13.2.2 ABOVE, LESSOR SHALL NOT (AND HEREBY WAIVES THE RIGHT TO) COMMENCE ANY ACTION OR PROCEEDING IN WHICH TERMINATION, CANCELLATION, RESCISSION OR REFORMATION OF THIS LEASE IS SOUGHT AS A REMEDY, AND LESSOR SHALL BE LIMITED TO SEEKING MONETARY DAMAGES FOR SUCH NON-MONETARY DEFAULT.

13.3 Restoration. Upon any surrender, termination or expiration of this Lease, Lessee shall, within twenty-four (24) months thereof, substantially complete the Restoration Requirements (as defined below). During the Restoration Period, Lessee shall continue to pay the applicable Rent paid immediately prior to the commencement of such Restoration Period, which shall be calculated on a monthly basis (i.e., such Rent divided by 12 months), and payable monthly in advance for each month during the Restoration Period. “**Restoration Requirements**” means (a) the decommissioning of the Project Facilities and restoration of the surface of the Premises to a condition and contour reasonably similar to that existing on the Property as of the Effective Date, wear and tear excepted, (b) removal of all of its above-grade and below-grade Project Facilities and other equipment located on the Premises, except those located 36 inches or more below-grade, (c) burying of all foundations below-grade with topsoil, (d) removal of all concrete, (e) reseeding areas where the pads were located with grasses or natural vegetation, and (f) any other requirements that may be imposed in connection with any land or water use permits issued in connection with the Project Facilities. Any access roads constructed by Lessee may remain on the Premises at Lessee’s option unless Lessor specifically requests their removal in writing. It is understood that it would not be reasonable to expect that any trees removed in conjunction with the Project be replaced.

13.4 Release of Lease. Upon termination, expiration or surrender of this Lease, in whole or in part, and upon written request by Lessor, Lessee shall provide Lessor with a copy of an appropriate release of Lease.

13.5 Termination of Option. Lessee may, for any reason, by 30 days’ notice to Lessor, terminate the Option granted in Section 1, and upon the effective date of such termination, neither Lessee, nor Lessor, shall have any further obligation to the other under this Lease except for Sections 8.1 and 10.10.

13.6 Injunctive Relief. Notwithstanding any provision to the contrary in this Agreement, in the event of any breach or threatened breach, either party shall have the right to apply for the entry of an immediate order to restrain or enjoin the breach and otherwise specifically to enforce the provisions of this Agreement.

14. Easements. Lessor hereby irrevocably grants and conveys to Lessee the following easements across the Property and any adjacent parcel of land outside the Property owned or controlled by Lessor (“**Adjacent Property**”), appurtenant to Lessee’s leasehold estate in the Premises (such easements set forth in Sections 14.1 to 14.3, collectively, “**Easements**”), which Easements shall run with the land and be binding upon Lessor’s successors and assigns:

14.1 Access and Transmission Easements. Lessor hereby grants to Lessee the following Easements across the Easement Areas (as defined below): (a) an exclusive easement for electrical interconnection purposes; (b) a non-exclusive easement for vehicular and pedestrian access, ingress or egress and access to and from the Premises and Easement Areas and to, across and through any portion of the Property outside the Premises and the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, waterways, lanes and rights-of-way on the Property and the Adjacent Property, and (ii) such additional roads, waterways, culverts, and bridges as Lessee or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads, culverts and bridges) from time to time; (c) an exclusive easement to install, maintain, repair, replace and operate on the Property and the Adjacent Property multiple (i) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Project, and (ii) communication cables (including fiber optic

cables), conduits, wire and/or lines which carry communications of any nature to and from the Project, and (iii) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing (the facilities in clauses (i) – (iii), collectively, the “**Interconnection Facilities**”); (d) a temporary easement on, over, across and under the Property or any Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Project Facilities (provided that Lessee shall restore any Adjacent Property to the same extent as Lessee shall restore the Property under Section 13.3); and (e) the right to remove fences, gates, cattle guards and any other improvements or structures on the Premises and Easement Areas which interfere with Lessee’s operations. The Easements granted in the immediately preceding clauses (a) to (e), are collectively referred to as the “**Access and Transmission Easements**”. Lessor shall execute and deliver to Lessee any documents or instruments reasonably requested by Lessee in recordable form to evidence the Access and Transmission Easements, including the applicability of such Access and Transmission Easements to any Adjacent Property, containing all the rights and privileges set forth herein, within 15 days following written request from Lessee. “**Easement Areas**” means those areas of any Adjacent Property or of the Property outside the Premises, which areas are preliminarily depicted in **Exhibit C**, including the Landscape Buffer Area and SWM Area (all as defined in Section 14.3) and the FC Area (as defined in Section 14.4).

14.2 Lessor Easements. To the extent that Lessor holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Property or the Adjacent Property (the “**Lessor Easements**”) on or after the date of this Lease, and such Lessor Easements are or could be used for the benefit of the Property, then the same are hereby included in this Lease, and Lessee shall be entitled to use such Lessor Easements, if such use is permitted under the Lessor Easements and provided that such use does not interfere with Lessor’s use of same. Upon the written request of Lessee, Lessor shall, within 15 days following such request, grant (in recordable form and containing such terms and provisions as may be reasonably requested by Lessee or any Financing Party), for no additional consideration, one or more sub-easements of Lessor Easements to run concurrently with the Lease Term (or for such shorter period as provided in the Lessor Easement).

14.3 Solar Easements. Lessor hereby grants to Lessee the following Easements across the Property and any Adjacent Property (such Easements, collectively, the “**Solar Easements**”): (a) direct access to sunlight and an exclusive easement and right to capture, use and convert the unobstructed solar resources over and across the Premises; (b) an easement 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, including but not limited to rights to cast shadows and reflect glare onto all of the Property or any Adjacent Property, from the Project Facilities or any and all other related facilities, wherever located; (c) the right to clear the Premises of trees and other vegetation as required for Lessee to fully utilize its Solar Easements, and to retain the value of any timber removed; (d) the right, but not the obligation to cut and maintain trees and other landscaping features on the Property within 100 feet of the Premises in order to optimize the utilization of the Premises for Project Activities, provided that Lessor shall have the right to use or sell any timber cut or trimmed by Lessee on the Property outside of the Premises; and, if applicable, (e) the right, for no additional consideration, to plant, install, construct, or otherwise create and maintain landscaping features or other visual buffers on certain areas of the Property preliminarily depicted in Exhibit C as the “**Landscape Buffer Area**” when and only to the extent required by Lessee to comply with any conditions or requirements imposed by law or any other person, authority, or entity holding jurisdiction (“**AHJ**”), and, if so required, Lessor shall grant Lessee or the AHJ, within 15 days of Lessee’s request, a stand-alone, recordable, and assignable easement or other similar agreement describing such landscaping features or visual buffers in the Landscape Buffer Area; and (f) the right to construct private stormwater management systems on certain areas of the Property as shown on Exhibit C (the “**SWM Area**”).

14.4 Grant to Utility and AHJ. Lessee, in its sole discretion and without further act of Lessor, shall

have the right to grant to the transmitting utility the right to construct, operate and maintain on the Premises or within the Easement Areas Interconnection Facilities, pursuant to any lease, easement or other agreement used or proposed by the utility. If requested by such utility or Lessee, Lessor shall, for no additional consideration other than the Rent and within 15 days after such request, grant such easement or enter into such other agreement, directly to or with such utility. If and only to the extent required by Lessee to comply with any conditions or requirements imposed by law or any AHJ, Lessor shall, upon payment by Lessee of a reasonable consideration to be agreed upon by the Parties, grant the AHJ, within 15 days of Lessee's request, a stand-alone, recordable, and assignable easement or other similar agreement related to certain areas of the Property or Adjacent Property ("FC Area") required by such AHJ for forest conservation purposes.

15. Miscellaneous Provisions.

15.1 Notice of Lease. Lessor and Lessee shall execute, in conjunction with this Lease, a recordable notice of the Lease and the Easements granted herein, in the form of a memorandum of lease attached hereto as Exhibit D. Lessee shall then record said memorandum within the land records of the applicable county or counties in which the Property is located. Lessor also consents to the recordation of the interest of an Assignee in the Premises.

15.2 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Leases shall be in writing and may be given by any of the following methods: (a) personal delivery, (b) a writing in portable document format ("**PDF**") attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested, (c) overnight or certified mail, postage prepaid, return receipt requested, or (d) next day air courier service. Notices shall be sent to the appropriate party at its address or email address given below:

If to Lessor:	Sussex County, Delaware	If to Lessee:	Blacktail Solar II LLC
Name:	Mike Harmer	Attention:	Land Department
Address:	P.O. Box 589, Georgetown, Delaware 19947, United States	Address:	1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States
Email:	michael.harmer@sussexcountyde.gov	Email:	land@chaberton.com
Phone No.:	302-855-7370		443-914-4100

Any Party may change its address for purposes of this Section 15.2 by giving notice of such change to the other Party.

15.3 Entire Agreement; Amendments. This Lease, including the exhibits, schedules, and any addendum attached hereto, constitutes the entire agreement between Lessor and Lessee respecting its subject matter. In the event of conflict between this Lease and any addendum attached hereto, the express provisions of such addendum will prevail. Any other agreement, understanding or representation respecting the Premises, or any other matter not expressly set forth in this Lease or a subsequent writing signed by both Parties is null and void. Except as provided in Section 4.1, this Lease shall not be modified or amended except in a writing signed by both Parties, and no purported modifications or amendments, including any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

15.4 Legal Matters. This Lease shall be governed by and interpreted in accordance with the laws of the State of Delaware. Venue shall be in the county where the Property is located, or if in Federal Court as required by subject matter or personal jurisdiction, in the U.S. District Court for the District where the Property is located. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Lease and is waived. The prevailing Party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy

under this Lease or for the interpretation of this Lease shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing Party.

15.5 Severability. Should any provision of this Lease be held, in a final and un-appealable decision by a court of competent jurisdiction, to be either invalid, void, or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Lease, the Parties agree that in no event shall the Lease Term or any Easement term be longer than, respectively, the longest period permitted by Applicable Law.

15.6 Tax Credits. If under applicable law the holder of any interest under this Lease becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Lessor and Lessee shall amend this Lease or replace it with a different instrument so as to convert Lessee's interest in the Premises to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive; provided, however, that nothing in this Lease shall entitle Lessee to a fee interest in the Property, diminish Lessee's payment obligations under this Lease or extend the Lease Term of this Lease.

15.7 Counterparts. This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument. This Lease may be executed and transmitted via facsimile, PDF, or other similar electronic means complying with the U.S. federal E-SIGN Act of 2000 (e.g. www.docusign.com) and a manual or electronic signature of the undersigned transmitted via such means shall have the same force and effect as a manually signed original.

15.8 Cooperation. Lessor shall cooperate with Lessee, and its permitted successor, assign or Affiliate, in the conduct of their operations consisting of the Project Facilities, Easements, or Transmission Facilities, and in otherwise giving effect to the purpose and intent of this Lease, including, without limitation, in Lessee's or any permitted successor, assign or Affiliate's efforts to obtain from any Governmental Authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with Lessee's Project Facilities, Access Rights, or Transmission Facilities; and Lessor shall promptly upon request, without demanding additional consideration therefore, execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, document or instrument that is reasonably requested by Lessee, its permitted successor, assign or Affiliate in connection therewith. Without limiting the generality of the foregoing, Lessor agrees (a) if requested by Lessee or its permitted successor, assign or Affiliate to support such application by filing a letter with the appropriate Governmental Authority in a form reasonably satisfactory to Lessee or its permitted successor, assign or Affiliate, and (b) not to oppose, in any way, whether directly or indirectly, any such valid, accurate application or approval at any administrative, judicial or legislative level.

15.9 Relationship. Neither this Lease nor any other agreements or transactions contemplated in this Lease shall in any respect be interpreted, deemed or construed as constituting Lessor and Lessee as partners or joint venturers, or as creating any partnership, joint venture, association or other relationship other than of landlord and tenant; and Lessor and Lessee agree not to make any contrary assertion, contention, claim or counterclaim in any action, suit or other proceeding involving either Lessor or Lessee or the subject matter of this Lease.

15.10 Condemnation. If all or part of the Premises is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a "**Taking**"), Lessor shall provide Lessee with reasonable advance notice of any impending proceeding or meeting related to such Taking and shall not in the absence of Lessee's consent thereto settle with the Taking authority or agree on compensation for such Taking. This Lease shall terminate as to any portion of the Premises so condemned or taken (except in the case of a

temporary Taking after the duration of which Lessee desires to continue this Lease, and the Lease Term shall be extended, in such event, by the duration of such temporary Taking). Subject to any applicable law or regulation, if any, any award or other compensation (“**Award**”) payable as a consequence of such Taking shall be paid as follows: (a) Lessor shall first be entitled to receive out of the Award the value of Lessor’s fee interest in the Property, valued as if no Project Facilities were on the Property; (b) Lessee shall next be entitled to receive out of the Award (i) the value of the Project Facilities, (ii) any other compensation or benefits payable by law as a consequence of the loss or interruption of Lessee’s business and the other costs and expenses incurred by Lessee as consequence of the Taking, and (iii) the remaining present value of Lessee’s interest in the Property (determined at the time of the Taking), including the value of Lessee’s interests under this Lease; (c) Lessor shall then be entitled to receive out of the Award, taking into account the leasehold and easement estates created by this Lease, the estimated amounts that would have been paid to date of condemnation by Lessee hereunder; and (d) Lessor shall be entitled to any remainder of the Award.

15.11 Joint and Several Liability. If applicable, the obligations under this Lease imposed upon Lessor shall be joint and several obligations of the individuals or entities comprising Lessor.

15.12 Force Majeure. If performance of this Lease or of any obligation under this Lease is prevented, restricted or interfered with by reason of an event of “**Force Majeure**” (as defined in the immediately following sentence), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference and the Lease Term shall be extended for the duration of the Force Majeure event; provided, however, that nothing in this Section 15.12 shall relieve Lessee of its obligations to pay Rent or other monetary obligation payable to Lessor pursuant to this Lease. The affected Party shall use its reasonable efforts to avoid or remove such causes of non-performance and shall continue performance under this Lease whenever such causes are removed. “**Force Majeure**” means flood, drought, earthquake, storm, fire, tornado, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God, casualty or accident; war, sabotage, vandalism, civil strife, civil unrest or other violence; strikes or labor disputes; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; a Regulatory Suspension (as defined in the immediately following sentence); litigation challenging the validity or content of any permit or approval necessary for the construction or operation of the Project; litigation by Lessor, nearby landowners or third party interest groups challenging the validity or content of this Lease or any aspect of the Project; or any other act or condition beyond the reasonable control of a party hereto. A “**Regulatory Suspension**” shall mean the application of any local, state or federal law, order, rule or regulation which results in the delay, interruption, or suspension of the: (i) construction of the Project; or (ii) transmission, production or sale of electricity from the Project.

15.13 Certain Matters of Construction. The terms “herein”, “hereof”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. The section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. References in this Agreement to “Sections”, “Schedules” or “Exhibits” shall be to Sections, Schedules or Exhibits of or to this Agreement unless otherwise specifically provided. All references in this Agreement to statutes shall include all amendments of same and implementing regulations and any successor statutes and regulations; to any instrument or agreement (including this Agreement) shall include any and all addendums, modifications and supplements thereto and any and all restatements, extensions or renewals thereof to the extent such modifications, supplements, restatements, extensions or renewals of any such documents are permitted by the terms thereof; to any person shall mean and include the successors, affiliates and permitted assigns of such person; to “including” shall be understood to mean “including, without limitation”; or to the time of day shall mean the time of day on the day in question in the State of Delaware, unless otherwise provided in this Agreement. Unless the context of this Agreement clearly requires otherwise, the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”.

*****SEE ADDENDUM ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF*****

(Signature Page follows)

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Effective Date.

LESSOR(S): Sussex County, Delaware

By:

Name: Michael H. Vincent

Title: President of County Council

Attest: (SEAL)

Clerk of Council

LESSEE: Blacktail Solar II LLC

By:

Name: Ron Stimmel

Title: Manager

ADDENDUM

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease"), dated _____, by and between **Sussex County, Delaware**, and **Blacktail Solar II LLC**,

In addition to the provisions previously set forth in the Lease and effective as of the date first written above, it is hereby agreed that:

1. **Conflict of Terms.** Capitalized terms not otherwise defined in this Addendum have the meanings ascribed to them in the Lease. In the event of a conflict or inconsistency between the printed terms of the Lease and this Addendum, the printed terms of this Addendum shall control and be deemed to supersede the printed terms of the Lease.
2. **County Decommissioning Requirements.** Notwithstanding anything to the contrary contained in the Lease, particularly in Section 13.3 thereof, Lessee shall comply with the requirements of the Zoning Ordinance for Sussex County, Delaware (the "**Ordinance**"), with respect to decommissioning of the Project, and the Restoration Requirements shall be as set forth in the decommissioning plan agreed to by the Parties prior to the Construction Commencement Date (the "**Decommissioning Plan**"). After Lessee's delivery of the Construction Notice, but prior to the Construction Commencement Date, the Parties shall execute a Decommissioning Funding Agreement, in substantially the form attached to the Lease as Exhibit E, which shall become effective as of the Construction Commencement Date, and pursuant to which the Parties shall establish and maintain a sinking fund account with a financial institution, counterparty to the DFA, as security to cover the costs of completing the Restoration Requirements under the Decommissioning Plan.
3. **Lessor Option to Purchase.**
 - (a) Upon expiration of the Lease Term or earlier termination of the Lease under Section 13.1 of the Lease, notwithstanding anything to the contrary contained in the Lease, particularly in Section 13.3 thereof, Lessor may elect to purchase the Project Facilities by notice to Lessee delivered by Lessor not later than 30 days after the expiration or earlier termination of this Lease. The Parties agree that Lessee shall not be obligated to commence decommissioning of the Project under Section 13.3 of the Lease and Paragraph 2 of this Addendum unless such 30-day period has elapsed and Lessor either fails to deliver the notice in the immediately preceding sentence or notifies Lessee in writing of Lessor's election not to purchase the Project Facilities. If Lessor elects to purchase the Project Facilities in accordance with the provision in this Paragraph 3(a), the purchase price for the Project Facilities (the "**Purchase Price**") shall be the fair market value of the Project Facilities at the time of purchase (the "**FMV**"), which value shall be determined in accordance with the valuation procedures set forth in Paragraph 3(b) below.
 - (b) Upon Lessor's exercise of the option to purchase the Project Facilities as set forth in Paragraph 3(a) of this Addendum, the Parties shall within 30 days of such Lessor election negotiate in good faith and agree upon the selection of a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the FMV. If the Parties cannot reach an agreement on an appraiser, each Party shall select one appraiser, and the two appraisers shall select a third appraiser to determine the FMV. The appraiser agreed to by the Parties, or otherwise selected by the other two appraisers, shall act reasonably and in good faith to determine the FMV and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence

of fraud or manifest error. The costs of the appraisal shall be shared by the Parties equally. Upon determination of the FMV, the Parties shall use good faith efforts to negotiate and execute a definitive agreement, pursuant to which Lessee shall sell to Lessor, and Lessor shall purchase from Lessee the Project Facilities in accordance with the terms and conditions set forth in such definitive agreement and at the Purchase Price in an amount equal to the FMV.

4. **Premises; Minimum Premises Acres.** In the event the total Premises Acres set forth in the Survey attached to the Construction Notice amount to an acreage equal to or less than 11 acres (the “**Minimum Acreage**”), then solely for the purposes of calculating the Annual Rent, the acreage of the Premises shall be deemed to be equal to the Minimum Acreage. Lessee shall design the Project to, as much as is practicable, maximize the amount of surface area covered by Project Facilities within the Premises.
5. **Infrastructure Support Cost; Payment.** Lessee shall be responsible for obtaining either i) a signed interconnection cost letter or ii) a fully executed interconnection agreement (referred to interchangeably as an “**Interconnection Agreement**”) from the applicable local electric utility allowing the Project Facilities to be connected to the local electric infrastructure. Lessor shall be ultimately responsible for all costs associated with the Interconnection Agreement (“**Infrastructure Support Cost**”) pursuant to the payment structure further defined in this Addendum. Lessee shall send the executed Interconnection Agreement to Lessor no later than five (5) business days following Lessee’s receipt of the same. Lessee shall send the initial associated or supporting invoices related to the Interconnection Agreement evidencing the initial amount of the Infrastructure Support Cost to Lessor no later than five (5) business days following Lessee’s receipt of the same (“**Initial Infrastructure Support Cost Invoice**”). The Infrastructure Support Cost shall be paid by Lessee directly to the local electric utility according to the amounts, due dates and payment direction instructions as set forth in the Interconnection Agreement or the Initial Infrastructure Support Cost Invoice. Lessee shall then generate a separate additional invoice (“**Infrastructure Support Cost Reimbursement Invoice**”) and deliver the same to Lessor no later than five (5) business days after Lessee’s payment of the Infrastructure Support Cost. Lessor shall reimburse Lessee according to the amounts, due dates and payment direction instructions as set forth in the Infrastructure Support Cost Reimbursement Invoice (“**Infrastructure Support Cost Reimbursement Payment**”). Notwithstanding anything to the contrary contained in the Lease, particularly in Section 5 thereof, in the event Lessor fails to pay Lessee the Infrastructure Support Cost Reimbursement Payment when due, Lessee may set off such expense from any payments due to Lessor by Lessee under the Lease including, but not limited to, Rent. The set-off rights granted to Lessee in this Section shall remain in effect until such time as Lessee is fully reimbursed for the entire amount of the Infrastructure Support Cost.
6. **Final Accounting Report; Payment.** A final accounting report shall be issued to Lessee by the local electric utility following the construction of the Project (“**Final Accounting Report**”). Lessee shall send the Final Accounting Report to Lessor no later than five (5) business days following Lessee’s receipt of the same. Lessee shall send the associated or supporting invoices related to the Final Accounting Report to Lessor no later than five (5) business days following Lessee’s receipt of the same (“**Final Infrastructure Support Cost Invoice**”). If the Final Accounting Report results in an additional amount being owed to the local electric utility beyond what was established as the initial Infrastructure Support Cost (such additional amount being the “**Additional Infrastructure Support Cost**”), Lessor shall be ultimately responsible for all costs associated with True-Up Additional Infrastructure Support Cost pursuant to the payment structure further defined in this Addendum. Lessee shall pay the Additional Infrastructure Support Cost directly to the local electric utility according to the amounts, due dates and payment direction instructions as set forth in the Final Accounting Report or the Final Infrastructure Support Cost Invoice. Lessee shall then generate an

additional separate invoice ("**Additional Infrastructure Support Reimbursement Invoice**") and deliver the same to Lessor no later than five (5) business days after Lessee's payment of the Additional Infrastructure Support Cost. Lessor shall reimburse Lessee according to the amounts, due dates and payment direction instructions as set forth in the Additional Infrastructure Support Reimbursement Invoice ("**Additional Infrastructure Support Reimbursement Payment**"). Notwithstanding anything to the contrary contained in the Lease, particularly in Section 5 thereof, in the event Lessor fails to pay Lessee the Additional Infrastructure Support Reimbursement Payment when due, Lessee may set off such expense from any payments due to Lessor by Lessee under the Lease including, but not limited to, Rent. The set-off rights granted to Lessee in this Section shall remain in effect until such time as Lessee is fully reimbursed for the entire amount of the additional costs paid to the local electric utility. If the Final Accounting Report results in a refund being issued to Lessee, Lessee shall pay to Lessor all refunded amounts associated with the Final Accounting Report or the Final Infrastructure Support Invoice no later than five (5) business days following Lessee's receipt of the same.

This Addendum shall not affect the terms and conditions set forth in the Lease in any manner except as set forth herein.

(Signature Page Follows)

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto set their hands and official seals the date first written above.

LESSOR: Sussex County, Delaware

By:

Name: Michael H. Vincent

Title: President of County Council

Attest: (SEAL)

Clerk of Council

LESSEE: Blacktail Solar II LLC

By:

Name: Ron Stimmel

Title: Manager

Exhibit A
LEGAL DESCRIPTION OF PROPERTY

Parcel ID Number: 334-7.00-30.01

That certain real property in the County of Sussex, State of Delaware, described as follows:

15674

101987 2008

This Deed was prepared by WILSON, HALSBROOK & BAYARD, P.A.
Georgetown, Delaware

DEED

THIS DEED made this 21st day of June, A.D. 1994,

BETWEEN,

J.G. TOWNSEND, JR. & CO. of P.O. Box 430, Georgetown, Delaware 19947, hereinafter referred to as "Grantor",

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, of P.O. Box 589, Georgetown, Delaware 19947, party of the second part, hereinafter referred to as the "Grantee".

WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), Current Lawful Money of the United States of America and other good and valuable considerations, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns forever,

ALL that certain piece or parcel of land situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, being more particularly described as follows to wit:

BEGINNING at a set concrete monument in the northwesterly right-of-way line of Sussex County Road 270 at its intersection with the former center line of the Penn Central Railroad; thence by and with the aforesaid former center line of the Penn Central Railroad North 32 degrees 02 minutes 59 seconds West 1032.463 feet to a set concrete monument; thence turning and running North 58 degrees 00 minutes 00 seconds East 1488.382 feet to a set concrete monument; thence turning and running North 32 degrees 00 minutes 00 seconds West 404.998 feet to a set concrete monument; thence turning and running North 57 degrees 59 minutes 58 seconds East 1044.130 feet to a set concrete monument; thence turning and running South 32 degrees 00 minutes 00 seconds East 944.668 feet to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 269.690 feet to a set concrete monument; thence South 32 degrees 00 minutes 00 seconds East 1210.420 to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 2021.920 feet to a set concrete monument; thence turning and running North 31 degrees 58 minutes 26 seconds West 709.956 feet to a set concrete monument thence turning and running South 59 degrees 49 minutes 34 seconds West 240.449 feet to the place of beginning said to contain 100.00 acres, more or less and as more particularly shown on the survey thereof and defined as lands to be conveyed to: SUSSEX COUNTY COUNCIL and Lands of J.G. TOWNSEND, JR. & CO. Prepared by Charles D. Murphy Associates, Inc., Land Surveyors, dated May 17, 1994, revised May 31, 1994, revised on June 2, 1994, and revised on June 16, 1994 said plot being of record in the Office of the Recorder of Deeds in and for Sussex County in Plot Book 52, page 328.

BEING a portion of those lands conveyed unto this Grantor by deed of Sally W. Thompson, et al., dated August _____, 1946 and of record in the Office of the Recorder of Deeds in and for

07:13 333 6/22/94 TX-EX ST .00

3436 111 6/22/94 CTX-EX SU .00

DLM

Sussex County in Deed Book 361, page 409.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Jacob M. Moore, et al., dated July 9, 1946 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 366, page 26.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Frank Martin, et al., dated March 24, 1951 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 398, page 147.

THIS conveyance is subject to the following covenants which are incorporated herein and made a part hereof:

By accepting title to the above-described premises, Sussex County hereby covenants on behalf of itself, its heirs, successors and assigns to State of Delaware, Division of Historical and Cultural Affairs, State Historic Preservation Office (DE SHPO) or its successor agency, to maintain and preserve that archaeological site data which qualified 78-D-65 and 78-D-60 for inclusion in the National Register of Historic Places as follows:

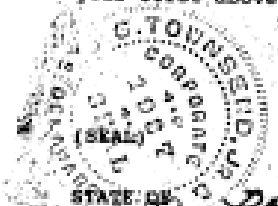
1. The County shall preserve and maintain the real property containing geological sites 78-D-65 and 78-D-60. Said sites are as shown and designated on the plot of lands referred to herein.
2. No construction or disturbance of the ground surface may take place without the express prior written permission of the DE SHPO signed by a fully authorized representative thereof. If the County proposes to undertake ground disturbing activities on the property, it may be necessary for the County to undertake data recovery in accordance with 36 CFR 800 prior to initiating the proposed activity. Maintenance activities such as grass mowing shall not be subject to this clause.
3. The DE SHPO shall be permitted at all reasonable times to inspect the aforementioned sites on land owned by the County to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant and in addition to any remedy now or hereafter provided by law, the DE SHPO may, following reasonable notice to the County, institute to enjoin said violation or require mitigation for said violation. The successful party shall be entitled to recover all costs or expenses incurred with such a suit, including all court costs and attorney's fees.
5. The County agrees that the DE SHPO may, at its discretion without prior notice to the County, convey and assign all or part of its rights and responsibilities to any successor agency.
6. This covenant is binding on the County, its heirs, successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the County verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the property as described in the above sites and bounds.
7. The failure of the DE SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

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8. The DE SHPO may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the County, its heirs, successors or assigns. The DE SHPO may also make application to the County to modify or cancel this covenant.

9. This covenant shall be a binding servitude upon the County and shall be deemed to run with the land. Acceptance of this Deed and its recordation shall constitute conclusive evidence that the County agrees to be bound to the foregoing conditions and restrictions and to conform to obligations herein set forth.

IN WITNESS WHEREOF, the said J.G. TOWNSEND, JR. & CO. has caused its name to be hereunto set by its President and the common and corporate seal of this said corporation shall be hereunto affixed, duly attested to by its Secretary, the day and year first above written.



J.G. TOWNSEND, JR. & CO.

BY: [Signature]
President

ATTEST: [Signature]
Secretary

STATE OF Delaware
COUNTY OF Sussex

BE IT REMEMBERED that on this 21st day of

June, A.D. 1984, personally came before me,

the Subscriber, a Notary Public for the State and County aforesaid, Paul G. Townsend, President of J.G. TOWNSEND, JR. & CO., a corporation of the State of Delaware, party to this indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

[Signature]
Notary Public

DALLAS D. GREEN

04 JUN 22 PM 2:09

RECORDED OF DEEDS
SUSSEX COUNTY

FRANK J. STRAUBE
NOTARIAL OFFICER ALTERNATE TO
BY DEL. CODE SECT. 432
ATTORNEY AT LAW
DELAWARE

PURCHASERS REPORT
MADE THIS DATE

JUN 23 1984

ASSESSMENT DIVISION
OF SUSSEX CTY.

Sussex County Engineering 7/17/94

EXHIBIT A-1

LAGOON 4





**Exhibit B
PREMISES**


Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease") and Memorandum of Lease Agreement (the "Memorandum"),

dated _____,
by and between **Sussex County, Delaware,**
and
Blacktail Solar II LLC,

Blacktail Solar II - Parcel
Boundary, Premises and
Equipment Pad

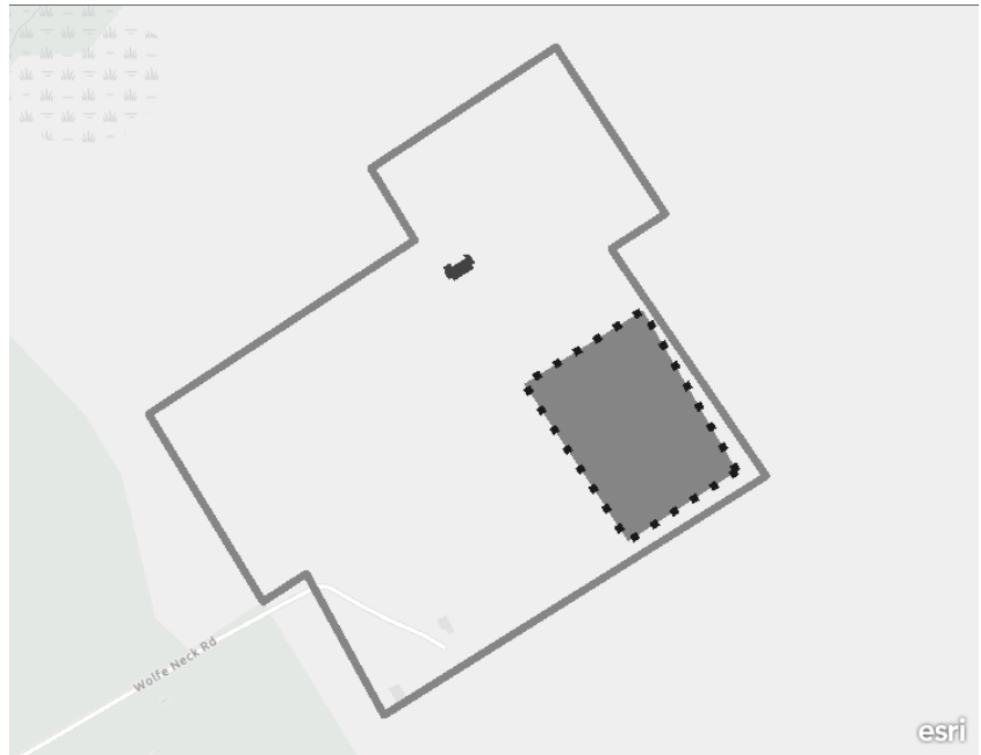
 Parcel Boundary
+/- 100 ac

 Premises +/- 13
ac

 Equipment Pad



 600ft



THE DEPICTION CONTAINED IN THIS EXHIBIT IS INTENDED TO BE FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT CONSTITUTE A SURVEYED REPRESENTATION OF THE BOUNDARIES DEPICTED THEREIN. PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE PREMISES DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE PREMISES IS AT THE SOLE DISCRETION OF LESSEE BUT WILL REMAIN WITHIN THE AREA DEPICTED HEREIN.

Exhibit C
EASEMENT AREAS

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease")
and Memorandum of Lease Agreement (the "Memorandum"),

dated _____,

by and between **Sussex County**,

and

Blacktail Solar II LLC

PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE EASEMENT AREAS DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE EASEMENT AREAS IS AT THE SOLE DISCRETION OF LESSEE.

Exhibit D
MEMORANDUM OF LEASE
(Attached)

MEMORANDUM OF LEASE
Parcel ID No.: 334-7.00-30.0

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Blacktail Solar II LLC

Attn: Land Department
1700 Rockville Pike, Suite 305
Rockville, MD 20852

(SPACE ABOVE FOR RECORDER'S USE ONLY)

MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT

THIS MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT ("Memorandum") has been made to indicate the existence of a Solar Energy Lease and Easement Agreement ("Lease") dated _____, by and between **Sussex County, Delaware** a county and political subdivision of the State of Delaware of/having an office at P.O. Box 589, Georgetown, Delaware 19947, United States as "**Lessor**", (whether one or more), and **Blacktail Solar II LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as "**Lessee**".

Lessor did grant demise, lease, and let the Premises (as defined below) exclusively unto Lessee, its successors and assigns, the right to develop a solar photovoltaic project or projects and grants certain easements associated therewith, on the lands described below and subject to the provisions contained in the Lease including the following:

1. The Option Period of the Lease is for a period of one year, commencing on the date immediately set forth above and may be incrementally extended, provided certain conditions are met, for up to a maximum of three (3) years in total thereby, continuing the term of the Lease to the end of the "extended" Option Period.
2. The Lease Term of the Lease comprises (a) a construction period of up to two years commencing on the Construction Commencement Date, and (b) an operations period of 25 years, commencing on the Operations Date, as defined in the Lease, and may be incrementally extended, provided certain conditions are met, for up to three additional five-year periods up to a maximum of 15 additional years, thereby continuing the term of the Lease to the end of the "extended" Lease Term.
3. The Property is described in the vesting deed attached hereto as **Exhibit "A"** and includes effluent spray lagoons constituting the Wolfe Neck Treatment Facility located at Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware.
4. The Premises containing up to 13 acres, more or less, is defined as being that portion of the Property comprising of an effluent spray lagoon surface at the Wolfe Neck Treatment Facility located on the Property, which lagoon is known as and identified as Lagoon 4 in the description attached hereto as **Exhibit "A-1"**, and which Premises is more fully described on **Exhibit "B"**, attached hereto and made a part hereof.
5. The Easement Area is defined as being that portion of the Property outside of the Premises which is more fully described on **Exhibit "C"**, attached hereto and made a part hereof, and the term of any such Easements is coterminous with the term of the Lease.

This Memorandum has been executed for the purpose of providing notice of the existence of the Lease and shall not be considered in any way a modification or alteration of the Lease. All terms and conditions of the Lease are hereby incorporated herein by reference as if fully set forth herein. This Memorandum has been entered into for the sole purpose of placing the Lease of record and shall not be deemed to amend, modify, supplement, or change any of the terms and conditions of the Lease in any respect whatsoever. To the extent of any conflict between this Memorandum and the Lease, the terms of the Lease shall govern and control.

(SIGNATURE PAGE(S) TO FOLLOW)

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto set their hands and official seals the date first written above.

LESSOR(S): Sussex County, Delaware

By:

Name:

Title: President of County Council

Attest: (SEAL)

Clerk of Council

Corporate Acknowledgement

STATE OF _____)

)§:

COUNTY OF _____)

On the _____ day of _____ in the year 20____ before me, the undersigned, a notary public in and for said state, personally appeared _____, who holds the capacity of _____, for _____, a _____, and that he/she/they in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself/themselves in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

LESSEE: Blacktail Solar II LLC

By:

Name: Ron Stimmel

Title: Manager

Corporate Acknowledgement

COMMONWEALTH/STATE OF _____)
)§:
COUNTY/PARISH OF _____)

On the _____ day of _____ in the year 20____ before me, the undersigned, a notary public in and for said state/commonwealth, personally appeared Ron Stimmel, who holds the capacity of Manager, for **Blacktail Solar II LLC, a Delaware limited liability company**, and that he/she/they in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself/themselves in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Exhibit A to Memorandum
LEGAL DESCRIPTION OF PROPERTY

Parcel ID Number: 334-7.00-30.01

That certain real property in the County of Sussex, State of Delaware, described as follows:

15674

01987 2008

This Deed was prepared by WILSON, HALSBROOK & BAYARD, P.A.
Georgetown, Delaware

DEED

THIS DEED made this 21st day of June, A.D. 1994,

BETWEEN,

J.G. TOWNSEND, JR. & CO. of P.O. Box 430, Georgetown, Delaware 19947, hereinafter referred to as "Grantor",

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, of P.O. Box 589, Georgetown, Delaware 19947, party of the second part, hereinafter referred to as the "Grantee".

W I T N E S S E T H:

That the said parties of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), Current Lawful Money of the United States of America and other good and valuable considerations, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns forever,

ALL that certain piece or parcel of land situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, being more particularly described as follows to wit:

BEGINNING at a set concrete monument in the northwesterly right-of-way line of Sussex County Road 270 at its intersection with the former center line of the Penn Central Railroad; thence by and with the aforesaid former center line of the Penn Central Railroad North 32 degrees 02 minutes 59 seconds West 1032.463 feet to a set concrete monument; thence turning and running North 58 degrees 00 minutes 00 seconds East 1488.382 feet to a set concrete monument; thence turning and running North 32 degrees 00 minutes 00 seconds West 404.998 feet to a set concrete monument; thence turning and running North 57 degrees 59 minutes 58 seconds East 1044.130 feet to a set concrete monument; thence turning and running South 32 degrees 00 minutes 00 seconds East 944.668 feet to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 269.690 feet to a set concrete monument; thence South 32 degrees 00 minutes 00 seconds East 1210.420 to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 2021.920 feet to a set concrete monument; thence turning and running North 31 degrees 58 minutes 26 seconds West 709.956 feet to a set concrete monument thence turning and running South 59 degrees 49 minutes 34 seconds West 240.449 feet to the place of beginning said to contain 100.00 acres, more or less and as more particularly shown on the survey thereof and defined as lands to be conveyed to: SUSSEX COUNTY COUNCIL and Lands of J.G. TOWNSEND, JR. & CO. Prepared by Charles D. Murphy Associates, Inc., Land Surveyors, dated May 17, 1994, revised May 31, 1994, revised on June 2, 1994, and revised on June 16, 1994 said plot being of record in the Office of the Recorder of Deeds in and for Sussex County in Plot Book 52, page 328.

BEING a portion of those lands conveyed unto this Grantor by deed of Sally W. Thompson, et al., dated August _____, 1946 and of record in the Office of the Recorder of Deeds in and for

0713 333 6/22/94 TX-EX ST .00

3436 111 6/22/94 CTX-EX SU .00

DUM

Sussex County in Deed Book 361, page 409.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Jacob M. Moore, et al., dated July 9, 1946 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 366, page 26.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Frank Martin, et al., dated March 24, 1951 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 398, page 147.

THIS conveyance is subject to the following covenants which are incorporated herein and made a part hereof:

By accepting title to the above-described premises, Sussex County hereby covenants on behalf of itself, its heirs, successors and assigns to State of Delaware, Division of Historical and Cultural Affairs, State Historic Preservation Office (DE SHPO) or its successor agency, to maintain and preserve that archaeological site data which qualified 78-D-65 and 78-D-60 for inclusion in the National Register of Historic Places as follows:

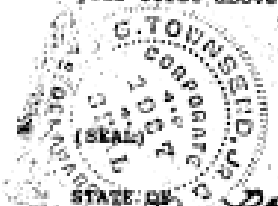
1. The County shall preserve and maintain the real property containing geological sites 78-D-65 and 78-D-60. Said sites are as shown and designated on the plot of lands referred to herein.
2. No construction or disturbance of the ground surface may take place without the express prior written permission of the DE SHPO signed by a fully authorized representative thereof. If the County proposes to undertake ground disturbing activities on the property, it may be necessary for the County to undertake data recovery in accordance with 36 CFR 800 prior to initiating the proposed activity. Maintenance activities such as grass mowing shall not be subject to this clause.
3. The DE SHPO shall be permitted at all reasonable times to inspect the aforementioned sites on land owned by the County to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant and in addition to any remedy now or hereafter provided by law, the DE SHPO may, following reasonable notice to the County, institute to enjoin said violation or require mitigation for said violation. The successful party shall be entitled to recover all costs or expenses incurred with such a suit, including all court costs and attorney's fees.
5. The County agrees that the DE SHPO may, at its discretion without prior notice to the County, convey and assign all or part of its rights and responsibilities to any successor agency.
6. This covenant is binding on the County, its heirs, successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the County verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the property as described in the above sites and bounds.
7. The failure of the DE SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

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8. The DE SHPO may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the County, its heirs, successors or assigns. The DE SHPO may also make application to the County to modify or cancel this covenant.

9. This covenant shall be a binding servitude upon the County and shall be deemed to run with the land. Acceptance of this Deed and its recordation shall constitute conclusive evidence that the County agrees to be bound to the foregoing conditions and restrictions and to conform to obligations herein set forth.

IN WITNESS WHEREOF, the said J.G. TOWNSEND, JR. & CO. has caused its name to be hereunto set by its President and the common and corporate seal of this said corporation shall be hereunto affixed, duly attested to by its Secretary, the day and year first above written.



J.G. TOWNSEND, JR. & CO.

BY: [Signature]
President

ATTEST: [Signature]
Secretary

STATE OF Delaware
COUNTY OF Sussex

BE IT REMEMBERED that on this 21st day of

June, A.D. 1984, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Paul G. Townsend, President of J.G. TOWNSEND, JR. & CO., a corporation of the State of Delaware, party to this indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

[Signature]
Notary Public

DALLAS D. GREEN

My commission expires:

04 JUN 22 PM 2:09

RECORDED OF DEEDS
SUSSEX COUNTY

FRANK J. STRAUBE
NOTARIAL OFFICER ALTERNATE TO
BY DEL. CODE SECT. 432
ATTORNEY AT LAW
DELAWARE

PURCHASERS REPORT
MADE THIS DATE

JUN 23 1984

ASSESSMENT DIVISION
OF SUSSEX CTY.

