



\*VG-18-2023-6901\*

**Nacogdoches County  
Sandra "Sandy" Yates  
Nacogdoches County Clerk**

**Instrument Number: 2023 - 6901**

Real Property Recordings

Parties: GEORGE PATRICIA  
MAST

Parties: MIDDLEBROOK SOLAR  
LLC

Recorded On: September 14, 2023 01:42 PM

Number of Pages: 28

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

Total Recording: \$130.00

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

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

**File Information:**

Document Number: 2023-6901  
Receipt Number: 20230901000029  
Recorded Date/Time: September 14, 2023 01:42 PM  
User: Jennifer A  
Station: CLERK02

**Record and Return To:**

SOLAR PROPONENT  
9111 JOLLYVILLE ROAD, SUITE 115  
  
AUSTIN TX 78759



**STATE OF TEXAS**

**Nacogdoches County**

**I hereby certify that this Instrument was filed in the File Number sequence on the date/time printed hereon, and was duly recorded in the Official Records of Nacogdoches County, Texas**

Sandra "Sandy" Yates  
Nacogdoches County Clerk  
Nacogdoches County, TX

*Sandra "Sandy" Yates*

After recording, please return to:  
Middlebrook Solar LLC  
c/o Solar Proponent LLC  
9111 Jollyville Road  
Suite 115  
Austin, TX 78759

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(above space reserved for recorder)

### **SURFACE USE AGREEMENT**

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

This SURFACE USE AGREEMENT ("Agreement"), dated as 8/28/23 (the "Effective Date"), is made by and among, **PATRICIA MAST GEORGE**, herein represented by her Agent and Attorney-in-Fact, **JOHN C. MAST** (collectively referred to as "Mineral Owner"), whose address is P. O. Box 635025, Nacogdoches, Texas 75963-5025 and **Middlebrook Solar LLC**, a Delaware limited liability company ("Solar Company").

### **RECITALS**

- A. Capitalized terms used in this Agreement have the meanings given to such terms in the introductory paragraph of this Agreement above, these Recitals, or Article 1 of this Agreement below.
- B. The Mineral Owner owns the Mineral Interest in the Property, based upon mineral ownership research obtained by Solar Company.
- C. The Solar Company has entered into the Solar Lease Agreement, which affects the surface of the Property for the development and operation of the Solar Project.
- D. The Parties desire to jointly use the surface in such a way that neither Party will infringe on the surface rights of the other Party, subject to the provisions contained herein.

- E. In consideration of the mutual promises set out in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Mineral Owner and Solar Company agree to be bound by the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS; INTERPRETATION; TERM**

- 1.1. **Definitions.** As used in this Agreement, these words or expressions have the following meanings:

“Affiliate” means any legal entity which controls, is controlled by, or is under common control with the Person specified. A Person is deemed to “control” another if it owns directly or indirectly at least fifty percent (50%) of either of the following (A) the shares entitled to vote at a general election of directors of such other entity, or (B) the voting interest in such other entity if such entity does not have either shares or directors.

“Access Corridors” means the twenty (20’) foot-wide strips of land on the Property identified on the map in Exhibit C attached hereto and made a part hereof. The Parties agree, that at the request of either of them, they will execute an amendment to this Agreement to more particularly describe the Access Corridors by surveyed metes and bounds.

“Claim” means any claim, liability, loss, demand, damages, lien, cause of action of any kind, obligation, costs, royalty, fees, assessments, penalties, fines, judgment, interest and award (including recoverable legal counsel fees and costs of litigation of the Person asserting the Claim), whether arising by law, contract, tort, voluntary settlement or otherwise.

“County” means Nacogdoches County, Texas.

“Dispute” means any dispute or disagreement or grievance arising out of this Agreement or the performance of obligations under this Agreement, including a Claim under this Agreement and any dispute or disagreement or grievance regarding the existence, construction, validity, interpretation, enforceability or breach of this Agreement.

“Drill Sites” means the five (5) acre areas of land on the Property identified on the map in Exhibit C attached hereto and made a part hereof. The Parties agree, that at the request of either of them, they will execute an amendment to this Agreement to more particularly describe the Drill Sites by surveyed metes and bounds.

“Geophysical Operations” means the surface and/or subsurface generation and/or measurement of different types of energy and forces used to record geophysical properties of the earth, which properties include, by way of example and not of limitation, magnetic, seismic, gravitational, electrical, and natural radiation.

“Mineral Activities” means exploring for, developing, drilling, producing, treating, storing or transporting the Minerals and any other activity incident thereto.

“Mineral Interest” means the mineral interest in the Property more particularly described on Exhibit B attached hereto and made a part hereof.