Sussex County Engineering 7/17/94

EXHIBIT A-1 to Memorandum

LAGOON 4





**Exhibit B to Memorandum
PREMISES**


Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease")
and Memorandum of Lease Agreement (the "Memorandum"),

dated _____, 2024,
by and between **Sussex County, Delaware,**
and
Blacktail Solar II LLC,

Blacktail Solar II - Parcel
Boundary, Premises and
Equipment Pad

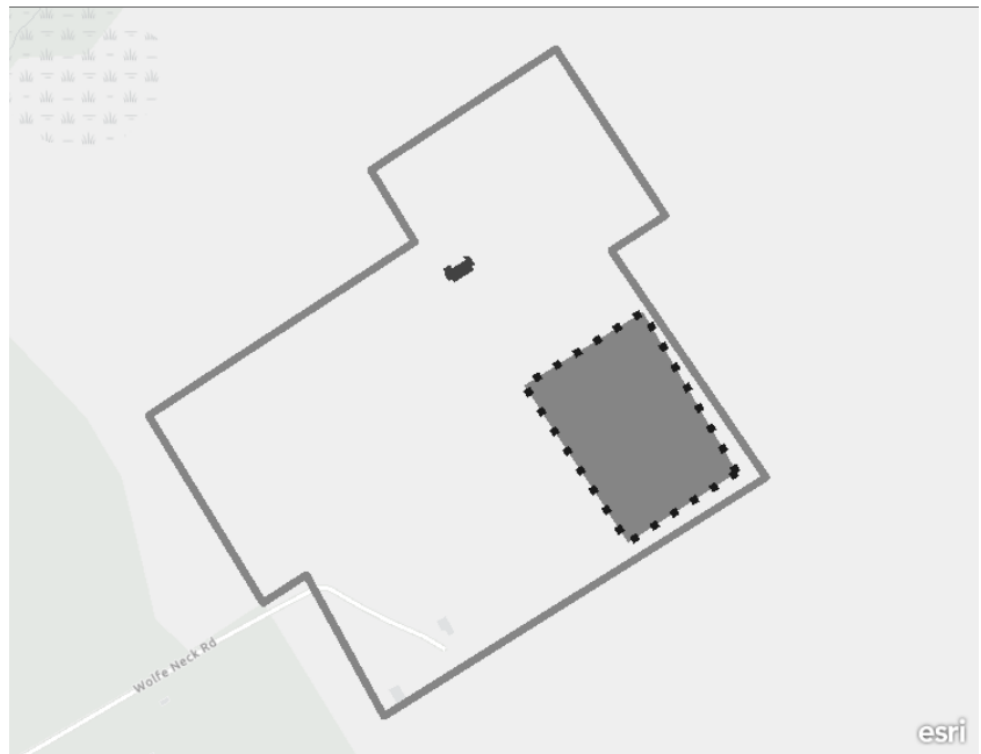
 Parcel Boundary
+/- 100 ac

 Premises +/- 13
ac

 Equipment Pad



 600ft



THE DEPICTION CONTAINED IN THIS EXHIBIT IS INTENDED TO BE FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT CONSTITUTE A SURVEYED REPRESENTATION OF THE BOUNDARIES DEPICTED THEREIN. PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE PREMISES DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE PREMISES IS AT THE SOLE DISCRETION OF LESSEE BUT WILL REMAIN WITHIN THE AREA DEPICTED HEREIN.

**Exhibit C to Memorandum
EASEMENT AREAS**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease")
and Memorandum of Lease Agreement (the "Memorandum"),

dated _____, 2024,
by and between **Sussex County, Delaware**
and
Blacktail Solar II LLC,

PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF
THE EASEMENT AREAS DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE
EASEMENT AREAS IS AT THE SOLE DISCRETION OF LESSEE.

EXHIBIT E to LEASE
DECOMMISSIONING FUNDING AGREEMENT
(Attached)

DECOMMISSIONING FUNDING AGREEMENT

THIS DECOMMISSIONING FUNDING AGREEMENT (this “**DFA**”) dated as of _____ and to be effective as of the Construction Commencement Date (as defined in the Lease (defined below)) is made by and among **Sussex County, Delaware**, a county and political subdivision of the State of Delaware, having an office at P.O. Box 589, Georgetown, Delaware 19947, United States, as “**Lessor**”, (whether one or more), **Blacktail Solar II LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as “**Lessee**”, and M&T Bank, having an office at 2205 DuPont Blvd., Georgetown, DE 19947, as “**Bank**”. Lessor and Lessee are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

RECITALS

(a) Lessor is the owner of approximately 100 acres of real property located in Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware, as more particularly described in the vesting deed which is attached hereto as **Exhibit A** (the “**Property**”);

(b) Lessor is the owner of the effluent spray lagoon at the Wolfe Neck Treatment Facility, located on the Property, which lagoon is known as and identified as Lagoon 4 in the description attached hereto as Exhibit A-1 (the “**Lagoon**”);

(c) Lessor and Lessee have entered into that certain Solar Energy Lease and Easement Agreement of even date herewith, as modified by that certain Addendum to Solar Energy Lease and Easement Agreement of even date herewith (the “**Addendum**”) (and as further amended, restated, modified, and supplemented from time to time, the “**Lease**”);

(d) Pursuant to the Lease, as of the Effective Date (as defined below) of this DFA, Lessee has leased from Lessor and Lessor has leased to Lessee the Premises for the construction and operation of a solar photovoltaic and/or energy storage project on the Premises, including all necessary equipment to deliver solar or stored energy from the Premises to the distribution grid (the “**Project**”);

(e) Lessor and Lessee desire to open and maintain that an interest bearing certificate of deposit account with Bank to be known as the Sinking Fund Account, for depositing of sums to cover the costs of decommissioning the Project, and the Parties desire to enter this Agreement to set forth their agreements related to operation and maintenance of the Sinking Fund Account.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND THE AGREEMENTS, COVENANTS AND PROMISES set forth in this DFA and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and agreed by the Parties, Lessor and Lessee, intending to be legally bound hereby, agree as follows:

1. **Definitions.** Capitalized terms in this DFA which are defined in the Lease but not otherwise defined in this DFA have the same meanings herein as in the Lease.
2. **Effective Date.** This DFA shall become effective as of the Construction Commencement Date (the “**Effective Date**”).
3. **Sinking Fund.**
 - (a) Within five (5) days after the Effective Date, Lessor and Lessee shall establish a special purpose interest-bearing certificate of deposit account with Bank (the “**Sinking Fund Account**”), and upon

such establishment, Lessee shall deposit the sum of \$125,000.00 into the Sinking Fund Account. The initial deposit into the Sinking Fund Account, together with additional sums deposited therein in accordance with the provision in the immediately following sentence are hereinafter collectively referred to as the "**Sinking Fund**". At the end of each calendar year after the Effective Date, Bank shall distribute to Lessee in accordance with Lessee's written directions any amount in the Sinking Fund Account consisting solely of interest, dividends, income, capital gains and other amounts earned on or derived from the sums deposited by Lessee into the Sinking Fund Account under this DFA.

- (b) Commencing on the first anniversary of the Operations Date and on each subsequent anniversary of the Operations Date during the Lease Term, Lessee shall deposit into the Sinking Fund Account an additional sum equal to 2.5% of the then-existing amount in the Sinking Fund, as described in greater detail on Schedule I attached hereto. The Parties agree that the Sinking Fund shall be used solely to pay for any costs of decommissioning the Project under the Lease. Provided Lessee complies with its obligations to deposit funds into the Sinking Fund Account in accordance with this DFA, Lessee shall have no further payment obligation in connection with funding the DFA during the Lease Term; *provided, however*, that in the event the actual costs of decommissioning the Project exceed the amount of the Sinking Fund, Lessee shall be responsible for any such excess costs, provided such excess costs are not as a result of Lessor using any portion of the Sinking Fund for any reason other than to pay for decommissioning costs of the Project in accordance with this DFA.
- (c) In the event Lessor uses any amount in the Sinking Fund for any reason other than to pay for decommissioning costs in accordance with this DFA, Lessor shall be responsible to pay for such amount used and shall indemnify and hold harmless Lessee from any claim, loss, damage, liability or costs (including any reasonable attorney costs) arising from such use of funds for reasons other than to pay for decommissioning costs in accordance with this DFA.
- (d) Until Bank is notified in accordance with the provision in Section 4, and except to the extent permitted by the provision in Section 3(a), neither Lessor nor Lessee may withdraw any amount from the Sinking Fund Account.

4. Decommissioning Process.

- (a) Upon expiration or earlier termination of the Lease in accordance with Section 13.1 of the Lease, Lessee shall give notice to Bank of such expiration or earlier termination, which notice shall set forth: (a) the expiration date or termination date of the Lease, and (b) that Lessor has 30 days from such expiration date or termination date (the "**Purchase Option Exercise Period**") to exercise its option to purchase the Project Facilities as set forth in the Lease (the "**Lessor Purchase Option**").
- (b) If Lessor exercises its Purchase Option, Lessor shall deliver a notice to Lessee and Bank of such exercise. Pursuant to such exercise, on the date Lessee and Lessor consummate the purchase and sale of the Project Facilities from Lessee to Lessor (such consummation, the "**Closing**"), the Parties shall jointly notify Bank in writing of the Closing, and Bank shall, within five days thereof, distribute all amounts in the Sinking Fund Account to Lessee.
- (c) In the event Lessor does not deliver the notice exercising its Purchase Option during the Purchase Option Exercise Period or notifies Lessee and Bank in writing of Lessor's election not to purchase the Project Facilities, Lessee shall immediately commence the decommissioning of the Project Facilities in accordance with the Lease. Upon Lessee's completion of the Restoration Requirements in accordance with the Decommissioning Plan, Lessee and Lessor shall jointly notify

Bank in writing of such completion of the Restoration Requirements, and Bank shall, within five days of receipt of such notice, distribute all amounts in the Sinking Fund Account to Lessee.

- (d) If (i) Lessee fails to complete the Restoration Requirements within eight months after the expiration date of the Purchase Option Exercise Period, or (ii) the Project ceases to produce electrical energy for a period of 12 consecutive months, Lessor shall give Lessee and Bank notice of its intent to commence decommissioning of the Project (the “**Lessor Decommissioning Notice**”). In the event Lessee fails to respond to Lessor with a reasonable explanation for the delay in the restoration or cessation of operation of the Project within 30 days after delivery of the Lessor Decommissioning Notice, Lessor may commence the decommissioning of the Project. Upon request by Lessor to Bank at any time after expiration of the 30-day period after delivery of the Lessor Decommissioning Notice, Bank shall distribute 100% of the Sinking Fund to Lessor or its designee in accordance with Lessor’s written instructions.

5. Miscellaneous.

- (a) Lessor and Lessee agree to indemnify and hold harmless Bank, its officers, directors, employees and agents, against claims, liabilities or expenses (including reasonable attorney’s fees) arising out of Bank’s compliance with any requirements of this DFA with respect to the Sinking Fund Account, except if such claims, liabilities or expenses are caused by Bank’s negligence or willful misconduct.
- (b) This DFA shall not create any obligation or duty of Bank except as expressly set forth herein.
- (c) As to the matters specifically subject of the DFA, in the event of any conflict between this DFA and the Lease or any other agreement among the parties or between any of them, the terms of the DFA shall control.
- (d) All notices, requests, demands, waivers and other communications required or permitted to be given under this Leases shall be in writing and may be given by any of the following methods: (a) personal delivery, (b) a writing in portable document format (“**PDF**”) attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested, (c) overnight or certified mail, postage prepaid, return receipt requested, or (d) next day air courier service. Notices shall be sent to the appropriate party at its address or email address given below, provided that any Party may change its address for purposes of this Section (d) by giving notice of such change to the other Parties:

If to Lessor: Sussex County, Delaware
Name: Mike Harmer
Address: P.O. Box 589, Georgetown , Delaware
19947, United States
Email: mike.harmer@sussexcountyde.gov
Phone No.: +1-3028557370

If to Lessee: Blacktail Solar II LLC
Attention: Land Department
Address: 1700 Rockville Pike, Suite 305,
Rockville, MD 20852, United States
Email: land@chaberton.com

If to Bank: M&T Bank
Attention:
Address: 22205 DuPont Blvd
Georgetown, DE 19947
Email:

- (e) This DFA shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the Parties. This DFA may not be amended or modified except by written instrument signed and delivered by the Parties. Lessee may assign this DFA to any subsidiary, or purchaser or transferee of the Project. The Parties agree to execute and deliver any additional document or take any further action as reasonably requested by the other party to effectuate the purpose of this DFA.
- (f) This DFA shall be construed and enforced in accordance with the laws of the State of Delaware.
- (g) This DFA shall terminate upon distribution of 100% of the Sinking Fund to Lessee or Lessor in accordance with the provisions of this DFA, whereupon the Sinking Fund Account shall also be terminated and closed.
- (h) This DFA may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument. This DFA may be executed and transmitted via facsimile, PDF, or other similar electronic means complying with the U.S. federal ESIGN Act of 2000 (e.g. www.docusign.com) and a manual or electronic signature of the undersigned transmitted via such means shall have the same force and effect as a manually signed original.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Decommissioning Funding Agreement as of the date set forth above.

LESSOR: Sussex County, Delaware

By:

Name: Michael H. Vincent

Title: President of County Council

Attest: (SEAL)

Clerk of Council

LESSEE: Blacktail Solar II LLC

By:

Name: Ron Stimmel

Title: Manager

BANK: M&T Bank

By:

Name:

Title:

SCHEDULE I
SINKING FUND DEPOSIT SCHEDULE

Sinking Fund (Deposits)		
Timeframe	Amount (\$)	Cumulative
Construction Commencement Date	125,000	125,000
Yr 1 of Operations Date	\$3,125.00	\$128,125.00
Yr 2	\$3,203.13	\$131,328.13
Yr 3	\$3,283.20	\$134,611.33
Yr 4	\$3,365.28	\$137,976.61
Yr 5	\$3,449.42	\$141,426.03
Yr 6	\$3,535.65	\$144,961.68
Yr 7	\$3,624.04	\$148,585.72
Yr 8	\$3,714.64	\$152,300.36
Yr 9	\$3,807.51	\$156,107.87
Yr 10	\$3,902.70	\$160,010.57
Yr 11	\$4,000.26	\$164,010.83
Yr 12	\$4,100.27	\$168,111.10
Yr 13	\$4,202.78	\$172,313.88
Yr 14	\$4,307.85	\$176,621.73
Yr 15	\$4,415.54	\$181,037.27
Yr 16	\$4,525.93	\$185,563.20
Yr 17	\$4,639.08	\$190,202.28
Yr 18	\$4,755.06	\$194,957.34
Yr 19	\$4,873.93	\$199,831.27
Yr 20	\$4,995.78	\$204,827.06
Yr 21	\$5,120.68	\$209,947.73
Yr 22	\$5,248.69	\$215,196.42
Yr 23	\$5,379.91	\$220,576.34
Yr 24	\$5,514.41	\$226,090.74
Yr 25	\$5,652.27	\$231,743.01

Exhibit A
LEGAL DESCRIPTION OF PROPERTY

Parcel ID Number: 334-7.00-30.01

That certain real property in the County of Sussex, State of Delaware, described as follows:

15674

101987 2008

This Deed was prepared by WILSON, HALBROOK & BAYARD, P.A. ^{TM#3-34-7-part of 30}
Georgetown, Delaware

DEED

THIS DEED made this 21st day of June, A.D. 1994,

BETWEEN,

J.G. TOWNSEND, JR. & CO. of P.O. P.O. Box 430, Georgetown, Delaware 19947, hereinafter referred to as "Grantor",

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, of P.O. Box 589, Georgetown, Delaware 19947, party of the second part, hereinafter referred to as the "Grantee".

WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), Current Lawful Money of the United States of America and other good and valuable considerations, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns forever,

ALL that certain piece or parcel of land situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, being more particularly described as follows to wit:

BEGINNING at a set concrete monument in the northwesterly right-of-way line of Sussex County Road 270 at its intersection with the former center line of the Penn Central Railroad; thence by and with the aforesaid former center line of the Penn Central Railroad North 32 degrees 02 minutes 59 seconds West 1032.463 feet to a set concrete monument; thence turning and running North 58 degrees 00 minutes 00 seconds East 1488.382 feet to a set concrete monument; thence turning and running North 32 degrees 00 minutes 00 seconds West 404.998 feet to a set concrete monument; thence turning and running North 57 degrees 59 minutes 58 seconds East 1044.130 feet to a set concrete monument; thence turning and running South 32 degrees 00 minutes 00 seconds East 944.658 feet to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 269.690 feet to a set concrete monument; thence South 32 degrees 00 minutes 00 seconds East 1210.420 to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 2021.920 feet to a set concrete monument; thence turning and running North 31 degrees 58 minutes 26 seconds West 709.956 feet to a set concrete monument thence turning and running South 59 degrees 49 minutes 34 seconds West 240.449 feet to the place of beginning said to contain 100.00 acres, more or less and as more particularly shown on the survey thereof and defined as lands to be conveyed to: SUSSEX COUNTY COUNCIL and Lands of J.G. TOWNSEND, JR. & CO. prepared by Charles D. Murphy Associates, Inc., Land Surveyors, dated May 27, 1994, revised May 31, 1994, revised on June 2, 1994, and revised on June 16, 1994 said plot being of record in the Office of the Recorder of Deeds in and for Sussex County in Plot Book 52, page 328.

BEING a portion of those lands conveyed unto this Grantor by deed of Sally W. Thompson, et al., dated August _____, 1946 and of record in the Office of the Recorder of Deeds in and for

3713 333 6/22/94 TX-EX ST .00

3436 111 6/22/94 CTX-EX SU .00

DLM

Sussex County in Deed Book 361, page 409.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Jacob M. Moore, et al., dated July 9, 1946 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 366, page 26.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Frank Martin, et al., dated March 24, 1951 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 398, page 147.

THIS conveyance is subject to the following covenants which are incorporated herein and made a part hereof:

By accepting title to the above-described premises, Sussex County hereby covenants on behalf of itself, its heirs, successors and assigns to State of Delaware, Division of Historical and Cultural Affairs, State Historic Preservation Office (DE SHPO) or its successor agency, to maintain and preserve that archaeological site data which qualified 78-D-65 and 78-D-60 for inclusion in the National Register of Historic Places as follows:

1. The County shall preserve and maintain the real property containing geological sites 78-D-65 and 78-D-60. Said sites are as shown and designated on the plot of lands referred to herein.
2. No construction or disturbance of the ground surface may take place without the express prior written permission of the DE SHPO signed by a fully authorized representative thereof. If the County proposes to undertake ground disturbing activities on the property, it may be necessary for the County to undertake data recovery in accordance with 36 CFR 800 prior to initiating the proposed activity. Maintenance activities such as grass mowing shall not be subject to this clause.
3. The DE SHPO shall be permitted at all reasonable times to inspect the aforementioned sites on land owned by the County to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant and in addition to any remedy now or hereafter provided by law, the DE SHPO may, following reasonable notice to the County, institute to enjoin said violation or require mitigation for said violation. The successful party shall be entitled to recover all costs or expenses incurred with such a suit, including all court costs and attorney's fees.
5. The County agrees that the DE SHPO may, at its discretion without prior notice to the County, convey and assign all or part of its rights and responsibilities to any successor agency.
6. This covenant is binding on the County, its heirs, successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the County verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the property as described in the above sites and bounds.
7. The failure of the DE SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

#01987 2010

8. The DE SHPO may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the County, its heirs, successors or assigns. The DE SHPO may also make application to the County to modify or cancel this covenant.

9. This covenant shall be a binding servitude upon the County and shall be deemed to run with the land. Acceptance of this Deed and its recordation shall constitute conclusive evidence that the County agrees to be bound to the foregoing conditions and restrictions and to conform to obligations herein set forth.

IN WITNESS WHEREOF, the said J.G. TOWNSEND, JR. & CO. has caused its name to be hereunto set by its President and the common and corporate seal of this said corporation shall be hereunto affixed, duly attested to by its Secretary, the day and year first above written.



J.G. TOWNSEND, JR. & CO.

BY: [Signature]
President

ATTEST: [Signature]
Secretary

STATE OF Delaware
COUNTY OF Sussex

BE IT REMEMBERED that on this 21st day of

June, A.D. 1984, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Paul G. Townsend, President of J.G. TOWNSEND, JR. & CO., a corporation of the State of Delaware, party to this indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

[Signature]
Notary Public

DALLAS D. GREEN

My commission expires: 04 JUN 22 PM 2:09

RECORDED OF DEEDS
SUSSEX COUNTY

FRANK J. STRAUBE
NOTARIAL OFFICER ALTERNATE TO
BY DEL. CODE SECT. 432
ATTORNEY AT LAW
DELAWARE

PURCHASERS REPORT
MADE THIS DATE

JUN 23 1984

ASSESSMENT DIVISION
OF SUSSEX CTY.

Sussex County Engineering 7/17/94

EXHIBIT A-1

LAGOON 4



**SOLAR ENERGY LEASE AND EASEMENT AGREEMENT
(Delaware)**

THIS SOLAR ENERGY LEASE AND EASEMENT AGREEMENT (“**Lease**” or “**Agreement**”) is made and entered into on _____ (the “**Effective Date**”), by and between **Sussex County, Delaware**, a county and political subdivision of the State of Delaware, having an office at P.O. Box 589, Georgetown, Delaware 19947, United States, as “**Lessor**”, (whether one or more), and **Blacktail Solar III LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as “**Lessee**”. Lessor and Lessee are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

RECITALS

(a) Lessor is the owner of approximately 100 acres of real property located in Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware, as more particularly described in the vesting deed which is attached hereto as **Exhibit A** (the “**Property**”);

(b) Lessor is the owner of the effluent spray lagoon at the Wolfe Neck Treatment Facility, located on the Property, which lagoon is known as and identified as Lagoon 2 in the description attached hereto as Exhibit A-1 (the “**Lagoon**”);

(c) Noria Chaberton JV LLC (“**NCJV**”) is the parent company of Lessee and Lessee’s affiliated entities Blacktail Solar I LLC (“**BSI**”) and Blacktail Solar II LLC (“**BSII**”) (collectively referred to herein as the “**Affiliated Entities**”);

(d) BSI and BSII have each entered into stand-alone solar energy and easement agreements substantially similar to this Agreement pursuant to which Lessor demised portions of Lagoon 4 on the Property to BSI and BSII for purposes of developing, constructing and owning solar projects thereon, which agreements and projects were approved by virtue of that certain Sussex County Council Request for Proposal dated October 26, 2023 and subsequent approval by the Sussex County Council on March 19, 2024 of the Affiliated Parties’ Wolfe Neck Regional Wastewater Facility Floating Community Solar Proposal dated December 14, 2023 (“**Lagoon 4 Projects**”);

(e) Lessee, the Affiliated Entities, and Lessor determined that it would be in the best interest of Lessor and the Lagoon 4 Projects that a stand-alone solar energy and easement agreement be established between Lessor and Lessee with respect to the Premises hereof;

(f) Lessor and Lessee desire that Lessee should lease the exclusive rights to use the surface of the Lagoon, lying within approximately up to 12.45 acres of the Property as preliminarily depicted on **Exhibit B**, together with all solar and air rights, improvements, fixtures, equipment pads, personal property and trade fixtures, appurtenances, tenements, hereditaments, ingress and egress rights, and other Easements (as defined in Section 14) pertaining to the Property (collectively, the “**Premises**”); and

(g) Lessee desires to obtain from Lessor, and Lessor desires to grant to Lessee, an exclusive option to lease the Premises while Lessee undertakes due diligence and development activities, and upon the successful conclusion of such activities, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor the Premises for the construction and operation of a solar photovoltaic and/or energy storage project on the Premises, including all necessary equipment to deliver solar or stored energy from the Premises to the distribution grid (the “**Project**”).

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND THE AGREEMENTS, COVENANTS AND PROMISES set forth in this Lease and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and agreed by the Parties, Lessor and Lessee, intending to be legally bound hereby, agree as follows:

1. Option to Lease; Lease and Grant of Easements. Lessor grants to Lessee, at any time during the Option Period (as defined in Section 4.1), an exclusive, irrevocable, and continuing right and option (the “**Option**”) to lease the Premises and obtain the Easements (as defined in Section 14) upon the terms and conditions set forth herein. Subject to Section 3, during the Option Period (as defined below in Section 4.1), Lessor shall grant no license, easement, option, leasehold, or other right in or affecting the Premises or any right related thereto, nor permit any third party to undertake any activities on the Premises without Lessee’s written consent. Effective as of the Construction Commencement Date (as defined in Section 4.1), Lessor hereby leases to Lessee the Premises, and grants to Lessee the Easements, upon and subject to the terms and conditions in this Lease. Lessee shall have the quiet use and enjoyment of the Premises in accordance with and subject to the terms of this Lease, without any manner of hindrance, interference, or molestation of any kind by Lessor or any person claiming through or under Lessor.

2. Purpose and Scope of Lease.

2.1 This Lease is for the uses set forth in this Agreement and Lessee will have the exclusive right to use the Premises for any and all uses related to the Project Activities (as defined in Section 2.2); provided that (a) during the Option Period, Lessee will have the right of access to and from the Premises from a public road through any easements, rights of way, or other access rights held by Lessor for the benefit of the Premises, and the rights to use the Premises on a non-exclusive basis for the purpose of carrying out due diligence and development activities consistent with the Project Activities, including the activities set forth in Section 2.2.2; and (b) during the Restoration Period (as defined in Section 4.3), Lessee shall have the exclusive right to access and use the Premises for the purpose of completing the Restoration Requirements set forth in Section 13.3. The rights hereby granted to Lessee in this Lease include, without limitation, the Easements and related rights more fully described in Section 14.

2.2 “**Project Activities**” means any and all activities related to developing, installing, constructing, interconnecting, owning, maintaining, and operating one or more solar photovoltaic electric generation systems and/or Energy Storage Technology (as such term is defined under Section 48(c)(6) of the Internal Revenue Code of 1986 and the Inflation Reduction Act of 2022), converting solar or stored energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related to such uses, including:

2.2.1 constructing, installing, using, replacing, relocating, repowering and removing from time to time, and maintaining and operating the following facilities (collectively, “**Project Facilities**”): (a) solar-powered electric generating facilities, including but not limited to modules, inverters, cables, foundations, panels, mounting units and all necessary ancillary improvements and equipment providing support or otherwise associated therewith; (b) photovoltaic solar power generating equipment or such other solar-powered generating equipment as determined in Lessee’s commercially reasonable judgment to be used to capture and convert solar radiation to produce electricity; (c) fences, gates and other safety and protection facilities; (d) utility installations; (e) Energy Storage Technology; (f) private stormwater management systems; and (g) overhead, submerged under water, and underground electrical transmission, collection and communications lines and cables, electric transformers, switching stations, substations, telecommunications equipment, concrete batch plants, power generation facilities to be operated in conjunction with solar array installations, roads, control buildings, operation and maintenance buildings and yards, construction laydown

and staging areas, security fencing and related facilities and equipment necessary or convenient for the construction, operation and maintenance of the Project;

2.2.2 any and all activities to determine the feasibility of the Premises for the Project including conducting surveys, soil or water sampling, studies of environmental, biological, cultural, and geotechnical conditions of the Premises, and other tests; and

2.2.3 all other activities on the Premises whether accomplished by Lessee or a third-party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.

3. Uses Reserved by Lessor. During the Option Period, Lessor shall have the right to undertake agricultural activities on the Premises provided that any such activities shall be performed in such a manner so as not to adversely affect Lessee's ability to utilize the Premises for Lessee's intended purpose of constructing the Project Facilities from the Construction Commencement Date. The cost of any such activities undertaken by Lessor during the Option Period shall be the sole responsibility of Lessor, and the proceeds from the sale of any materials resulting from any such activities performed by Lessor prior to the Construction Commencement Date shall be for the sole benefit of Lessor. Effective as of the Construction Commencement Date (as defined in Section 4.1), Lessor acknowledges that neither Lessor nor Lessor's lessees or grantees (other than Lessee) shall have any right to occupy or use the Premises until this Lease terminates or expires. Lessor and any of its other lessees or grantees shall immediately cease all activity and presence on the Premises as of the Construction Commencement Date and clear any equipment, facilities or anything else from the Premises that would otherwise potentially interfere with the Project.

4. Option Period; Term of Lease. Subject to the other provisions contained herein, the term of this Lease and the Easements contained in this Lease shall be as follows:

4.1 Option Period. The "**Option Period**" of this Lease shall be in force for a period of one year, commencing on the Effective Date and expiring at 11:59 PM EST on the one-year anniversary of the Effective Date, unless otherwise extended pursuant to the provision in the immediately following sentence. At Lessee's option, upon notice to Lessor provided no later than the date that is one month prior to the end of the then-current Option Period or Option Period Extension (each such notice, a "**Option Period Extension Notice**"), and subject to other provisions contained herein, Lessee may extend the Option Period for up to five additional one-year periods (each additional one-year period, a "**Option Period Extension**"), up to a maximum Option Period of six years. Notwithstanding the provision in the preceding sentence, and subject to Section 4.2, if this Lease has not been terminated in accordance with the terms hereof and, by the date set forth in the preceding sentence, Lessee fails to (i) deliver the Option Period Extension Notice, or (ii) otherwise notify Lessor that Lessee will not be exercising its option to extend the Option Period, Lessee shall be deemed to have exercised its option to extend the Option Period to the next allowable Option Period Extension up to the expiration date of the second Option Period Extension. If during the Option Period, Lessee secures all approvals and permits necessary to initiate the Project Activities, and, at its sole discretion, finds the Property suitable for development of the Project Facilities, Lessee shall notify Lessor of its intent to commence construction of the Project Facilities (such notice, the "**Construction Notice**"). The Construction Notice shall: (a) set forth the date on which Lessee shall commence construction of the Project Facilities (the "**Construction Commencement Date**"); and (b) contain an ALTA-compliant and certified survey ("**Survey**") of the Premises and the Easement Areas (as defined in Section 14.1). Lessee shall deliver the Construction Notice no later than two weeks in advance of the Construction Commencement Date. The Survey shall show (i) a calculation of the actual number of acres contained within the Premises (each being a "**Premises Acre**"); and (ii) the final routing and delineation of the Access and Transmission Easements (as defined in Section 14.1), if any. Upon Lessee's delivery of the Construction Notice to Lessor, (A) Lessee shall be deemed to have exercised the Option; (B) **Exhibit B** and **Exhibit C** shall each be deemed revised (without the need for any additional documentation) to reflect the Premises and Easement Areas as set forth in the Survey, *provided that* upon Lessee's request, Lessor and Lessee

shall execute an amended memorandum of lease to give recordable notice of the revised Premises and Easement Areas and Lessee shall record said amended memorandum within the land records of Sussex County; and (C) such revised **Exhibit B** shall definitively establish the surveyed acreage of the Premises for purposes of calculating the Annual Rent (as defined in Section 5.2.1).

4.2 Lease Term. If this Lease has not been terminated in accordance with the terms hereof before the end of the Option Period (or any extension thereof), the "**Lease Term**" shall commence on the Construction Commencement Date and shall terminate on the 25th anniversary of the Operations Date (as defined in the provision in the immediately following sentence), unless otherwise extended pursuant to the provisions of this Section 4.2. The "**Operations Date**" means the date that is the earlier of (a) the date on which the Project has been completely constructed, has physically completed all performance tests, and has received the permission to operate from the local electric utility; and (b) two years after the Construction Commencement Date. At Lessee's option, upon notice to Lessor (each such notice, a "**Lease Term Extension Notice**") provided no later than six months prior to the end of the then-current Lease Term or Lease Term Extension, Lessee may extend the Lease Term for up to three additional five-year periods (each additional five-year extension period, a "**Lease Term Extension**"). Lessee shall pay to Lessor, the Annual Rent for the first year of such Lease Term Extension calculated in the manner, and by the date, set forth in Section 5.2.1. For the avoidance of doubt, the expression "**Lease Term**" means the Lease Term together with any Lease Term Extensions.

4.3 Restoration Period. "**Restoration Period**" means the period from the earlier termination or expiration date of the Lease until the last date of Lessee's completion of the Restoration Requirements under Section 13.3.

5. **Fees and Rent**. Lessee will pay Lessor the following amounts:

5.1 Option Period Fee. Within 30 calendar days after the third anniversary of the Effective Date of this Agreement, Lessee will tender a one-time nonrefundable payment to Lessor in the amount of \$10,000.00 (the "**Option Period Fee**"). In the event Lessee extends the then-current Option Period or Option Period Extension, Lessee shall pay to Lessor an additional payment in the amount of \$15,000.00 (the "**Option Period Extension Fee**") for each new Option Period Extension, payable no later than five days after the commencement of such Option Period Extension.

5.2 Rent.

5.2.1 During the Lease Term, and any extension thereof, Lessee shall pay to Lessor the Annual Rent (as defined in the immediately following sentence). The "**Annual Rent**" shall be in the amount of **\$6,500.00** per surveyed Premises Acre, payable within 45 days of the Construction Commencement Date and on each anniversary of the Construction Commencement Date. During the first anniversary of the Construction Commencement Date and each subsequent anniversary during the Lease Term, the Annual Rent shall increase by 2.5% over the Annual Rent paid in the previous year.

5.2.2 "**Rent**" means, collectively, the Option Period Fee, Option Period Extension Fee, and the Annual Rent. Subject to Section 13.3, Lessee shall have no obligation to make any additional payments of Rent following the termination or expiration of this Lease.

5.3 Interest on Past Due Payments. All Rent and other fees not paid or tendered when due under this Lease shall bear simple interest at an annual rate equal to the lesser of (a) the Federal Reserve Bank Loan Prime Rate or (b) the maximum rate allowed by Applicable Law (as defined in Section 9.1).

5.4 Payment Adjustments; Partial Ownership; Change in Property Ownership.

5.4.1 Lessor shall provide Lessee with its certified taxpayer identification numbers simultaneously with the execution and delivery of this Lease via an Internal Revenue Service (IRS) Form W-9 (or its equivalent). No payments under this Lease shall be paid, but shall continue to accrue, until Lessee has received such taxpayer identification information. Upon receipt of such taxpayer identification information, all

accrued, but unpaid Rent shall be immediately due and payable by Lessee to Lessor. In the event of an assignment of this Lease or sale, assignment or transfer of Lessor's interest in the Premises, or any part thereof, to a third party, Rent shall be adjusted proportionately with respect to the fee interest in the Premises held by Lessor and said third party beginning with the first payment of Rent due subsequent to said sale, assignment, or transfer. No payments under this Lease shall be paid to said third-party, but shall continue to accrue, until Lessee has received certified taxpayer identification numbers from the third-party via an IRS Form W-9 (or its equivalent). Any Rent paid to Lessor for the year in which a sale, assignment, or transfer has occurred shall be allocated between Lessor and the third-party as determined between Lessor and the third-party but in no event shall Lessee be required to make any additional Rent payments or to otherwise compensate the third-party for its proportionate share of Rent for the year of sale, assignment, or transfer.

5.4.2 Notwithstanding anything to the contrary in this Lease or elsewhere, any obligation under this Lease for Lessee or any Assignee (as defined in Section 11.1) to pay Lessor any amount will be completely and unconditionally satisfied by payment of such amount by Lessee or Assignee, as applicable, to Lessor at the address for Lessor given in this Lease or such other single address designated by not less than 30 days' prior notice to Lessee and each such Assignee signed by Lessor. At Lessee's election, such payment may be by joint check or checks payable to any assignee(s) of Lessor under Section 11.5. Lessor shall be solely responsible to notify Lessee and each Assignee in writing of any change in ownership of the Property or any portion thereof.

6. Ownership of Project Facilities. Lessor shall have no ownership or other interest in any Project Facilities and Lessee may remove any or all Project Facilities at any time. No part of the Project Facilities or other equipment installed by Lessee on the Premises shall be considered part of the Property, or fixtures, or an improvement to real property. The Project Facilities shall at all times be considered tangible personal property owned exclusively by Lessee. Notwithstanding any provision herein to the contrary, Lessor acknowledges that Lessee shall have no obligation to construct any Project Facilities on the Premises.

7. Taxes and Assessments.

7.1 Responsibility of the Parties.

7.1.1 With the exception of the taxes and assessments set forth in Section 7.1.2, Lessor shall pay all taxes of every kind and nature (including real and personal property, income, gross receipts, franchise, profits, sales and withholding taxes), all general and special assessments, water and sewer rents and charges, and all levies, permits, inspection and license fees and other public charges now or hereafter levied or assessed against the Property as liens or assessments as the same shall become due and payable from time to time and before interest or penalties accrue thereon. Lessor shall under no circumstances permit the Property to be sold or advertised for sale for nonpayment of any tax. Lessor shall deliver to Lessee receipts evidencing the payment of such tax within 30 days after Lessee's demand therefor.

7.1.2 During the Lease Term, Lessee shall pay all taxes and assessments levied or assessed against its personal property located on the Leased Premises, including the Project Facilities and all other taxes (including property tax increases specifically triggered by development and build out of the Project Facilities, or applicable "roll back" taxes), assessments or other public charges assessed or imposed by reason of the Project Activities or the conduct of Lessee's business, including, but not limited to, sales and income taxes. Lessee shall have the right to enter into a payment in lieu of tax ("PILOT") agreement with the municipality or county in which the Premises are located for the taxation of Lessee's personal property located on the Premises. If requested by Lessee, Lessor shall, at the sole expense of Lessee, reasonably cooperate with Lessee in connection with a PILOT agreement.

7.1.3 Lessee may, in its sole discretion, but shall not be obligated to, pay directly to the relevant taxing authority, any taxes with respect to the Property which under this Lease are the responsibility of the Lessor, in order to remove any tax lien or other restriction placed on the Property due to non-payment;

in which case Lessee shall receive a credit on its Rent, of any amounts so paid plus an amount equivalent to interest at the rate provided for in Section 5.3 on the amount so paid from the date of payment to the time the Rent being credited is due. Furthermore, any such payment of taxes by Lessee which are the responsibility of Lessor under this Lease shall not obligate Lessee to make any further payments of such taxes.

7.2 Reimbursement. If any taxes payable by Lessee under this Lease are levied or assessed in the name of Lessor as part of the real property taxes payable by Lessor, then, promptly after Lessor timely submits the real property tax bill to Lessee, Lessee shall reimburse Lessor for all such taxes payable by Lessee under this Lease in the amount due without interest or penalties; provided, however, that if penalties and interest are incurred as a result of any failure or omission on Lessee's part, then Lessee shall be responsible for the same. It is a condition to Lessor's right to payment or reimbursement of any penalties or interest relating to taxes under this Lease that Lessor submit the real property tax bill (and any other communication from any government authority regarding the same) to Lessee at least 45 days before the tax bill is due.

7.3 Right to Contest. Lessee's obligations under this Lease are subject to Lessee's right to contest the same as hereinafter provided. Lessee shall have the right, in its sole discretion and at its sole expense, to contest by appropriate legal proceedings (which may be brought in the name(s) of Lessor or Lessee where appropriate or required), the validity or amount of any assessments or taxes for which Lessee is responsible under this Lease. Lessor shall in all respects cooperate with Lessee in any such contest.

8. Indemnities, Insurance, Safety Measures, and Environmental Matters.

8.1 Indemnity.

8.1.1 To the fullest extent permitted by law, Lessee shall defend, indemnify and hold harmless Lessor, and the elected and appointed officials, officers, directors, partners, employees, agents of each and any of them (each, a "**Lessor Party**", and collectively, the "**Lessor Parties**") from all claims, costs, losses, or damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs, collectively, "**Losses**") arising out of or relating to the Project Activities, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom but only to the extent caused in whole or in part by any negligent act or omission of Lessee, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them (each, a "**Lessee Party**", and collectively, the "**Lessee Parties**") to perform any of the Project Activities or anyone for whose acts any of them may be liable. Lessee shall be liable, regardless of whether or not such claims, damages, losses, injuries, or expenses are caused in part by a party indemnified hereunder.

8.1.2 In any and all claims against Lessor or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Lessee, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

8.1.3 Lessee agrees to expressly waive its immunity, if any, as a complying employer under the Workers' Compensation law or statute, but only to the extent that such immunity would bar or affect recovery under or enforcement of any indemnification obligation contained herein. This waiver applies to Title 19, Chapter 23 of the Delaware Code, including amendments, or any other applicable state Workers' Compensation law or statute.

8.2 Limitation of Liability. **LESSEE SHALL IN NO CASE BE LIABLE FOR LOST BUSINESS OPPORTUNITIES, LOST PROFITS, OR ANY OTHER SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MAY RESULT FROM THE CONDUCT OF LESSEE'S PROJECT ACTIVITIES OR OTHERWISE AS A**

RESULT OF ANY EXERCISE BY LESSEE OF ITS RIGHTS UNDER THIS LEASE; PROVIDED, HOWEVER, THAT SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO: (A) THE FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSEE; OR (B) THE INDEMNIFICATION OBLIGATIONS OF LESSEE UNDER SECTION 8.1.

8.3 Insurance. Lessee shall, at its expense, obtain and maintain throughout the Lease Term, (i) a broad form comprehensive coverage policy of public liability insurance insuring Lessee and Lessor against loss or liability caused by Lessee's activities on the Premises under this Lease, in an amount not less than \$2,000,000.00 of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible; (ii) commercial auto liability insurance with a combined single limit of not less than \$1,000,000.00, and (iii) umbrella liability insurance with a combined single limit of not less than \$5,000,000.00. Certificates of insurance identifying the required insurance must be provided to the Lessor and kept current. All required insurance policies shall be endorsed to provide that the policy is not subject to cancellation until thirty (30) days prior written notice has been given to Lessor (not less than ten (10) days' notice is required for non-payment of premium). If Lessor is damaged by the failure or neglect of Lessee to purchase and maintain required insurance, then Lessee shall bear all reasonable costs properly attributable thereto.

8.4 Safety Measures and Recognition of Dangers.

8.4.1 Lessor authorizes Lessee to take reasonable safety measures to reduce the risk of theft of or damage to the Project Facilities or the risk that the Project Facilities will cause damage, injury or death to people, livestock, other animals, and property. Lessee may construct fencing around the entire Premises and take other security precautions if Lessee determines, in its sole discretion, that such fencing or security measures will reduce such risks of theft, damage, death or injury. The expense for any and all fencing constructed by Lessee, or other security measures taken by Lessee, shall be borne solely by Lessee.

8.4.2 **LESSOR RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN CLOSE PROXIMITY TO ANY OF THE PROJECT FACILITIES. LESSOR AGREES TO EXERCISE CAUTION AT ALL TIMES AND TO ADVISE THE LESSOR PARTIES TO DO THE SAME. LESSOR SHALL TAKE REASONABLE MEASURES TO AVOID ALL RISKS ASSOCIATED WITH ELECTROMAGNETIC FIELDS RESULTING FROM THE PRODUCTION AND TRANSMISSION OF ELECTRICITY AND LESSOR WAIVES ANY AND ALL CLAIMS AND CAUSES OF ACTION WHATSOEVER (WHETHER CURRENTLY EXISTING OR THAT MAY OTHERWISE ARISE OR ACCRUE AT ANY TIME IN THE FUTURE) THAT LESSOR POSSESSES OR OTHERWISE MAY POSSESS AGAINST LESSEE PARTIES ARISING FROM OR RELATING TO SUCH RISKS; PROVIDED, HOWEVER, SUCH WAIVER SHALL NOT BE EFFECTIVE TO THE EXTENT LESSEE OR ANY LESSEE PARTY ENGAGES IN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

8.5 Environmental Matters; Hazardous Materials.

8.5.1 Lessee shall not violate, and shall indemnify Lessor Parties against any Losses arising from violation by Lessee or any Lessee Party of, any Environmental Law (as defined in Section 8.5.3) in connection with or related to Lessee's use of the Premises. Lessee's violation of the prohibition in the preceding sentence shall constitute a material breach and default under this Lease. In conformance with the requirements of applicable law, Lessee shall clean up, remove, remedy, repair, and shall have the right to register any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials (as defined in Section 8.5.4) by Lessee or any Lessee Parties in, on or under the Premises.

8.5.2 Lessor shall not violate, and shall indemnify Lessee Parties against any Losses arising from violation by Lessor or any Lessor Party of, any Environmental Law in connection with or related to Lessor's ownership or use of the Property, including without limitation any such violation which may have occurred by Lessor, Lessor Parties or any other person prior to the Effective Date. Lessor's violation of the prohibition in the preceding sentence shall constitute a material breach and default under this Lease. In conformance with the requirements of applicable law, Lessor shall clean up, remove, remedy, and repair any soil or ground water

contamination and damage caused by the release or disposal of any Hazardous Materials by Lessor or any Lessor Party in, on, under, or about the Premises or within 200 feet of the Premises.

8.5.3 **“Environmental Laws”** means any and all federal, state, local laws, ordinances, codes, and regulations relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Materials, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (**“CERCLA”**) and all laws referred to under the definition of “hazardous substance” in CERCLA.

8.5.4 **“Hazardous Materials”** means any hazardous or toxic material, substance or waste, pollutant, or contaminant as defined or regulated under Environmental Laws, including “hazardous substance” and “pollutant or contaminant” (as such terms are defined or used in CERCLA), petroleum, petroleum products, asbestos, polychlorinated biphenyls, and radioactive materials.

8.6 **Brokerage Commissions.** Lessee and Lessor agree to indemnify and defend the other Party against and hold the other party harmless from any and all claims with respect to any commission or equivalent compensation alleged to be owing on account of the indemnifying Party's dealings with any broker or agent. The terms of this Section 8 shall survive the expiration or earlier termination of the Term of this Lease.

9. Lessee's Representations, Warranties, and Covenants. Lessee represents, warrants, and covenants to Lessor that:

9.1 **Requirements of Governmental Agencies.** Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders, rules and regulations of any governmental agency applicable to the Project Facilities (collectively, **“Applicable Law”**). Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, brought in the name of Lessee or in the names of both Lessee and Lessor, the validity or applicability to the Premises or Project Facilities of any Applicable Law. Lessor shall fully cooperate in such contest, so long as it is reimbursed for its out-of-pocket expenses incurred in such contest and cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested Applicable Law.

9.2 **Liens.** Lessee shall keep the Premises free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to the Premises for Lessee's use or benefit; provided, however, that if such a lien does arise, Lessee has a right to contest such lien and Lessee, within 60 days after it receives notice of the filing of such lien, either bonds around such lien or establishes appropriate reserves therefore, or, otherwise, removes such lien from the Premises pursuant to Applicable Law, in which case Lessee shall not be deemed to have breached this Section 9.2. Nothing in this Section 9.2 or this Lease shall be construed to prohibit Lessee from granting one or more liens on all or any portion of Lessee's right, title or interest under this Lease as security for the repayment of any indebtedness or the performance of any obligation relating in whole or in part to any of the Project Activities.

10. Lessor's Representations, Warranties and Covenants. Lessor represents, warrants and covenants as follows:

10.1 **Lessor's Authority.** Lessor is the sole owner of the Property and has the unrestricted right and authority to execute this Lease and to grant to Lessee the rights granted under this Lease. Each person signing this Lease on behalf of Lessor is authorized to do so, and all persons having any ownership interest in the Property are signing this Lease as Lessor. When signed by Lessor, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

10.2 **No Interference.** Lessor's activities and any grant of rights Lessor makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with the construction, installation, maintenance or operation of the Project, Project Facilities, whether located on the

Property or elsewhere; access over the Property to the Project Facilities or the Project; any Project Activities; or the undertaking of any other activities permitted under this Lease.

10.3 Treatment of Liens; Third-Party Rights. If at any time during the Lease Term, any lien or any third-party right is found, exists or is claimed to exist against the Property or any portion thereof, that creates rights superior to those of Lessee, and Lessee determines that the existence, use, operation, implementation or exercise of such lien or such third-party right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Lessee's rights under this Lease or the financing of the Project, Lessee shall be entitled to obtain a recordable subordination and non-disturbance agreement (in form and substance reasonably acceptable to Lessee and any Financing Party (as defined in Section 12.1) from the holder of such lien or such third-party right, and Lessor shall use best efforts and diligence in helping Lessee obtain the same at no out of pocket expense to Lessor. Lessor agrees that any right, title, or interest created by Lessor from and after the Effective Date in favor of or granted to any third-party shall be subject to (a) this Lease and all of Lessee's rights, title and interests created in this Lease, and (b) any and all documents executed or to be executed by and between Lessee and Lessor in connection with this Lease.

10.4 Hazardous Materials. To the best of Lessor's knowledge, as of the Effective Date, there are no Hazardous Materials or Hazardous Substance located on the Premises or on the Property within 200 feet of the Premises, the Premises or the Property within 200 feet of the Premises has not been used for the generation, treatment, storage or disposal of Hazardous Materials or Hazardous Substance, no underground storage tanks have ever been located on the Property and there are no underground storage tanks presently located on the Premises or on the Property within 200 feet of the Premises. Lessor's breach of the foregoing representation shall constitute a material breach and default under this Lease.

10.5 Endangered Species. To the best of Lessor's knowledge, as of the Effective Date, there are no vertebrate, invertebrate or plant species located within the Premises that are in a protected category under federal or state law or would otherwise result in a mitigation obligation in connection with the development of the Project Facilities.

10.6 Access. The Premises are accessible by public roadways or through an Easement granted by Lessor to a public roadway. Lessor shall not interfere with and shall not allow any other party to interfere with, Lessee's use of the Easements for the purposes described in this Agreement, or Lessee's rights under this Agreement. Lessor shall not erect, install or maintain any barriers, fences, walls, ditches, barricades, docks or other structures or obstacles on or anywhere within the Easement Areas which would burden or interfere with, impede, slow, divert or in any way prevent pedestrian, vehicular or watercraft traffic from fully passing within, through or across the Easement Areas.

10.7 No Litigation and Liens.

10.7.1 Lessor is not a party to any, and to Lessor's actual knowledge, there are no pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Lessor (i) challenging the validity or propriety of this Lease, or transactions contemplated in this Lease or (ii) which could reasonably be expected to have a material adverse effect on the ownership or operation of the Property or any part thereof or interest therein. If Lessor learns that any such litigation, claim, action or investigation is threatened or has been initiated, Lessor shall promptly deliver notice thereof to Lessee. Lessor is not subject of any bankruptcy, insolvency or probate proceeding.

10.7.2 To Lessor's knowledge, there are no liens, covenants, restrictions, rights of way, easements or other encumbrances affecting the Premises, which will prevent or limit Lessee's use of the Premises for the purposes permitted under this Agreement, or that are otherwise contrary to the terms of this Agreement.

10.8 Consents and Estoppel Certificates. Lessor shall cooperate with Lessee in the execution and delivery of such consents, estoppel certificates and other documents as a Financing Party, hedge provider, power purchaser, tax equity investor, title insurance company or any other party (collectively, “Requestor”) may request, including, without limitation, any instruments required to evidence such Requestor’s rights under this Lease. Within 15 days of actual receipt of a request to do so from Lessee or from any existing or proposed Requestor, Lessor shall execute an estoppel certificate (a) certifying that this Lease is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Lease), (b) certifying that to the best of Lessor’s knowledge there are no uncured events of default under this Lease (or, if any uncured events of default exist, stating with particularity the nature thereof) and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee or any Requestor. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Lease is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Lease.

10.9 Requirements of Governmental Agencies and Utilities. Lessor shall assist and fully and promptly cooperate with Lessee, so long as Lessor is reimbursed for its out-of-pocket expenses, in complying with or obtaining any land or water use permits and approvals, building permits, development permits, construction permits, interconnection applications and requirements of any utility or the owner of any transmission facilities, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Project (collectively the “Permits”), including execution of applications for such approvals. Lessor consents to and authorizes Lessee, as Lessor’s attorney-in-fact, with full authority in the place and stead of Lessor, to sign and file Permits on Lessor’s behalf so long as Lessor is given a copy of the Permits at least 10 days prior to such execution and Lessor does not give notice within those 10 days that Lessor believes a portion of such Permit is inaccurate.

10.10 Confidentiality. Lessor shall maintain in the strictest confidence, for the benefit of Lessee, all solar data, all information pertaining to the financial terms of or payments under this Lease, and any and all terms and conditions of this Lease, Lessee’s site or product design, methods of operation, methods of construction, power production or availability of the Project Facilities, and the like, whether disclosed by Lessee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or any Lessor Party, or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor’s lenders, attorneys, accountants, and other personal advisors; any prospective purchaser of the Property; or pursuant to lawful process, subpoena, or court order; provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

10.11 Waivers. To the extent that any Applicable Law establishes land or water use or zoning conditions, restrictions or requirements, including setbacks from the exterior boundaries of the Property for Project Facilities thereon, Lessor, to the extent permissible, waives any and all such conditions or requirements for the benefit of Lessee. Further, if so requested by Lessee, Lessor shall promptly, without demanding additional consideration therefore, execute, and if appropriate cause to be acknowledged and recorded, any waiver or other document or instrument required by any governmental authority. Lessor acknowledges that certain aspects inherent to the operation of the solar energy facilities may result in some nuisance, such as visual impacts, possible increased noise levels, possible glare, and other possible effects of electrical generation and transmission including without limitation potential interference with radio, television, telephone, mobile telephone, or other electronic devices, within 200 feet of the Premises. Without limiting the grant of Easements made in Section 2 and Section 14, Lessor understands and has been informed by Lessee that the Project

Facilities may result in some nuisance, and hereby accepts such nuisance, and Lessor waives its right to object to such nuisance.

10.12 No CRP. Lessor is not a party to a Conservation Reserve Program contract with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410 or any state-based conservation easement or reserve program regarding the Property.

10.13 Title Review. Lessor shall, within 10 days after receipt of Lessee's request to do so, deliver all documents related to the Property in Lessor's possession or control to Lessee for Lessee's review, including, without limitation, copies of the following: reports, site plans, surveys, soil studies, phase one, two, three or four environmental reports, other inspection reports, architectural drawings, plans and specifications, studies, and investigations, government notices or agreements, title policies, commitments and reports, abstracts, rent rolls, insurance policies, water rights and well agreements, instruments and agreements relating to oil, gas or mineral rights, mineral exceptions or reservations or conveyances, and mineral leases, agreements regarding third party rights and leases, surveys, loan agreements, lien documents, site assessments, ad valorem property tax applications, agreements, notices, invoices and receipts, appraisals, and any and all notices or correspondence from any governmental authority which indicates that the Property is not in compliance with any applicable ordinance. In addition, Lessee shall have the right to obtain, at Lessee's expense, a current title report relating to the Property to determine the condition of Lessor's title and all the recorded rights of way and easements benefiting or encumbering the Property, as well as all mineral rights encumbering the Property.

10.14 Ownership and Mineral Estate. Lessor represents that Lessor owns all of the fee simple interest in the Property. Except as set forth in any instrument with respect to the Property recorded among the land records of the county in which the Property is located, Lessor owns all of the rights and title to the oil, gas and other minerals in, on, under or that may be produced from the Property howsoever drilled, mined or produced (such right, collectively, "**Mineral Estate**"). If Lessee determines that any part of the Mineral Estate is not owned, leased or controlled by Lessor, then Lessor shall use its best efforts to obtain non-interference and waiver of surface rights agreements from all persons and entities that have any ownership, royalty or leasehold interest in the Mineral Estate. Notwithstanding anything to the contrary in this Lease, after the Effective Date, Lessor shall not utilize the surface of the Premises to explore for, develop, or produce oil, gas or other minerals from the Mineral Estate underlying the Premises nor enter into any agreement permitting a third party to utilize the surface of the Premises to explore for, develop, or produce oil, gas or other minerals from the Mineral Estate underlying the Premises.

11. Assignment; Right to Encumber; Division of Lease

11.1 Assignment by Lessee. Lessor hereby consents and grants to Lessee the right to grant, sell, lease, convey or assign all or a portion of Lessee's interest in the Lease or the Project Facilities or to grant co-leases (including, without limitation, co-tenancy interests), separate leases, subleases, easements, sub-easements, licenses or similar rights to Lessee's interest in the Lease or the Project Facilities (collectively "**Assignment**") to one or more persons or entities (collectively "**Assignee**"). No Lessor consent shall be required for any change in ownership of Lessee. Lessor further hereby consents and grants to Lessee the right to encumber, hypothecate, mortgage or pledge (including by mortgage, or personal property security instrument) all or any portion of Lessee's right, title, or interest under this Lease or in any Project Facilities to any Financing Party as security for the repayment of any indebtedness or the performance of any Mortgage (as defined in Section 12.1). If any additional consent is needed, Lessor shall not unreasonably withhold, condition, or delay its consent to any assignment that is not allowed by the preceding sentences of this Section 11.1. All Assignees will be subject to all of the obligations, covenants and conditions applicable to the Lessee under this Lease. Upon Lessee's assignment of its entire interest under this Lease as to all or any portion of the Premises, or as may otherwise be provided in the applicable grant, sale, lease, conveyance or assignment document, Lessor shall recognize the Assignee as Lessee's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Lessee under and pursuant to this Lease, and Lessee shall be relieved of all of its

obligations relating to the assigned interests under this Lease that relate to acts or omissions which occur or accrue following the effective date of such grant, sale, lease, conveyance or assignment. As clarification, and without prejudice to Lessee's right to encumber its interest in the Lease and the Project Facilities, as permitted herein, Lessee shall have no right to mortgage or encumber the underlying Property.

11.2 Notice to Lessor. Following an Assignment or the granting of a Mortgage as contemplated by Section 11.1, Lessee or the Financing Party will give actual notice of the same (including the address of the Financing Party for notice purposes) to Lessor; provided, however, that the failure to give such notice shall not constitute a default but rather shall, solely with respect to the Mortgage, only have the effect of not binding Lessor hereunder with respect to such Financing Party until such notice is given.

11.3 Cure. Each Assignee that holds a full or partial interest in, or a sublease under this Lease, shall have the same amount of time following delivery of notice of a default, to cure said default as is given to Lessee pursuant to this Lease. If Lessee or an Assignee holds an interest in less than all of this Lease, the Premises or the Project Facilities, any default under this Lease shall be deemed remedied, as to Lessee's or such Assignee's partial interest only (and Lessor shall not disturb such partial interest), if Lessee or Assignee, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Lease, the Premises or Project Facilities in which Lessee or the Assignee, as the case may be, holds an interest.

11.4 Division into Separate Leases. Lessee may divide the Premises into two or more separate solar energy projects or phases of development if such division becomes necessary to further the development of the Project Facilities. If Lessee elects to divide the Premises into two or more solar energy projects or phases of development, then Lessor shall, within 20 days after written request from Lessee, and without demanding any additional consideration, bifurcate this Lease by entering into and delivering to Lessee two stand-alone new leases (which shall supersede and replace this Lease) that provide Lessee with separate leasehold estates in different portions of the Premises, as designated by Lessee. Each of such new leases shall: (i) specify the portion(s) of the Premises to be covered thereby (and the term "Premises", as used therein, shall refer only to such portion(s)), (ii) contain the same terms and conditions as this Lease (except for any requirements that have been fulfilled by Lessee, any Assignee, or any other person or entity prior to the execution of such new leases, and except for any modifications that may be required to ensure that Lessee's and Lessor's respective combined obligations under such new leases do not exceed their respective obligations under this Lease) and be in a form reasonably acceptable to Lessee and Lessor; (iii) be for a term equal to the then-remaining term of this Lease; (iv) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Premises as Lessee may designate (but only to the extent permitted in this Lease); (v) require payment to Lessor of only per acre amounts to be paid under this Lease for the acres lease under such new lease; and (vi) to the extent permitted by law, enjoy the same priority as this Lease over any lien, encumbrance or other interest against the Premises.

11.5 Assignments by Lessor. The burdens of this Lease, Easements and other rights contained in this Lease shall run with and against the Property and shall be a charge and burden thereon for the duration of the Lease Term and shall be binding upon and against Lessor and its successors and assigns. Lessor shall notify Lessee in writing of any sale, assignment or transfer of any of Lessor's interest in the Property, or any part thereof. Until such notice is received, along with proof of the successor Lessor's ownership interest, a completed IRS Form W-9, and a revised payment instructions, Lessee shall have no duty to any successor owner, and Lessee shall not be in default under this Lease if it continues to make all payments to the original Lessor before notice of sale, assignment or transfer is received. Lessor agrees it will not assign the rights to payments due to Lessor under this Agreement except to a successor owner of the Premises and, in no case, shall Lessor sever or attempt to sever the solar energy rights or interests from the fee title of the Premises or otherwise convey, assign or transfer or attempt to convey, assign or transfer this Agreement or any interest herein, except to a successor owner of the Premises. Under no circumstances shall a transfer by Lessor include the Project or the Project Facilities.

12. Financing Party Protection.

12.1 Financing Parties. Lessor acknowledges that in order to finance the Project, Lessee may partner with various Financing Parties (as defined below). Without limiting the generality of the foregoing, Lessee may, at any time and from time to time, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its estate, right, title or interest in or under this Agreement or Lessee's interest in the Premises. Any party who is the mortgagee, beneficiary, or holder of any such security instrument or interest (a "**Secured Lender**") shall, for so long as its security instrument or interest is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 12. Lessee or any Secured Lender shall send written notice to Lessor of the name and address of any such Secured Lender. As used in this Lease, (a) the term "**Financing Party**" means any financial institution or other person or entity that from time to time (i) provides financing for some or all of the Project Facilities, any phase or constituent project thereof, or any operations of the foregoing, or otherwise holds a lien or security interest in this Agreement or any interest or estate hereunder, the Project Facilities or any phase or constituent project thereof, any components thereof, or any direct or indirect equity interest in Lessee or any holder of an interest in this Agreement or any interest or estate hereunder, by mortgage, deed of trust or other real or personal property security instrument (including any sale-leaseback arrangement entered into for financing purposes); (ii) provides tax credit financing with respect to some or all of the Project Facilities or any phase or constituent project thereof or any components thereof, including any party acquiring a direct or indirect interest in Lessee or any holder of an interest in this Agreement or any interest or estate hereunder or in any of their respective interest in or estate under this Agreement as a tax credit investor, including, in each case, any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders or investors involved in whole or in part in such financing, secured obligations or tax equity investment, and their respective representatives, successors and assigns; or (iii) any Secured Lender, (b) the term "**Mortgage**" refers to the mortgage, deed of trust or other security interest in this Lease or the Project Facilities given to a Secured Lender in connection with such financing, and (c) the term "**Mortgaged Interest**" refers to the interest in this Lease or the Project Facilities, that is held by the Secured Lender.

12.2 Protections. Any Financing Party, including each Secured Lender, and its respective successors and assigns, are hereby expressly made third party beneficiaries of this Agreement to the extent of their respective rights hereunder and shall be entitled to compel the performance of the obligations of Lessor under this Lease. Lessor and Lessee agree with respect to Financing Parties whose names and addresses have been provided to Lessor in writing that such Financing Parties shall be entitled to the protections in this Section 12.

12.3 Right to Possession, Right to Acquire and Right to Assign. A Financing Party shall have the absolute right (but not the obligation): (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Premises or any portion thereof and to perform all obligations to be performed by Lessee or Assignee under this Lease, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. Lessor's consent shall not be required for (a) the pledge, mortgage or hypothecation of Lessee's rights in the Lease, the Project Facilities, or Lessee or (b) the acquisition of Lessee's or Assignee's leasehold estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure. Lessor agrees to cooperate with Lessee and any of its Financing Parties. Lessor, at no cost thereto, shall execute and deliver all documents reasonably requested by a Financing Party in a form reasonably satisfactory to Lessor, Lessee and any Financing Party.

12.4 Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee or Assignee, Lessor shall give notice of the default to each Financing Party concurrently with delivery of such notice to Lessee or Assignee. Lessor shall not be entitled to exercise any remedy for a default unless Lessor has given a written notice of such default to Lessee and to each Financing Party, specifying the nature of the default and the method of cure, and the expiration of the applicable grace

periods provided in this Agreement (and such other applicable cure periods provided in this Agreement). In the event the Lessor gives such a notice of default, the following provisions shall apply:

12.4.1 A “**Monetary Default**” means failure to pay when due any rent or other monetary obligation of Lessee or Assignee to Lessor under this Lease, and such failure continues beyond the expiration of any applicable cure period provided hereunder; any other event of default is a “**Non-Monetary Default.**”

12.4.2 The Financing Party shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee or Assignee, plus, in each instance, the following additional time periods: (a) 60 days after receipt of the notice of default in the event of any Monetary Default; and (b) 90 days after receipt of the notice of default in the event of any Non-Monetary Default, provided that such period shall be extended for the time reasonably required to complete such cure, including the time required for any Secured Lender to perfect its right to cure such Non-Monetary Default by obtaining possession of the Premises (including possession by a receiver) or by instituting foreclosure proceedings, provided the Secured Lender acts with reasonable and continuous diligence. The Financing Party shall have the absolute right (but not the obligation) to substitute itself for Lessee or any Assignee and perform the duties of Lessee or any Assignee under this Lease for purposes of curing such defaults. Lessor expressly consents to such substitution, agrees to accept such performance, and authorizes the Financing Party (or its employees, agents, representatives, or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the Lessee or any Assignee. Lessor shall not terminate this Lease prior to expiration of the cure periods available to a Financing Party as set forth herein.

12.4.3 During any period of possession of the Mortgaged Interest by a Financing Party (or a receiver requested by such Financing Party) or during the pendency of any foreclosure proceedings instituted by a Financing Party, the Financing Party shall pay or cause to be paid the Rent and all other monetary charges payable by Lessee or any Assignee under this Lease which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee’s or any Assignee’s Mortgaged Interest by the Financing Party or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Lease shall continue in full force and effect and the Financing Party or party acquiring title to the Mortgaged Interest shall, as promptly as reasonably possible, commence the cure of all defaults outstanding under this Lease and thereafter diligently process such cure to completion, whereupon Lessor’s right to terminate this Lease based upon such defaults shall be deemed waived; provided, however, that the Financing Party or party acquiring title to the Mortgaged Interest shall not be required to cure those non-monetary defaults which are not capable of being cured or performed by such party (“**Non-Curable Defaults**”). Non-Curable Defaults shall be deemed waived by Lessor upon completion of foreclosure proceedings or acquisition of interest in this Lease by such party.

12.4.4 Any Financing Party or other party who acquires the Mortgaged Interest pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee or an Assignee by this Lease incurred or accruing after such party no longer has ownership of the leasehold estate or possession of the Premises.

12.4.5 Neither the bankruptcy nor the insolvency of Lessee or any Assignee shall be grounds for terminating this Lease as long as the Rent and all other monetary charges payable by Lessee or Assignee under this Lease are paid by the Financing Party in accordance with the terms of this Lease.

12.4.6 Nothing in this Lease shall be construed to extend this Lease beyond the Lease Term or to require a Financing Party to continue foreclosure proceedings after the default has been cured. If the default is cured and the Financing Party discontinues foreclosure proceedings, this Lease shall continue in full force and effect.

12.5 New Lease to Financing Party. If this Lease terminates because of Lessee's or Assignee's default or if the Mortgaged Interest is foreclosed, or if this Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, then Lessor shall, give prompt notice to each Financing Party, and Lessor shall, promptly upon written request from any Financing Party if made within ninety (90) days after such termination, rejection or disaffirmance, without demanding additional consideration, enter into a new lease of the Premises in favor of such Financing Party, on the following terms and conditions:

12.5.1 The terms of the new lease shall commence on the date of termination, foreclosure, or rejection or disaffirmance and shall continue for the remainder of the Lease Term of this Lease, at the same Rent and subject to the same terms and conditions set forth in this Lease.

12.5.2 The new lease shall be executed within 30 days after receipt by Lessor of notice of the Financing Party's election to enter a new lease, provided said Financing Party: (a) pays to Lessor all Rent and other monetary charges payable by Lessee or Assignee, as applicable, under the terms of this Lease up to the date of execution of the new lease, as if this Lease had not been terminated, foreclosed, rejected or disaffirmed, less the Rent and other income actually collected by Lessor; and (b) performs all other obligations of Lessee or Assignee under the terms of this Lease, to the extent performance is then due and susceptible of being cured and performed by the Financing Party; (c) agrees in writing to timely perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee or any Assignee and would have accrued under this Lease up to the date of commencement of the new lease, except those obligations which constitute Non-Curable Defaults; and (d) reimburses Lessor for Lessor's reasonable attorney fees incurred in reviewing the same. Any new lease granted the Financing Party shall enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Lessor.

12.5.3 At the option of the Financing Party, the new lease may be executed by a designee of such Financing Party without the Financing Party assuming the burdens and obligations of the Assignee thereunder.

12.5.4 If more than one Financing Party makes a written request for a new lease pursuant hereto, then the new lease delivered to each will have priority consistent with those effective prior to the applicable termination, rejection or disaffirmance, such that, without limitation, the lease delivered to any Secured Lender whose security interest was senior shall retain senior priority. Lessor shall be reimbursed all reasonable expenses incurred in determining whose secured interest has senior priority.

12.5.5 Lessor hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent a Financing Party from the Premises for the purpose of inspecting the Project.

12.6 Financing Party's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Lease to the contrary, the Parties agree that this Lease shall not be modified or amended, and Lessor shall not accept a surrender of the Premises or any part thereof or a cancellation or release of this Lease from Lessee or Assignee prior to expiration of the Lease Term without the prior written consent of each Financing Party. This provision is for the express benefit of and shall be enforceable by such Financing Party. In addition, and notwithstanding anything in this Agreement to the contrary, in the event that Lessee should fail to exercise its right to extend the Lease Term for a Lease Term Extension by the applicable date required in Section 4.2 above, Lessee's right to so extend the Lease Term shall nonetheless continue for an additional 30 days following Lessor's delivery of written notice of the failure of Lessee to timely exercise such right to Lessee and each Financing Party. If either Lessee or any Financing Party provides written notice to Lessor, within such 30 days, of its intent that such right to extend be exercised, then timely notice of the exercise of the right to extend the Lease Term for the applicable Lease Term Extension shall be deemed to have been given.

12.7 No Waiver. No payment made to Lessor by a Financing Party shall constitute an agreement that such payment was, in fact, due under the terms of this Lease; and a Financing Party having made any payment

to Lessor pursuant to Lessor's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment.

12.8 Further Amendments. Provided that no material default in the performance of Lessee's obligations under this Lease shall have occurred and remain uncured after the expiration of all applicable notice and cure periods, at Lessee's request, Lessor shall (a) amend this Lease to include any provision that may reasonably be requested by an existing or proposed Financing Party, or by any entity that is proposing to directly or indirectly acquire the Project, and (b) shall execute such additional documents as may reasonably be required to evidence such Financing Party's or other entity's rights hereunder; provided, however, that such amendment shall not materially impair the rights of Lessor under this Lease, or extend the Lease Term of this Lease beyond the period of time stated in Section 4. Further, Lessor shall, within 10 days after notice from Lessee or any existing or proposed Financing Party, execute and deliver thereto a certificate to the effect that Lessor (i) recognizes a particular entity as a Financing Party under this Lease and (ii) will accord to such entity all the rights and privileges of a Financing Party hereunder.

13. Termination and Remedies.

13.1 Lessee's Rights. Lessee may, for any reason, by 30 days' notice to Lessor, terminate this Lease or a part hereof and surrender its interest in all or a portion of the Premises to the benefit of the Lessor, and upon delivery of such notice, all obligations of the Parties hereunder shall cease on the termination date specified in such notice to the extent of such termination; provided, however, that upon each surrender as to any part of the Lease, Lessee shall maintain such easements rights to the surrendered portion as may be appropriate to its enjoyment of the portion not surrendered. Lessee shall pay Lessor all amounts accrued under this Lease through the date of such termination and completion of any restoration pursuant to Section 13.3. Upon such termination, Lessee shall promptly record an appropriate instrument with the office of the County Recorder evidencing the termination of this Lease or a portion hereof. In no event shall Lessor have a right to seek damages against Lessee with respect to this Lease solely by reason of its termination excepting only the amounts accrued through the date of such termination. To compel compliance with this Lease, in the event of a default of any provision of this Lease by Lessor, Lessee shall be entitled to seek all remedies available at law and in equity, including specific performance. In the event Lessee terminates this Lease, neither Lessor nor Lessee shall have any further rights, liabilities, or obligations under this Lease except for any of same that expressly survives such termination.

13.2 Lessor's Rights. Notwithstanding anything to the contrary in the Lease, if Lessee is in default and fails to cure the default after all applicable notice and cure periods (including those contained in Sections 13.2.1 and 13.2.2), Lessor shall have the right and option to do any or all of the following:

13.2.1 If a Monetary Default occurs Lessor may terminate this Lease or pursue an action for damages (or in equity, as the case may be) under this Lease while such Monetary Default is continuing, if all of the following occur:

(a) Lessor simultaneously notifies Lessee and all Financing Parties in writing of such Monetary Default, which notice sets forth in detail the facts pertaining to the default;

(b) Lessee fails to cure such Monetary Default within 60 days after Lessee receives the notice from Lessor of such Monetary Default, or if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period, Lessee has not begun to diligently undertake the cure within the period provided herein or to thereafter prosecute such cure to completion; and

(c) all Financing Parties fail to cure such Monetary Default within the additional period permitted them under Section Error! Reference source not found. of this Lease.

13.2.2 If a Non-Monetary Default occurs, subject to the provision in Section 13.2.3, Lessor may pursue an action for monetary damages (or in equity, as the case may be) under this Lease while such Non-Monetary Default is still continuing if all of the following occur:

(a) Lessor simultaneously notifies Lessee and all Financing Parties in writing of such Non-Monetary Default, which notice sets forth in detail the facts pertaining to the default;

(b) Lessee fails to cure such Non-Monetary Default within 60 days after Lessee receives the notice from Lessor of such Non-Monetary Default, or if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period, Lessee has not begun to diligently undertake the cure within the period provided herein or to thereafter prosecute such cure to completion; and

(c) all Financing Parties fail to cure such Non-Monetary Default within the additional period permitted them under Section 12 of this Lease.

13.2.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS LEASE OR ANY RIGHTS OR REMEDIES WHICH LESSOR MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY, WITH RESPECT TO ANY LESSEE NON-MONETARY DEFAULT THAT IS NOT CURED WITHIN THE TIME PERIOD CONTEMPLATED IN SECTION 13.2.2 ABOVE, LESSOR SHALL NOT (AND HEREBY WAIVES THE RIGHT TO) COMMENCE ANY ACTION OR PROCEEDING IN WHICH TERMINATION, CANCELLATION, RESCISSION OR REFORMATION OF THIS LEASE IS SOUGHT AS A REMEDY, AND LESSOR SHALL BE LIMITED TO SEEKING MONETARY DAMAGES FOR SUCH NON-MONETARY DEFAULT.

13.3 Restoration. Upon any surrender, termination or expiration of this Lease, Lessee shall, within twenty-four (24) months thereof, substantially complete the Restoration Requirements (as defined below). During the Restoration Period, Lessee shall continue to pay the applicable Rent paid immediately prior to the commencement of such Restoration Period, which shall be calculated on a monthly basis (i.e., such Rent divided by 12 months), and payable monthly in advance for each month during the Restoration Period. "**Restoration Requirements**" means (a) the decommissioning of the Project Facilities and restoration of the surface of the Premises to a condition and contour reasonably similar to that existing on the Property as of the Effective Date, wear and tear excepted, (b) removal of all of its above-grade and below-grade Project Facilities and other equipment located on the Premises, except those located 36 inches or more below-grade, (c) burying of all foundations below-grade with topsoil, (d) removal of all concrete, (e) reseeding areas where the pads were located with grasses or natural vegetation, and (f) any other requirements that may be imposed in connection with any land or water use permits issued in connection with the Project Facilities. Any access roads constructed by Lessee may remain on the Premises at Lessee's option unless Lessor specifically requests their removal in writing. It is understood that it would not be reasonable to expect that any trees removed in conjunction with the Project be replaced.

13.4 Release of Lease. Upon termination, expiration or surrender of this Lease, in whole or in part, and upon written request by Lessor, Lessee shall provide Lessor with a copy of an appropriate release of Lease.

13.5 Termination of Option. Lessee may, for any reason, by 30 days' notice to Lessor, terminate the Option granted in Section 1, and upon the effective date of such termination, neither Lessee, nor Lessor, shall have any further obligation to the other under this Lease except for Sections 8.1 and 10.10.

13.6 Injunctive Relief. Notwithstanding any provision to the contrary in this Agreement, in the event of any breach or threatened breach, either party shall have the right to apply for the entry of an immediate order to restrain or enjoin the breach and otherwise specifically to enforce the provisions of this Agreement.

14. Easements. Lessor hereby irrevocably grants and conveys to Lessee the following easements across the Property and any adjacent parcel of land outside the Property owned or controlled by Lessor ("**Adjacent Property**"), appurtenant to Lessee's leasehold estate in the Premises (such easements set forth in Sections 14.1

to 14.3, collectively, “**Easements**”), which Easements shall run with the land and be binding upon Lessor’s successors and assigns:

14.1 Access and Transmission Easements. Lessor hereby grants to Lessee the following Easements across the Easement Areas (as defined below): (a) an exclusive easement for electrical interconnection purposes; (b) a non-exclusive easement for vehicular and pedestrian access, ingress or egress and access to and from the Premises and Easement Areas and to, across and through any portion of the Property outside the Premises and the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, waterways, lanes and rights-of-way on the Property and the Adjacent Property, and (ii) such additional roads, waterways, culverts, and bridges as Lessee or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads, culverts and bridges) from time to time; (c) an exclusive easement to install, maintain, repair, replace and operate on the Property and the Adjacent Property multiple (i) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Project, and (ii) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Project, and (iii) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing (the facilities in clauses (i) – (iii), collectively, the “**Interconnection Facilities**”); (d) a temporary easement on, over, across and under the Property or any Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Project Facilities (provided that Lessee shall restore any Adjacent Property to the same extent as Lessee shall restore the Property under Section 13.3); and (e) the right to remove fences, gates, cattle guards and any other improvements or structures on the Premises and Easement Areas which interfere with Lessee’s operations. The Easements granted in the immediately preceding clauses (a) to (e), are collectively referred to as the “**Access and Transmission Easements**”. Lessor shall execute and deliver to Lessee any documents or instruments reasonably requested by Lessee in recordable form to evidence the Access and Transmission Easements, including the applicability of such Access and Transmission Easements to any Adjacent Property, containing all the rights and privileges set forth herein, within 15 days following written request from Lessee. “**Easement Areas**” means those areas of any Adjacent Property or of the Property outside the Premises, which areas are preliminarily depicted in **Exhibit C**, including the Landscape Buffer Area and SWM Area (all as defined in Section 14.3) and the FC Area (as defined in Section 14.4).

14.2 Lessor Easements. To the extent that Lessor holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Property or the Adjacent Property (the “**Lessor Easements**”) on or after the date of this Lease, and such Lessor Easements are or could be used for the benefit of the Property, then the same are hereby included in this Lease, and Lessee shall be entitled to use such Lessor Easements, if such use is permitted under the Lessor Easements and provided that such use does not interfere with Lessor’s use of same. Upon the written request of Lessee, Lessor shall, within 15 days following such request, grant (in recordable form and containing such terms and provisions as may be reasonably requested by Lessee or any Financing Party), for no additional consideration, one or more sub-easements of Lessor Easements to run concurrently with the Lease Term (or for such shorter period as provided in the Lessor Easement).

14.3 Solar Easements. Lessor hereby grants to Lessee the following Easements across the Property and any Adjacent Property (such Easements, collectively, the “**Solar Easements**”): (a) direct access to sunlight and an exclusive easement and right to capture, use and convert the unobstructed solar resources over and across the Premises; (b) an easement 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, including but not limited to rights to cast shadows and reflect glare onto all of the Property or any Adjacent Property, from the Project Facilities or any and all other related facilities, wherever located; (c) the right to clear the Premises of trees and other vegetation as required for Lessee to fully utilize its Solar

Easements, and to retain the value of any timber removed; (d) the right, but not the obligation to cut and maintain trees and other landscaping features on the Property within 100 feet of the Premises in order to optimize the utilization of the Premises for Project Activities, provided that Lessor shall have the right to use or sell any timber cut or trimmed by Lessee on the Property outside of the Premises; and, if applicable, (e) the right, for no additional consideration, to plant, install, construct, or otherwise create and maintain landscaping features or other visual buffers on certain areas of the Property preliminarily depicted in Exhibit C as the “**Landscape Buffer Area**” when and only to the extent required by Lessee to comply with any conditions or requirements imposed by law or any other person, authority, or entity holding jurisdiction (“**AHJ**”), and, if so required, Lessor shall grant Lessee or the AHJ, within 15 days of Lessee’s request, a stand-alone, recordable, and assignable easement or other similar agreement describing such landscaping features or visual buffers in the Landscape Buffer Area; and (f) the right to construct private stormwater management systems on certain areas of the Property as shown on Exhibit C (the “**SWM Area**”).

14.4 Grant to Utility and AHJ. Lessee, in its sole discretion and without further act of Lessor, shall have the right to grant to the transmitting utility the right to construct, operate and maintain on the Premises or within the Easement Areas Interconnection Facilities, pursuant to any lease, easement or other agreement used or proposed by the utility. If requested by such utility or Lessee, Lessor shall, for no additional consideration other than the Rent and within 15 days after such request, grant such easement or enter into such other agreement, directly to or with such utility. If and only to the extent required by Lessee to comply with any conditions or requirements imposed by law or any AHJ, Lessor shall, upon payment by Lessee of a reasonable consideration to be agreed upon by the Parties, grant the AHJ, within 15 days of Lessee’s request, a stand-alone, recordable, and assignable easement or other similar agreement related to certain areas of the Property or Adjacent Property (“**FC Area**”) required by such AHJ for forest conservation purposes.

15. Miscellaneous Provisions.

15.1 Notice of Lease. Lessor and Lessee shall execute, in conjunction with this Lease, a recordable notice of the Lease and the Easements granted herein, in the form of a memorandum of lease attached hereto as Exhibit D. Lessee shall then record said memorandum within the land records of the applicable county or counties in which the Property is located. Lessor also consents to the recordation of the interest of an Assignee in the Premises.

15.2 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Leases shall be in writing and may be given by any of the following methods: (a) personal delivery, (b) a writing in portable document format (“**PDF**”) attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested, (c) overnight or certified mail, postage prepaid, return receipt requested, or (d) next day air courier service. Notices shall be sent to the appropriate party at its address or email address given below:

If to Lessor:	Sussex County, Delaware	If to Lessee:	Blacktail Solar III LLC
Name:	Mike Harmer	Attention:	Land Department
Address:	P.O. Box 589, Georgetown, Delaware 19947, United States	Address:	1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States
Email:	michael.harmer@sussexcountyde.gov	Email:	land@chaberton.com
Phone No.:	302-855-7370		443-914-4100

Any Party may change its address for purposes of this Section 15.2 by giving notice of such change to the other Party.

15.3 Entire Agreement; Amendments. This Lease, including the exhibits, schedules, and any addendum attached hereto, constitutes the entire agreement between Lessor and Lessee respecting its subject

matter. In the event of conflict between this Lease and any addendum attached hereto, the express provisions of such addendum will prevail. Any other agreement, understanding or representation respecting the Premises, or any other matter not expressly set forth in this Lease or a subsequent writing signed by both Parties is null and void. Except as provided in Section 4.1, this Lease shall not be modified or amended except in a writing signed by both Parties, and no purported modifications or amendments, including any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

15.4 Legal Matters. This Lease shall be governed by and interpreted in accordance with the laws of the State of Delaware. Venue shall be in the county where the Property is located, or if in Federal Court as required by subject matter or personal jurisdiction, in the U.S. District Court for the District where the Property is located. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Lease and is waived. The prevailing Party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Lease or for the interpretation of this Lease shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing Party.

15.5 Severability. Should any provision of this Lease be held, in a final and un-appealable decision by a court of competent jurisdiction, to be either invalid, void, or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Lease, the Parties agree that in no event shall the Lease Term or any Easement term be longer than, respectively, the longest period permitted by Applicable Law.

15.6 Tax Credits. If under applicable law the holder of any interest under this Lease becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Lessor and Lessee shall amend this Lease or replace it with a different instrument so as to convert Lessee's interest in the Premises to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive; provided, however, that nothing in this Lease shall entitle Lessee to a fee interest in the Property, diminish Lessee's payment obligations under this Lease or extend the Lease Term of this Lease.

15.7 Counterparts. This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument. This Lease may be executed and transmitted via facsimile, PDF, or other similar electronic means complying with the U.S. federal E-SIGN Act of 2000 (e.g. www.docusign.com) and a manual or electronic signature of the undersigned transmitted via such means shall have the same force and effect as a manually signed original.

15.8 Cooperation. Lessor shall cooperate with Lessee, and its permitted successor, assign or Affiliate, in the conduct of their operations consisting of the Project Facilities, Easements, or Transmission Facilities, and in otherwise giving effect to the purpose and intent of this Lease, including, without limitation, in Lessee's or any permitted successor, assign or Affiliate's efforts to obtain from any Governmental Authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with Lessee's Project Facilities, Access Rights, or Transmission Facilities; and Lessor shall promptly upon request, without demanding additional consideration therefore, execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, document or instrument that is reasonably requested by Lessee, its permitted successor, assign or Affiliate in connection therewith. Without limiting the generality of the foregoing, Lessor agrees (a) if requested by Lessee or its permitted successor, assign or Affiliate to support such application by filing a letter with the appropriate Governmental Authority in a form reasonably satisfactory to Lessee or its permitted successor, assign or Affiliate, and (b) not to oppose, in any way, whether directly or indirectly, any such valid, accurate application or approval at any administrative, judicial or legislative level.

15.9 Relationship. Neither this Lease nor any other agreements or transactions contemplated in this Lease shall in any respect be interpreted, deemed or construed as constituting Lessor and Lessee as partners or joint venturers, or as creating any partnership, joint venture, association or other relationship other than of landlord and tenant; and Lessor and Lessee agree not to make any contrary assertion, contention, claim or counterclaim in any action, suit or other proceeding involving either Lessor or Lessee or the subject matter of this Lease.

15.10 Condemnation. If all or part of the Premises is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a “**Taking**”), Lessor shall provide Lessee with reasonable advance notice of any impending proceeding or meeting related to such Taking and shall not in the absence of Lessee’s consent thereto settle with the Taking authority or agree on compensation for such Taking. This Lease shall terminate as to any portion of the Premises so condemned or taken (except in the case of a temporary Taking after the duration of which Lessee desires to continue this Lease, and the Lease Term shall be extended, in such event, by the duration of such temporary Taking). Subject to any applicable law or regulation, if any, any award or other compensation (“**Award**”) payable as a consequence of such Taking shall be paid as follows: (a) Lessor shall first be entitled to receive out of the Award the value of Lessor’s fee interest in the Property, valued as if no Project Facilities were on the Property; (b) Lessee shall next be entitled to receive out of the Award (i) the value of the Project Facilities, (ii) any other compensation or benefits payable by law as a consequence of the loss or interruption of Lessee’s business and the other costs and expenses incurred by Lessee as consequence of the Taking, and (iii) the remaining present value of Lessee’s interest in the Property (determined at the time of the Taking), including the value of Lessee’s interests under this Lease; (c) Lessor shall then be entitled to receive out of the Award, taking into account the leasehold and easement estates created by this Lease, the estimated amounts that would have been paid to date of condemnation by Lessee hereunder; and (d) Lessor shall be entitled to any remainder of the Award.