“Mineral Lessee” means any person or party that leases the Mineral Interest from Mineral Owner or Mineral Owner’s successors or assigns.

“Minerals” means all of the following on or below the Property: all oil, gas, and other hydrocarbons and non-hydrocarbons produced as components or constituents thereof, coal, asphalt and coalbed gas, and other minerals, including, but not limited to, uranium, thorium, bauxite, iron ore, copper, silver, gold and other types of metallic ores and metallic minerals, granite, limestone, dolomite, sandstone, silica sand, sand, gravel, sand clay gravel, sand and gravel mix, fill sand, flume sand, common and specialty clay and shale.

“Notice of Construction Start” means a written notice to be delivered by Solar Company to Mineral Owner that states the date that construction has commenced or will commence on the Solar Project (the “Construction Start Date”).

“Party” means Mineral Owner or Solar Company, and “Parties” means both of them.

“Person” means an individual, corporation, company, partnership, state, statutory corporation, government entity or any other legal entity.

“Property” means the real property described and depicted on Exhibit A attached hereto. Mineral Owner agrees to execute an amendment to this Agreement to more particularly describe the Property if requested by Solar Company and agreed upon mutually with Mineral Owner. The Parties intend for Exhibit A to describe all of the real property in the County, for which both (i) Mineral Owner owns a mineral interest and (ii) Solar Company has executed a solar energy lease or easement agreement (including but not limited to the Solar Lease Agreement).

“Solar Lease Agreement” means the Solar Energy Lease and Easement Agreement with an effective date of June 30, 2022, by and between HGT Group LP (as Owner) and Solar Company (as Lessee), which Solar Lease Agreement is evidenced by a Memorandum of Solar Energy Lease and Easement Agreement recorded in Instrument No. 2022-7757 in the Official records of Nacogdoches County, Texas (as the same may be amended and/or replaced from time to time).

“Solar Project” means the solar energy generation system(s) and related equipment, facilities and improvements planned, developed (as the same may be modified and/or replaced from time to time), and/or operated by Solar Company on the Surface Lands, including any associated easements.

“Surface Lands” means the surface of the Property and the subsurface of the Property down to a depth of one thousand (1,000) feet below the surface.

“Term” means the period described in Section 1.3 of this Agreement.

1.2. **Interpretation.** Unless the context expressly requires otherwise, all of the following apply to the interpretation of this Agreement:

- (A) The plural and singular words each include the other.
- (B) The masculine, feminine and neuter genders each include the others.
- (C) The word “or” is not exclusive.
- (D) The word “includes” and “including” are not limiting.
- (E) The headings in this Agreement are included for convenience and do not affect the construction or interpretation of any provision of, or the rights or obligations of a Party under, this Agreement.

1.3. Term.

- (A) This Agreement shall remain in effect for an initial term commencing on the Effective Date and continuing for the duration of the term of the Solar Lease Agreement, including any renewals and extensions thereof (the “Term”). If the Solar Lease Agreement terminates for any reason, this Agreement shall automatically terminate concurrently with the Solar Lease Agreement. The partial termination, surrender, or release of the Solar Lease Agreement with respect to a portion of the Property shall be effective to partially terminate, surrender, or release this Agreement with respect to such partially terminated, surrendered, or released acreage. If the Solar Lease Agreement is terminated at any time, Solar Company shall record a termination of this Agreement in the official public records of the County.

## 2. USE OF SURFACE LANDS.

2.1. **Mineral Owner’s Use of the Surface Lands.** Subject to all of the terms and conditions contained in this Agreement, during the Term of this Agreement, the Mineral Owner hereby waives, releases, and relinquishes all of its rights to use the Surface Lands except the Drill Sites and the Access Corridors, including, the right to enter upon the Surface Lands for the purposes of conducting any Mineral Activities or for any other purpose incident thereto. The Mineral Owner agrees that, during the Term, it shall not have the right to conduct any activities,

including Mineral Activities, on the Surface Lands except the Drill Sites and Access Corridors. The Mineral Owner further agrees that, during the Term, it shall not authorize third parties, including any Mineral Lessees acting by, through, or under Mineral Owner, to enter upon the Surface Lands except for the Drill Sites and Access Corridors for any purpose, including for the purpose of conducting Mineral Activities. For purposes of clarification, all of the restrictions on the Mineral Owner's ability to use the Surface Lands shall be binding on any Mineral Lessee acting by, through, or under Mineral Owner. Notwithstanding anything herein to the contrary, Mineral Owner shall be deemed to have no responsibility or reasonable control over third party holders of interest in the Minerals severed prior to the Effective Date or their respective Mineral Lessees. The Mineral Owner shall have the rights described in Section 2.6 to use the Drill Sites and Access Corridors. In exercising its rights to use the Access Corridors, Solar Company shall not disturb, damage, or interfere with the Mineral Activities or any other purpose incident thereto.