15.11 Joint and Several Liability. If applicable, the obligations under this Lease imposed upon Lessor shall be joint and several obligations of the individuals or entities comprising Lessor.

15.12 Force Majeure. If performance of this Lease or of any obligation under this Lease is prevented, restricted or interfered with by reason of an event of “**Force Majeure**” (as defined in the immediately following sentence), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference and the Lease Term shall be extended for the duration of the Force Majeure event; provided, however, that nothing in this Section 15.12 shall relieve Lessee of its obligations to pay Rent or other monetary obligation payable to Lessor pursuant to this Lease. The affected Party shall use its reasonable efforts to avoid or remove such causes of non-performance and shall continue performance under this Lease whenever such causes are removed. “**Force Majeure**” means flood, drought, earthquake, storm, fire, tornado, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God, casualty or accident; war, sabotage, vandalism, civil strife, civil unrest or other violence; strikes or labor disputes; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; a Regulatory Suspension (as defined in the immediately following sentence); litigation challenging the validity or content of any permit or approval necessary for the construction or operation of the Project; litigation by Lessor, nearby landowners or third party interest groups challenging the validity or content of this Lease or any aspect of the Project; or any other act or condition beyond the reasonable control of a party hereto. A “**Regulatory Suspension**” shall mean the application of any local, state or federal law, order, rule or regulation which results in the delay, interruption, or suspension of the: (i) construction of the Project; or (ii) transmission, production or sale of electricity from the Project.

15.13 Certain Matters of Construction. The terms “herein”, “hereof”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision.

Any pronoun used shall be deemed to cover all genders. The section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. References in this Agreement to “Sections”, “Schedules” or “Exhibits” shall be to Sections, Schedules or Exhibits of or to this Agreement unless otherwise specifically provided. All references in this Agreement to statutes shall include all amendments of same and implementing regulations and any successor statutes and regulations; to any instrument or agreement (including this Agreement) shall include any and all addendums, modifications and supplements thereto and any and all restatements, extensions or renewals thereof to the extent such modifications, supplements, restatements, extensions or renewals of any such documents are permitted by the terms thereof; to any person shall mean and include the successors, affiliates and permitted assigns of such person; to “including” shall be understood to mean “including, without limitation”; or to the time of day shall mean the time of day on the day in question in the State of Delaware, unless otherwise provided in this Agreement. Unless the context of this Agreement clearly requires otherwise, the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”.

*****SEE ADDENDUM ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF*****

(Signature Page follows)

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Effective Date.

LESSOR(S): Sussex County, Delaware

By:

Name: Michael H. Vincent

Title: President of County Council

Attest: (SEAL)

Clerk of Council

LESSEE: Blacktail Solar III LLC

By:

Name: Ron Stimmel

Title: Manager

ADDENDUM

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease"), dated _____, by and between **Sussex County, Delaware** and **Blacktail Solar III LLC,**

In addition to the provisions previously set forth in the Lease and effective as of the date first written above, it is hereby agreed that:

1. **Conflict of Terms.** Capitalized terms not otherwise defined in this Addendum have the meanings ascribed to them in the Lease. In the event of a conflict or inconsistency between the printed terms of the Lease and this Addendum, the printed terms of this Addendum shall control and be deemed to supersede the printed terms of the Lease.
2. **County Decommissioning Requirements.** Notwithstanding anything to the contrary contained in the Lease, particularly in Section 13.3 thereof, Lessee shall comply with the requirements of the Zoning Ordinance for Sussex County, Delaware (the "**Ordinance**"), with respect to decommissioning of the Project, and the Restoration Requirements shall be as set forth in the decommissioning plan agreed to by the Parties prior to the Construction Commencement Date (the "**Decommissioning Plan**"). After Lessee's delivery of the Construction Notice, but prior to the Construction Commencement Date, the Parties shall execute a Decommissioning Funding Agreement, in substantially the form attached to the Lease as Exhibit E, which shall become effective as of the Construction Commencement Date, and pursuant to which the Parties shall establish and maintain a sinking fund account with a financial institution, counterparty to the DFA, as security to cover the costs of completing the Restoration Requirements under the Decommissioning Plan.
3. **Lessor Option to Purchase.**
 - (a) Upon expiration of the Lease Term or earlier termination of the Lease under Section 13.1 of the Lease, notwithstanding anything to the contrary contained in the Lease, particularly in Section 13.3 thereof, Lessor may elect to purchase the Project Facilities by notice to Lessee delivered by Lessor not later than 30 days after the expiration or earlier termination of this Lease. The Parties agree that Lessee shall not be obligated to commence decommissioning of the Project under Section 13.3 of the Lease and Paragraph 2 of this Addendum unless such 30-day period has elapsed and Lessor either fails to deliver the notice in the immediately preceding sentence or notifies Lessee in writing of Lessor's election not to purchase the Project Facilities. If Lessor elects to purchase the Project Facilities in accordance with the provision in this Paragraph 3(a), the purchase price for the Project Facilities (the "**Purchase Price**") shall be the fair market value of the Project Facilities at the time of purchase (the "**FMV**"), which value shall be determined in accordance with the valuation procedures set forth in Paragraph 3(b) below.
 - (b) Upon Lessor's exercise of the option to purchase the Project Facilities as set forth in Paragraph 3(a) of this Addendum, the Parties shall within 30 days of such Lessor election negotiate in good faith and agree upon the selection of a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the FMV. If the Parties cannot reach an agreement on an appraiser, each Party shall select one appraiser, and the two appraisers shall select a third appraiser to determine the FMV. The appraiser agreed to by the Parties, or otherwise selected by the other two appraisers, shall act reasonably and in good faith to determine the FMV and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence

of fraud or manifest error. The costs of the appraisal shall be shared by the Parties equally. Upon determination of the FMV, the Parties shall use good faith efforts to negotiate and execute a definitive agreement, pursuant to which Lessee shall sell to Lessor, and Lessor shall purchase from Lessee the Project Facilities in accordance with the terms and conditions set forth in such definitive agreement and at the Purchase Price in an amount equal to the FMV.

4. **Minimum Premises Acres**. In the event the total Premises Acres set forth in the Survey attached to the Construction Notice amount to an acreage equal to or less than 11 acres (the “**Minimum Acreage**”), then solely for the purposes of calculating the Annual Rent, the acreage of the Premises shall be deemed to be equal to the Minimum Acreage.
5. **Infrastructure Support Cost; Payment**. Lessee shall be responsible for obtaining either i) a signed interconnection cost letter or ii) a fully executed interconnection agreement (referred to interchangeably as an “**Interconnection Agreement**”) from the applicable local electric utility allowing the Project Facilities to be connected to the local electric infrastructure. Lessor shall be ultimately responsible for all costs associated with the Interconnection Agreement (“**Infrastructure Support Cost**”) pursuant to the payment structure further defined in this Addendum. Lessee shall send the executed Interconnection Agreement to Lessor no later than five (5) business days following Lessee’s receipt of the same. Lessee shall send the initial associated or supporting invoices related to the Interconnection Agreement evidencing the initial amount of the Infrastructure Support Cost to Lessor no later than five (5) business days following Lessee’s receipt of the same (“**Initial Infrastructure Support Cost Invoice**”). The Infrastructure Support Cost shall be paid by Lessee directly to the local electric utility according to the amounts, due dates and payment direction instructions as set forth in the Interconnection Agreement or the Initial Infrastructure Support Cost Invoice. Lessee shall then generate a separate additional invoice (“**Infrastructure Support Cost Reimbursement Invoice**”) and deliver the same to Lessor no later than five (5) business days after Lessee’s payment of the Infrastructure Support Cost. Lessor shall reimburse Lessee according to the amounts, due dates and payment direction instructions as set forth in the Infrastructure Support Cost Reimbursement Invoice (“**Infrastructure Support Cost Reimbursement Payment**”). Notwithstanding anything to the contrary contained in the Lease, particularly in Section 5 thereof, in the event Lessor fails to pay Lessee the Infrastructure Support Cost Reimbursement Payment when due, Lessee may set off such expense from any payments due to Lessor by Lessee under the Lease including, but not limited to, Rent. The set-off rights granted to Lessee in this Section shall remain in effect until such time as Lessee is fully reimbursed for the entire amount of the Infrastructure Support Cost.
6. **Final Accounting Report; Payment**. A final accounting report shall be issued to Lessee by the local electric utility following the construction of the Project (“**Final Accounting Report**”). Lessee shall send the Final Accounting Report to Lessor no later than five (5) business days following Lessee’s receipt of the same. Lessee shall send the associated or supporting invoices related to the Final Accounting Report to Lessor no later than five (5) business days following Lessee’s receipt of the same (“**Final Infrastructure Support Cost Invoice**”). If the Final Accounting Report results in an additional amount being owed to the local electric utility beyond what was established as the initial Infrastructure Support Cost (such additional amount being the “**Additional Infrastructure Support Cost**”), Lessor shall be ultimately responsible for all costs associated with True-Up Additional Infrastructure Support Cost pursuant to the payment structure further defined in this Addendum. Lessee shall pay the Additional Infrastructure Support Cost directly to the local electric utility according to the amounts, due dates and payment direction instructions as set forth in the Final Accounting Report or the Final Infrastructure Support Cost Invoice. Lessee shall then generate an additional separate invoice (“**Additional Infrastructure Support Reimbursement Invoice**”) and deliver the same to Lessor no later than five (5) business days after Lessee’s payment of the

Additional Infrastructure Support Cost. Lessor shall reimburse Lessee according to the amounts, due dates and payment direction instructions as set forth in the Additional Infrastructure Support Reimbursement Invoice (**“Additional Infrastructure Support Reimbursement Payment”**). Notwithstanding anything to the contrary contained in the Lease, particularly in Section 5 thereof, in the event Lessor fails to pay Lessee the Additional Infrastructure Support Reimbursement Payment when due, Lessee may set off such expense from any payments due to Lessor by Lessee under the Lease including, but not limited to, Rent. The set-off rights granted to Lessee in this Section shall remain in effect until such time as Lessee is fully reimbursed for the entire amount of the additional costs paid to the local electric utility. If the Final Accounting Report results in a refund being issued to Lessee, Lessee shall pay to Lessor all refunded amounts associated with the Final Accounting Report or the Final Infrastructure Support Invoice no later than five (5) business days following Lessee’s receipt of the same.

This Addendum shall not affect the terms and conditions set forth in the Lease in any manner except as set forth herein.

(Signature Page Follows)

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto set their hands and official seals the date first written above.

LESSOR: Sussex County, Delaware

By:

Name: Michael H. Vincent

Title: President of County Council

Attest: (SEAL)

Clerk of Council

LESSEE: Blacktail Solar III LLC

By:

Name: Ron Stimmel

Title: Manager

Exhibit A
LEGAL DESCRIPTION OF PROPERTY

Parcel ID Number: 334-7.00-30.01

That certain real property in the County of Sussex, State of Delaware, described as follows:

15674 01987 2008

This Deed was prepared by WILSON, HALSBROOK & BAYARD, P.A.
Georgetown, Delaware

TN#3-34-7-part of 30

DEED

THIS DEED made this 21st day of June, 1994, A.D.

BETWEEN,

J.G. TOWNSEND, JR. & CO. of P.O. Box 430, Georgetown, Delaware 19947, hereinafter referred to as "Grantor",

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, of P.O. Box 589, Georgetown, Delaware 19947, party of the second part, hereinafter referred to as the "Grantee".

WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), Current Lawful Money of the United States of America and other good and valuable considerations, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns forever,

ALL that certain piece or parcel of land situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, being more particularly described as follows to wit:

BEGINNING at a set concrete monument in the northwesterly right-of-way line of Sussex County Road 270 at its intersection with the former center line of the Penn Central Railroad; thence by and with the aforesaid former center line of the Penn Central Railroad North 32 degrees 02 minutes 59 seconds West 1032.463 feet to a set concrete monument; thence turning and running North 58 degrees 00 minutes 00 seconds East 1488.382 feet to a set concrete monument; thence turning and running North 32 degrees 00 minutes 00 seconds West 404.998 feet to a set concrete monument; thence turning and running North 57 degrees 59 minutes 58 seconds East 1044.130 feet to a set concrete monument; thence turning and running South 32 degrees 00 minutes 00 seconds East 944.668 feet to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 269.690 feet to a set concrete monument; thence South 32 degrees 00 minutes 00 seconds East 1210.420 to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 2021.920 feet to a set concrete monument; thence turning and running North 31 degrees 58 minutes 26 seconds West 709.956 feet to a set concrete monument thence turning and running South 59 degrees 49 minutes 34 seconds West 240.449 feet to the place of beginning said to contain 100.00 acres, more or less and as more particularly shown on the survey thereof and defined as lands to be conveyed to: SUSSEX COUNTY COUNCIL and Lands of J.G. TOWNSEND, JR. & CO. Prepared by Charles D. Murphy Associates, Inc., Land Surveyors, dated May 27, 1994, revised May 31, 1994, revised on June 2, 1994, and revised on June 16, 1994 said plot being of record in the Office of the Recorder of Deeds in and for Sussex County in Plot Book 52, page 328.

BEING a portion of those lands conveyed unto this Grantor by deed of Sally W. Thompson, et al., dated August _____, 1946 and of record in the Office of the Recorder of Deeds in and for

07:13 333 6/22/94 TX-EX ST .00

3436 111 6/22/94 CTX-EX SU .00

DLM

Sussex County in Deed Book 361, page 409.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Jacob M. Moore, et al., dated July 9, 1946 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 366, page 26.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Frank Martin, et al., dated March 24, 1951 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 398, page 147.

THIS conveyance is subject to the following covenants which are incorporated herein and made a part hereof:

By accepting title to the above-described premises, Sussex County hereby covenants on behalf of itself, its heirs, successors and assigns to State of Delaware, Division of Historical and Cultural Affairs, State Historic Preservation Office (DE SHPO) or its successor agency, to maintain and preserve that archaeological site data which qualified 78-D-65 and 78-D-60 for inclusion in the National Register of Historic Places as follows:

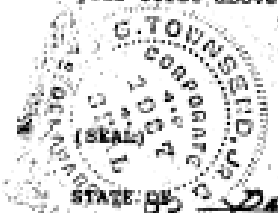
1. The County shall preserve and maintain the real property containing geological sites 78-D-65 and 78-D-60. Said sites are as shown and designated on the plot of lands referred to herein.
2. No construction or disturbance of the ground surface may take place without the express prior written permission of the DE SHPO signed by a fully authorized representative thereof. If the County proposes to undertake ground disturbing activities on the property, it may be necessary for the County to undertake data recovery in accordance with 36 CFR 800 prior to initiating the proposed activity. Maintenance activities such as grass mowing shall not be subject to this clause.
3. The DE SHPO shall be permitted at all reasonable times to inspect the aforementioned sites on land owned by the County to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant and in addition to any remedy now or hereafter provided by law, the DE SHPO may, following reasonable notice to the County, institute to enjoin said violation or require mitigation for said violation. The successful party shall be entitled to recover all costs or expenses incurred with such a suit, including all court costs and attorney's fees.
5. The County agrees that the DE SHPO may, at its discretion without prior notice to the County, convey and assign all or part of its rights and responsibilities to any successor agency.
6. This covenant is binding on the County, its heirs, successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the County verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the property as described in the above sites and bounds.
7. The failure of the DE SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

#01987 2010

8. The DE SHPO may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the County, its heirs, successors or assigns. The DE SHPO may also make application to the County to modify or cancel this covenant.

9. This covenant shall be a binding servitude upon the County and shall be deemed to run with the land. Acceptance of this Deed and its recordation shall constitute conclusive evidence that the County agrees to be bound to the foregoing conditions and restrictions and to conform to obligations herein set forth.

IN WITNESS WHEREOF, the said J.G. TOWNSEND, JR. & CO. has caused its name to be hereunto set by its President and the common and corporate seal of this said corporation shall be hereunto affixed, duly attested to by its Secretary, the day and year first above written.



J.G. TOWNSEND, JR. & CO.

BY: [Signature]
President

ATTEST: [Signature]
Secretary

STATE OF Delaware
COUNTY OF Sussex

BE IT REMEMBERED that on this 21st day of

June, A.D. 1984, personally came before me,

the Subscriber, a Notary Public for the State and County aforesaid, Paul G. Townsend, President of J.G. TOWNSEND, JR. & CO., a corporation of the State of Delaware, party to this indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

[Signature]
Notary Public

DALLAS D. GREEN
My commission expires:

04 JUN 22 PM 2:09

RECORDED OF DEEDS
SUSSEX COUNTY

FRANK J. STRAUBE
NOTARIAL OFFICER ALTERNATE TO
BY DEL. CODE SECT. 432
ATTORNEY AT LAW
DELAWARE

PURCHASERS REPORT
MADE THIS DATE

JUN 23 1984

ASSESSMENT DIVISION
OF SUSSEX CTY.

Sussex County Engineering 7/17/94

EXHIBIT A-1

LAGOON 2



**Exhibit B
PREMISES**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease") and Memorandum of Lease Agreement (the "Memorandum"),

dated _____,
by and between **Sussex County, Delaware,**
and
Blacktail Solar III LLC,

Blacktail Solar III - Parcel Boundary, Premises and Equipment Pad

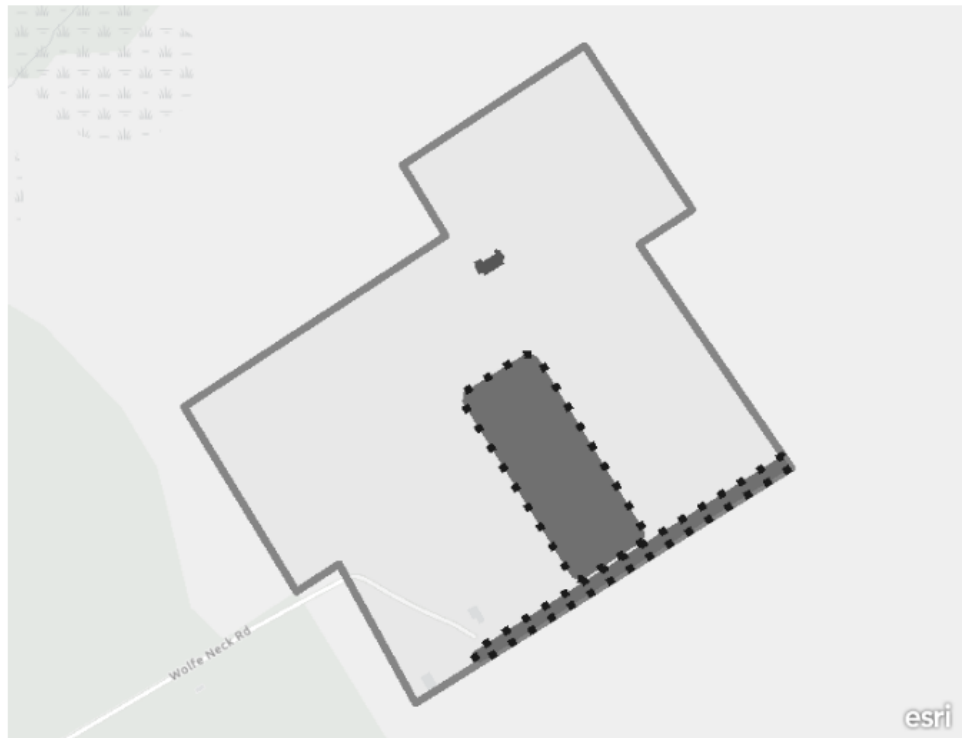
 Parcel Boundary +/- 100 ac

 Premises +/- 12.45 ac

 Equipment Pad



 600ft



THE DEPICTION CONTAINED IN THIS EXHIBIT IS INTENDED TO BE FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT CONSTITUTE A SURVEYED REPRESENTATION OF THE BOUNDARIES DEPICTED THEREIN. PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE PREMISES DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE PREMISES IS AT THE SOLE DISCRETION OF LESSEE BUT WILL REMAIN WITHIN THE AREA DEPICTED HEREIN.

Exhibit C
EASEMENT AREAS

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease")
and Memorandum of Lease Agreement (the "Memorandum"),

dated _____,

by and between **Sussex County,**

and

Blacktail Solar III LLC,

PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE EASEMENT AREAS DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE EASEMENT AREAS IS AT THE SOLE DISCRETION OF LESSEE.

Exhibit D
MEMORANDUM OF LEASE
(Attached)

MEMORANDUM OF LEASE
Parcel ID No.: 334-7.00-30.0

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Blacktail Solar III LLC

Attn: Land Department
1700 Rockville Pike, Suite 305
Rockville, MD 20852

(SPACE ABOVE FOR RECORDER'S USE ONLY)

MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT

THIS MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT ("Memorandum") has been made to indicate the existence of a Solar Energy Lease and Easement Agreement ("Lease") dated _____, 2024, by and between **Sussex County, Delaware** a county and political subdivision of the State of Delaware of/having an office at P.O. Box 589, Georgetown, Delaware 19947, United States as "**Lessor**", (whether one or more), and **Blacktail Solar III LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as "**Lessee**".

Lessor did grant demise, lease, and let the Premises (as defined below) exclusively unto Lessee, its successors and assigns, the right to develop a solar photovoltaic project or projects and grants certain easements associated therewith, on the lands described below and subject to the provisions contained in the Lease including the following:

1. The Option Period of the Lease is for a period of one year, commencing on the date immediately set forth above and may be incrementally extended, provided certain conditions are met, for up to a maximum of six (6) years in total thereby, continuing the term of the Lease to the end of the "extended" Option Period.
2. The Lease Term of the Lease comprises (a) a construction period of up to two years commencing on the Construction Commencement Date, and (b) an operations period of 25 years, commencing on the Operations Date, as defined in the Lease, and may be incrementally extended, provided certain conditions are met, for up to three additional five-year periods up to a maximum of 15 additional years, thereby continuing the term of the Lease to the end of the "extended" Lease Term.
3. The Property is described in the vesting deed attached hereto as **Exhibit "A"** and includes effluent spray lagoons constituting the Wolfe Neck Treatment Facility located at Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware.
4. The Premises containing up to 12.45 acres, more or less, is defined as being that portion of the Property comprising of an effluent spray lagoon surface at the Wolfe Neck Treatment Facility located on the Property, which lagoon is known as and identified as Lagoon 2 in the description attached hereto as **Exhibit "A-1"**, and which Premises is more fully described on **Exhibit "B"**, attached hereto and made a part hereof.
5. The Easement Area is defined as being that portion of the Property outside of the Premises which is more fully described on **Exhibit "C"**, attached hereto and made a part hereof, and the term of any such Easements is coterminous with the term of the Lease.

This Memorandum has been executed for the purpose of providing notice of the existence of the Lease and shall not be considered in any way a modification or alteration of the Lease. All terms and conditions of the Lease are hereby incorporated herein by reference as if fully set forth herein. This Memorandum has been entered into for the sole purpose of placing the Lease of record and shall not be deemed to amend, modify, supplement, or change any of the terms and conditions of the Lease in any respect whatsoever. To the extent of any conflict between this Memorandum and the Lease, the terms of the Lease shall govern and control.

(SIGNATURE PAGE(S) TO FOLLOW)

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto set their hands and official seals the date first written above.

LESSOR(S): Sussex County, Delaware

By:

Name: Michael H. Vincent

Title: President of County Council

Attest: (SEAL)

Clerk of Council

Corporate Acknowledgement

STATE OF _____)

)§:

COUNTY OF _____)

On the _____ day of _____ in the year 20____ before me, the undersigned, a notary public in and for said state, personally appeared _____, who holds the capacity of _____, for _____, a _____, and that he/she/they in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself/themselves in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

LESSEE: Blacktail Solar III LLC

By:

Name: Ron Stimmel

Title: Manager

Corporate Acknowledgement

COMMONWEALTH/STATE OF _____)
)§:
COUNTY/PARISH OF _____)

On the _____ day of _____ in the year 20____ before me, the undersigned, a notary public in and for said state/commonwealth, personally appeared Ron Stimmel, who holds the capacity of Manager, for **Blacktail Solar III LLC, a Delaware limited liability company**, and that he/she/they in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself/themselves in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Exhibit A to Memorandum
LEGAL DESCRIPTION OF PROPERTY

Parcel ID Number: 334-7.00-30.01

That certain real property in the County of Sussex, State of Delaware, described as follows:

15674

01987 2008

This Deed was prepared by WILSON, HALSBROOK & BAYARD, P.A.
Georgetown, Delaware

DEED

THIS DEED made this 21st day of June, A.D. 1994,

BETWEEN,

J.G. TOWNSEND, JR. & CO. of P.O. Box 430, Georgetown, Delaware 19947, hereinafter referred to as "Grantor",

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, of P.O. Box 589, Georgetown, Delaware 19947, party of the second part, hereinafter referred to as the "Grantee".

WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), Current Lawful Money of the United States of America and other good and valuable considerations, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns forever,

ALL that certain piece or parcel of land situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, being more particularly described as follows to wit:

BEGINNING at a set concrete monument in the northwesterly right-of-way line of Sussex County Road 270 at its intersection with the former center line of the Penn Central Railroad; thence by and with the aforesaid former center line of the Penn Central Railroad North 32 degrees 02 minutes 59 seconds West 1032.463 feet to a set concrete monument; thence turning and running North 58 degrees 00 minutes 00 seconds East 1488.382 feet to a set concrete monument; thence turning and running North 32 degrees 00 minutes 00 seconds West 404.998 feet to a set concrete monument; thence turning and running North 57 degrees 59 minutes 58 seconds East 1044.130 feet to a set concrete monument; thence turning and running South 32 degrees 00 minutes 00 seconds East 944.668 feet to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 269.690 feet to a set concrete monument; thence South 32 degrees 00 minutes 00 seconds East 1210.420 feet to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 2021.920 feet to a set concrete monument; thence turning and running North 31 degrees 58 minutes 26 seconds West 709.956 feet to a set concrete monument thence turning and running South 59 degrees 49 minutes 34 seconds West 240.449 feet to the place of beginning said to contain 100.00 acres, more or less and as more particularly shown on the survey thereof and defined as lands to be conveyed to: SUSSEX COUNTY COUNCIL and Lands of J.G. TOWNSEND, JR. & CO. Prepared by Charles D. Murphy Associates, Inc., Land Surveyors, dated May 17, 1994, revised May 31, 1994, revised on June 2, 1994, and revised on June 16, 1994 said plot being of record in the Office of the Recorder of Deeds in and for Sussex County in Plot Book 52, page 328.

BEING a portion of those lands conveyed unto this Grantor by deed of Sally W. Thompson, et al., dated August _____, 1946 and of record in the Office of the Recorder of Deeds in and for

07:13 333 6/22/94 TX-EX ST .00

3436 111 6/22/94 CTX-EX SU .00

DUM

Sussex County in Deed Book 361, page 409.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Jacob M. Moore, et al., dated July 9, 1946 of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 366, page 26.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Frank Martin, et al., dated March 24, 1951 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 398, page 147.

THIS conveyance is subject to the following covenants which are incorporated herein and made a part hereof:

By accepting title to the above-described premises, Sussex County hereby covenants on behalf of itself, its heirs, successors and assigns to State of Delaware, Division of Historical and Cultural Affairs, State Historic Preservation Office (DE SHPO) or its successor agency, to maintain and preserve that archaeological site data which qualified 78-D-65 and 78-D-60 for inclusion in the National Register of Historic Places as follows:

1. The County shall preserve and maintain the real property containing geological sites 78-D-65 and 78-D-60. Said sites are as shown and designated on the plot of lands referred to herein.
2. No construction or disturbance of the ground surface may take place without the express prior written permission of the DE SHPO signed by a fully authorized representative thereof. If the County proposes to undertake ground disturbing activities on the property, it may be necessary for the County to undertake data recovery in accordance with 36 CFR 800 prior to initiating the proposed activity. Maintenance activities such as grass mowing shall not be subject to this clause.
3. The DE SHPO shall be permitted at all reasonable times to inspect the aforementioned sites on land owned by the County to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant and in addition to any remedy now or hereafter provided by law, the DE SHPO may, following reasonable notice to the County, institute to enjoin said violation or require mitigation for said violation. The successful party shall be entitled to recover all costs or expenses incurred with such a suit, including all court costs and attorney's fees.
5. The County agrees that the DE SHPO may, at its discretion without prior notice to the County, convey and assign all or part of its rights and responsibilities to any successor agency.
6. This covenant is binding on the County, its heirs, successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the County verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the property as described in the above sites and bounds.
7. The failure of the DE SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

201987 2010

8. The DE SHPO may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the County, its heirs, successors or assigns. The DE SHPO may also make application to the County to modify or cancel this covenant.

9. This covenant shall be a binding servitude upon the County and shall be deemed to run with the land. Acceptance of this Deed and its recordation shall constitute conclusive evidence that the County agrees to be bound to the foregoing conditions and restrictions and to conform to obligations herein set forth.

IN WITNESS WHEREOF, the said J.G. TOWNSEND, JR. & CO. has caused its name to be hereunto set by its President and the common and corporate seal of this said corporation shall be hereunto affixed, duly attested to by its Secretary, the day and year first above written.



J.G. TOWNSEND, JR. & CO.

BY: [Signature]
President

ATTEST: [Signature]
Secretary

STATE OF Delaware
COUNTY OF Sussex

BE IT REMEMBERED that on this 21st day of

June, A.D. 1984, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Paul G. Townsend, President of J.G. TOWNSEND, JR. & CO., a corporation of the State of Delaware, party to this indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

[Signature]
Notary Public

DALLAS D. GREEN
My commission expires:

04 JUN 22 PM 2:09

RECORDED OF DEEDS
SUSSEX COUNTY

FRANK J. STRAUBE
NOTARIAL OFFICER ALTERNATE TO
BY DEL. CODE SECT. 432
ATTORNEY AT LAW
DELAWARE

PURCHASERS REPORT
MADE THIS DATE

JUN 23 1984

ASSESSMENT DIVISION
OF SUSSEX CTY.

Sussex County Engineering 7/17/94

EXHIBIT A-1 to Memorandum

LAGOON 2





**Exhibit B to Memorandum
PREMISES**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease")
and Memorandum of Lease Agreement (the "Memorandum"),

dated _____, 2024,
by and between **Sussex County, Delaware,**
and
Blacktail Solar III LLC,

**Blacktail Solar III - Parcel
Boundary, Premises and
Equipment Pad**

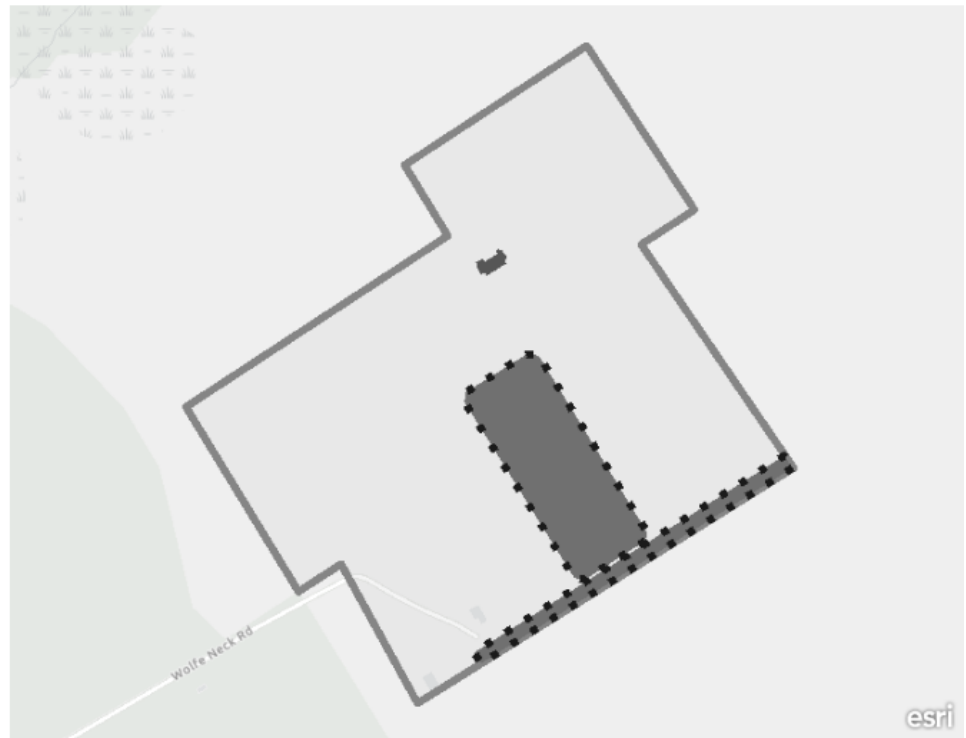
 Parcel Boundary +/-
100 ac

 Premises +/-
12.45 ac

 Equipment Pad



 600ft



THE DEPICTION CONTAINED IN THIS EXHIBIT IS INTENDED TO BE FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT CONSTITUTE A SURVEYED REPRESENTATION OF THE BOUNDARIES DEPICTED THEREIN. PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE PREMISES DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE PREMISES IS AT THE SOLE DISCRETION OF LESSEE BUT WILL REMAIN WITHIN THE AREA DEPICTED HEREIN.

**Exhibit C to Memorandum
EASEMENT AREAS**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the "Lease")
and Memorandum of Lease Agreement (the "Memorandum"),

dated _____, 2024,
by and between **Sussex County, Delaware,**
and
Blacktail Solar III LLC,

PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF
THE EASEMENT AREAS DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE
EASEMENT AREAS IS AT THE SOLE DISCRETION OF LESSEE.

EXHIBIT E to LEASE
DECOMMISSIONING FUNDING AGREEMENT
(Attached)

DECOMMISSIONING FUNDING AGREEMENT

THIS DECOMMISSIONING FUNDING AGREEMENT (this “**DFA**”) dated as of _____ and to be effective as of the Construction Commencement Date (as defined in the Lease (defined below)) is made by and among **Sussex County, Delaware**, a county and political subdivision of the State of Delaware, having an office at P.O. Box 589, Georgetown, Delaware 19947, United States, as “**Lessor**”, (whether one or more), **Blacktail Solar III LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, United States, as “**Lessee**”, and M&T Bank, having an office at 2205 DuPont Blvd., Georgetown, DE 19947, as “**Bank**”. Lessor and Lessee are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

RECITALS

(a) Lessor is the owner of approximately 100 acres of real property located in Wolfe Neck Road, Rehoboth Beach, the County of Sussex, State of Delaware, as more particularly described in the vesting deed which is attached hereto as **Exhibit A** (the “**Property**”);

(b) Lessor is the owner of the effluent spray lagoon at the Wolfe Neck Treatment Facility, located on the Property, which lagoon is known as and identified as Lagoon 2 in the description attached hereto as Exhibit A-1 (the “**Lagoon**”);

(c) Lessor and Lessee have entered into that certain Solar Energy Lease and Easement Agreement of even date herewith, as modified by that certain Addendum to Solar Energy Lease and Easement Agreement of even date herewith (the “**Addendum**”) (and as further amended, restated, modified, and supplemented from time to time, the “**Lease**”);

(d) Pursuant to the Lease, as of the Effective Date (as defined below) of this DFA, Lessee has leased from Lessor and Lessor has leased to Lessee the Premises for the construction and operation of a solar photovoltaic and/or energy storage project on the Premises, including all necessary equipment to deliver solar or stored energy from the Premises to the distribution grid (the “**Project**”);

(e) Lessor and Lessee desire to open and maintain that an interest bearing certificate of deposit account with Bank to be known as the Sinking Fund Account, for depositing of sums to cover the costs of decommissioning the Project, and the Parties desire to enter this Agreement to set forth their agreements related to operation and maintenance of the Sinking Fund Account.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND THE AGREEMENTS, COVENANTS AND PROMISES set forth in this DFA and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and agreed by the Parties, Lessor and Lessee, intending to be legally bound hereby, agree as follows:

1. **Definitions.** Capitalized terms in this DFA which are defined in the Lease but not otherwise defined in this DFA have the same meanings herein as in the Lease.
2. **Effective Date.** This DFA shall become effective as of the Construction Commencement Date (the “**Effective Date**”).
3. **Sinking Fund.**
 - (a) Within five (5) days after the Effective Date, Lessor and Lessee shall establish a special purpose interest-bearing certificate of deposit account with Bank (the “**Sinking Fund Account**”), and upon

such establishment, Lessee shall deposit the sum of \$125,000.00 into the Sinking Fund Account. The initial deposit into the Sinking Fund Account, together with additional sums deposited therein in accordance with the provision in the immediately following sentence are hereinafter collectively referred to as the "**Sinking Fund**". At the end of each calendar year after the Effective Date, Bank shall distribute to Lessee in accordance with Lessee's written directions any amount in the Sinking Fund Account consisting solely of interest, dividends, income, capital gains and other amounts earned on or derived from the sums deposited by Lessee into the Sinking Fund Account under this DFA.

- (b) Commencing on the first anniversary of the Operations Date and on each subsequent anniversary of the Operations Date during the Lease Term, Lessee shall deposit into the Sinking Fund Account an additional sum equal to 2.5% of the then existing amount in the Sinking Fund, as described in greater detail on Schedule I attached hereto. The Parties agree that the Sinking Fund shall be used solely to pay for any costs of decommissioning the Project under the Lease. Provided Lessee complies with its obligations to deposit funds into the Sinking Fund Account in accordance with this DFA, Lessee shall have no further payment obligation in connection with funding the DFA during the Lease Term; *provided, however*, that in the event the actual costs of decommissioning the Project exceed the amount of the Sinking Fund, Lessee shall be responsible for any such excess costs, provided such excess costs are not as a result of Lessor using any portion of the Sinking Fund for any reason other than to pay for decommissioning costs of the Project in accordance with this DFA.
- (c) In the event Lessor uses any amount in the Sinking Fund for any reason other than to pay for decommissioning costs in accordance with this DFA, Lessor shall be responsible to pay for such amount used and shall indemnify and hold harmless Lessee from any claim, loss, damage, liability or costs (including any reasonable attorney costs) arising from such use of funds for reasons other than to pay for decommissioning costs in accordance with this DFA.
- (d) Until Bank is notified in accordance with the provision in Section 4, and except to the extent permitted by the provision in Section 3(a), neither Lessor nor Lessee may withdraw any amount from the Sinking Fund Account.

4. Decommissioning Process.

- (a) Upon expiration or earlier termination of the Lease in accordance with Section 13.1 of the Lease, Lessee shall give notice to Bank of such expiration or earlier termination, which notice shall set forth: (a) the expiration date or termination date of the Lease, and (b) that Lessor has 30 days from such expiration date or termination date (the "**Purchase Option Exercise Period**") to exercise its option to purchase the Project Facilities as set forth in the Lease (the "**Lessor Purchase Option**").
- (b) If Lessor exercises its Purchase Option, Lessor shall deliver a notice to Lessee and Bank of such exercise. Pursuant to such exercise, on the date Lessee and Lessor consummate the purchase and sale of the Project Facilities from Lessee to Lessor (such consummation, the "**Closing**"), the Parties shall jointly notify Bank in writing of the Closing, and Bank shall, within five days thereof, distribute all amounts in the Sinking Fund Account to Lessee.
- (c) In the event Lessor does not deliver the notice exercising its Purchase Option during the Purchase Option Exercise Period or notifies Lessee and Bank in writing of Lessor's election not to purchase the Project Facilities, Lessee shall immediately commence the decommissioning of the Project Facilities in accordance with the Lease. Upon Lessee's completion of the Restoration Requirements in accordance with the Decommissioning Plan, Lessee and Lessor shall jointly notify

Bank in writing of such completion of the Restoration Requirements, and Bank shall, within five days of receipt of such notice, distribute all amounts in the Sinking Fund Account to Lessee.

- (d) If (i) Lessee fails to complete the Restoration Requirements within eight months after the expiration date of the Purchase Option Exercise Period, or (ii) the Project ceases to produce electrical energy for a period of 12 consecutive months, Lessor shall give Lessee and Bank notice of its intent to commence decommissioning of the Project (the “**Lessor Decommissioning Notice**”). In the event Lessee fails to respond to Lessor with a reasonable explanation for the delay in the restoration or cessation of operation of the Project within 30 days after delivery of the Lessor Decommissioning Notice, Lessor may commence the decommissioning of the Project. Upon request by Lessor to Bank at any time after expiration of the 30-day period after delivery of the Lessor Decommissioning Notice, Bank shall distribute 100% of the Sinking Fund to Lessor or its designee in accordance with Lessor’s written instructions.

5. Miscellaneous.

- (a) Lessor and Lessee agree to indemnify and hold harmless Bank, its officers, directors, employees and agents, against claims, liabilities or expenses (including reasonable attorney’s fees) arising out of Bank’s compliance with any requirements of this DFA with respect to the Sinking Fund Account, except if such claims, liabilities or expenses are caused by Bank’s negligence or willful misconduct.
- (b) This DFA shall not create any obligation or duty of Bank except as expressly set forth herein.
- (c) As to the matters specifically subject of the DFA, in the event of any conflict between this DFA and the Lease or any other agreement among the parties or between any of them, the terms of the DFA shall control.
- (d) All notices, requests, demands, waivers and other communications required or permitted to be given under this Leases shall be in writing and may be given by any of the following methods: (a) personal delivery, (b) a writing in portable document format (“**PDF**”) attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested, (c) overnight or certified mail, postage prepaid, return receipt requested, or (d) next day air courier service. Notices shall be sent to the appropriate party at its address or email address given below, provided that any Party may change its address for purposes of this Section (d) by giving notice of such change to the other Parties:

If to Lessor: Sussex County, Delaware
Name: Mike Harmer
Address: P.O. Box 589, Georgetown , Delaware
19947, United States
Email: mike.harmer@sussexcountyde.gov
Phone No.: +1-3028557370

If to Lessee: Blacktail Solar III LLC
Attention: Land Department
Address: 1700 Rockville Pike, Suite 305,
Rockville, MD 20852, United States
Email: land@chaberton.com

If to Bank: M&T Bank
Attention:
Address: 22205 DuPont Blvd
Georgetown, DE 19947
Email:

- (e) This DFA shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the Parties. This DFA may not be amended or modified except by written instrument signed and delivered by the Parties. Lessee may assign this DFA to any subsidiary, or purchaser or transferee of the Project. The Parties agree to execute and deliver any additional document or take any further action as reasonably requested by the other party to effectuate the purpose of this DFA.
- (f) This DFA shall be construed and enforced in accordance with the laws of the State of Delaware.
- (g) This DFA shall terminate upon distribution of 100% of the Sinking Fund to Lessee or Lessor in accordance with the provisions of this DFA, whereupon the Sinking Fund Account shall also be terminated and closed.
- (h) This DFA may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument. This DFA may be executed and transmitted via facsimile, PDF, or other similar electronic means complying with the U.S. federal ESIGN Act of 2000 (e.g. www.docusign.com) and a manual or electronic signature of the undersigned transmitted via such means shall have the same force and effect as a manually signed original.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Decommissioning Funding Agreement as of the date set forth above.

LESSOR: Sussex County, Delaware

By:

Name: Michael H. Vincent

Title: President of County Council

Attest: (SEAL)

Clerk of Council

LESSEE: Blacktail Solar III LLC

By:

Name: Ron Stimmel

Title: Manager

BANK: M&T Bank

By:

Name:

Title:

SCHEDULE I
SINKING FUND DEPOSIT SCHEDULE

Sinking Fund (Deposits)		
Timeframe	Amount (\$)	Cumulative
Construction Commencement Date	125,000	125,000
Yr 1 of Operations Date	\$3,125.00	\$128,125.00
Yr 2	\$3,203.13	\$131,328.13
Yr 3	\$3,283.20	\$134,611.33
Yr 4	\$3,365.28	\$137,976.61
Yr 5	\$3,449.42	\$141,426.03
Yr 6	\$3,535.65	\$144,961.68
Yr 7	\$3,624.04	\$148,585.72
Yr 8	\$3,714.64	\$152,300.36
Yr 9	\$3,807.51	\$156,107.87
Yr 10	\$3,902.70	\$160,010.57
Yr 11	\$4,000.26	\$164,010.83
Yr 12	\$4,100.27	\$168,111.10
Yr 13	\$4,202.78	\$172,313.88
Yr 14	\$4,307.85	\$176,621.73
Yr 15	\$4,415.54	\$181,037.27
Yr 16	\$4,525.93	\$185,563.20
Yr 17	\$4,639.08	\$190,202.28
Yr 18	\$4,755.06	\$194,957.34
Yr 19	\$4,873.93	\$199,831.27
Yr 20	\$4,995.78	\$204,827.06
Yr 21	\$5,120.68	\$209,947.73
Yr 22	\$5,248.69	\$215,196.42
Yr 23	\$5,379.91	\$220,576.34
Yr 24	\$5,514.41	\$226,090.74
Yr 25	\$5,652.27	\$231,743.01

Exhibit A
LEGAL DESCRIPTION OF PROPERTY

Parcel ID Number: 334-7.00-30.01

That certain real property in the County of Sussex, State of Delaware, described as follows:

15674

101987 2008

This Deed was prepared by WILSON, HALSBROOK & BAYARD, F.A.
Georgetown, Delaware

TN#3-34-7-part of 30

DEED

THIS DEED made this 21st day of June, 1994, A.D.

BETWEEN,

J.G. TOWNSEND, JR. & CO. of P.O. Box 430, Georgetown, Delaware 19947, hereinafter referred to as "Grantor",

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, of P.O. Box 589, Georgetown, Delaware 19947, party of the second part, hereinafter referred to as the "Grantee".

WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00), Current Lawful Money of the United States of America and other good and valuable considerations, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns forever,

ALL that certain piece or parcel of land situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, being more particularly described as follows to wit:

BEGINNING at a set concrete monument in the northwesterly right-of-way line of Sussex County Road 270 at its intersection with the former center line of the Penn Central Railroad; thence by and with the aforesaid former center line of the Penn Central Railroad North 32 degrees 02 minutes 59 seconds West 1032.463 feet to a set concrete monument; thence turning and running North 58 degrees 00 minutes 00 seconds East 1488.382 feet to a set concrete monument; thence turning and running North 32 degrees 00 minutes 00 seconds West 404.998 feet to a set concrete monument; thence turning and running North 57 degrees 59 minutes 58 seconds East 1044.130 feet to a set concrete monument; thence turning and running South 32 degrees 00 minutes 00 seconds East 944.668 feet to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 269.690 feet to a set concrete monument; thence South 32 degrees 00 minutes 00 seconds East 1210.420 to a set concrete monument; thence turning and running South 58 degrees 00 minutes 00 seconds West 2021.920 feet to a set concrete monument; thence turning and running North 31 degrees 58 minutes 26 seconds West 709.956 feet to a set concrete monument thence turning and running South 59 degrees 49 minutes 34 seconds West 240.449 feet to the place of beginning said to contain 100.00 acres, more or less and as more particularly shown on the survey thereof and defined as lands to be conveyed to: SUSSEX COUNTY COUNCIL and Lands of J.G. TOWNSEND, JR. & CO. Prepared by Charles D. Murphy Associates, Inc., Land Surveyors, dated May 17, 1994, revised May 31, 1994, revised on June 2, 1994, and revised on June 16, 1994 said plot being of record in the Office of the Recorder of Deeds in and for Sussex County in Plot Book 52, page 328.

BEING a portion of those lands conveyed unto this Grantor by deed of Sally W. Thompson, et al., dated August _____, 1946 and of record in the Office of the Recorder of Deeds in and for

07:13 333 6/22/94 TX-EX ST .00

3436 111 6/22/94 CTX-EX SU .00

DLM

Sussex County in Deed Book 361, page 409.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Jacob M. Moore, et al., dated July 9, 1946 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 366, page 26.

AND FURTHER being a portion of those lands conveyed unto this Grantor by deed of Frank Martin, et al., dated March 24, 1951 and of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 398, page 147.

THIS conveyance is subject to the following covenants which are incorporated herein and made a part hereof:

By accepting title to the above-described premises, Sussex County hereby covenants on behalf of itself, its heirs, successors and assigns to State of Delaware, Division of Historical and Cultural Affairs, State Historic Preservation Office (DE SHPO) or its successor agency, to maintain and preserve that archaeological site data which qualified 78-D-65 and 78-D-60 for inclusion in the National Register of Historic Places as follows:

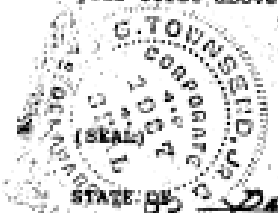
1. The County shall preserve and maintain the real property containing geological sites 78-D-65 and 78-D-60. Said sites are as shown and designated on the plot of lands referred to herein.
2. No construction or disturbance of the ground surface may take place without the express prior written permission of the DE SHPO signed by a fully authorized representative thereof. If the County proposes to undertake ground disturbing activities on the property, it may be necessary for the County to undertake data recovery in accordance with 36 CFR 800 prior to initiating the proposed activity. Maintenance activities such as grass mowing shall not be subject to this clause.
3. The DE SHPO shall be permitted at all reasonable times to inspect the aforementioned sites on land owned by the County to ascertain if the above conditions are being observed.
4. In the event of a violation of this covenant and in addition to any remedy now or hereafter provided by law, the DE SHPO may, following reasonable notice to the County, institute to enjoin said violation or require mitigation for said violation. The successful party shall be entitled to recover all costs or expenses incurred with such a suit, including all court costs and attorney's fees.
5. The County agrees that the DE SHPO may, at its discretion without prior notice to the County, convey and assign all or part of its rights and responsibilities to any successor agency.
6. This covenant is binding on the County, its heirs, successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the County verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the property as described in the above sites and bounds.
7. The failure of the DE SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

#01987 2010

8. The DE SHPO may, for good cause, modify or cancel any or all of the foregoing conditions or restrictions upon application of the County, its heirs, successors or assigns. The DE SHPO may also make application to the County to modify or cancel this covenant.

9. This covenant shall be a binding servitude upon the County and shall be deemed to run with the land. Acceptance of this Deed and its recordation shall constitute conclusive evidence that the County agrees to be bound to the foregoing conditions and restrictions and to conform to obligations herein set forth.

IN WITNESS WHEREOF, the said J.G. TOWNSEND, JR. & CO. has caused its name to be hereunto set by its President and the common and corporate seal of this said corporation shall be hereunto affixed, duly attested to by its Secretary, the day and year first above written.



J.G. TOWNSEND, JR. & CO.

BY: [Signature]
President

ATTEST: [Signature]
Secretary

STATE OF Delaware
COUNTY OF Sussex

BE IT REMEMBERED that on this 21st day of

June, A.D. 1984, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Paul G. Townsend, President of J.G. TOWNSEND, JR. & CO., a corporation of the State of Delaware, party to this indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed, and the act and the deed of the said corporation; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said corporation duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the Board of Directors of the said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

[Signature]
Notary Public

DALLAS D. GREEN
My commission expires:

04 JUN 22 PM 2:09

RECORDED OF DEEDS
SUSSEX COUNTY

FRANK J. STRAUBE
NOTARIAL OFFICER ALTERNATE TO
BY DEL. CODE SECT. 432
ATTORNEY AT LAW
DELAWARE

PURCHASERS REPORT
MADE THIS DATE

JUN 23 1984

ASSESSMENT DIVISION
OF SUSSEX CTY.

Sussex County Engineering 7/17/94

EXHIBIT A-1

LAGOON 2





Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: December 12, 2024

RE: County Council Report for C/U 2515 filed on behalf of Renewable Redevelopment, LLC

The Planning and Zoning Department received an application (C/U 2515 filed on behalf of Renewable Redevelopment, LLC) for a Conditional Use for an electric substation in a HI-1 Heavy Industrial Zoning District, to be located at Tax Parcel 233-2.00-2.01. The property is located at Gate A Road, located off Iron Branch Road, S.C.R 331. The parcel size is 140.25 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on June 26, 2024. At the meeting of July 10, 2024, the Planning & Zoning Commission recommended approval of the application for the 7 reasons stated and subject to the 7 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on July 30, 2024. At the conclusion of the Public Hearing, Council deferred action on the application for further consideration. Below is a link to the minutes of the July 30, 2024, County Council meeting:

[Link to the Minutes of the July 30, 2024 County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meetings of June 26, 2024, and July 10, 2024.

[Minutes of the June 26, 2024, Planning & Zoning Commission Meeting](#)

C/U 2515 Renewable Redevelopment, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A HI-1 HEAVY INDUSTRIAL DISTRICT FOR AN ELECTRIC SUBSTATION AND UTILITY USES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN



DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 140.25 ACRES, MORE OR LESS. The property is lying on the northwest side of Gate A Road, located off Iron Branch Road (S.C.R. 331). 911 Address: N/A. Tax Map Parcel: 233-2.00-2.01.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant conceptual site plan, a copy of a letter received from the applicant, a copy of the DelDOT SLER, a copy of the staff analysis, a copy of comments received from the Sussex County Engineering Department Utility Planning Division, a copy of the property deed and two comments.

Mr. Jim Fuquay, Esq., spoke on behalf of the Applicant, that the applicant is seeking a conditional use approval for an electrical substation on a portion of 140 acre parcel of land located on the northwest side of Gate A Rd.; that the land was purchased from Indian River Power, LLC in December of 2023 and the land was part of the Indian River Power Plant property near Millsboro; that the purpose of today's hearing is to consider a Conditional Use application for an electrical substation on a portion of the 140 acre property; that today's hearing is not about the development of offshore wind energy projects or the federal and state permitting process that authorizes that development; that the purpose of today's P&Z hearing is very specific, that is the applicants site an appropriate location for an electrical substation under the applicable Sussex County land use regulations; that the applicants conditional use application contains 140 acres consisting of 71.42 acres of mostly wooded wetlands and 68.89 acres of most mostly wooded uplands; that the substation site itself will require the removal of approximately 21.89 acres of upland woodlands and the remaining upland woodlands and wetlands will remain undisturbed to the greatest extent possible; that of the 140 acre site, approximately 23.59 acres will be disturbed during the location of the underground cable vaults that contain the incoming transmission lines and then the site of the actual substation itself which will utilize 13.32 acres of the property; that to the East of the site is the Indian River Power plant which generates electricity and continues to be transmitted to the DP&L electrical substation on Gate A Rd.; that the site is immediately adjacent to and contiguous with the site of the proposed substation; that the Renewable Development site surrounds the DP&L substation on three sides; that an electrical substation is a critical component of an electrical generating transmission and distribution system; that an electrical substation changes the high transmission voltage from the generating source to a lower distributing voltage, which can then be transmitted to the electric grid and ultimately delivered to the user; that the substation is a combination of various components of equipment used to accomplish the voltage change and to ensure safety of the operation; that the main pieces of equipment in a substation are the transformers, which actually change the voltage, the circuit breakers, isolators, surge arrestors, capacitor banks, voltage regulators and cooling equipment; that there are control buildings which house the control and monitoring systems that manage the operation of the substation; that the substation and control buildings are unmanned and all that operation takes place remotely; that the traffic generated by the substation after construction, the will be minimal, as there are no regular employees; that any traffic would be related to the maintenance, inspection and repair of the equipment when that is required and in addition there would be ground maintenance and periodic security inspections; that the location of the substation is approximately 1 mile North East of Iron Branch Road and approximately 1700 feet from the closest off site dwelling; that the 13 acre substation itself is surrounded by the remainder of the 140 acre. parcel and is buffered by a significant natural barrier of existing mature trees; that the only sounds associated with the substation are a low hum or a buzz from the transformers and other equipment, a clicking from circuit breakers, relays and switches and the sound of the cooling fans and pumps; that there's no noticeable odors from the operation; that there is a grounding system comprised of ground wires and rods that would dissipate electricity from lightning into the ground to prevent damage to the equipment and ensure safety; that

the site lighting at the substation will be similar to the lighting at the existing DPL substation; that there is no waste, trash or other byproducts produced; that there's no plan for any sewer or domestic water connection proposed for the site; that the substation design will be reviewed and comply with requirements of the state fire Marshall's office, stormwater management will be designed and constructed in compliance with the state and county requirements; that the design will utilize a subgrade stormwater containment to manage the quality and quantity of discharge; that the containment is anticipated to be a multilayer aggregate base across the entire stone surface of the substation area which would have to be approved by a soil conservation; that the substation itself will maintain a 50 foot buffer from any wetland area; that a portion of the substation area is located within the 100 year floodplain as that is designated on the FEMA maps; that the entire substation pad area and all critical equipment will be constructed at a height to avoid potential flood impact that will exceed FEMA elevation requirements; that the entire substation area will be enclosed by a security fence, which will be finalized as part of the final site plan approval; that a fence would be 7 feet high chain link fence and it would have a 45° angle topping course of barbed wire; that the gate to the facility will have the appropriate ability for emergency vehicle access; that the fence signage would provide the site name, the owner, contact information and appropriate warnings about safety and unauthorized entry onto the property; that the substation will be designed in conformity with all applicable county, state and federal standards and codes, as well as in compliance with DP&L's requirements for the interconnect utility for the connection to the electric grid; that this substation will be connecting into DP&L on the adjacent property and then from there into the electrical grid; that all the impacts I just discussed are similar to impacts and operations of the adjacent DP&L substation that has been operating safely at that location without negative impact for decades; that as the applicable land use regulations, the entire 140 acre site is currently zoned HI-1 heavy industrial, as is all of the adjacent power plant property; that the HI-1 district also authorizes as a conditional use public utilities, including buildings of regulator stations and substations; that the zoning ordinance describes a conditional use as a use that is generally of a public or semipublic character and is essential and desirable for the general convenience and welfare; that conditional uses require the exercise of planning judgment as to location and site plan because of the nature of the use and the importance of the relationship of the use to the comprehensive plan; that the entire 140 acre site and the power plant property are designated as being in the industrial area as shown on the comprehensive plans future land use map; that the comprehensive plan states that the county recognizes that the availability of public services and infrastructure is necessary in order to spur industrial growth; that the county supports efforts by utility providers to extend service areas; that the comp plan discusses the importance of renewable energy sources, including emerging technologies such as offshore wind energy for utility scale electricity, and encourages renewable energy sources.

Mr. Butler asked if there would be any storage of lithium batteries within the confines of the substation.

Mr. Matthew Filippelli, technical director stated that there is no large commercial scale battery storage at this facility at this time.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing the Commission discussed the Application.

In relation to C/U 2515 Renewable Redevelopment, LLC. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

Minutes of the July 10, 2024, Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since June 26, 2024.

Ms. Wingate moved that the Commission recommend approval of C/U 2515 for RENEWABLE REDEVELOPMENT, LLC for an electrical substation based on the record and for the following reasons:

1. The proposed substation is located on land that is zoned HI-1 Heavy Industrial. The purpose of the HI-1 District is to provide for a variety of industrial operations as well as uses permitted in the LI-1 and LI-2 zoning districts. This conditional use is appropriate in the HI-1 District.
2. The location of the facility is designated as being in the “Industrial Area” under the Comprehensive Plan’s Future Land Use Map. “Industrial Areas” are areas devoted to concentrations of larger industrial uses including heavy industry.
3. The proposed facility is on land that was part of the Indian River Power Plant (in operation at this location since the 1950s) and it is adjacent to the existing DP&L electrical substations which have been in operation for decades. This conditional use is a reasonable and appropriate extension of the long-established land use at this location.
4. The proposed facility will not result in any significant increase in traffic on area roadways since there will be no full-time employees at the site, only periodic visits for inspections, repair and maintenance of the facility.
5. The proposed site is located a considerable distance from other properties and residences and the facility will be buffered by a significant natural barrier of existing mature trees.
6. The construction and use of an electrical substation on this site will not adversely affect neighboring properties or roadways.
7. No parties appeared in opposition to this application.
8. This Conditional Use is subject to the following conditions:
 - A. The Final Site Plan shall clearly show the limits of the electrical substation conditional use area as well as the remaining acreage.
 - B. The perimeter of the substation shall be fenced.
 - C. Two signs shall be required on the fencing around the property to identify the site and emergency contact information.
 - D. The plot indicates that only 23.59 acres of the 140.25 acre site will be disturbed. Forested areas outside of the disturbed area shall be preserved to the greatest extent possible and shown on the Final Site Plan.
 - E. Any security lighting shall be downward screened.
 - F. All stormwater management and erosion and sedimentation control facilities shall comply with applicable state and county requirements. These facilities shall be operated using Best Management Practices.
 - G. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of

County Council Report for C/U 2515 – Renewable Redevelopment, LLC

C/U 2515 Renewable Redevelopment, LLC for the reasons and the conditions stated in the motion.
Motion carried 5-0.

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
KIM HOEY STEVENSON, VICE-CHAIRMAN
R. KELLER HOPKINS
J. BRUCE MEARS
HOLLY J. WINGATE



Sussex County

DELAWARE
sussexcountyde.gov
302-855-7878 T
JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: June 26th, 2024

Application: C/U 2515 Renewable Redevelopment, LLC

Applicant: Renewable Redevelopment, LLC (c/o Gener Gotiangco)

Owner: Renewable Redevelopment, LLC (c/o Jeffrey Grybowski)

Site Location: The property is lying on the northwest side of Gate A Road, located off Iron Branch Road (S.C.R. 331)

Current Zoning: HI-I (Heavy Industrial)

Proposed Use: An electric substation and utility uses

Comprehensive Land Use Plan Reference: Industrial

Councilmanic District: District 4 – Mr. Doug Hudson

School District: Indian River School District

Fire District: 73 – Dagsboro Volunteer Fire Company

Sewer: N/A

Water: N/A

Site Area: 140.25 acres +/-

Tax Map ID.: 233-2.00-2.01



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
(302) 854-5079 F
jamie.whitehouse@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Mrs. Christin Scott, Planner II
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: June 17, 2024
RE: Staff Analysis for C/U 2515 Renewable Development, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of Application C/U 2515 Renewable Development, LLC. to be reviewed during the June 26th, 2024, Planning Commission Meeting. This analysis should be included in the record of this Application and is subject to comments and information that may be presented during the Public Hearing.

Please note that the following Staff Analysis is for informational purposes only and does not prejudice any decision that the Sussex County Planning & Zoning Commission or Sussex County Council may wish to make as part of any Application submitted to the Department.

Tax Parcel ID: 233-2.00-2.01

Proposal: The request is for a Conditional Use for Tax Parcel 233-2.00-2.01 for an electric substation and utility uses. The property is lying on the northwest side of Gate A Road, located off Iron Branch Road (S.C.R. 331), Dagsboro, Delaware. The Conditional Use is proposed to be on a property that consists of 140.25 acres +/-.

Zoning: The Parcel is zoned Heavy Industrial (HI-1) District. The adjacent Parcels to the south of the subject Parcel are also zoned Heavy Industrial (HI-1) District. The north and east sides of the parcel are adjacent to the Indian River. Properties to the west are zoned Agricultural Residential (AR-1) Zoning District.

Future Land Use Map Designation w/in Comprehensive Plan: The subject property is located within the "Industrial Area" as outlined in the Sussex County's 2018 Comprehensive Plan.

Applicability to Comprehensive Plan: The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the Plan indicates that the subject property has a Future Land Use designation of "Industrial." The properties to the south also have a Future Land Use designation of "Industrial." Properties located outside of the "Industrial" Area are designated as within the "Coastal Area."

As outlined in the 2018 Sussex County Comprehensive Plan, Industrial Areas are lands devoted to concentrations of larger industrial uses including heavier industry, light industry, warehousing, and



flex space. Appropriate development in these areas could take the form of conventional industrial parks or planned business parks with a unified design that incorporate a combination of light industry and other business uses. Large, more intensive stand-alone industrial uses should also be directed to these areas (Sussex County Comprehensive Plan, 4-17).

Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories” in the 2018 Sussex County Comprehensive Plan notes that the existing Heavy Industrial (HI-1) District is an applicable Zoning District within the “Industrial” Future Land Use Map Designation (2018 Sussex County Comprehensive Plan, 4-25).

Further Site Considerations:

- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** Staff note that the Site is located within the vicinity of lands that are actively farmed.
- **Interconnectivity:** N/A
- **Transportation Improvement District (TID):** The Parcel is not located within any established Transportation Improvement Districts.
- **Forested Areas:** N/A
- **Wetlands Buffers/Waterways:** Adjacent to Indian River at the rear. Tidal & Regulated Wetlands are located on the site.
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within an “AE” Flood Zone.

The property does not lie within any established Tax Ditch Areas. Additionally, the County’s Online Mapping System indicates that there are no Well Head Protection Areas present on the site and that the property is located within an area of “Excellent” Groundwater Recharge Potential. The Applicant will have to abide by the requirements set forth in Chapter 89 Source Water Protection of the Sussex County Code.

Existing Conditional Uses within the Vicinity of the Subject Site: A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications, since 2011, that are within a 1.0-mile distance from the subject site.






Conditional Use Applications						
(Within a 1-mile radius of the subject site)						
Application Number CU #	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
2405	Elk Development, LLC	GR	Solar Farm	Approved	2/20/2024	2989
1972	Harry G. Miller	GR	Auto Repair Shop	Approved	12/3/2013	2330
1887	Mayola A. Clark	AR-1	Monument/sales/display	Approved	5/3/2011	2189

Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use Application to allow for an electric substation and utility use, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

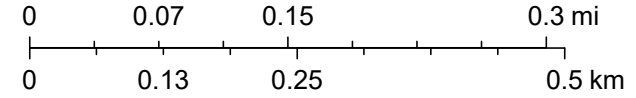
Sussex County



May 23, 2024

-  Override 1
-  Override 1
-  Tax Parcels
-  Streets
-  County Boundaries

1:9,028



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Sussex County



May 23, 2024

polygonLayer


 Override 1


 Override 2

Zoning

 Medium Residential - MR


 General Residential - GR

 Heavy Industrial - HI-1


 Tax Parcels

 Streets

 County Boundaries

 World Imagery

 Low Resolution 15m Imagery

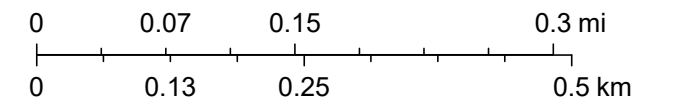
 High Resolution 60cm Imagery

High Resolution 30cm Imagery

Citations

2.4m Resolution Metadata

1:9,028



Sussex County Government, Maxar

Layers Search Basemaps Select Area Eagleview Print



Eagleview Search Results

Selected Features: Parcels (1)

1) 233-2.00-2.01 Zoom

BOOK	6027
PAGE	214
FULLNAME	RENEWABLE REDEVELOPMENT LLC
Second_Owner_Name	
MAILINGADDRESS	401 E PRATT ST
CITY	BALTIMORE
STATE	MD
a_account	
DESCRIPTION	I R PLANT #1 2 3 W199
DESCRIPTION2	LOT 1
DESCRIPTION3	
LUC	999
SCHOOL	
MUNI	00
CAP	0
APRBLDG	
APRLAND	259700
PINWASSEMENTUNIT	233-2.00-2.01
PIN	233-2.00-2.01

Navigation icons: back, forward, up, down, home, search

Selected Features (1)

Clear Selected



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: December 12, 2024

RE: County Council Report for C/U 2545 filed on behalf of J. G. Townsend, Jr. & Co.

The Planning and Zoning Department received an application (C/U 2545 filed on behalf of J.G. Townsend, Jr. & Co.) for an amendment of Condition "H" and the amendment/deletion of Condition "R" contained within Conditional Use No. 2359 (Ordinance No. 2964) regarding the requirements for landscaping, and for the installation of gates on Stockley Boulevard between the Governors Community and the proposed cottages, to be located in an MR Medium Density Residential Zoning District at Tax Parcel 335-12.00-3.00. The property is located at 16673 Kings Highway, Lewes. The parcel size is 25.56 ac. +/-

The Planning & Zoning Commission held a Public Hearing on the application on November 13, 2024. At the meeting of December 11, 2024, the Planning & Zoning Commission recommended approval of the application for the 11 reasons and subject to the revised condition wording as outlined in the motion (below).

The County Council held a Public Hearing on the application at its meeting on December 10, 2024. At the conclusion of the meeting, and as a recommendation on the application had not been received from the Planning & Zoning Commission, the Council deferred action on the application, holding the record open for both the receipt of the Planning & Zoning Commission's recommendation and also for any additional public comments received before the end of business on Monday, December 16, 2024. Any additional public comments received are to be reported at the scheduled County Council meeting on December 17, 2024.

Below are the minutes from the Planning & Zoning Commission meetings of November 13, 2024, and December 11, 2024.



Minutes of the October 23, 2024, Planning & Zoning Commission Meeting

C/U 2545 J. G. Townsend Jr. & Co.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION "H" AND THE AMENDMENT/DELETION OF CONDITION "R" CONTAINED WITHIN CONDITIONAL USE NO. 2359 (ORDINANCE NO. 2964) REGARDING THE REQUIREMENTS FOR LANDSCAPING, AND FOR THE INSTALLATION OF GATES ON STOCKLEY BLVD BETWEEN THE GOVERNORS COMMUNITY AND THE PROPOSED COTTAGES, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS. The property is lying on the east side of Kings Highway (Rt. 9) and the south side of Gills Neck Road (S.C.R. 267) at the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267). 911 Address: 16673 Kings Highway, Lewes. Tax Parcel: 335-12.00-3.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the conditional use site plan, a copy of the applicants exhibit booklet, a copy of the presentations received from the applicants, a copy of the staff analysis, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division, a copy of the DelDOT SLER and we have received 129 responses in opposition and two responses that were classified as neutral and in total there is a petition with total signatures with 369 signatures.

Mr. David Hutt, Esq., of Morris & James, spoke on behalf of the owner, J.G. Townsend Jr., & Co., and the applicant, Jack Lingo Asset Management, that this application is in relation to two specific conditions of Conditional Use #2359, Ordinance #2964; that the original application was heard on May 25, 2023, for a Conditional Use to put multifamily dwellings of 102 units on about 25 1/2 acres of land and on December 5, 2023 County Council adopted Ordinance #2964; that 2 conditions are the reason for this case, Condition "H" and Condition "R"; that Condition "H" regarding interconnectivity is the part of the original application, which references to portions of the Sussex County Comprehensive Plan and the importance of interconnectivity between parcels of land within subdivisions and this is consistent with Comprehensive Plan, Section 12.2.3, which directly encourages interconnectivity between parcels; that it's also consistent with strategies. 12.1.4.2 and 12.1.4.3, which states that the County should encourage interconnectivity between parcels and create multiple alternative methods for automobiles to reach a property; that the master plan reflected sound land use principles which puts the most intense activity, such as commercial or business activities and higher densities for residential uses closer to main roads; that the main roads that Sussex County and DelDOT refer to as arterials, major arterials and collector roads, and then the more distant one gets from those areas, the intensity and the density will generally speaking decrease; that when you have that type of sound land use planning and a singular owner it's an opportunity for the County to have master planning so that there can be things like shared stormwater management, pedestrian and vehicular interconnectivity; that when the master planning was done, the working assumption was that the intersection of Clay Rd. and Stokely Blvd., the road that extends from Kings Highway past the village center commercial and the village center cottages to the Governor's community, it was thought that that would be a signalized intersection; that DelDOT has decided that this would be a roundabout since the plan was developed, however it was always part of the plan to have that connection there; that at the May 2023 hearing, there was a rendering of the future village center commercial along that

faces King's Highway, right behind that is the village center cottages, then behind that you can see an aerial image that includes the Governors Community; that this afternoon's application will be create a four way intersection on Kings Highway with Stokely Blvd. coming off directly across from Clay Rd., going past the future village Center commercial area, past the cottages and immediately to the entrance of the Governor's Community off of the future Stokely Blvd.; that Stokely Blvd. is intended to be a Blvd. with islands in the middle and the travel lanes on either side; that those travel lanes extend right to the property line and bisect the island and the travel ways; that the interconnectivity is the exact same interconnectivity that was shown on the Governor's site plan when that was presented in 2008 to the Planning Commission and County Council; that the same bisected road with an island in the middle extending to the property line and then ultimately out to an intersection with Clay Rd. is what has been shown on all site plans, record plans, and condominium declaration plans since this was laid out prior to 2008; that the discussions that occurred during the public hearings before the Planning Commission and County Council, the applicant asked Mr. Mumford at Davis, Bowen and Friedel to redesign that point of interconnection to address traffic calming measures; that in order to address the concern that people would travel off of Stokely Blvd. and accelerate through Stokely Blvd. past the village center commercial and cottages area and then into the Governor's Community; that Davis, Bowen and Freidel came up with a plan to have the connection point at the Governors Community townhomes and then to the village center cottages; that Stokely Blvd. would have the islands and the sides of the road on either side and pinch the roadway to be narrower and then the second addition to was to put in elevated crosswalks to calm traffic; that for reference, there are 323 record plots that relate to the Governor's Community, either record plans or condominium declarations, and 320 of them included the interconnectivity; that with respect to Section 9H, directly addressed in the Planning Commission's recommendation on this application it stated this interconnectivity has been part of the developer's master plan for this entire area and has been shown and approved by Sussex County at each stage of development; that along Gills Neck, Rd. the indication and evidence that once construction is completed, this interconnectivity must remain open to all vehicular traffic at all times without obstruction; that County Council adds obstructions to that condition as they ask for there to be a gate installed with card access; that the applicants request to the Planning Commission is to strike the language that County Council added to Condition "H" and then add language that states while the interconnection must remain open, to address the concerns about this becoming a shortcut where people will speed through these connected communities, the applicant shall install an elevated crosswalk as a traffic calming measure at the boundary line between the Governors Community and the cottage community; that Condition 9 R was added by County Council and is a landscape plan for the subdivisions frontage along Kings Highway and being consistent with the goals of the Lewes Scenic and Historic Byway Corridor Management Plan; that the only connection point that this application has with Kings Highway is the intersection of Clay Road and Stokely Blvd., and there wouldn't be any landscaping at that intersection to maintain consistent with the Lewes Scenic and Historic Byway Corridor Management Plan; that Mr. Mumford and the applicant met with The Byways Committee, the chairwoman Mary Roth, and she suggested that rather than delete the condition that the condition be modified so that it relates to the portion of the property that is on Gills Neck Rd. which is a part of the scenic byway around the City of Lewes; that that's the change to the conditions that are different than the requested changes that were filed with the initial application, that the references to Kings Highway are deleted and in in their place Gills Neck Rd. has been inserted.

Mr. Collins asked if there were any other traffic calming measures that could be put in place other than just the elevated crosswalk.

Mr. Hutt stated that there would be the limited speed limits within the communities.

Mr. Mears stated that through all of the Comprehensive Plans one of the things that the County strives for is master planning and with the current Mater Plan Ordinance that is being worked on there is large parcels of property, whose master planning would include state maintained roads, wide boulevards that are part of that larger property that would connect the different residential uses and densities along with the commercial uses and office uses to the outside road infrastructure; that in this case, Mr. Hutt has talked about, this is one has been master planned since probably the 1990s; that we saw the applications come in one at a time, but there was a master plan that was showed informally to the County throughout that process from day one and of course that was modified as the different plans occurred, but it always anticipated that there would be interconnectivity; that when this was approved last time with this condition Ms. Howie-Stevenson was very adamant that this remained in place because, the Senators language, said something like there should also be interconnectivity with the adjacent properties, but she anticipated that this might become an issue; that her intent was well known and would survive in perpetuity that the condition in its entirety was this project is interconnected with the adjacent commercial areas facing King's Highway, as well as the Governor's Community, which is itself interconnected with the Senators Community; that this interconnection is part of the larger plan for the residential development of Kings Highway and Gills Neck Rd.; that this interconnectivity is important and necessary for safe vehicular and pedestrian movement within the developments to provide a means of access to and from them; that this interconnection or interconnectivity has been part of the developers master plan for this entire area and it has been shown and approved by Sussex County at each stage of development along Gills Neck Rd.; that this was very clear language that was used in putting together this condition; that the other thing to consider is if this is going to go by the master planning of the County and then it completely undermines that initiative by doing a redesign after going through the full master plan.

Mr. Robertson stated that one of things that everyone is concerned with is the backup on Kings Highway and how this interconnectivity will move traffic off of Kings Highway sooner for these developments and make it easier for members of those communities to get in and out of them more efficiently.

Mr. John Wright, from Department of Public Safety, EMS Division, spoke in regards to the application that artificial barriers and roadways ultimately affect response times for EMS; that EMS look to meet an 8min response time and with a 12.2min response time in some of the lowest fire districts and with additional road barriers those times will be even slower.

Mr. Michael Wolfe, President of Governor's Condominium Association, spoke in opposition to the application that they want to discuss a siren activated gate arm; that they went through the community to find the best solution to this and this gate arm doesn't violate any rules, no laws, statutes or doesn't place a significant burden on the developer, rather, it's intended to protect the children, grandchildren, and adult residents in our neighborhoods; that The Planning and Zoning Staff Analysis dated November 4th, 2024 and posted in the record, fails to consider the safety of adjacent communities, in particular the Governor's Community and the amendment cites 2 reasons for requesting elimination of the gate; that providing card access to Governors residents would place a burden on the village center cottages, Property Owners Association, and property manager and such a burden could easily be mitigated either by modifying the shared services agreement between the two communities that's already in place for pond and open space management or by enabling the Governor's property management company to manage the gate resident system for control; that the second one is the installation of the gate goes against the spirit of interconnectivity as originally intended by the Kings

Highway and Gills Neck master plan; that we maintain that interconnectivity must never take priority over safety; that no street connection was required for the Hawkeye Community and everyone keeps bringing up Kim Howie Stevenson and that's the community she lives in; that that was another JLAM project along Gills Neck Rd. clearly demonstrating that in Jay Lambs view the master plan, vehicle interconnectivity is an option, not a requirement; that the master plan sets forth design principles and strategies, advocates designs that are sensitive in their context, it does not mandate inner conductivity; that excessive traffic along Kings Highway and Gills Neck Rd. will continue to worsen with the influx of hundreds of new homes and associated vehicles; that shifting traffic through residential neighborhoods fails to provide the kind of comprehensive solution needed to prioritize the safety of residents, and promotes alternate forms of transportation, including walking and cycling; that its Planning and Zoning and County Councils responsibility first and foremost to provide for the safety and welfare of the county residents under the law and within the framework of the Sussex County Comprehensive Plan; that many residents are concerned about the safety of their families and believe that eliminating the gate is a terrible idea; that JLAM indicates that they don't understand how to implement the card access requirement in their approval; that we have professionals in our community that are willing to work with them to develop the card access system; that they would consider removing the card access requirement as long as JLAM considers installing an emergency siren activated breakaway gate with a camera system so it can be monitored; that the community would also agree to oversee the management and maintenance of the gate arm; that the interconnectivity states its necessary for safe vehicular and pedestrian movement, but with the location of this gate if it is removed there is immediate danger to the people who utilize our clubhouse, pools, children's playgrounds and sports courts; that our community has written over 120 letters and submitted a petition with over 375 signatures explaining why eliminating the gate requirement would be dangerous to our residents.

Mr. Rick Hansen, of Collins Rd., spoke in opposition to the application that he was the former President of the HOA for Governor's during the transfer of the development from JLAM to Governor's; that the gates critical for the safety of Governors residents, Jay lambs, opposition gate management, that it doesn't need to be a FOB or a car, it can be a little decal on your car, which is a fairly common type thing, so that objection, in my opinion, is not a meritable objection; that the master plans changed numerous times for that development corridor interconnectivity; that it's an ideology that makes great sense, but it doesn't always take into consideration the well-being of the people that it impacts; that there are other areas that gates and barriers to enter are able to go as long as it can allow access, what's the real reason for Governors to be connected to the village center?; that Kings Highway is a traffic disaster and all it's going to do when Stokely Blvd. opens up, is it's going to be a cut through; that Clay's Rd. to Gills Neck when the ferries out, everybody's going to do a cut through because it's a perfect Blvd. 2 lanes each way; that the traffic circles aren't going to solve the traffic problem; that when one person hits the crosswalk button down by the high school, which during school hours is going to be continuous; that originally it was asked that JLAM during development, not open the connection except for bicycles, pedestrians and emergency vehicles and they refused; that it was said that the gate and interconnectivity was in the master plan; that sometimes maybe a master plan needs to be changed or modified; that when the residents of Governor's asked for an emergency gate only they refused, then we asked P&Z to support an emergency gate only and that was refused; that Governor's asked JLAM for a monument sign and traffic calming features to be added the entrance which they've added; that . I have emails between myself as president of the board and Nick Hammonds with the design layout that is actually there, because when we were asking for a gate he says you're not going to get a gate, so you have to do something to protect the kids; that was an idea of Governors presented to JLAM, not the opposite way; that JLAM states the interconnectivity

is consistent with the master plan for the area; that the plan calls for interconnectivity between Senators, Governors and village center; that Senators doesn't want connectivity, they wanted a gate; that Hawkseye didn't want a gate to be connected to Senators, Governors doesn't want to be connected to the village center; that it's going to be people that don't live in the communities that want this cut through; that it's not the residents of the village center, they're going to have two exits, it's not Senators, they have two exits; that why should one developer be allowed to keep a plan that endangers the safety and quality of life of residents of a development they no longer control?; that does this gate impact the traffic counts or anything in the area and Anna Maria Fermato of DeDOT said that its not finalized as of yet so she cannot give an answer; that the need for interconnectivity does not mean only vehicular traffic, but it can be multimodal or pedestrian traffic.

Mr. Lee Thompson, of Governors Community, spoke in opposition to the application that he is speaking in terms of a parent who has children in Cape Henlopen High School and when school starts and lets out traffic at that light is a problem; that there are times that a car can sit through several light cycles before being able to get through; that with that traffic backup, people will often drive the median to the light down Kings Highway and then turn onto Gills Neck Rd. and do a U-turn just to avoid sitting through the light even longer; that if there is an interconnected road that begins at Clay and Stokely then, those same people who want to avoid this traffic light are going to use this interconnection as a cut through.

Mr. Howard Berger, of Collins Rd., spoke in opposition to that Section 13.2.4 of the County Plan talks about the disadvantages of interconnectivity and the dangers from through traffic; that the plan should see that roads are designed as to eliminate any problems from the interconnectivity; that the only change that the developer is offering since County Council denied its proposal is the elevated walkway and some street narrowing; that nothing in the Staff Review or in the proposal effectively deals with the safety issue from through traffic.

Mr. Whitehouse stated for the record that the Comprehensive Plan has been quoted as the correct Section, but for the purpose of the minutes, there is no misinterpretation the final paragraph says “*that there are a few perceived disadvantages relating to increased interconnectivity, such as increasing through traffic on residential streets. However, there are ways to plan and design connected roads better to avoid or minimize through traffic impacts on residential streets. The focus needs to shift on encouraging. Subdivision design that can provide a balanced mix of residential seclusion and local connectivity while maintaining commercial viability of the subdivision.*”

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Ms. Laura Wolfe, of Governor’s Community, spoke in opposition to the application that they are a tight knit community and everyone looks out for each other; that if someone is speeding through the development or driving unsafely, then everyone will knock on each other’s doors and let them know to slow down; that if you allow the interconnectivity there no longer is that recourse ability of knowing who to approach; that Governor’s Community is full of pedestrian traffic and children and allowing this interconnectivity will just put all of them in danger.

Mr. Garrick Hughes, a member of the Board of Directors of the Governors HOA, spoke in opposition to the application because his concern is that with this increase in traffic on these roads are going to bring an increase in road repairs and at whose expense since they are private maintained roads.

Mr. Jeff Irwin, of Collins Rd., spoke in opposition to the application that the roundabouts are not built for large vehicles and even firetrucks will have a hard time navigating the turns around the roundabouts.

Mr. Scott Beagle, a Governor's resident, spoke in opposition to the application that if you allow people to have access to the community then there is a possibility of them trying to utilize the amenities that they see as they pass through.

Mr. Toby Port, of Collins Rd., spoke in opposition to the application that when purchasing their home, it was listed as a private community, but with this interconnectivity from Stockley Rd. to Kings Highway it is now going to have a main public road running through the community; that people will take this cut through to avoid sitting through the traffic lights, which can be multiple cycles during busy times of the day or busy season.

Ms. Debbie Marie, of Temple Rd., spoke in opposition to the application that the biggest concern is that the residents of Governors will have to take on the cost of the maintenance of these roads of interconnectivity as they are classified as private roads and with that all of the increased cut-through traffic will put wear and tear on them.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2545 J.G. Townsend Jr. & Co. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Minutes of the December 11, 2024, Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since November 13, 2024.

Mr. Collins moved the Commission to recommend APPROVAL of C/U 2545 J.G. TOWNSEND JR. & CO., for an amendment of Condition "H" and the amendment/deletion of Condition "R" contained within Conditional Use No. 2359 (Ordinance No. 2964) regarding the requirements for landscaping, and for the installation of gates on Stockley Blvd between the Governors community and the cottages approved as part of that prior Conditional Use based upon the record made during the public hearing and for the following reasons:

1. This request seeks to amend two conditions that were attached by County Council to the approval of Conditional Use No. 2359 (Ordinance No. 2964). Condition H concerned the installation of gates on Stockley Blvd and Condition R required landscaping on an area of land that was not part of the Conditional Use.
2. Conditional Use No. 2359 (Ordinance No. 2964) was the last residential development of land owned by J.G. Townsend, Jr. & Co. along the outside of Gill's Neck Road. This area has developed residentially over many years, and all subject to a master plan prepared by J.G. Townsend, Jr. & Co. many years ago. That master plan has always included the form of interconnectivity provided by Governor Stockley Blvd. Sussex County has been regularly criticized for not doing enough master planning as part of its land use. Interconnectivity is an important aspect of master planning. The County should not be asked to delete or limit access

to a road that was thoughtfully approved after taking into account all of the circumstances and master planning that occurred. Doing so would be counter to the master planning that is a good land use tool that is beneficial to Sussex County. Retroactively amending an established and well-known master plan to delete interconnectivity would undermine the overall design and the finality of any master planned development throughout all of Sussex County.

3. The Planning & Zoning Commission unanimously approved Conditional Use No. 2359 (Ordinance No. 2964) with a very specific Condition contained in it that Governor Stockley Blvd. shall remain open for interconnectivity at all times. This condition also included specific reasons why it was being imposed. Condition H stated in its entirety:
This project is interconnected with the adjacent commercial areas facing King's Highway as well as the Governor's community which is itself interconnected with the Senator's Community. This interconnection is part of the larger plan for the residential development of King's Highway and Gill's Neck Road. This interconnectivity is important and necessary for safe vehicular and pedestrian movement within the developments to provide a means of access to and from them in addition to use Gill's Neck Road. This interconnectivity has been part of the developer's Master Plan for this entire area and it has been shown and approved by Sussex County at each stage of development along Gill's Neck Road. Therefore, once construction is completed this interconnectivity must remain open to all vehicular traffic at all times without obstruction.
4. Despite this clear directive that this roadway must “remain open to all vehicular traffic at all times without obstruction”, County Council inexplicably added an inconsistent provision at the end of this condition that a gate can be installed on the roadway. This addition was an error, because the roadway cannot “remain open to vehicular traffic at all times without obstruction” at the same time that a gate exists.
5. The record reveals that all homeowners who purchased properties within the adjacent development served by Governor Stockley Boulevard knew, or should have known, that the roadway provided a means of access to and from Kings Highway and Gill's Neck Road. As included in the public record, this was clearly shown on (a) the marketing materials for the adjacent developments, including the website used by the homebuilder to market all of the new homes there; (b) the Public Offering Statement that was provided to every prospective homebuyer in accordance with Delaware's DUCIOA law; (c) the Seller's Disclosure of Real Property Condition Report that was provided to every prospective homebuyer as required by State Code; and (d) hundreds of different filings in the Sussex County Recorder of Deeds as new units were added to the adjacent projects (which would appear in every title search for homebuyers at the time of their settlement); and other examples.
6. The roadway itself was designed for interconnectivity. It is a boulevard-style roadway with wider lanes and a traffic circle to handle the traffic that may use it. Also, the plans for the development approved by Conditional Use No. 2359 as well as the adjacent development show that the use of this road for interconnectivity was always intended. In this regard, there are no homes with direct access or frontage on Governor Stockley Boulevard were included in either plan.
7. While interconnectivity may not always be appropriate in every situation, particularly between otherwise unrelated developments, those circumstances do not exist here, where there is a single landowner and developer for the entire area; it was all master planned with interconnectivity from day-one; it was marketed with interconnectivity so any potential purchaser of a home would know that it was expected; and hundreds of recorded documents showed the interconnection of Governor Stockley Boulevard.
8. If Governor Stockley Blvd. is gated at the interior location that is proposed, it will not prevent any traffic from entering from either Kings Highway or Gill's Neck Road. While residents may know about this interior gate, delivery vehicles, visitors, utility vehicles, and emergency

services will not necessarily have knowledge of the gate's existence. It is likely that such an interior gate will double the amount of traffic coming in or out of either side. Anyone unaware of the gate would come halfway into the development before hitting the blockage- only to be forced to turn around the same way they came in- possibly at a high rate of speed to make up for lost time. That is particularly problematic on this boulevard-style roadway where a simple U-Turn is blocked by the median.

9. Our Sussex County Comprehensive Plan promotes interconnectivity like what was required in Conditional Use No. 2359. Section 12.2.3 of the Plan states that the County “should encourage interconnectivity between parcels of land” like the design of Governor Stockley Blvd. This is summarized in Objective 12.1.4 of the Plan, which states that the County should “encourage development design that promotes increased access between developments and community facilities including parks, schools and libraries.” More specifically, Strategies 12.1.4.2 and 12.1.4.3 direct the County to implement the interconnectivity required in Conditional Use No. 2359 by “encourage[ing] interconnectivity” and “create[ing] multiple, alternate routes for automobiles....”. Amending the approved interconnectivity of Governor Stockley Blvd. would be inconsistent with these directives of our County Comprehensive Plan.
10. Based on the very specific reasons provided by the Commission in 2023 when it included the interconnectivity of Governor Stockley Boulevard and the unanimous vote in favor of that condition, there is no reason to undermine that condition now.
11. Finally, Condition R should be deleted in its entirety. County Council imposed this new condition as part of its approval of Conditional Use. No 2359, despite the fact that it creates obligations on land that is largely not the subject of the Conditional Use. As a result, the condition cannot be complied with and should be removed.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend APPROVAL of C/U 2545 J.G. Townsend Jr., & Co., for the reasons and the conditions stated in the motion. Motion carried 3-1.

Vote by roll call: Mr. Mears – nay, Ms. Wingate – yea, Mr. Collins – yea, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

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PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: November 13, 2024

Application: CU 2545 J. G. Townsend Jr. & Co.

Applicant: Jack Lingo Asset Management, LLC
246 Rehoboth Avenue
Rehoboth Beach, DE 19971

Owner: J. G. Townsend Jr. & Co.
P.O. Box 430
Georgetown, DE 19947

Site Location: Lying on the east side of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267) at the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267)

Current Zoning: Medium Residential (MR) Zoning District

Proposed Zoning: Medium Residential (MR) Zoning District

Proposed Use: 102 Multi-Family Units (Request to amend Condition “H” and amend/delete Condition “R” of CU 2359, Ord. No. 2964)

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire Company

Sewer: Sussex County

Water: Tidewater Utilities

Site Area: 25.56 acre +/-

Tax Map ID: 335-12.00-3.00 (p/o)



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Sussex County

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Memorandum

To: Sussex County Planning Commission Members
From: Mrs. Christin Scott, Planner II
CC: Mr. Vince Robertson, Assistant County Attorney, and applicant
Date: November 4, 2024
RE: Staff Analysis for C/U 2545 J.G. Townsend, Jr. & Co.

This memo is to provide background and analysis for the Planning Commission to consider as a part of application C/U 2545 J.G. Townsend, Jr. & Co. to be reviewed during the November 13th, 2024, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

Please note that the following Staff Analysis is for informational purposes only and does not prejudice any decision that the Sussex County Planning & Zoning Commission or Sussex County Council may wish to make as part of any Application submitted to the Department.

Tax Parcel ID: 335-12.00-3.00 (p/o)

Proposal: The request is for Tax Parcel 335-12.00-3.00 (p/o) to allow for an amendment of Condition "H" and the amendment/deletion of Condition "R" contained within Conditional Use No. 2359 (Ordinance No. 2964) regarding requirements for landscaping, and for the installation of gates on Stockley Boulevard between the Governors community and the proposed cottages. The property is lying on the east side of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267), at the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267). The parcel consists of 25.56 acres +/-.

Comprehensive Plan Analysis: The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject property has land use designation of "Coastal Area." The properties to the north, south, east, and west all have a land use designation of "Coastal Area" with properties to the northwest, across Kings Highway, having a land use designation of "Commercial Area."

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided that special environmental concerns are addressed. A range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units. Retail and office uses are appropriate, but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-



use development should all be allowed. In doing so, careful mixtures of homes with light commercial, office and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home. Major new industrial uses are not proposed in these areas. (Sussex County Comprehensive Plan, 4-15).

Zoning Information: The property is split zoned Agricultural Residential (AR-1) District and Neighborhood Business (B-1) Zoning District. The adjacent parcels to the east and west of the subject property are zoned Agricultural Residential (AR-1) District. The properties located to the northeast of the subject site, across Gills Neck Road, are zoned Medium Residential (MR-1) Zoning District. A few parcels south, north, and west of the site are zoned General Commercial (C-1), Medium Commercial (C-2), and Neighborhood Business (B-1) Zoning Districts.

Site Considerations:

- **Density:** 4.5 units/acre
- **Open Space Provisions:** 4.6 acres
- **Agricultural Areas:** There are agricultural uses in the vicinity of this property.
- **Interconnectivity:** Interconnectivity provided between the Village Center Cottages and neighboring development of Governors through Stockley Boulevard.
- **Transportation Improvement District (TID):** N/A
- **Forested Areas:** N/A
- **Wetlands Buffers/Waterways:** N/A
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The site is partially located in a Wellhead Protection Area

Based on this analysis, a Conditional Use for an amendment of Condition “H” and the amendment/deletion of Condition “R” contained within Conditional Use No. 2359 (Ordinance No. 2964) regarding requirements for landscaping, and for the installation of gates on Stockley Boulevard between the Governors community and the proposed cottages could be considered as being consistent with the land use, area zoning and surrounding uses.

Existing Change of Zones within the Vicinity of the Subject Property:

Since 2011, there have been thirty-one (31) Conditional Use applications within a one (1) mile radius of the application site. A data table has been provided below.

Conditional Use Number	Tax Parcel #	APPLICANT	911 Address or Road Name	Proposed Use	CC Decision Date	CC Decision
2352	334-6.00-504.02	CB Lewes, LLC	Coastal Tide - Tidal Way, Lewes	Multi-family (30 units)	6/14/2022	Approved

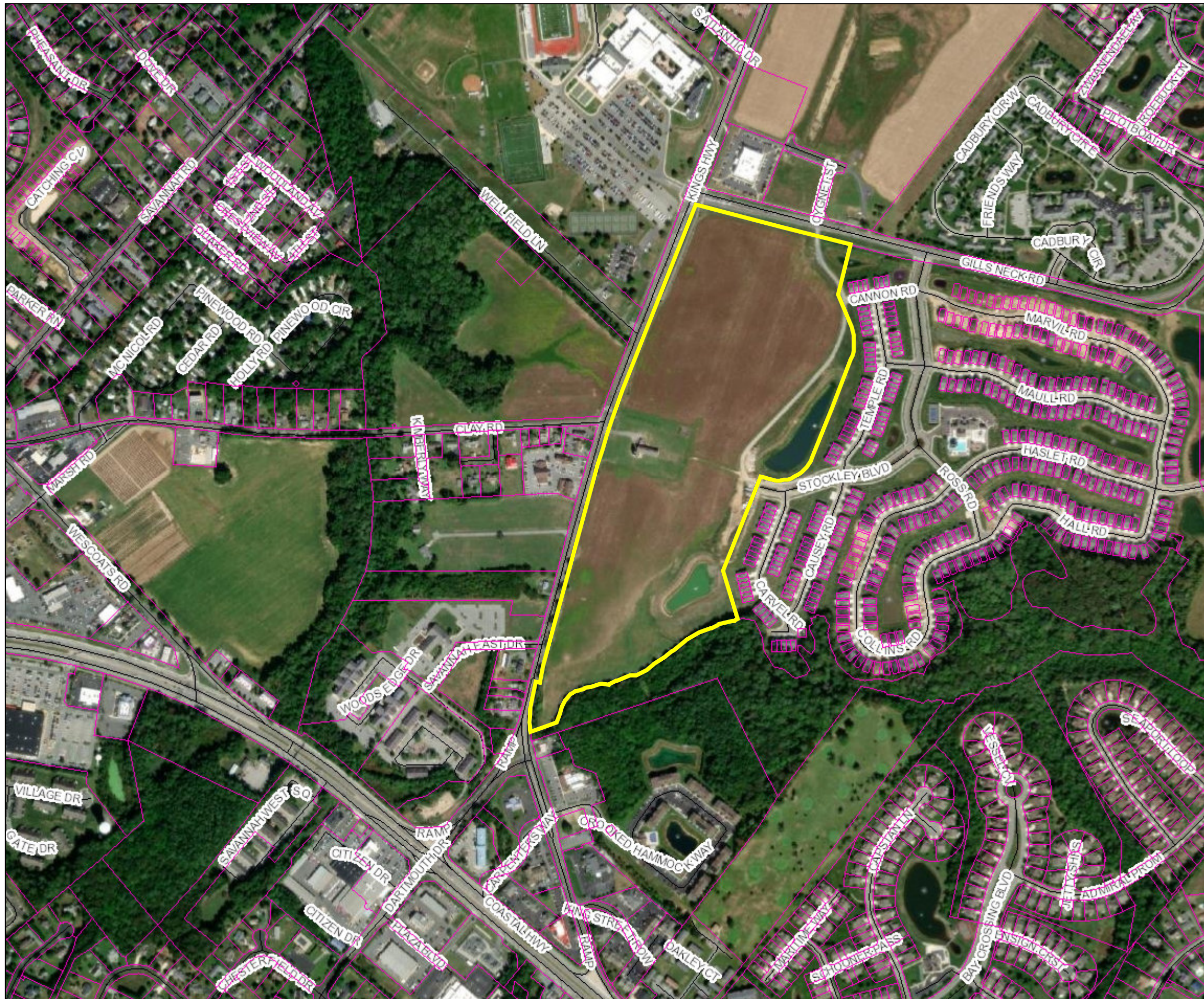
2334	335-8.00-37.00	Henlopen Properties, LLC	Kings Hwy & Gills Neck Rd	Multi-family	7/26/2022	Approved
2327	334-12.00-7.00	Howard L. Ritter & Sons, Inc.	33508 Ritter Lake Rd	Expansion of a non-conforming borrow pit	1/24/2023	Approved
2316	334-6.00-511.02	Lighthouse Construction, Inc.	17611 Shady Rd	Office Building	9/27/2022	Approved
2313	335-12.06-49.00	John Ford	1528 Savannah Rd	Realty Office	9/20/2022	Approved
2281	334-12.00-7.00	Susan Riter	Ritter Lake Dr	Borrow Pit	6/8/2021	Withdrawn
2264	335-8.18-15.00	Laudan Investments, LLC	1302 & 1305 Svannah Rd	General Office Use	11/16/2021	Approved
2262	334-6.00-686.00	Matthew Hete	34360 Postal Lane	Multi-family (4-units)	11/16/2021	Approved
2261	334-6.00-515.00	What Is Your Voice, Inc.	17583 Shady Road	Use Existing Garage for Office uses and one-story pole building for rental storage facilities (4 units) in connection w/ Applicant's non-profit corporation	9/14/2021	Approved
2252	334-12.00-2.00	Delaware Electric Co-Op	Cedar Grove Rd	Substation	7/13/2021	Approved
2237	334-12.00-55.01	Sam Warrington II	Postal Ln	Outside Boat & RV Storage	12/1/2020	Approved
2209	334-6.00-686.00	Matthew C. Hete	34360 Postal Ln	Multi-Family (14 Units)	7/28/2020	Denied
2169	335-12.06-1.00	Robert & Debora Reed	1525 Savannah Rd.	Multi-family	6/18/2019	Approved

2160	335-12.06-3.00	Procino, Wells, and Woodland, P.A.	1519 Savannah Rd.	Professional Office	3/19/2019	Approved
2159	335-8.18-28.00	Elisabeth Ann Burkhardt	1500 Savannah Rd.	professional office	1/15/2019	Approved
2137	335-12.06-50.00	John W. Ford	1530 Savannah Rd.	professional offices	7/31/2018	Approved
2136	335-8.18-4.00	Christine Degnon	1409 Savannah Rd.	medical offices	10/23/2018	Approved
2134	335-8.00-44.00	The Evergreen Companies, LLC (Admirals Chase)	16386 Gills Neck Rd.	multifamily	8/14/2018	Approved
2133	335-8.14-47.00	Dr. Laima Anthaney and Dr. Michael Cahoon	1200 Savannah Rd.	professional office	7/31/2018	Approved
2132	335-12.06-58.00	Dorothy Darley	33995 Clay Rd.	Hair Studio	7/31/2018	Approved
2116	335-8.18-2.00	William and Stacey Smith	1501 Savannah Rd.	professional offices	3/20/2018	Approved
2112	335-8.00-37.01	Mitchell Family Limited Partnership	SE corner of Kings Hwy. and Gills Neck Rd.	medical office and ancillary medical uses	3/20/2018	Approved
2109	335-8.14-49.00	Quakertown Wellness Center	1204 Savannah Rd.	Holistic Health Center with massage, acupuncture and chiropractor	1/9/2018	Approved

2106	334-6.00-511.00	MDI Investment Group, LLC (C/O Doug Compher)	17645 Shady Rd. & N/A	multi-family (52 townhouses)	3/20/2018	Approved
2074	335-12.06-1.00	Quail Valley 1525, LLC (Midway Fitness)	1523 Savannah Rd	Commercial use as a Therapy and Fitness Center	8/8/2017	Denied
2073	334-6.00-496.00	Delmarva Power & Light Co.	18200 Coastal Hwy., Lewes	Expansion to an existing electrical station	3/7/2017	Approved
2069	335-12.06-58.00	Rudolph Joseph Johnson	34001 Clay Rd	Workout Studio	4/25/2017	Approved
2064	335-12.05-4.00	R & K Partners	1537 Savannah Rd., Lewes	medical offices	3/7/2017	Approved
1974	335-12.06-7.00	Sara Kay I. Phillips	Route 9B (Savannah Road)	Hair Salon	1/14/2014	Approved
1912	335-8.18-30.00	Wm. A. Bell & Kathleen M. Sperl-Bell	Savannah Road	Professional Office	11/8/2011	Approved
1868	335-12.00-1.10	Old Towne Pointe, L.L.C.	N Village Main Blvd	pharmacy/community service	5/24/2011	Approved



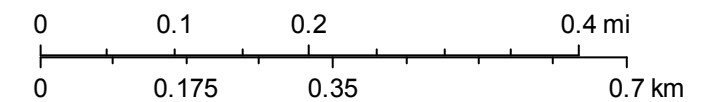
Sussex County



PIN:	335-12.00-3.00
Owner Name	JG TOWNSEND JR CO
Book	361
Mailing Address	PO BOX 430
City	GEORGETOWN
State	DE
Description	E/KINGS HWY
Description 2	S/GILLS NECK RD
Description 3	RESIDUAL LANDS
Land Code	

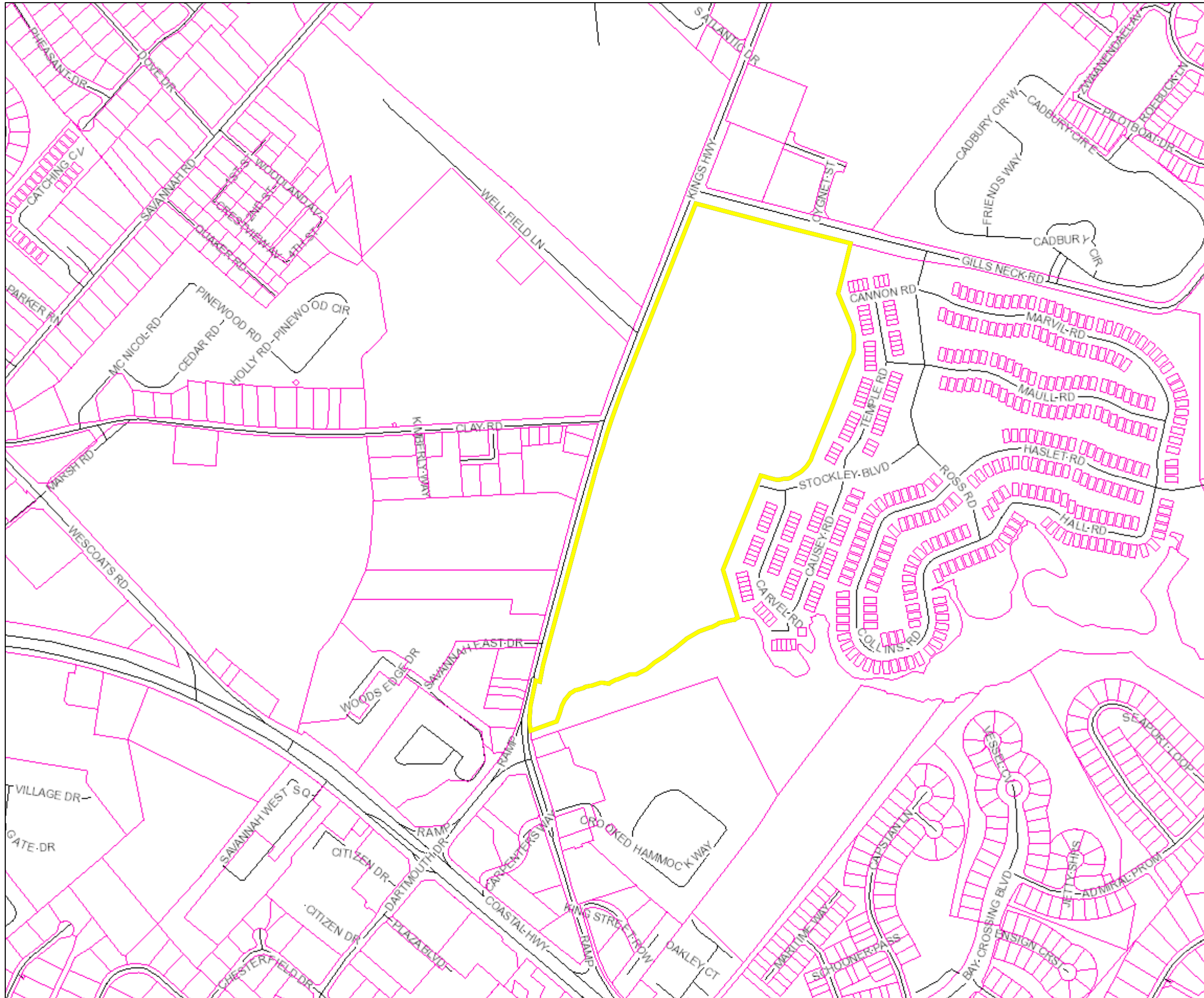
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- Streets
- County Boundaries

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Sussex County



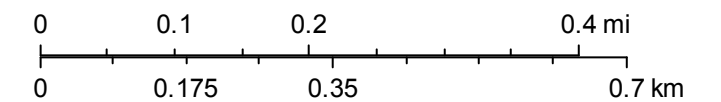
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Book	361
Mailing Address	PO BOX 430
City	GEORGETOWN
State	DE
Description	E/KINGS HWY
Description 2	S/GILLS NECK RD
Description 3	RESIDUAL LANDS
Land Code	

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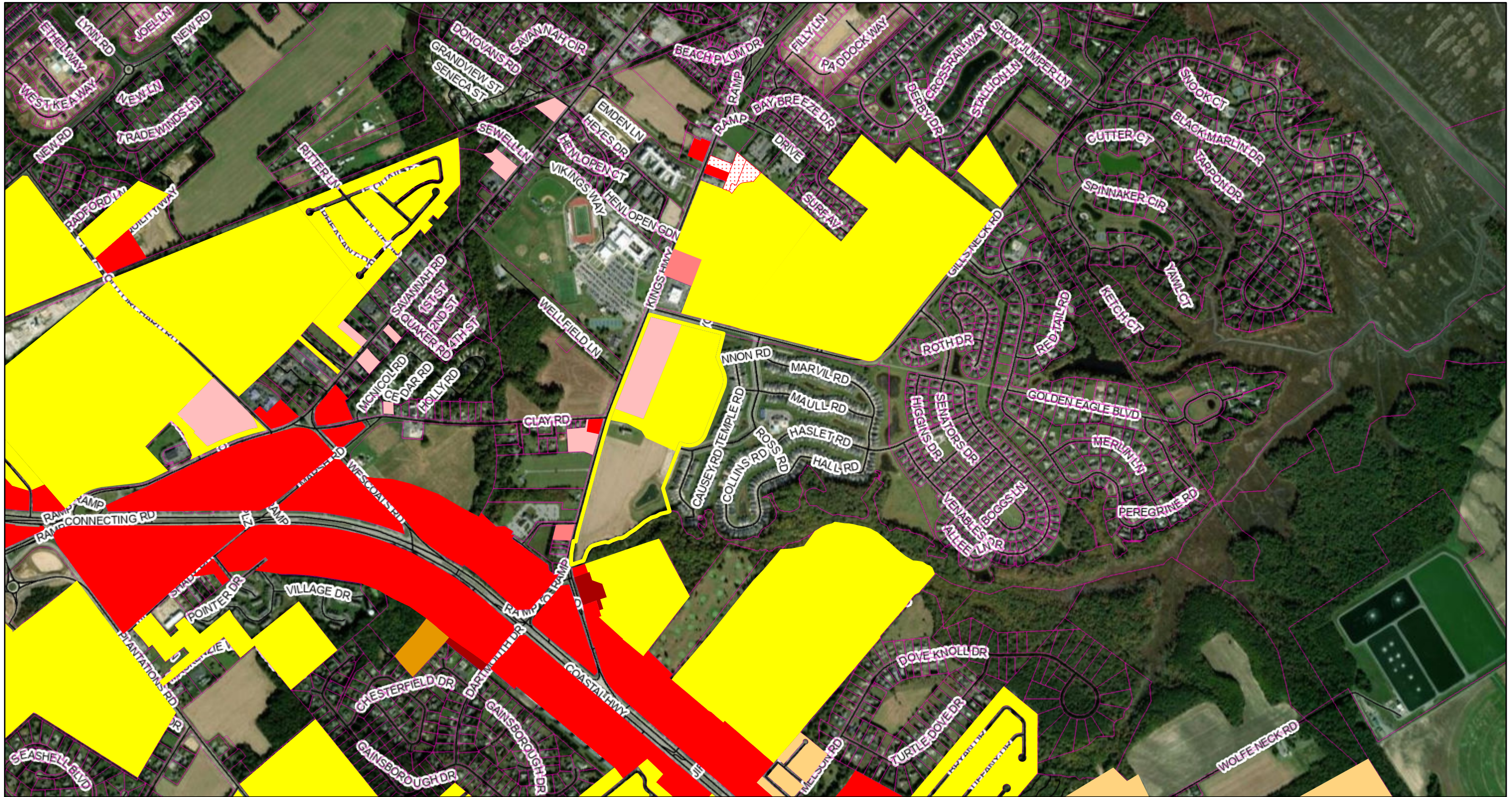
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 - Override 1
 - Tax Parcels
 - Streets
 - County Boundaries

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Sussex County



October 9, 2024

1:18,056

layer43

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- Green: Band_2
- Blue: Band_3
- polygonLayer
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- Override 2
- Zoning
- Medium Residential - MR
- General Residential - GR
- High Density Residential - HR-2

- Commercial Residential - CR-1
- C1: General Commercial
- C2: Medium Commercial
- C3: Heavy Commercial
- B-1: Neighborhood Business

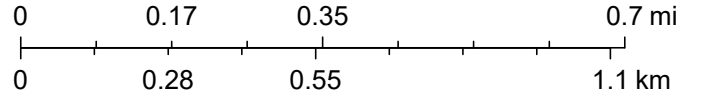
- Tax Parcels
- Streets
- County Boundaries
- World Imagery
- Low Resolution 15m Imagery

High Resolution 60cm Imagery

High Resolution 30cm Imagery

Citations

4.8m Resolution Metadata



Sussex County Government, Maxar

Introduced: 8/13/24

Council District 3: Mr. Schaeffer
Tax I.D. No.: 335-12.00-3.00 (p/o)
911 Address: 16673 Kings Highway, Lewes

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION "H" AND THE AMENDMENT/DELETION OF CONDITION "R" CONTAINED WITHIN CONDITIONAL USE NO. 2359 (ORDINANCE NO. 2964) REGARDING THE REQUIREMENTS FOR LANDSCAPING, AND FOR THE INSTALLATION OF GATES ON STOCKLEY BLVD BETWEEN THE GOVERNORS COMMUNITY AND THE PROPOSED COTTAGES, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS

WHEREAS, on the 5th day of August 2024, a Conditional Use application, denominated Conditional Use No. 2545 was filed on behalf of J. G. Townsend Jr. & Co.; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2545 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article V, Subsections 115-31 Code of Sussex County, be amended by adding the designation of Conditional Use No. 2545 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Kings Highway (Rt. 9) and on the south side of Gills Neck Road (S.C.R. 267) at the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 25.56 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: December 12, 2024

RE: County Council Report for C/U 2454 filed on behalf of H&K Group, LLC

The Planning and Zoning Department received an application (C/U 2454 filed on behalf of H&K Group, LLC) for a borrow pit, to be located in an AR-1 Agricultural Residential Zoning District at Tax Parcel 232-8.00-44.01. The property is located on the northwest side of Shiloh Church Road (Rt. 74) approximately 0.38 mile west of East Trap Pond Road (Rt. 62). The parcel size is 309.6 ac. +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 9, 2024. At the meeting of November 13, 2024, the Planning & Zoning Commission recommended approval of the application for the 10 reasons stated and subject to the 18 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on November 19, 2024. At the conclusion of the public hearing, the County Council deferred action on the application for further consideration. On November 20, 2024, staff noted that the legal notices for the application did not include the correct Hundred for the Application's location. Therefore, the remedy this defect, the application is to be re-noticed for new Public Hearing dates. The new dates are as follows:

Planning & Zoning Commission: January 22, 2025

County Council: February 11, 2025

Below are the minutes from the Planning & Zoning Commission meetings of October 9, 2024, and November 13, 2024.



Minutes of the October 9, 2024, Planning & Zoning Commission Meeting

C/U 2454 H&K Group LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 309.6 ACRES, MORE OR LESS. The property is lying on the northwest side of Shiloh Church Road (Rt. 74) approximately 0.38-mile west of East Trap Pond Road (Rt. 62). 911 Address: N/A. Tax Map Parcel: 232-8.00-44.01. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicant exhibit booklet, a copy of a deed for the property, a copy of a conceptual site plan, a copy of a DelDOT SLER, a copy of the staff analysis, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division, a copy of PLUS comments for the property, a copy of Technical Advisory Committee comments, including a letter from Delmarva Power, Delaware Electric Co-op and the State Division of Watershed Stewardship and the Office of the State Fire Marshall and one written letter.

Mr. David Hutt, Esq., of Morris James, LLP, spoke on behalf of the applicant that they are H&K Group who are a tenant lease for the property that is the subject of the application; that this is an application for a burrow pit off of Shiloh Church Rd; that the entire property is 309.6+/- acres, but only 269+/- acres are in question for this application; that the property is located within a AR-1 Zoning district and is a low density area on the Future Land Use Map; that there are 7 other burrow pit operations in this area; that the actual processing area will be approximately 1,000ft off of Shiloh Church Road; that there are wetlands that run along Beaver Dam Branch and basically bisects the property; that the Army Corp of Engineers will facilitate the crossing of any of the wetlands; that with this type of Conditional Use there are several special requirements that must be followed under Section 115-172; that there are 6 special conditions that will be followed:

1. No material can be brought into the site for processing.
2. The excavation shall be controlled to offer reasonable protection to surrounding properties.
 - a. The entranceway will be paved to reduce noise and dust.
 - b. There will be a gated entranceway at Shiloh Church Rd.
 - c. Water trucks will be available to control dust issues.
 - d. Hours of operation will be Monday through Friday 6:00AM – 6:00PM and Saturday 6:00AM – 2:00PM.
3. The location of the excavation will be done in relation to the water table and the side slopes of the pit, and the processing area will be more than 80ft from all property lines.
4. The burrow pit needs to be surrounded by a landscaped unexcavated buffer strip of open space with a minimum distance of 100ft from a street line and a minimum of 50ft from all other property lines.
5. The burrow pit shall be at least 200ft from any dwelling on the property of other ownership.
6. There are various requirements for existing conditions, proposed excavation areas, reclamation areas and approvals from various agencies.

That all surrounding properties are very large parcels, with the smallest being 5 acres, but most being 60 plus acres; that the fundamental need and use of aggregates demonstrates the semi-public or public

nature of this burrow; that there are standardized set of conditions that are typically used in burrow pit applications and the only change we would be suggesting is to allow fuel storage on site in compliance with all regulations and requirements including secondary containment; that secondary containment is a requirement for any fuel storage, but this would be different that the equipment on site uses the fuel and the storage of fuel properly on site will be much more convenient and practical.

Mr. Butler asked if there would be any fencing around the proposed property?

Mr. Hutt responded that there would be fencing around the entryway to the burrow pit so there would be no unauthorized access, but there will also be the buffer around the wetland area that will act as a barrier, but if the Commission were to request fencing then that would be discussed with the Applicant.

The Commission discussed the application and asked the Applicant some brief questions.

Mr. Scott Drumbone, from H&K Group, spoke on behalf of the application that they would place DANGER signs around the perimeter if that's what the Commission asked, that the burrow pit will create approximately 8-10 new jobs, and that part of the reclamation plan once the site is fully excavated would be to remove all of the processing equipment and fuel storage.

Mr. Mears asked about the equipment and vehicle maintenance on the property.

Mr. Hutt stated that all work would be done in a designated area and materials can be stored safely within all regulations.

Mr. Drumbone stated that repairs can be managed on site through mobile mechanics in the small building in a day or so, but anything larger will be taken off the property to be completed.

Chairman Wheatley stated that one of the concerns that has been brought up is the amount of traffic trips this burrow pit will create.

Mr. Drumbone stated that DelDOT noted the traffic impact would be negligible, and it would equate to less than 500 vehicle trips per day, but they expect about 95 truckloads in and out in a day on average.

Mr. Hunter Price, spoke in opposition to the application that he was providing the Commission a petition from 50 neighbors against the burrow pit; that the main concern is that Shiloh Church Rd. cannot handle another 80-100 trucks per day; that the road is already a common accident-prone area with people running the stop signs all the time.

Mr. John Mills, spoke in opposition to the application that there is a concern of the increased traffic along the surrounding roads as they are already overcrowded with the increase of people utilizing these roads as alternatives to Routes 9 & 24.

Ms. Connor Vincent, of King Crop Insurance, spoke in opposition to the application that her company insures 350 acres directly surrounding the proposed burrow pit and hundreds more within a 2 mile radius; that the clearing of 227 acres will disrupt critical drainage systems supported by the trees that naturally help regulate water absorption from an area of poorly drained soils; that famers will lose crops due to the changes completely out of their control; that the deer population is already

an ongoing issue for farmers in Sussex County and by clearing all of this land it will ultimately push more deer into the nearby farmland causing crop damage; that approving the burrow pit would only threaten the farmers livelihoods.

Mr. Dee Steen, spoke in opposition to the application that he is a farmer in Sussex County and has been for his entire life; that there is no need for anymore burrow pits, as they are plentiful already.

Mr. Jerry Marble, spoke in opposition to the applicant that the roadways cannot handle the increase in truck traffic and the noise from the operation is going to be unbearable to the neighboring properties.

Ms. Adrian Davis, spoke in opposition to the application that the traffic is an issue, that the noise and elevated dust levels are concerning, that there is a concern of water contamination and the loss in property values.

Mr. Kyle Mitchell, spoke in opposition to the application that there is concern that the Beaver Dam Branch runs along by the dump and would come down through the burrow pit and if there was any contaminates from the dump in the runoff it's going to be spread throughout the wetlands; that there is going to be 100 dump trucks a day coming and going weighing approximately 60,000lbs and the amount of wear and tear on the roads.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2454 H&K Group, LLC. Motion by Mr. Butler to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Mr. Whitehouse requested to Chairman Wheatley that the final two cases be combined and read as one.

Minutes of the November 13, 2024, Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since October 9, 2024.

Mr. Butler requested that Mr. Robertson read the motion on his behalf.

Mr. Butler moved the Commission to recommend approval of C/U 2454 H&K GROUP, LLC for a borrow pit based upon the record made at the public hearing and for the following reasons:

1. This application is for a 269.07 acre borrow pit operation within a 309.6-acre site. The excavated area will not exceed 195.83 acres, more or less.
2. A need exists in the area for dirt, sand and gravel. The material removed from this site will be used throughout the County for a variety of residential and commercial uses and road construction.
3. The borrow pit is within a much larger wooded parcel leased by the Applicant. The preserved woodlands will provide an extensive buffer between the borrow pit operations and adjacent

properties and roadways. It is not likely to be visible from nearby homes or roadways. This is an appropriate location for this use.

4. Based upon information in the record, the area used for borrow pit operations and processing will be at least 1,000 feet from Shiloh Church Road and there will be approximately 1,700 feet between these operations and the nearest off-site home (not including an abandoned dwelling approximately 230 feet away).
5. The Applicant will provide dust control to keep the area roadways free of dirt and dust from trucks leaving the site.
6. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties. DelDOT has also stated that the use will have a negligible impact on area roadways.
7. The property contains approximately 17.19 acres of non-tidal wetlands. The proposed use will create a minimum 50-foot-wide buffer from these wetlands and will obtain a permit from the U.S. Army Corps of Engineers for any crossing of these wetlands.
8. As a source of fill dirt available to the entire County, the project is essential and desirable for the general convenience, safety and welfare of the current and future residents of the County.
9. The use is subject to approvals from State Agencies including DelDOT and DNREC.
10. This recommendation for approval is subject to the following conditions and stipulations:
 - A. No materials shall be brought from off the site for processing, mixing or similar purposes.
 - B. The excavated area of the borrow pit shall not exceed 196-acres.
 - C. Water or a water truck shall be available to control dust from road traffic when conditions require.
 - D. The only entrance to the pit shall be a paved road from Shiloh Church Road. The entrance shall be fenced or gated to prevent access, but the gate shall be set back at least 50 feet from Shiloh Church Road to allow trucks and equipment to pull completely off of Shiloh Church Road when the gate is closed.
 - E. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.
 - F. The hours of operation including any dredging shall be between the hours of 7:00 a.m. to 5:00 p.m. Monday through Saturday. No Sunday hours shall be permitted.
 - G. No materials shall be stored on any access roads or within any buffer area.
 - H. Fuel may be stored on-site, subject to all agency guidelines.
 - I. No “Jake Brakes” or compression release engine brakes shall be used within the site.
 - J. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
 - K. The proposed pit will have a 3:1 side slope down to a 10-foot level bench that will be approximately near or 1 foot below the static water surface.
 - L. A final site plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance and protect existing and future developments.
 - M. The Applicant shall comply with all State and County erosion and sediment control regulations.
 - N. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.

- O. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling of other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation and there shall be “No Trespassing/Danger” signs posted at 200-foot intervals around the perimeter of the property.
- P. The non-tidal wetlands on the site shall be delineated and they shall have a buffer that is at least 50-feet-wide except where permitted wetland crossings exist.
- Q. A violation of any of these conditions may result in the termination of this conditional use.
- R. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Butler, seconded by Ms. Wingate to recommend approval of C/U 2454 H&K Group, LLC for the reasons and the conditions stated in the motion. Motion carried 3 -2.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – no, Mr. Butler – yea, Chairman Wheatley – no

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
HOLLY J. WINGATE, VICE-CHAIRMAN
J. BRUCE MEARS
GREGORY SCOTT COLLINS
BRIAN BUTLER



Sussex County

DELAWARE
SUSSEXCOUNTYDE.GOV
302-855-7878 T
302-854-5079 F
JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 9, 2024

Application: CU 2454 H&K Group, LLC

Applicant: H&K Group, LLC
2052 Lucon Road, P.O. Box 196
Skippack, PA 199474

Owner: Ellis Family Investments, LLC
34364 Fox Hound Lane
Millsboro, DE 19966

Site Location: The site is located on northwest side of Shiloh Church Road (Rt. 74) approximately 0.38 mile west of East Trap Pond Road (Rt. 62)

Current Zoning: Agricultural Residential (AR-1)

Proposed: Borrow Pit

Comprehensive Land Use Plan Reference: Low Density Area

Councilmanic District: District 1 – Mr. Vincent

School District: Laurel School District

Fire District: Laurel Fire Company

Sewer: Private septic

Water: Private Well

TID: Not Applicable

Site Area: 309.59 acres +/-

Tax Map ID: 232-8.00-44.01



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
(302) 854-5079 F
jamie.whitehouse@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Mr. Michael Lowrey, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: September 27th, 2024
RE: Staff Analysis for CU 2454 H&K Group, LLC

This memo is to provide background and analysis for the Planning & Zoning Commission to consider as a part of application CU 2454 H&K Group, LLC to be reviewed during the October 9th, 2024 Planning & Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 232-8.00-44.01 to allow for the construction of a borrow pit on the site. The property is located at the southeast corner of the intersection of John J. Williams Highway (Route 24) and Mulberry Knoll Road (S.C.R. 284). The parcel is comprised of a total of 2.98 acres +/-.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject property has a land use designation of "Low Density Area." All surrounding properties to the north, south, and west of the subject site contain the Future Land Use Map designation of "Low Density Area." The surround parcels to the also have a Future Land Use Map designation of "Low Density Area."

As outlined in the 2018 Sussex County Comprehensive Plan, "Low Density" Areas are areas that the County envisions as "a predominantly rural landscape where farming co-exists with appropriate residential uses and permanently preserved property" (Sussex County Comprehensive Plan, 4-18). The Plan notes in reference to permitted uses: "The primary uses envisioned in Low Density Areas are agricultural activities and homes. Business development should be largely confined to businesses addressing the needs of these two uses. Industrial and agribusiness uses that support or depend on agriculture should be permitted." (Sussex County Comprehensive Plan, 4-19).

Zoning Information

The subject properties are zoned Agricultural Residential (AR-1) with all the immediately surrounding properties zoned (AR-1) as well. The closest commercial use zoning districts lie approximately 3 miles to the west adjacent to Route 13 and the Town of Laurel.



Further Site Considerations:

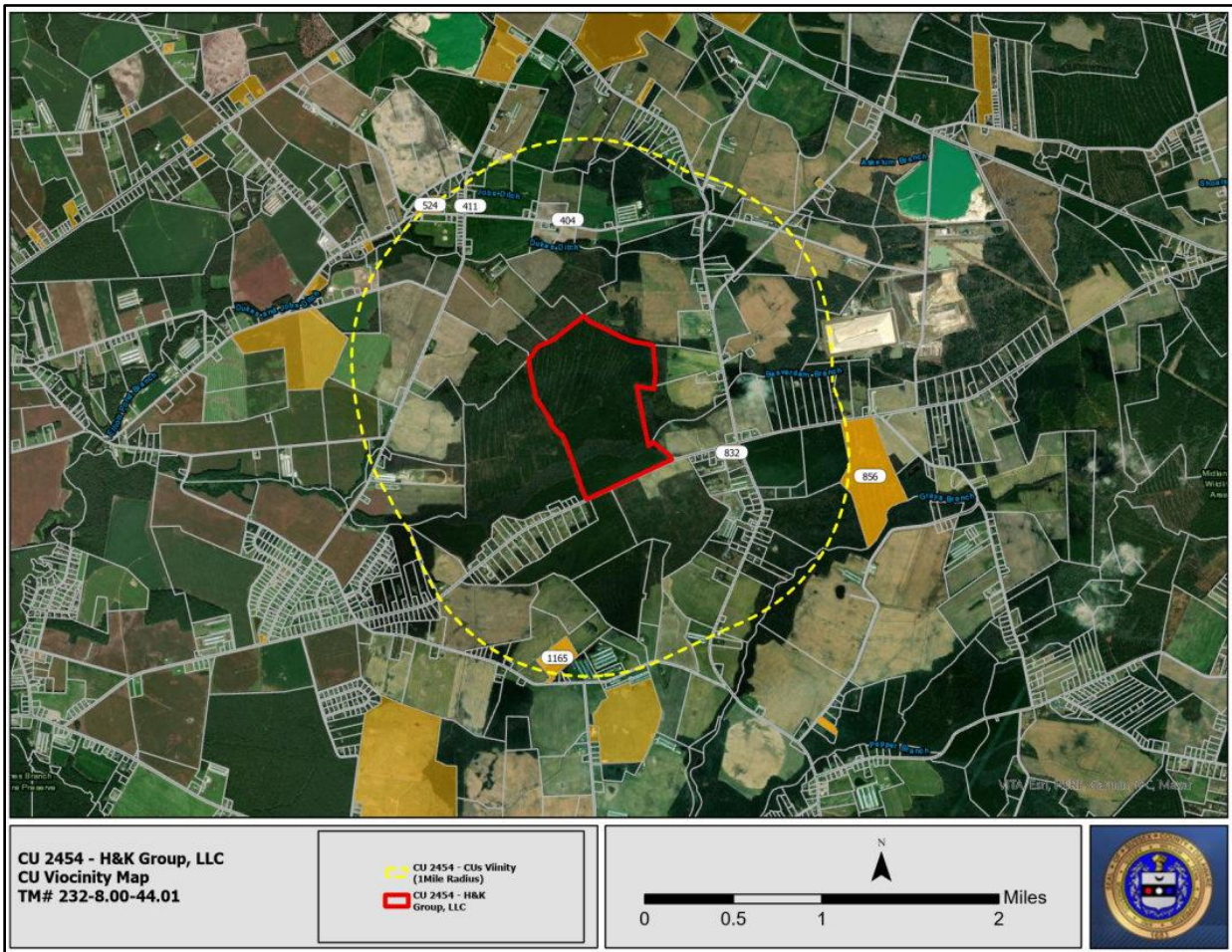
- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** The site is within the vicinity of active agricultural lands. The “Kirk Expansion” Agricultural Preservation District Easement lies immediately adjacent to the north of the subject parcel and the Hitchens Crossroads Agricultural Preservation District Easement lies immediately adjacent to the east.
- **Interconnectivity:** N/A
- **Transportation Improvement District (TID):** The site is not within the Henlopen TID.
- **Forested Areas:** The site includes existing forest on a majority of the property.
- **Wetlands Buffers/Waterways:** State and County data indicates the possible presence of regulatory and/or jurisdictional wetlands on the southern portion of the Parcel. The Applicant will be required to provide a delineation of the wetland area on any future site plan submitted if the use were to be permitted.
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is partially located within the Flood Zone “X” with areas of “Fair”, “Good” and “Water Areas” classifications of Groundwater Recharge Potential on the site. The parcel is not located in a Wellhead Protection Area.

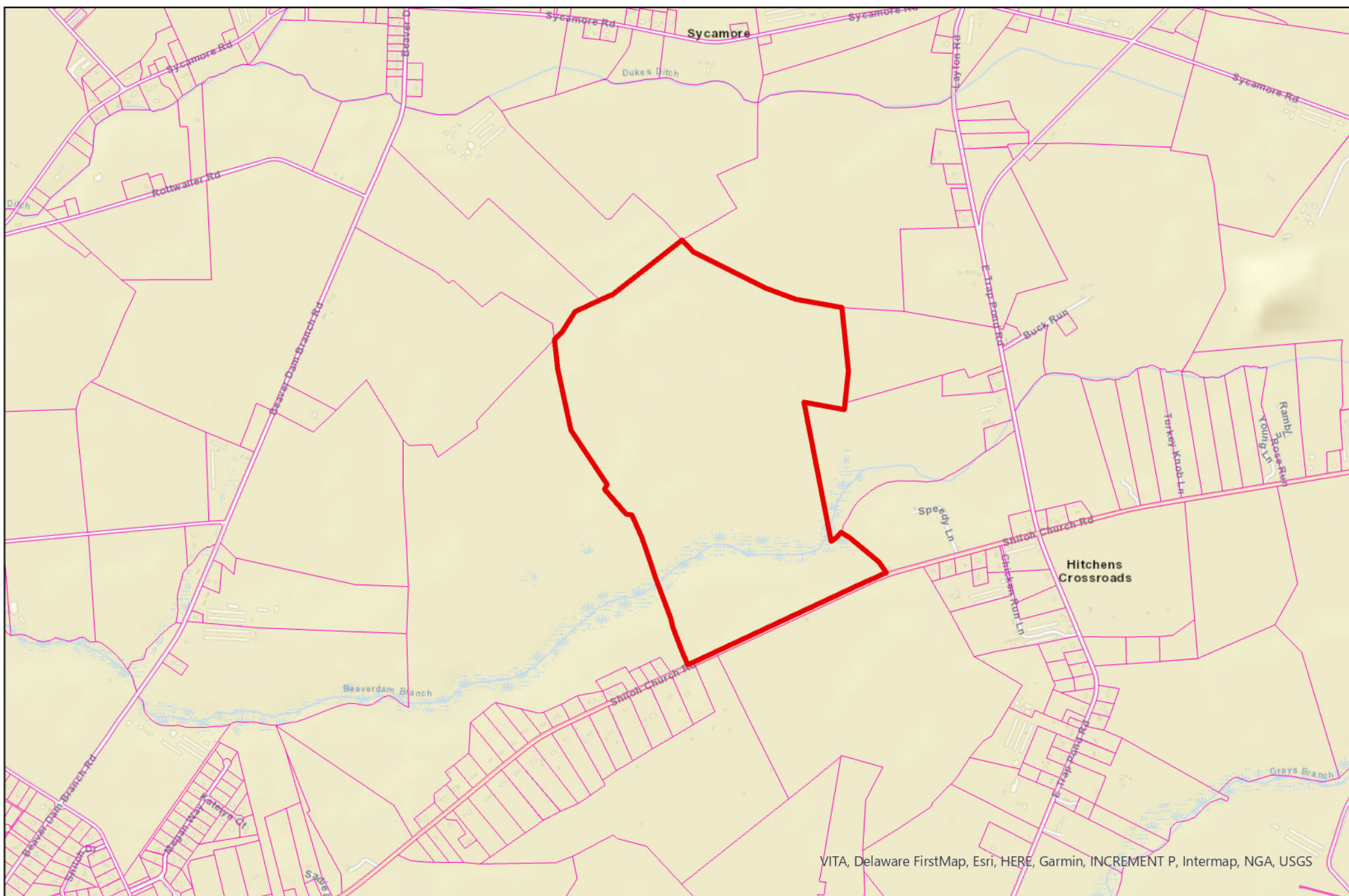
Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for the construction of a borrow pit in this location, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

Existing Conditional Uses within the Vicinity of the Subject Site: A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications that are less than 1 mile distance from the subject site.

Conditional Use Applications						
(Within a 1-mile radius of the subject site)						
Application Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
404	Edward W Littleton & Linda	AR-1	Beauty Salon	Approved	3/1/1977	N/A

411	Everett Messick	AR-1	Poultry House on Less Than 5-Acres	Approved	5/17/1977	N/A
524	Epworth Fellowship Church Inc	AR-1	Christian School	Approved	5/1/1979	N/A
832	James E. Wharton	AR-1	Poultry House on Less Than 5 Acres	Approved	9/3/1985	296
856	Elmer M. Cox	GR	Manufactured Home Park	Withdrawn	N/A	N/A
1165	John J. Reed	AR-1	Private Runway	Approved	10/15/1996	1108






VITA, Delaware FirstMap, Esri, HERE, Garmin, INCREMENT P, Intermap, NGA, USGS


CU 2454 H&K Group, LLC
Streets Map
TM# 232-8.00-44.01

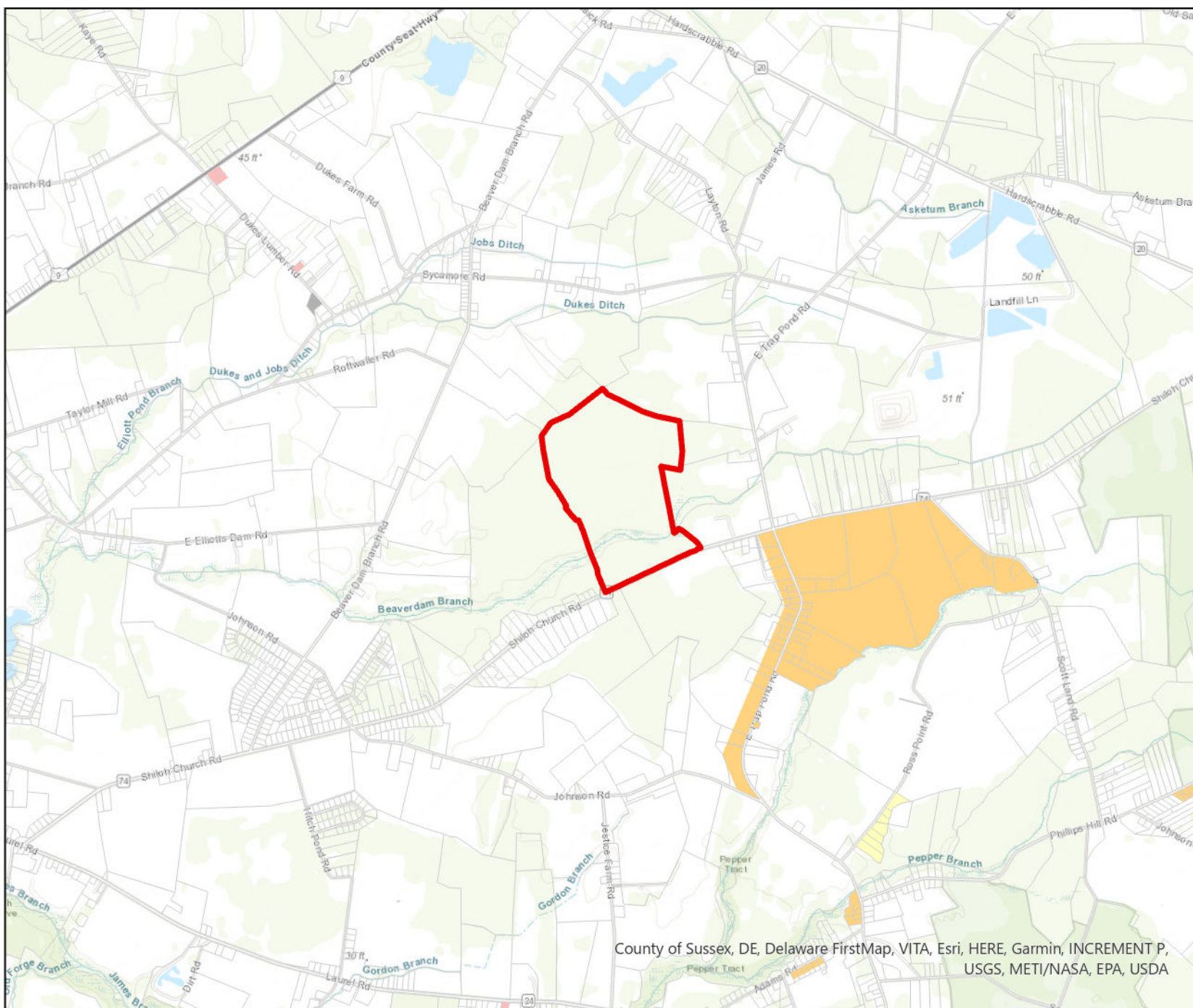
 **CU 2454 - H&K Group, LLC**

N



0 0.13 0.25 0.5 Miles





Zoning

- Agricultural Residential - AR-1
- Agricultural Residential - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential - HR-1
- High Density Residential - HR-2
- Vacation, Retire, Resident - VRP
- Commercial Residential - CR-1
- Institutional - I-1
- Marine - M
- Limited Industrial - LI-1
- Light Industrial - LI-2
- Heavy Industrial - HI-1
- C1: General Commercial
- C2: Medium Commercial
- C3: Heavy Commercial
- C4: Planned Commercial
- C5: Service/Limited Manufacturing
- B-1: Neighborhood Business
- B-2: Business Community District
- B-3: Business Research

County of Sussex, DE, Delaware FirstMap, VITA, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA

CU 2454 H&K Group, LLC
Zoning Map
TM# 232-8.00-44.01

CU 2454 - H&K Group, LLC

N


0 0.25 0.5 1 Miles






VITA, Esri, HERE, Garmin, IPC, Maxar

CU 2454 H&K Group, LLC
Aerial Map
TM# 232-8.00-44.01

 **CU 2454 - H&K Group, LLC**

N

 **Miles**

0 0.13 0.25 0.5



Introduced: 9/17/24

Council District 1: Mr. Vincent
Tax I.D. No. 232-8.00-44.01
911 Address N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 309.59 ACRES, MORE OR LESS

WHEREAS, on the 26th day of May 2023, a conditional use application, denominated Conditional Use No. 2454 was filed on behalf of H&K Group, LLC; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2454 be _____; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2454 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Broad Creek Hundred, Sussex County, Delaware, and lying on northwest side of Shiloh Church Road (Rt. 74) approximately 0.38 mile west of East Trap Pond Road (Rt. 62), and being more particularly described in the attached deed prepared by Susan Pittard Weidman, P.A., said parcel containing 309.59 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: December 12, 2024

RE: County Council Report for C/U 2543 filed on behalf of Toney Floyd & Charletta Speaks-Floyd

The Planning and Zoning Department received an application (C/U 2543 filed on behalf of Toney Floyd and Charletta Speaks-Floyd) for a commercial hauling, goods and materials delivery services, and driveway installation business, to be located in a GR General Residential Zoning District at Tax Parcel 234-29.00-274.02. The property is located at 32404 Hersel Davis Road, Millsboro. The parcel size is 2.31 ac. +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 23, 2024. At the meeting of November 13, 2024, the Planning & Zoning Commission recommended denial of the application for the 9 reasons as stated within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on December 10, 2024. At the conclusion of the Public Hearing, the Council closed the Public Record and deferred action on the application for further consideration.

Below are the minutes from the Planning & Zoning Commission meetings of October 23, 2024, and November 13, 2024.

[Minutes of the October 23, 2024, Planning & Zoning Commission Meeting](#)

C/U 2543 Toney Floyd & Charletta Speaks-Floyd

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A COMMERCIAL HAULING, GOODS AND MATERIALS DELIVERY SERVICES, AND DRIVEWAY INSTALLATION BUSINESS TOGETHER WITH STORAGE OF VEHICLES, EQUIPMENT, AND MATERIALS TO



BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.31 ACRES MORE OR LESS.

The property is lying on the northeast side of Hersel Davis Road approximately 0.42-mile northeast of Oak Orchard Road (Rt. 5). 911 Address: 32404 Hersel Davis Road, Millsboro. Tax Map Parcel: 234-29.00-274.02.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicant's exhibit booklet, which includes copies of DNREC inspection reports and photographs, along with a copy of the applicant's conceptual conditional use site plan, a copy of the staff analysis, a copy of the DelDOT SLER, a copy of a letter that has been received from the Sussex County Engineering Department Utility Planning Division and that the Planning & Zoning Department has received 128 written responses; a petition with 703 signatures and along with a separate letter received from the Peninsula Lakes Use Advisory Committee.

Ms. Mackenzie Peet, Esq., of Saul Ewing, spoke on behalf of the applicants that they are seeking a conditional use of land in a GR, General Residential district for commercial hauling of goods and material services and driveway installation business known as Tony Floyd Trucking LLC, together with storage of vehicles, equipment and materials to be located on a 1.08 acre portion of an approximately 2.31 acre lot; that Tony Floyd Trucking, LLC has been operating in the county since 1998 and Mr. Floyd runs the front of the house operations and Mrs. Speaks- Floyd handles all of the administrative aspects of the business; that the Floyd's previously applied for conditional use on this property in 2021, having Pole Buildings Unlimited construct a 46 by 60 by 16 feet pole building at a cost of approximately \$60,272; that they applied for a building permit and permit number 202103547 was issued on April 1st, 2021 by the county allowing the construction of the pole building; that following the completion of inspections, Sussex County issued a certificate of occupancy and compliance on January 13, 2022 and the Floyd's began operating their business on site under the assumption that no further approvals were needed; that the certificate stated, "This certifies that the structure premise described in application number 202103547 conforms to and complies with the requirements of Chapter 52, building code and Chapter 115 zoning code for Sussex County, Delaware, and may be occupied as of the date."; that the certificate confirms compliance with Chapter 115, the county Zoning code, which is obviously not the case because the conditional use was also required, which is not clear whatsoever from their certificate issued and the reason we're here today; that after the pole building was completed, the Floyds operated without issue until a violation was issued in 2023, following a public complaint and to address this violation, they filed an application on March 30, 2023 without legal counsel and worked with Planning and Zoning staff to complete that application; that the application only referenced storage of work equipment and trucks failing to mention that it also involves stockpiling materials; that the applicants attended the Planning and Zoning Commission hearing before this Commission on January 3, 2024, and soon after they engaged our firm for representation; that upon reviewing the application and its history, it was determined that they needed to withdraw the application to correct the noted deficiencies and address public concerns consequently; that On March 29, 2024, my office submitted a letter to Planning and Zoning requesting to withdraw CU 2436 and notifying them of the Floyd's intent to revise and reapply for the conditional use once plans were prepared by Vista Design and the DelDOT SLER was received, both essential for filing the amended application, the Floyd's submitted their current proposal on July 29, 2024; that according to the new application the plan is to subdivide this 2.3 acre piece into two, so one area will be designated for the conditional use area and the other area is earmarked for the development of the Floyd's future home; that the conditional use area is approximately 1.08 acres and has included provisions for screening along the Reynolds property and to plant additional vegetation along the

wetlands boundary; that the conditional use is now set to be located between 478.75 feet and 581.97 feet away from nearby residents of Peninsula Lakes community; that the revised proposal eliminates any stockpiling activities altogether, there has been cleanup of this site and they've been removing the stockpiles that were on the site as part of the DNREC compliance; that if the new conditions were approved that there would be no more tailgate related noise, as there would be no more dumping on site which means no slamming of tailgates and backup alarms which were a concern of the neighbors; that there's 2 reports and we also received another report from DNREC today confirming that the applicant has continued to bring the property into compliance and stabilize the area; that this holds historical significance, having been in the Floyd family for generations, it specifically operated historically as a farm, then it was taken out of production and has been surrounded by residential. Developments; that creates challenges, but the Floyds are committed to coexisting harmoniously with their neighbors and are focused on minimizing any negative impacts their business may have on their surrounding residential community; that the proposed use aligns with the vision by supporting both residential and commercial growth within Sussex County, specifically, the business will facilitate the transportation of materials that are critical for construction and development projects in the area, while also offering services such as driveway installation for residents and commercial property owners; that public water and sewer are available to the site and the property is located in Tier 1 and connections available nearby are Tidewaters and the provider access to the site will be from Hersel Davis Rd. which connects to Oak Orchard Road; that DelDOT reviewed the SLER and concluded that the proposed use would have a diminutive impact on the local roads; that Mr. Floyd employs only three to five workers at any given time, and most of them typically depart for job sites directly from their homes, meaning that trucks are not frequently coming and going from the site throughout the day; that on an average day, there would be only a few trips in the morning as trucks head out to job sites and then returning later in the evening.

Mr. Edward Launay, a professional wetland scientist, of Environmental Resource Insights, spoke on behalf of the application that he was retained by the Floyds to assist them with the DNREC drainage section and the soil erosion control section; that Mr. Floyd was stockpiling and moving gravel material back and forth, so there were some piles on the site; that the easterly boundary of the site there's a small intermittent stream that has seasonal flow and adjacent to that stream, there's a band of wooded wetlands; that myself and DNREC had the same opinion that number one was to implement a plan to: #1, consolidate and remove the piles, #2, regrade the land, #3, install a soil erosion set of control measures to prevent any erosion, and #4, stabilize the land that was really going to be inactive on the wetland side of where the soil erosion and control fencing was installed; that I did an analysis and determined that there was small encroachment well under a 10th of an acre of material that had clearing had been done and there was material that was in the wetlands; that I worked with Mr. Floyd to supervise that removal, which was consistently coordinated and inspected with DNREC, any encroachment in the wetlands; that there was super silt fence measures installed and all while Mr. Floyd was working to get the piles of material consolidated and removed; that then he came in and stabilized that area of disturbance with grassy vegetation and including a seed mix within the wetland area; that Vista Design came in and located the boundary of the entire wetland area and showed that the area in which is up for the Conditional Use is now well elevated with good soils; that the intention is to put the Floyd home on that area of land if this was to be approved.

Mr. Bruce Hall, P.E., of Vista Design, spoke on behalf of the application that he was the engineer working on the sediment and stormwater management for this project; that they were brought on to handle the DNREC Stormwater Management Plan; that the site is 2.31 acres and of that .34 acres are

impervious; that the goal is to catch all of the impervious runoff in the two grass areas to prevent any downstream flood issues on the Emily's Gut.

Ms. Mackenzie Peet, Esq., stated that they submitted into record proposed specific conditions and a petition with 85 signatures on it; that the applicant met with the nearby residents, specifically the Peninsula Lakes Board, to present the offered conditions and receive any feedback, but none have been received as of yet; that the proposed use meets the purpose of the conditional use as outlined in the code given its public and semipublic character which serves the general convenience and welfare of the community; that the conditions set forth for the proposed use, reflect careful consideration of potential impacts on neighboring properties and the broader community; that the business will focus on commercial hauling goods and material delivery services and driveway installation on a 1.08 acre portion of the property, operating hours are limited to minimize disturbances with deliveries restricted to specific times during the week and no operations on Sunday; that measures will be implemented to manage materials and maintain cleanliness on site, including prohibitions on stockpiling and designated vehicle, trailer and equipment, and material storage areas; that the proposed parking and vehicle management plan adheres to the county's standards, ensuring efficient use of space while minimizing noise and safety concerns associated with vehicle operations; that there will be limitations on vehicle idling, maintenance activities and the handling of hazardous materials such as oil and to safeguard the environment and neighboring properties, security measures, including a well-designed lighting plan and visual screening through landscaping, further enhance the compatibility of the use with its surroundings; that by addressing these considerations through specific conditions, the proposed use aligns with the intent of the conditional use regulations; that the proposed Conditions from the applicant are as follows:

1. Hours of Operation will be 6:30 AM – 6:30 PM Monday through Friday and 8:00 AM – 3:00 PM on Saturdays and no Sunday hours.
2. No stockpiling of materials, except for the necessary operational needs for the driveway installation aspect of the business.
3. The storage area will be a stabilized surface, with all materials stored on-site in storage bins identified on the site plan.
4. Parking shall meet county requirements and on a stabilized surface and parked in a manner that facilitates stacking to prevent reversing and backup alarms.
5. No junked or inoperable or unregistered vehicles on site.
6. No vehicle idling for more than 15 minutes.
7. No maintenance of vehicles, trailers or equipment with the exception of limited repairs that can be conducted on-site. For example: battery replacement, tire changes, oil changes, air hose changes and minor trailer repairs for hitches.
8. No hazardous materials or fuel shall be stored on-site except for limited quantities for minor repairs and those that are stored will be disposed of properly.
9. A security lighting system will be installed and shall be shielded and downward screened so that it does not shine on neighboring properties.
10. A row of evergreens will be installed to provide visual screening between the site and the area where the residential home is proposed.
11. Any dumpsters associated with the use shall be screened from neighboring properties.
12. One lighted sign permitted.
13. The stormwater management system shall meet the requirements of the State and County.

The applicant has made significant investments in order to bring the property into compliance and wishes to work with all neighboring homeowners to coexist with each other.

Mr. Whitehouse stated for the record that the chronological order started with the our building permit for the pole building; that parcel 274 was subdivided on January 26, 2023, into Lot 1, Lot 2 and Lot 3; that prior to that subdivision there was a pole building that was originally part of parcel 274, which is the parent parcel; that a building permit was pulled on April 1, 2021, for an accessory pole building and the reference for that is building permit is 202103547 and this was given a certificate of occupancy on January 13, 2022; that the documents showed that it was applied for as an accessory structure to the dwelling that existed on the parcel and it was assessed and considered as an accessory structure; that the current parcel is now 274.01, 274.00 and 274.02 and that was recorded in the Recorder of Deeds on January 26, 2023: that the other question in relation to the chronological order is the only other date just to point out was this came through our Constable's Office and the applicant has been responsive and cooperated with our constables; that the date according to my records that it was first reported to our constables was the use commenced somewhere around July 27, 2023, and the county's first visit in response to a complaint was on August 1, 2023, and we did observe the business to be in operation, but as the applicant had indicated, they're going through a conditional use process which we are working with the applicant on that process.

Mr. Mears asked what equipment other than dump trucks will be on-site and if there will be a rock shaker?

Ms. Peet stated that there will be a wheel loader, a skid steer, a dirt roller and three trailers, but no rock shaker.

Ms. Wingate asked what materials will be associated with the driveway installation and will they be stored in containers?

Ms. Peet stated that the materials that will used are fill dirt, gravel and different types of stone all of which will be stored in five different bins.

Mr. Collins stated that the applicant has made many strides towards being a better neighbor, while still running a business and want to commend them for that, but the hours of operation should be looked at to be changed.

Ms. Peet stated that the issue with having later hours is that many of the companies that work with the applicant require the trucks to be on site at 7:00AM which means trucks need to depart from the property at 6:30AM; that she would need to discuss the possibility of changing those hours with her client if it was a amended set of conditions.

Mr. Collins stated that with the number of close neighbors that this site may be better for a business that is much less contentious and that this may not be the right location for the business.

Ms. Wingate asked if they could get clarification as to the timeline of the construction of the final phase of Peninsula Lakes.

Ms. Peet stated that the homes were built somewhere between 2022 and 2023, as the complaints came through during the fall of 2023, once the leaves fell between the properties.

Mr. Robertson asked if the trucks and traffic will all be using Herschel Davis Rd., which is a private easement and if so, do they have the right to use it for commercial purposes and who owns it?

Ms. Peet states that there was no easement agreement found when they ran a search, however an agreement will need to be established as there are several other uses off of it which will most likely need to develop some kind of agreement between all the beneficiaries of that road.

There was no one present who wanted to speak in favor of the applicant.

Chairman Wheatley asked for a show of hands from the Chambers of those who were in opposition to the application and that number was 117.

Mr. Bob Valihura, Esq., of Morton, Valihura & Zerbato, LLC, spoke on behalf of the Captains Grant Homeowners Association and a committee of homeowners from Peninsula Lakes, in opposition to the applicant that between both developments there are almost 550 homes and neither community support this application; that the biggest issue is that the applicant established a business in an area contrary to the existing zoning and without the proper approvals in an area where homes and residents already exist; that they've done nothing to fix that problem, but only fix the issues that were brought up by the violations from the State and County; that the business itself should not be located in this area and should be moved to another location; that the application was denied once before by the Commission and nothing has changed as of yet, in fact now the question is do they even have the right to utilize the easement leading to their property, because it is not listed on their application anywhere; that the applicant withdrew their previous application earlier in the year, but never stopped working from the site even though they had no active application; that the continued use of this property is adversely affecting the neighboring communities; that the current condition of the property does not promote health, safety and welfare for the area and mostly they have had the business in operation for three years now and they never followed with the zoning codes, so the homeowners are worried that what will change now.

Mr. Bob Verdugo, a resident of Peninsula Lakes, who represented over 700 Sussex County residents and residents in Peninsula Lakes that are all in opposition to this application; that the main concern is that this business is better fit for a Light Industrial District not an Agricultural Residential District or General Residential; that there's insufficient distance with regard to the noise and mitigation strategies between neighboring properties; that there is concern with wildlife preservation being negated and diminished as a result of the activity taking place on this property; that many of the residents did research prior to purchasing their homes and being it is a General Residential zoning there should be no light commercial business in their backyards; that based on photos taken a couple of months ago the business is operating with a skip loader, a bobcat, multiple trailers, seven dump trucks, a roller and a large container holding some type of liquid; that the concern is that the homes that border this property only have a small berm separating them now that the vegetation is dying off for the winter season and with that the amount of noise from the movement of materials is in abundance.

Mr. Charlie Carlton, a retired professional engineer spoke in opposition to the application that the Board of Directors was informed that the Applicant uses 20 two ton dump trucks and a four cubic yard skip loader; that the skip loader is used to fill the trucks with the material that they use for the driveway installation; that there's sand and rocks that have a density of about 1.35 tons per cubic yard; that each skip loader can handle about 5.4 tons, therefore you need 4 to 5 trips per skip loader to load

one truck; that the skip loader has to go into their new 3 sided bin, back out, go over to the dump truck back up and keep doing that until they get the truck loaded; that is about a minimum of 8 to 10 backup alarms; that if they have 6 dump trucks and it's eight to 10 dumps per truck, its nearly 50 backup alarms; that each one of these skip loader alarms is over 100 decibels which is loud, but then there is the metal to metal from the skip loader hitting the dump truck; that this is a noisy operation and doesn't belong in a residential neighborhood.

Ms. Wingate asked if the trucks are coming in everyday and loading and unloading or are they going out and being filled at other locations.

Ms. Peet stated that not all of the trucks are being loaded and unloaded at the site every day as some employees go straight from their homes with trucks to off-site locations to load or unload; that under this new proposal, the amount of truck traffic has been diminished as to accommodate the surrounding properties and help address the noise issue.

Mrs. Dawn Russo, a resident of Peninsula Lakes, spoke in opposition to the application that the business's newly proposed site plan and mitigation strategies do not prevent the impact of a substantial amount of noise, dirt particulates, and engine pollution from negatively impacting multiple neighboring residential properties; that strong winds exist in our coastal area and they exacerbate the issue by blowing these materials onto Peninsula Lakes properties and into our homes.

Mrs. Dee Senkaku, a resident of Peninsula Lakes, spoke in opposition to the application that after purchasing her home several months ago she was stunned to hear the construction noises in her backyard from the applicant's business; that the backup alarms, slamming of dump trucks and the dumping of materials sounded as if there were construction sites surrounding her.

Mr. Michael Sherman, a licensed clinical social worker and organizational psychologist, and a resident of Peninsula Lakes, spoke in opposition to the application that trauma can affect people in different ways, such as being exposed to excessive noise and how that affects the mind, body, and spirit; that the commercial industry operating adjacent to an established residential neighborhood is absolutely and by professional opinion detrimental to the health and welfare of Sussex County residents; that for example, The State of Delaware established codified laws to protect our citizens, including Chapter Title 9, Chapter 68, section 6802, and I quote, "*For the purpose of promoting the health, safety, prosperity and general welfare of the county planning District*", also chapter 69, subchapter 11, section 6951, known as the quality of Life Act of 1988, and I quote again, "*the intent is to encourage the most appropriate use of land, water and resources consistent with the public interest. County government can preserve, promote and prove and improve the public health, safety, comfort and general welfare*"; that most residents of Peninsula Lakes moved there to enjoy retirement in peace and quiet harmony; that when environmental disturbances, such as excessive noise day in and day out, can cause or exacerbate existing psychological and physical health conditions; that after 90 days, the noise hasn't ceased, so we are still in the acute stress disorder phase because we have not had a pause in the exposure of the trauma on these residents.

Mr. Gary Weeks, a resident of Peninsula Lakes, spoke in opposition to the application that when he bought in to the subdivision it was not brought to the attention of residents that they would be living next to an industrial business and what is the County going to do to protect all of the people have moved into these subdivisions that the County has approved.

Mr. David Charles, a resident of Peninsula Lakes, spoke in opposition to the application that the applicants have indicated they will reduce the footprint of the area they intend to use, but that does not change the nature of their business; that in meeting with the Peninsula's Board of Directors, the applicant has indicated his wish to grow and expand his business by adding additional trucks; that if approved, this would set a precedent and the applicants could then submit additional applications to expand their business as it grows, on acreage that they own or adjacent; that the residents of Peninsula Lakes have invested significantly in our properties and recognized that the undeveloped contingent properties could be built on in the future, but that the zoning was for undeveloped land is general residential, not commercial.

Mr. Mike Masciandaro, a resident of Oak Orchard, spoke in opposition to the application; that he asked how is it possible that the applicant can operate a business out of code and then play catch to bring everything into code while still being unapproved; that when building homes, there are codes that must be followed and work will be halted if not followed properly, but this business has been operating out of compliance and there is no stoppage; that the trucks coming in and out of the property is an all-day thing; that the roads are not equipped to handle fully loaded dump trucks and are there even DelDOT approvals for the roads.

Dr. Jeff Hilovsky, State Representative, District 4, spoke on behalf of the 1200 residents of Peninsula Lakes and Captains Grant, both of which are in his district, in opposition to the application that he has received emails from the residents that they feel they are not being heard and need the help of their government to let their views be known; that after speaking with the residents he can stand and say they are 100% in opposition to this conditional use and he supports them.

Mr. Tony Morgan, of Herschel Davis Rd., spoke in opposition to the application that he owns the three-acre parcel that's on Herschel Davis Rd; that Herschel Davis Rd. is actually not in the right place, it's half on Captain's Grant, and half on my property, so it ends up coming out to be a one lane road out onto Oak Orchard Rd.; that the road is not meant for large trucks as its currently only one lane and in order to correct the width of the road I will need to take part of my land in order to make two lanes; that having eight dump trucks ride down the dirt road with the dust, is going to adversely affect my four properties that I'm going to build; that it makes it difficult because I'm putting all this money out to sell a piece of property after I build a house they're going to have dump trucks riding on the dirt road; that I have to maintain that road and I'm in legal issues with people; that there's three lots and people here use my route, but they want me to put two lanes in and the two lanes is going to be off of my property; that nobody wants to help maintain the road so I have to go after them; that I need some assistance with that and I haven't even got that far yet.

Mr. Scott Bechtel, of Hartford Court in Captains Grant, spoke on behalf of the HOA in Captains Grant in opposition to the application that the HOA received a unanimous vote to send a letter of opposition for the Conditional Use; that he owns the property closest to the applicant and the truck traffic cannot be handled on Oak Orchard Rd.

Mr. Bob Valihura spoke on behalf of the Reynolds family that he represents them and they are under contract to sell their 65 acres of land and that contract has been deferred because of the decision that has to be made here; that they have indicated that this is causing them a significant amount of income loss due to the fact that a high end residential builder is not moving forward with their plan.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2543 Toney Floyd & Charleta Speaks-Floyd. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Minutes of the November 13, 2024, Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since October 23, 2024.

Mr. Mears requested that Mr. Robertson read the motion on his behalf.

Mr. Mears moved the Commission to recommend denial of C/U 2543 Toney & Charletta Speaks-Floyd for the business of storing and hauling dirt and gravel along with the storage of work equipment and trucks based upon the record made during the public hearing and for the following reasons:

1. This is the second application for the same site, with the same applicant, based on the same sort of primary use. Conditional Use # 2436 had a public hearing earlier this year, with a recommendation for denial from the Planning & Zoning Commission based on 10 different reasons. Before the application was heard by County Council, the applicant withdrew the application to allow time to clean up the site and come forward with a more specific application for more limited uses on the site. Unfortunately, many of the concerns that existed at the first hearing remain in existence today, and for that reason it is recommended that County Council deny this application.
2. The Planning and Zoning Commission remains highly supportive of small businesses that are appropriately located. This is a new business that will create noise, odor, and dust. It was recently started in an area near other residential properties without the proper permits. This is neither the appropriate location, nor the appropriate circumstances, to grant the requested conditional use. While the Applicant stated that there are other conditional uses in the region, none are as intensive as this use, and they all are more appropriately located than this use.
3. This application is for a dirt storage and hauling business that uses heavy dump trucks and similar equipment on a 2.31-acre property in an area that includes undeveloped land and residential development, but no other nearly industrial businesses like this one. This is not an appropriate location for the Applicant's intensive use, with heavy equipment, large truck traffic, and the noise and other impacts of the use.
4. There was conflicting testimony about the roadway used for trucks and other vehicles associated with the proposed use, and the Applicant has the burden of showing that it has adequate legal access to the site as part of its presentation. It is unclear what private road is being used and photographic evidence and testimony is conflicting on this point. There is nothing in the record to show that the Applicant has the legal right to use either roadway for heavy trucking activities. While the Applicant may be able to clear this up during the hearing before County Council, this application should receive a recommendation for denial based upon this uncertainty about such an important aspect of the use.
5. There was substantial opposition to the Application from a large group of neighboring property owners with evidence showing and describing the current condition of the Property even after it was cleaned up following the prior hearing. There was photographic evidence and testimony that the noise associated with the use and environmental impacts from the use

are significant. The impact of the proposed use is significant both visually and audibly. This is based upon information presented about the activity currently occurring on the site and it is not speculation. Despite what was shown in the Applicant's exhibits, trees have also been clear-cut in the area between the proposed use and the neighboring properties eliminating the natural screening that previously existed.

6. There is evidence in the record that the existing activity on the property and the proposed use and the materials, equipment and vehicles associated with it, adversely affects the neighboring and adjacent properties.
7. The proposed conditional use does not promote the health, safety, and welfare of Sussex County and its residents.
8. The proposed use in this location does not satisfy the purpose of a conditional use under the Sussex County Zoning Code because it is not well-adjusted to its environment with full protection of the neighboring properties, and because the proposed use is not desirable in this location for the general convenience and welfare of Sussex County residents and businesses.
9. For all of these reasons, I move that the Commission recommend a denial of this Conditional Use. As the Commission stated previously, there is a need for the type of business performed by the Applicant in Sussex County. But it must occur at an appropriate location. For this reason, County Staff should again be directed to cooperate with the Applicants if they find a different, more suitable location for their business. If another, more suitable location is found by the Applicants, then any necessary applications should receive expedited scheduling.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend denial of C/U 2543 Toney Floyd & Charletta Speaks-Floyd for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
HOLLY J. WINGATE, VICE-CHAIRMAN
J. BRUCE MEARS
GREGORY SCOTT COLLINS
BRIAN BUTLER



Sussex County

DELAWARE
SUSSEXCOUNTYDE.GOV
302-855-7878 T
302-854-5079 F
JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 23, 2024

County Council Public Hearing Date: December 10, 2024

Application: C/U 2543 Toney & Charletta Floyd

Applicant: Toney & Charletta Floyd
32404 Hersel Davis Road
Millsboro DE 19966

Owner: Toney & Charletta Floyd
32404 Hersel Davis Road
Millsboro DE 19966

Site Location: Lying on the northeast side of Hersel Davis Road approximately (0.4) miles northeast of Oak Orchard Road (Route 5).

Current Zoning: General Residential (GR) Zoning District

Proposed Use: A business for storing & hauling of dirt and gravel and the storage of work equipment and six (6) trucks.

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Indian River Fire Department

Sewer: N/A

Water: N/A

Site Area: 2.31 acres +/-

Tax Map ID: 234-29.00-274.02



PLANNING & ZONING COMMISSION

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JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR

Memorandum

To: Sussex County Planning Commission Members
From: Mrs. Christin Scott, Planner II
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 15, 2024
RE: Staff Analysis for C/U 2543 Toney & Charletta Floyd

This memo is to provide background and analysis for the Planning Commission to consider as a part of Application C/U 2543 Toney & Charletta Floyd to be reviewed during the October 23rd, 2024, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

Please note that the following staff analysis is for informational purposes only and does not prejudice any decision that the Sussex County Planning & Zoning Commission or Sussex County Council may wish to make as part of any Application submitted to the Department.

Tax Parcel ID: 234-29.00-274.02

Proposal: The request is for a Conditional Use for Tax Parcel 234-29.00-274.02 to allow for a commercial hauling, goods and materials delivery services, and driveway installation company together with storage of vehicles, equipment, and materials on a parcel lying on the northeast side of Hersel Davis Road approximately (0.4) miles northeast of Old Orchard Road (Route 5). The parcel is comprised of 2.31 acres +/-.

Zoning: The Parcel is zoned General Residential (GR) District. The adjacent parcels to the east of the subject property are zoned Medium Density Residential (MR) District and parcels to the north, west, and south are zoned General Residential (GR) District.

Future Land Use Map Designation w/in Comprehensive Plan: Coastal Area

Applicability to Comprehensive Plan: The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the Plan indicates that the subject property is designated as a Growth Area and has a land use designation of "Coastal Area." The properties surrounding the subject Parcel are also categorized as "Coastal Area."

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are growth areas that the County encourages only the appropriate forms of concentrated new development, especially when environmental features are in play (2018 Sussex County Comprehensive Plan, 4-9). The



Coastal Area designation is intended to recognize the characteristics of both anticipated growth and ecologically important and sensitive characteristics (2018 Sussex County Comprehensive Plan, 4-15).

Further Site Considerations:

- **Density: N/A**
- **Open Space Provisions: N/A**
- **Agricultural Areas:** The site is within the vicinity of active agricultural lands.
- **Interconnectivity: N/A**
- **Transportation Improvement District (TID):** The parcels are not within the Henlopen Transportation Improvement District.
- **Forested Areas: N/A**
- **Wetlands Buffers/Waterways:** The site appears to contain a small area of wetlands along the eastern boundary shared with the Peninsula Lakes Subdivision (TM# 234-29.00-1837.00).
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within Flood Zones A along the eastern boundary of the Parcel along the shared boundary Peninsula Lakes Subdivision (TM# 234-29.00-1837.00). The Parcel is in an area of “Poor” Groundwater Recharge Potential.

Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use Application to allow for a commercial hauling, goods and materials delivery services, and driveway installation company together with storage of vehicles, equipment, and materials, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

Existing Conditional Uses within the Vicinity of the Subject Site: A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications that are less than 1 mile distance from the subject site.

Conditional Use Applications

(Within a 1-mile radius of the subject site)

Application CU Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
2257	Indian River Volunteer Fire Co. Inc.	GR	Boat Storage & Overflow Parking	Approved	9/14/2021	2799
1305	Short's Marine, Inc.	AR-1	Boat Storage	Approved	10/12/1999	1343
677	Lawrence Mergenthaler	GR	Manufactured Home Park	Approved	4/27/1982	N/A
1417	Boys & Girls Club of Delaware, Inc.	AR-1	Recreation Facility for Children	Approved	10/16/2001	1494
615	Lawrence E. Mergenthaler	GR	Manufactured Home Park	Denied	N/A	N/A
858	John T. Satterfield & Pauline	AR-1	Public Water Utility	Approved	9/30/1986	380
2005	Indian River Vol. Fire Co., Inc.	GR	Boat Storage Facility	Approved	3/10/2015	2387
1458	Indian River Vol. Fire Co., Inc.	GR	Expand Fire Station	Approved	7/16/2002	1551
395	John Satterfield	GR	Boat Display, Sales & Services	Approved	2/1/1977	N/A
284	John Satterfield	GR	Water System	Approved	7/29/1975	N/A
537	Tunnell Properties	AR-1	Borrow Pit	Approved	7/3/1979	N/A
83	Manufactured Homes Inc	AR-1	Manufactured Home Park	Denied	11/21/1972	N/A

1761	Sharp Energy, Inc.	MR	Propane Storage Facility	Approved	10/2/2007	1937
636	Lawrence E. Mergenthaler	GR	Manufactured Home Park	Withdrawn	N/A	N/A
1035	Robert L. & Melissa S. Richardson	B-1	Flea Market W/Outdoor Sales	Withdrawn	N/A	N/A
1583	Tidewater Utilities, Inc.	MR	Elevated Water Tank with Logo	Approved	2/1/2005	1751
1575	American Legion Post 28	AR-1	Carnival & Circus Events	Approved	1/4/2005	1741
2148	Sussex Farms, LLC c/o Samuel Connors	AR-1	Ministorage With Caretaker Residence & Office	Approved	11/13/2018	2615
2045	Robert & Deborah Reed REMAX	B-1	142 Townhouses (Riverview Plaza)	Approved	5/3/2016	2447
1172	Charles G. & Patricia A. Wagner	AR-1	Retail Sales & Professional Offices	Approved	12/10/1996	1118
275	John Satterfield	GR	Water System	Withdrawn	N/A	N/A
790	Charles Koch T/A Penguina Ice Co.	AR-1	Ice Plant	Approved	5/1/1984	N/A

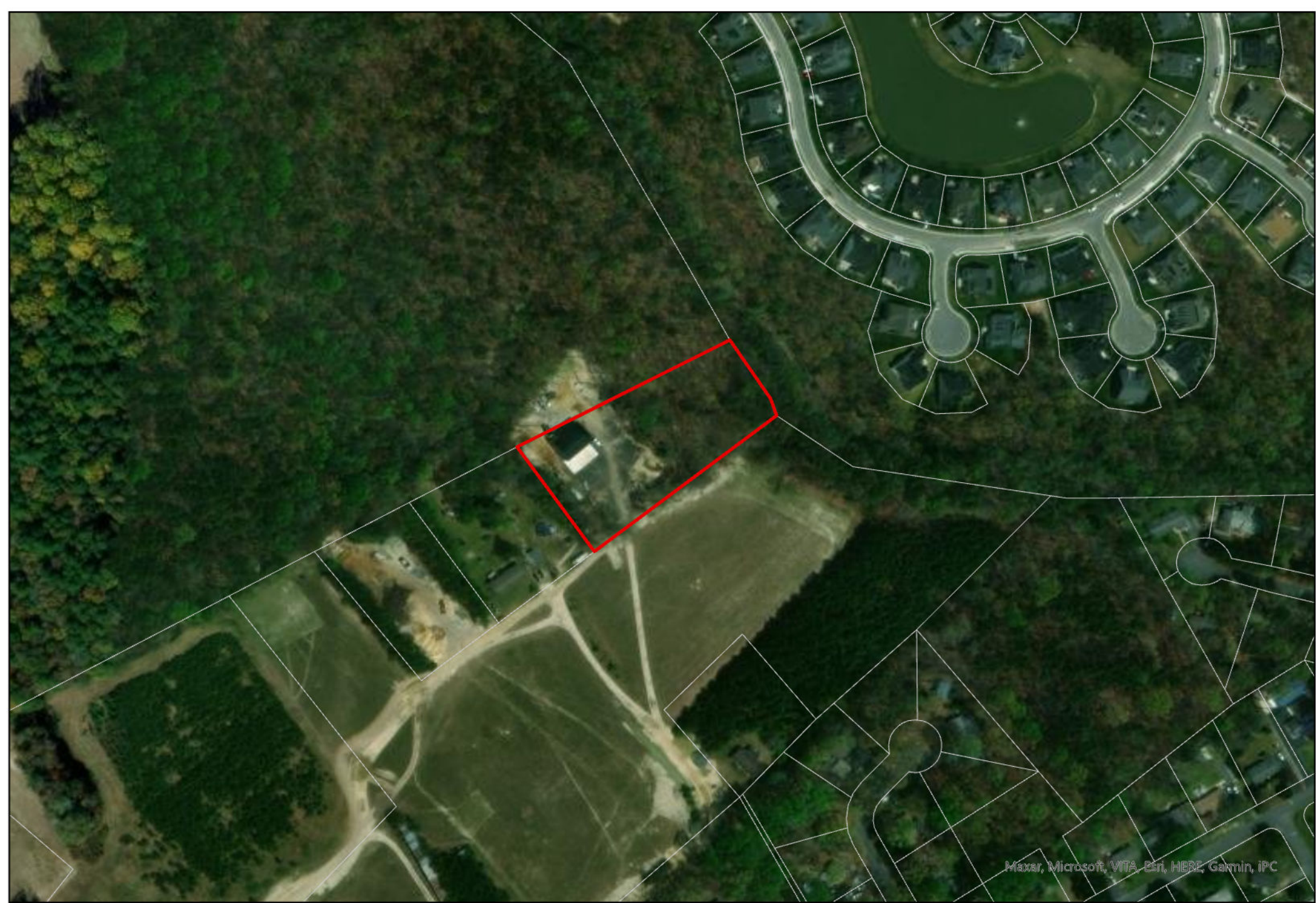


CU 2436 - Toney & Charletta Floyd Zoning Map

CU 2436 TMA#234-29.00-274.02
 1-Mile
 CU 2436 - CUs Within 1-Mile


0 0.25 0.5 1 Miles


N



Maxar, Microsoft, VITA, Esri, HERE, Garmin, IPC

CU 2436 - Toney & Charletta Floyd
Aerial Map

 CU 2436
TM#234-29.00-274.02


 Feet
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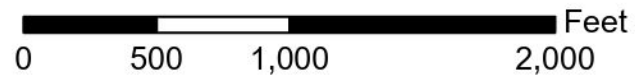




VITA, Delaware FirstMap, Esri, HERE, Garmin, INCREMENT P, NGA, USGS

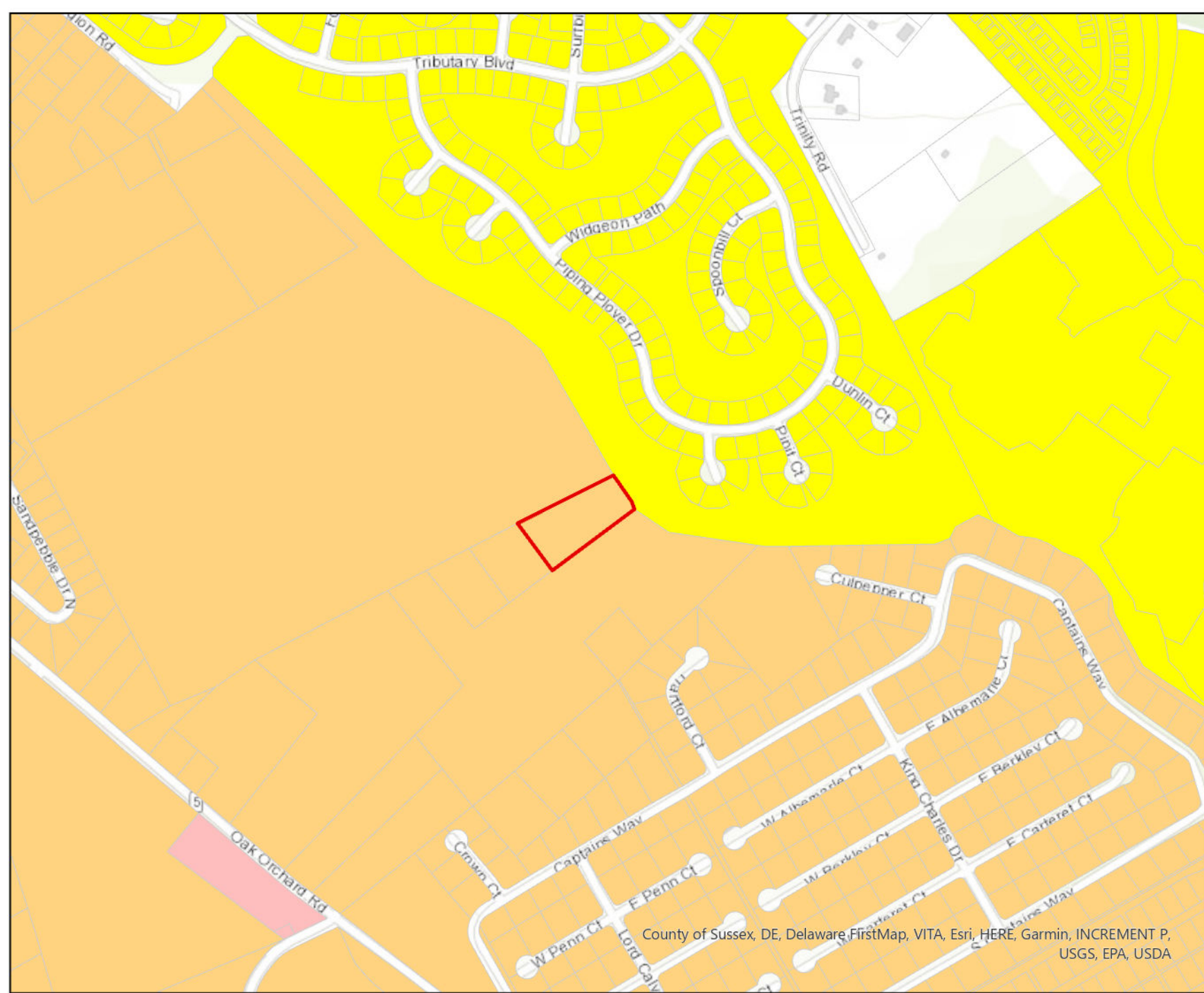
CU 2436 - Toney & Charletta Floyd
Streets Map

 CU 2436
TM#234-29.00-274.02




Zoning

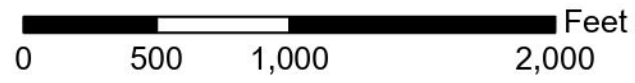
-  Agricultural Residential - AR-1
-  Agricultural Residential - AR-2
-  Medium Residential - MR
-  General Residential - GR
-  High Density Residential - HR-1
-  High Density Residential - HR-2
-  Vacation, Retire, Resident - VRP
-  Neighborhood Business - B-1
-  Neighborhood Business - B-2
-  Business Research - B-3
-  General Commercial - C-1
-  General Commercial - C-2
-  General Commercial - C-3
-  General Commercial - C-4
-  General Commercial - C-5
-  Commercial Residential - CR-1
-  Institutional - I-1
-  Marine - M
-  Limited Industrial - LI-1
-  Light Industrial - LI-2
-  Heavy Industrial - HI-1



County of Sussex, DE, Delaware FirstMap, VITA, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA

CU 2436 - Toney & Charletta Floyd
Zoning Map

 CU 2436
TM#234-29.00-274.02



Introduced: 10/1/24

Council District 4: Mr. Hudson
Tax I.D. No.: 234-29.00-274.02
911 Address 32404 Hersel Davis Road, Millsboro

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A COMMERCIAL HAULING, GOODS AND MATERIALS DELIVERY SERVICES, AND DRIVEWAY INSTALLATION BUSINESS TOGETHER WITH STORAGE OF VEHICLES, EQUIPMENT, AND MATERIALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.31 ACRES MORE OR LESS

WHEREAS, on the 31ST day of July 2024, a conditional use application, denominated Conditional Use No. 2543 was filed on behalf of Toney Floyd & Charletta Speaks-Floyd; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2543 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article VI, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2543 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the northeast side of Hersel Davis Road approximately 0.42-mile northeast of Oak Orchard Road (Rt. 5) and being more particularly described in the attached legal description prepared by Moore & Rutt, P.A. said parcels containing 2.31 ac., more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

To Be Introduced: 12/17/24

Council District 3: Mr. Schaeffer

Tax I.D. No.: 234-23.00-276.00, 276.01, & 277.00

911 Address: 23352 Rudder Road, Millsboro, 25071 Banks Road, Millsboro, & N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 30.57 ACRES, MORE OR LESS

WHEREAS, on the 8th day of May 2023, a zoning application, denominated Change of Zone No. 2012 was filed on behalf of Holdren, LLC; and

WHEREAS, on the ____ day of _____ 2025, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 2012 be _____; and

WHEREAS, on the ____ day of _____ 2025, a public hearing was held, after notice, before the County Council of Sussex County, and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation MR Medium Density Residential as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the east side of Banks Road (S.C.R. 298) approximately 0.61 mile northeast of Long Neck Road (Rt. 23) and being more particularly described in the attached legal description prepared by Brian D. Shirey P.A., said parcels containing 30.57 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

To Be Introduced: 12/17/24

Council District 3: Mr. Schaeffer

Tax I.D. No.: 234-23.00-276.00, 276.01 & 277.0

911 Address: 25352 Rudder Road, Millsboro, 25071 Banks Road, Millsboro & N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MUTLI-FAMILY DWELLINGS (116 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 30.57 ACRES, MORE OR LESS

WHEREAS, on the 8th day of May 2023, a Conditional Use application, denominated Conditional Use No. 2449 was filed on behalf of Rudder Road, LLC; and

WHEREAS, on the ____ day of _____ 2025, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2449 be _____; and

WHEREAS, on the ____ day of _____ 2025, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsections 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2449 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying the east side of Banks Road (S.C.R. 298), approximately 0.61 mile northeast of Long Neck Road (Rt. 23), and being more particularly described in the attached legal description prepared by Tunnell & Raysor, P.A. said parcel containing 30.57 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
(302) 855-7878 T
pandz@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: December 12, 2024

RE: County Council Report for C/U 2526 filed on behalf of Common Ground Hospitality

The Planning and Zoning Department received an application (C/U 2526 filed on behalf of Common Ground Hospitality) for a restaurant and farmers market, to be located in an AR-1 Agricultural Residential Zoning District at Tax Parcel 533-11.00-103.00 and 104.00. The property is located at 37051 Johnson Road, Selbyville. The parcel size is 71.3 ac. +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 23, 2024. At the meeting of November 13, 2024, the Planning & Zoning Commission recommended approval of the application for the 7 reasons and subject to the 9 recommended conditions as stated within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of October 23, 2024, and November 13, 2024.

Minutes of the October 23, 2024, Planning & Zoning Commission Meeting

C/U 2526 Common Ground Hospitality

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RESTAURANT AND FARMERS MARKET TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 71.3 ACRES, MORE OR LESS. The properties are lying on the south side of Zion Church Road (Route 20), approximately 0.50 mile west of the intersection of Zion Church Road (Route 20) and New Road (Route 391). 911 Address: 37051 Johnson Road, Selbyville. Tax Map Parcels: 533-11.00-103.00 & 533-11.00-104.00.



COUNTY ADMINISTRATIVE OFFICES
2 THE CIRCLE | PO BOX 417
GEORGETOWN, DELAWARE

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicants exhibit booklet, which includes a copy of the applicants conceptual site plan, a copy of the staff analysis, a copy of the DelDOT SLER, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division, and zero comments.

Ms. Mackenzie Peet, Esq., of Saul Ewing, spoke on behalf of the applicant that Common Ground Hospitality Group is a restaurant group which includes 4 restaurants and a catering division; that the 4 restaurants are, Hooked and Tail Chasers in Ocean City, MD, Off the Hook in Bethany Beach, DE, and Hooked Up in Millville, DE; that the Conditional Use is to open a new restaurant within an AR-1 zoning; that the proposed area is owned by H&M, Johnson Farms, LLC and one of the owners of the Common Ground Group is a relative of the Johnson Farms, LLC which will ensure that the land will stay within the family; that currently the site is operated agriculturally and grows its own produce and has chicken houses; that the building in which the restaurant would be is currently used as a roadside farmers market which received conditional approval under conditional use #1657 in 2006 for a produce market and sales facility; that the market aimed to sell products grown on site as well as those from other producers, local producers specifically; that this use was approved, but the market eventually closed in 2012 and nothing's been in this space since; that the concept is to open a farm to table restaurant while upgrading the existing buildings to help preserve the property; that it represents a natural progression of the previously approved use preserving the properties legacy, but also creating the opportunity to keep it within the family and maintaining its productivity, rather than allowing for alternative developments that may not reflect its historical significance; that the proposed restaurant will feature an interior area and an exterior seating area; that the area is zoned AR-1 which allows for a restaurant under a conditional use and that falls in line with neighboring properties which range from low, medium and high density properties to Commercial including C1, C2, C3 and B1; that the restaurant is consistent with the County's comprehensive plan by promoting local economic growth; that this site will be served by central water and sewer with Artesian supplying sewer; that DelDOT found that the proposed use would have a negligible impact on local roadways; that they are proposing the following conditions:

1. The space would be limited to 2.16-acre portion of the site.
2. The restaurant would not have a drive through capabilities.
3. The maximum floor space of the restaurant would not exceed 5280 square feet, with 2130 square feet of patio porch space and 70 square feet of shed space.
4. The hours of operation will be Monday through Sunday 9:00AM – 5:00PM.
5. The applicant will obtain a liquor license from the Delaware Office of Alcohol Beverage Control Commissioner
6. The site shall be served by sewer and water.
7. Security and parking lot lighting shall be non-intrusive and provide downward illumination.
8. All dumpsters or trash receptacles shall be screened from view of neighboring properties or roadways.
9. Parking shall be within compliance with the Code.
10. All entrance, intersection and roadway improvements required by DelDOT shall be completed.
11. Stormwater management and erosion standard conditions must be stated.

Mr. Mike Truitt, who resides across the street from this property, spoke in opposition to the application that a restaurant does not fit the characteristics of the area; that this area is full of residential homes and a restaurant in the middle of it just doesn't fit; that the amount of traffic that will be brought

in could cause a problem as currently there are no turning lanes to gain access to the property and are the plans showing the development of any; that the amount of noise that would come along with a restaurant with a bar and an outdoor patio with be a complete disruption to the neighborhood environment.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2526 Common Ground Hospitality. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Minutes of the November 13, 2024, Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since October 23, 2024.

Mr. Mears requested that Mr. Robertson read the motion on his behalf.

Mr. Mears moved the Commission to recommend approval of C/U 2526 Common Ground Hospitality for a restaurant and farmers market based upon the record made during the public hearing and for the following reasons:

1. The use will occur within a small portion of a 71.3-acre parcel that has had a farm market known as “Johnson’s Country Market” located on it for decades. The remainder of the property will remain in agricultural use. This application simply seeks to add a restaurant to the long-standing use of the property.
2. This use is an extension of ongoing agricultural use of the property and the surrounding farmland. The use promotes the agricultural industry in Sussex County.
3. There is a mixture of commercial and residentially zoned properties in the vicinity of this site, including GR General Residential, HR-1 High-Density Residential, MR Medium Density Residential, L1 Limited Industrial, C1 General Commercial, C2 Medium Commercial, C3 Heavy Commercial, and B1 Neighborhood Business. Surrounding uses include Harris Teeter, Signatures Restaurant, and the Freeman Arts Pavilion near the intersection of Route 20 and Route 54 as well as other commercial and business uses.
4. The site is located in the Coastal Area according to the Sussex County Comprehensive Plan. The Plan states that this type of use is appropriate within the Coastal Area.
5. DelDOT has stated that the use will have a “negligible” impact on area roadways and traffic.
6. The site will have sufficient areas for parking.
7. With the conditions and limitations placed upon this Conditional Use, it will not adversely affect neighboring properties or area roadways.
8. This recommendation is subject to the following conditions:
 - A. The use shall be limited to a restaurant and farmers market located on 2.61 acres of the site as shown on the site plan that was presented during the public hearing.
 - B. The restaurant shall not have a “drive-through” capability or design. Any expansion of the use may require an additional public hearing.

- C. The hours of operation shall be from 10:00 am until 10:00 pm, daily.
- D. Any security lighting shall only illuminate downward so that it does not shine on neighboring properties or roadways.
- E. All dumpsters or trash receptacles shall be screened from the view of neighboring properties and roadways. The location of these items shall be shown on the Final Site Plan.
- F. The consumption of alcoholic beverages shall be permitted within the restaurant and its patios on the site subject to the approval from the Delaware Office of the Alcoholic Beverage Control Commissioner.
- G. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself.
- H. The Final Site Plan shall be subject to the receipt of all applicable agency approvals, including but not limited to DelDOT, Sussex County Engineering, the Sussex Conservation District, and the State Fire Marshall.
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2526 Common Ground Hospitality for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
HOLLY J. WINGATE, VICE-CHAIRMAN
SCOTT COLLINS
J. BRUCE MEARS
BRIAN BUTLER



Sussex County

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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 23, 2024

County Council Public Hearing Date: December 17, 2024

Application: C/U 2526 Common Ground Hospitality

Applicant: Common Ground Hospitality
782 Garfield Parkway, Suite 201
Bethany Beach, DE 19930

Owner: H&M Johnson Farms, LLC
37047 Johnson Road
Selbyville, DE 19975

Site Location: Lying the south side of Zion Church Road (Route 20), approximately
0.50 mile west of the intersection of Zion Church Road (Route 20) and
New Road (Route 391)

Current Zoning: Agricultural Residential (AR-1) Zoning District

Proposed Use: Restaurant and Farmers Market

Comprehensive Land
Use Plan Reference: Coastal Area

Councilman
District: District 4 - Mr. Hudson

School District: Indian River School District

Fire District: Roxana Fire Department

Sewer: Sussex County

Water: Artesian Water Company

Site Area: 71.3 acres +/-

Tax Map ID.: 533-11.00-103.00 & 104.00



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Sussex County

DELAWARE
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Memorandum

To: Sussex County Planning Commission Members
From: Mrs. Susan Isaacs, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 16th, 2024
RE: Staff Analysis for CU 2526 Common Ground Hospitality

This memo is to provide background and analysis for the Planning & Zoning Commission to consider as a part of application CU 2526 Common Ground Hospitality to be reviewed during the October 23rd, 2024, Planning & Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcels: 533-11.00-103.00 & 104.00 to allow for a Restaurant and Farmers Market. The parcels are lying on the south side of Zion Church Road (Rt. 20), approximately 0.50 mile west of the intersection of Zion Church Road (Rt. 20) and New Road (Rt. 391). The parcels consist of 71.3 acres +/-.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the parcels have a designation of “Coastal Area.” The surrounding and adjacent properties also contain the “Coastal Area” Future Land Use Map designation.

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are growth areas that the County encourages only the appropriate forms of concentrated new development, especially when environmental features are in play (2018 Sussex County Comprehensive Plan, 4-9). The Coastal Area designation is intended to recognize the characteristics of both anticipated growth and ecologically important and sensitive characteristics (2018 Sussex County Comprehensive Plan, 4-15).

Zoning Information

The subject properties are zoned Agricultural Residential (AR-1). The adjacent properties to the south, east, and west of the subject sites are also zoned Agricultural Residential (AR-1). The properties to the north across Zion Church Road are also zoned Agricultural Residential (AR-1), with properties across Johnson Road to the west are zoned General Residential (GR).



Further Site Considerations:

- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** The properties are in the vicinity of lands used primarily for agricultural purposes, including the properties themselves.
- **Interconnectivity:** N/A
- **Transportation Improvement District (TID):** The site is not within the Henlopen TID.
- **Forested Areas:** The properties do contain some forested areas in the rear.
- **Wetlands Buffers/Waterways:** N/A
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within the Flood Zone “X” with areas of “Fair/Poor” classifications of Groundwater Recharge Potential on the site. The parcels are not located in a Wellhead Protection Area. The Henry C. Johnson Main Prong runs from north to south through Parcel 104.00 with tax ditch right of ways of 80-ft from the top of the bank. The west side of the Ta Ditch does have a reduced right of way of 30-ft from the top of the bank.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for a Restaurant and Famers Market, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

Existing Conditional Uses within the Vicinity of the Subject Site: A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications that are less than 1 mile distance from the subject site.

Conditional Use Applications						
(Within a 1-mile radius of the subject site) (Since 2011)						
Application Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
1914	Steven Krebs & Barbara Krebs	AR-1	Barbeque Prep and Sales	Approved	1/17/2012	2233

1920	Collins 54, LLC	AR-1	Storage Garage for Trucks and Equipment and a Parking Area	Approved	2/7/2012	2240
2023	Frank Miranda	AR-1	veterinarian office	Approved	9/15/2015	2416
2076	Joseph Mark Zdurienick	AR-1	event facility/center	Approved	6/13/2017	2504
2098	Fenwick Commons. LLC	MR	Multi-family (62 Duplex Units)	Denied	1/23/2018	
2120	PJM Properties, LLC	AR-1	amend conditions of approval of CU 1106	Approved	5/15/2018	2575
2197	Fenwick Commons, LLC	MR	Multi-family (62 Duplex units)	Approved	12/17/2019	2701
2292	Gulfstream Development, LLC	AR-1	32 Multi-Family Units (Duplexes)	Approved	9/21/2021	2804
2271	Chris Brasure	AR-1	Office for pest control business - amendment to Ordinance 2240 CU 1920	Approved	11/16/2021	2814
2088	Billy Banning Enterprises, LLC	AR-1	dance studio	Withdrawn		
1914	Steven Krebs & Barbara Krebs	AR-1	Barbeque Prep and Sales	Approved	1/17/2012	2233
1920	Collins 54, LLC	AR-1	Storage Garage for Trucks and Equipment and a Parking Area	Approved	2/7/2012	2240
2023	Frank Miranda	AR-1	veterinarian office	Approved	9/15/2015	2416
2076	Joseph Mark Zdurienick	AR-1	event facility/center	Approved	6/13/2017	2504

2098	Fenwick Commons. LLC	MR	Multi-family (62 Duplex Units)	Denied	1/23/2018	
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2197	Fenwick Commons, LLC	MR	Multi-family (62 Duplex units)	Approved	12/17/2019	2701



CHANDLER DR

CYGNET DR

JOHNSON LN

COLLINS LN

FETWICK CIR

NEW RD

N SEA

S SEAGULL RD

ZION CHURCH RD

Roy Creek

JOHNSON STORE RD

JOHNSON RD

DICKERSON RD

E HAVENWOOD DR

SILVER FOX DR

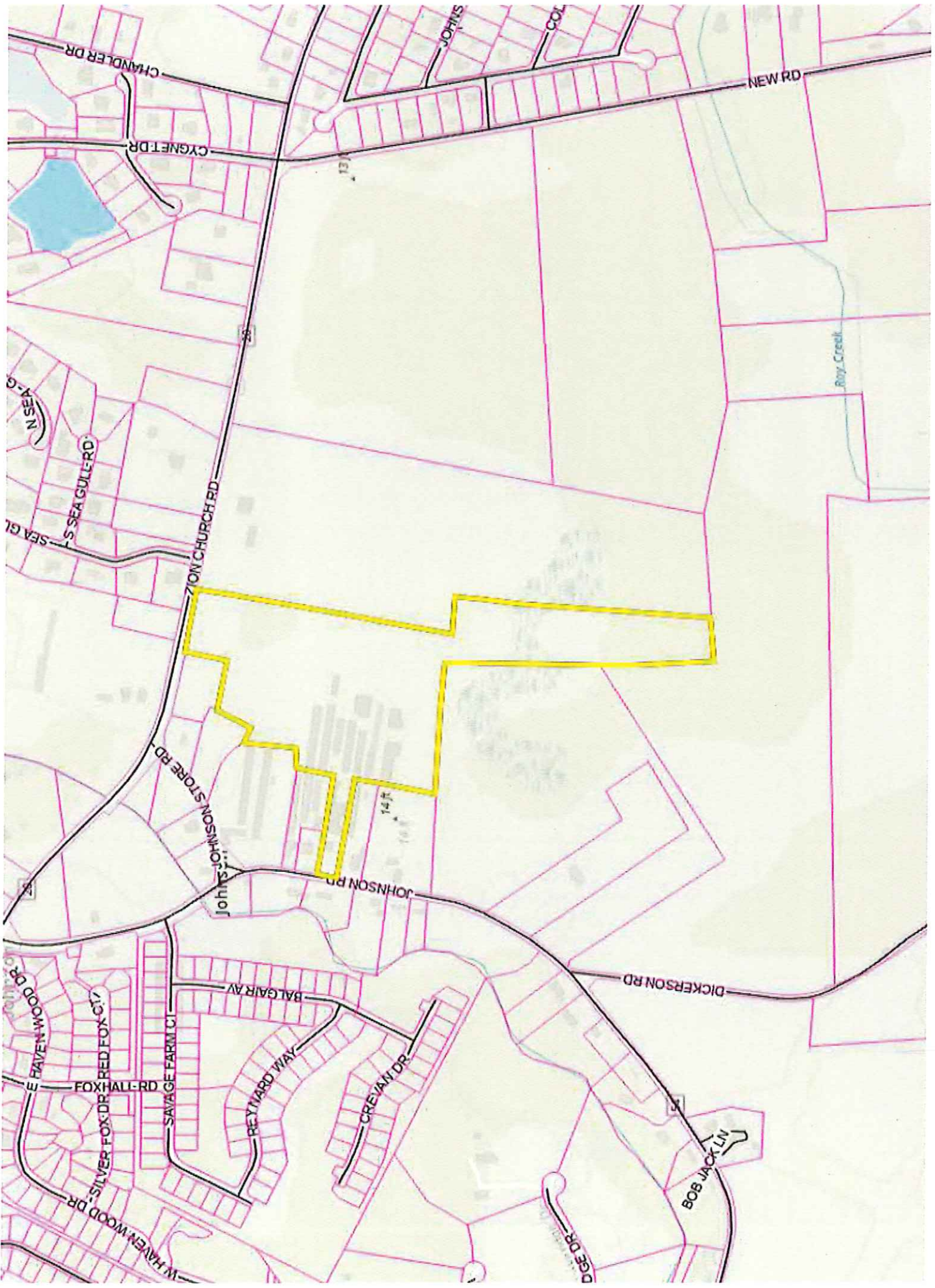
FOX HALL RD

SAVA GE FARM CT

REYNARD WAY

CREVIER DR

BOB JACK LN



CHANDLER DR

CYGNET DR

NEW RD

JOHNS

COI

13R

Boy Creek

N SEA GULL

S SEA GULL RD

JOHN CHURCH RD

JOHNSON STORE RD

JOHNSON RD

14R

10R

DICKERSON RD

BALGAIR AV

REY VARD WAY

CREVAN DR

BOB JACKLIN

SAVAGE FARM CT

FOX HALL RD

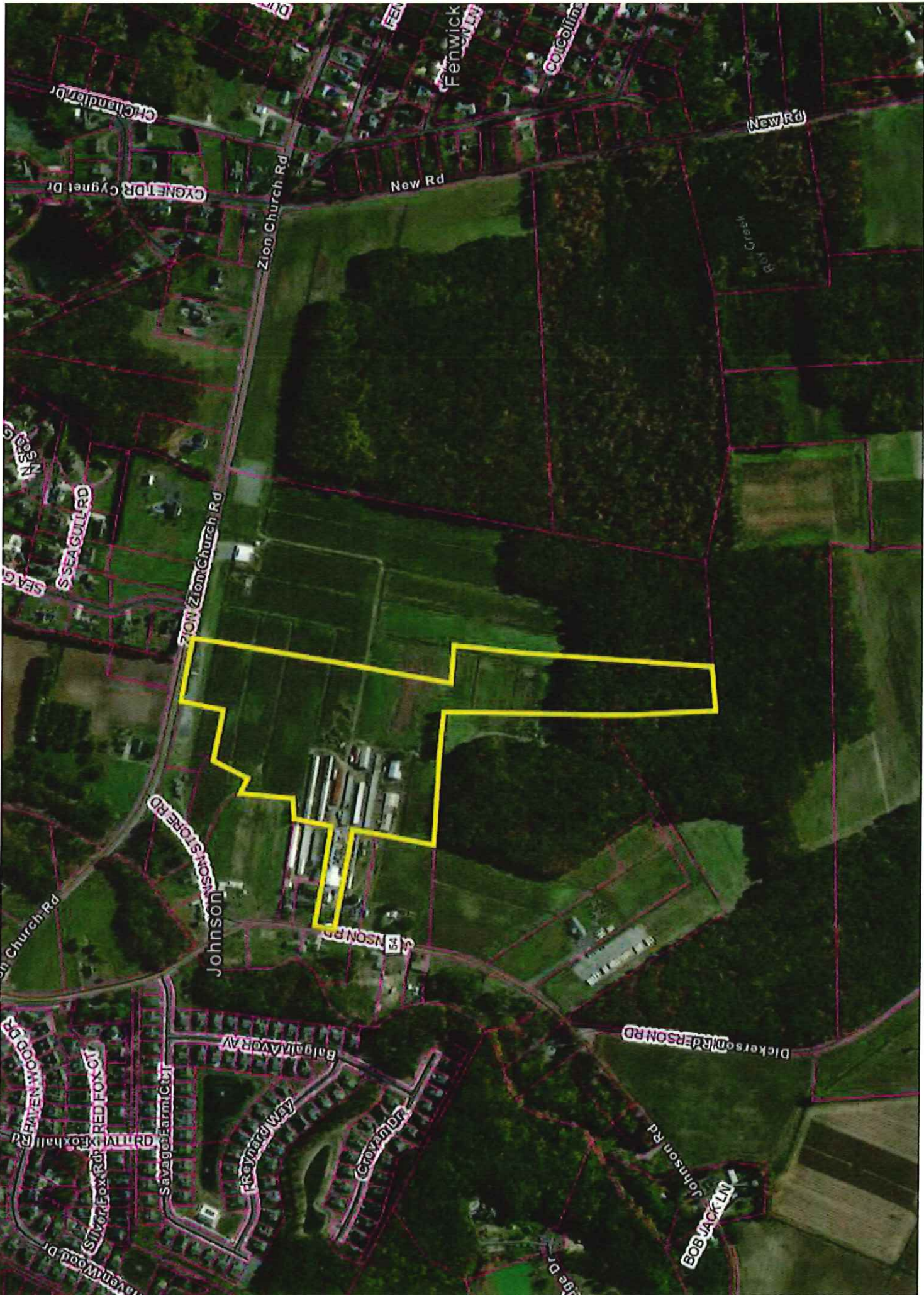
SILVER FOX DR

RED FOX CT

E HAVEN WOOD DR

W HAVEN WOOD DR

BOE DR



Introduced: 8/27/24

Council District 4: Mr. Hudson
Tax I.D. No.: 533-11.00-103.00 & 533-11.00-104.00
911 Address: 37051 Johnson Road, Selbyville

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RESTAURANT AND FARMERS MARKET TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 71.3 ACRES, MORE OR LESS

WHEREAS, on the 17th day of April 2024, a Conditional Use application, denominated Conditional Use No. 2526 was filed on behalf of H & M Johnson Farms, LLC; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2526 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsections 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2526 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying the south side of Zion Church Road (Route 20), approximately 0.50 mile west of the intersection of Zion Church Road (Route 20) and New Road (Route 391) and being more particularly described in the attached legal description prepared by David W. Baker Esq. said parcels containing a total of 71.3 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: December 12, 2024

RE: County Council Report for C/U 2542 filed on behalf of Lauden Investments, LLC

The Planning and Zoning Department received an application (C/U 2542 filed on behalf of Lauden Investments, LLC) for an amendment of Condition "D" for C/U 2264 (Ordinance No. 2813) relating to the permitted days and hours of operation for a professional office, to be located in an AR-1 Agricultural Residential Zoning District at Tax Parcel 335-8.18-15.00 & 16.00. The property is located at 1302 and 1304 Savannah Road, Lewes. The parcel size is 0.68 ac. +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 23, 2024. At the meeting of November 13, 2024, the Planning & Zoning Commission recommended approval of the application for the reasons stated and subject to the recommended revised conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of October 23, 2024, and November 13, 2024.

Minutes of the October 23, 2024, Planning & Zoning Commission Meeting

C/U 2542 Lauden Investments, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION "D" FOR C/U 2264 (ORDINANCE NO. 2813) RELATING TO THE PERMITTED DAYS AND HOURS OF OPERATION FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.68 ACRE, MORE OR LESS. The properties are lying on the southeastern side of Savannah Road (S.C.R. 443A),



approximately 0.77-mile northeast of Westcoats Road (Rt. 12). 911 Address: 1302 & 1304 Savannah Road, Lewes. Tax Map Parcels: 335-8.18-15.00 & 16.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicants conceptual site plan, a copy of the DelDOT SLER, a copy of the staff analysis, a copy of a deed for the property, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division and zero comments.

Mr. James Churchman, Esq., of Fuqua, Willard & Schab, spoke on behalf of Tim Willard, Esq., who represents the applicant; that the application is a conditional use to amend Condition “D” to allow weekend hours; that the initial application was to only allow Saturday hours, but that has been changed and submitted to the Planning & Zoning Department to now allow Saturday and Sunday hours; that the new proposed hours would be Saturday 8:00AM to 8:00PM and Sunday 10:00Am to 5:00PM; that the property was approved for a conditional use #1549, ordinance #1723 to use the parcel as a medical office; that the second parcel was purchased and that was granted a conditional use #1744, ordinance #1966 for a professional office; that the current conditional use application is to amend the hours of operation, as Dr. Aponte wishes to rent out the professional building to a real estate office and they work weekends; that the properties within a mile radius have 21 conditional uses and out of those there are 10 that allow for Saturday hours, and 3 that have Sunday hours.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2542 Lauden Investments, LLC. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Butler and carried unanimously. Motion carried 5-0.

Minutes of the November 13, 2024, Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since October 23, 2024.

Mr. Collins stated that based on the circumstances, including the development of this area of Savannah Road as a business and office corridor, and the fact that this property is surrounded by the entrance to the high school and the high school itself along with another office next door, that the hours of operation are no longer necessary here. Therefore, Condition “D” of Conditional Use 2264 (Ord. No. 2813) should be deleted in its entirety.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to delete Condition “D” of C/U 2264 through C/U 2542 Lauden Investments, LLC for the reasons and the conditions stated. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
HOLLY J. WINGATE, VICE-CHAIRMAN
J. BRUCE MEARS
GREGORY SCOTT COLLINS
BRIAN BUTLER



Sussex County

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JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 23, 2024

County Council Public Hearing Date: December 10, 2024

Application: CU 2542 Laudan Investments, LLC

Applicant: Laudan Investments, LLC
1302 Savannah Road
Lewes, DE 19958

Owner: Laudan Investments, LLC
1302 Savannah Road
Lewes, DE 19958

Site Location: 1302 and 1304 Savannah Road

Current Zoning: Agricultural Residential (AR-1) Zoning District

Proposed Use: General Office Use – Modify Condition D of previously approved (CU 2264) relating to hours of operation

Comprehensive Land Use Plan Reference: Commercial

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire Department

Sewer: Septic

Water: Well

Site Area: .68 acres +/-

Tax Map ID.: 335-8.18-15.00 & 16.00



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(302) 854-5079 F
jamie.whitehouse@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Mr. Michael Lowrey, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 10th, 2024
RE: Staff Analysis for CU 2542 Lauden Investments, LLC

This memo is to provide background and analysis for the Planning & Zoning Commission to consider as a part of application CU 2542 Lauden Investments, LLC to be reviewed during the October 23rd, 2024 Planning & Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 335-8.18-15.00 & 16.00 to allow for an office use. Specifically, this Application seeks to modify "Condition D" of previously approved (CU 2264) relating to hours of operation. Conditional Use No. 2264 was approved by Sussex County Council on November 16, 2021 subject to nine (9) Conditions of Approval. The Applicant is requesting to modify "Condition D" which requires: "the business hours shall be limited to 8:00 am until 5:00 pm, Monday through Friday, with the exception of emergency services that may be required" to include business hours on Saturdays. The parcels are lying on the southeastern side of Savannah Road (Route 9B/ S.C.R. 443A) approximately 0.77-mile northeast of Wescoats Road (Route 12) and share an entrance. The parcels consist of 0.68 acres +/-.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the parcels have a designation of "Commercial Area." The surrounding and adjacent to the east and west as well as the south also contain the "Commercial Area" Future Land Use Map designation.

As outlined within the 2018 Sussex County Comprehensive Plan, Commercial Areas are areas that include "concentrations of retail and service uses that are mainly located along arterials, and highways." (Sussex County Comprehensive Plan, 4-17). The Plan notes "as opposed to small, traditional downtown areas that are often historic and pedestrian-friendly, Commercial Areas include commercial corridors, shopping centers, and other medium and large commercial vicinities geared towards vehicular traffic." The Plan also notes, "these more intense uses should be located along main roads or near major intersections. Institutional and commercial uses may be appropriate depending on surrounding uses" (Sussex County Comprehensive Plan, 4-17).



Zoning Information

The subject properties are zoned Agricultural Residential (AR-1). The adjacent properties to the north of the subject sites are also zoned Agricultural Residential (AR-1). There are two properties to the northwest of the subject properties which are zoned Neighborhood Business (B-1). The properties on the northern side of Vikings Way are located within the incorporated town limits of the City of Lewes.

Further Site Considerations:

- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** N/A
- **Interconnectivity:** N/A
- **Transportation Improvement District (TID):** The site is not within the Henlopen TID.
- **Forested Areas:** N/A
- **Wetlands Buffers/Waterways:** N/A
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within the Flood Zone “X” with areas of “Fair” classifications of Groundwater Recharge Potential on the site. The parcels are partially located in a Wellhead Protection Area.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for the office use with Saturday hours of operation, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

Existing Conditional Uses within the Vicinity of the Subject Site: A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications that are less than 1 mile distance from the subject site.

Conditional Use Applications						
(Within a 1-mile radius of the subject site) (Since 2011)						
Application Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
1912	Wm. A. Bell & Kathleen M. Sperl-Bell	AR-1	Professional Office	Approved	11/8/2011	2226
1974	Sara Kay I. Phillips	AR-1	Hair Salon	Approved	1/14/2014	2334
2058	Old Orchard Ventures - Oyster Cove	MR	Multi-Family (Duplex) Dwelling Structures (24 Units)	Approved	10/25/2016	2472
2064	R & K Partners	AR-1	Medical Offices	Approved	3/7/2017	2484
2069	Rudolph Joseph Johnson	AR-1	Workout Studio	Approved	4/25/2017	2494
2074	Quail Valley 1525, LLC (Midway Fitness)	AR-1	Commercial Use as A Therapy And Fitness Center	Denied	8/8/2017	<Null>
2109	Quakertown Wellness Center	AR-1	Holistic Health Center with Massage, Acupuncture and Chiropractor	Approved	1/9/2018	2541
2112	Mitchell Family Limited Partnership	AR-1	Medical Office and Ancillary Medical Uses	Approved	3/20/2018	2567
2116	William and Stacey Smith	AR-1	Professional Offices	Approved	3/20/2018	2569
2132	Dorothy Darley	AR-1	Hair Studio	Approved	7/31/2018	2590
2133	Dr. Laima Athaney and Dr. Michael Cahoon	AR-1	Professional Office	Approved	7/31/2018	2591
2134	The Evergreen Companies, LLC (Admirals Chase)	MR	Multifamily	Approved	8/14/2018	2594

2136	Christine Degnon	AR-1	Medical Offices	Approved	10/23/2018	2608
2137	John W. Ford	AR-1	Professional Offices	Approved	7/31/2018	2592
2159	Elisabeth Ann Burkhardt	AR-1	Professional Office	Approved	1/15/2019	2628
2160	Procino, Wells, and Woodland, P.A.	AR-1	Professional Office	Approved	3/19/2019	2638
2169	Robert & Debora Reed	AR-1	Multi-Family	Approved	6/18/2019	2663
2181	Mitchell Family, LLC	MR	Multi-Family (209)	Withdrawn	N/A	N/A
2313	John Ford	AR-1	Realty Office	Approved	9/20/2022	2885
2334	Henlopen Properties, LLC	MR	Multi-Family	Approved	7/26/2022	2876
2359	JG Townsend Jr. & Co.	AR-1	Multi-Family (102 Units)	Approved	12/05/2023	2964

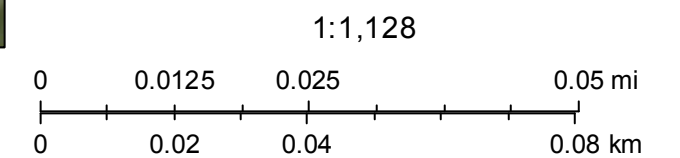


Sussex County



PIN:	335-8.18-15.00
Owner Name	LAUDAN INVESTMENTS LLC
Book	3007
Mailing Address	1302 SAVANNAH RD
City	LEWES
State	DE
Description	S/E HWY LEWES
Description 2	TO WESCOATS COR
Description 3	DOVER ST L9
Land Code	

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries





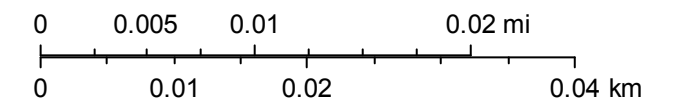
Sussex County

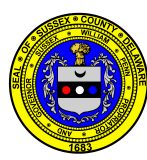


PIN:	335-8.18-15.00
Owner Name	LAUDAN INVESTMENTS LLC
Book	3007
Mailing Address	1302 SAVANNAH RD
City	LEWES
State	DE
Description	S/E HWY LEWES
Description 2	TO WESCOATS COR
Description 3	DOVER ST L9
Land Code	

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Override 1
- polygonLayer
Override 1
- ⋯ Tax Parcels
- 911 Address
- Streets
- County Boundaries

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Sussex County



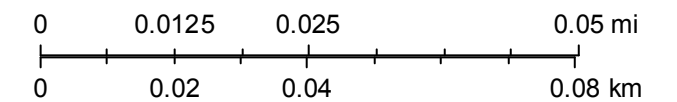
PIN:	335-8.18-15.00
Owner Name	LAUDAN INVESTMENTS LLC
Book	3007
Mailing Address	1302 SAVANNAH RD
City	LEWES
State	DE
Description	S/E HWY LEWES
Description 2	TO WESCOATS COR
Description 3	DOVER ST L9
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- ⋮ Tax Parcels
- 911 Address
- Streets

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Introduced: 10/1/24

Council District 3: Mr. Schaeffer
Tax I.D. No.: 335-8.18-15.00 & 16.00
911 Address: 1302 & 1304 Savannah Road, Lewes

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION D FOR CONDITIONAL USE NO. 2264 (ORDINANCE NO. 2813) RELATING TO THE PERMITTED DAYS AND HOURS OF OPERATION FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.68 ACRE, MORE OR LESS

WHEREAS, on the 15th day of July 2024, a Conditional Use application, denominated Conditional Use No. 2542 was filed on behalf of Lauden Investments, LLC; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2542 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsections 115-22 Code of Sussex County, be amended by adding the designation of Conditional Use No. 2542 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying the southeastern side of Savannah Road (S.C.R. 443A), approximately 0.77 mile northeast of Westcoats Road (Rt. 12) and being more particularly described in the attached legal description prepared by Gregory W. Williams said parcel containing 0.68 acre, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.