## 2.2. Solar Company's Use of the Surface Lands.

- (A) Subject to all of the terms and conditions contained in this Agreement, the Solar Company hereby agrees that it shall have the right to use the Surface Lands except for the Drill Sites for installation of Solar Project improvements (including the limited uses specified in Section 2.2(B) below for use of the Access Corridors). The Solar Company further agrees that it shall not authorize third parties to enter upon the Drill Sites for any purposes. For purposes of clarification, all of the restrictions on the Solar Company's ability to use the Drill Sites shall be binding on any third party receiving its rights from Solar Company.
- (B) Notwithstanding the limitations in Section 2.2(A) above, Solar Company and any third party receiving its rights from Solar Company shall have the right to use the Drill Sites and Access Corridors outside the Drill Sites for only the following activities:
  - (1) Solar Company shall be permitted to install, operate, maintain, repair, replace, and remove permanent above-ground and below-ground collection, transmission, and communication lines and related facilities across portions of the Access Corridors without needing consent from the Mineral Owner, provided that (i) such improvements shall use only so much of the Access Corridors as is necessary to connect the Solar Project improvements with each other and the remaining parts of the Solar Project, (ii) such facilities and appurtenances do not materially interfere with Mineral Owner's use and occupancy of the Drill Sites and Access Corridors, and (iii) all facilities constructed by Solar Company must maintain at least two feet (2') of vertical and horizontal clearance between any existing pipelines within

the Drill Sites and Access Corridors and Mineral Owner's facilities within the Drill Sites and Access Corridors. At least thirty (30) days prior to installation, written notice will be provided by Solar Company to the Mineral Owner and any Mineral Lessee, of the locations of any above and below ground collection, transmission, and communication lines installed within the Access Corridors. In exercising its rights to use the Access Corridors, Mineral Owner shall not disturb, damage, or interfere with the operation of the Solar Project's collection, transmission, and communication lines.

- (2) Solar Company and those receiving permission from Solar Company further shall have access to the Access Corridors for ingress and egress to the Surface Lands so long as such access is in support of the permitted activities under the Solar Lease Agreement, and further provided that Solar Company and its agents do not materially interfere with Mineral Owner or its lessees' access to the Drill Sites or Access Corridors.

2.3. **Types of Exploration.** Notwithstanding the provisions of Section 2.1 above, nothing in this Agreement shall be construed as waiving, releasing, or relinquishing (i) the Mineral Owner's or any Mineral Lessee's right to extract, produce, take, or otherwise develop oil, gas, and/or hydrocarbons of any kind or nature from under the Property without using the Surface Lands by directional drilling as long as such directional drilling activities are conducted at least one thousand (1,000) feet below the surface of the Surface Lands and so long as subsidence does not occur, (ii) the right of Mineral Owner to pool or unitize its oil, gas, and hydrocarbon lease interests with lands adjoining the Property in accordance with the laws and regulations of the State of Texas and to the extent permitted by all applicable governing laws. Notwithstanding anything herein to the contrary, Mineral Owner shall be permitted to enter into oil and gas leases and subsurface easement agreements, including sequestration and storage agreements, that do not use the Surface Lands and otherwise comply with the surface waiver and depth restrictions and other requirements of this Agreement.

2.4. **Geophysical Operations.** The Parties agree that nothing contained in this Agreement shall be construed to waive, release, relinquish or in any way limit the Mineral Owner's rights and any Mineral Lessee's rights, to use reasonably the areas outside of the Surface Lands and the Access Corridors for exploration or Geophysical Operations so long as such operations are conducted (i) in accordance with this Agreement and the applicable laws, rules or regulations, if any, in effect at the time such operations are conducted, and (ii) in such a way as not to interfere unreasonably with Solar Company's use of the Surface Lands, including the operation of the Solar Project, and in particular, the Mineral Owner and or Mineral Lessee shall not cause any shadow to be cast on any portion of Surface Lands with any of its operations. The Mineral Owner shall in no event be permitted to use dynamite or similar explosives for Geophysical Operations anywhere on the Property.

- 2.5. **Compensation Payable by Solar Company.** Solar Company agrees to pay to Mineral Owner the compensation described on Exhibit D attached hereto as additional consideration for Mineral Owner entering into this Agreement. The Parties agree that under no circumstances shall Exhibit D be recorded with this Agreement. Mineral Owner agrees that the compensation on Exhibit D is confidential and that Mineral Owner will not disclose the terms thereof to anyone else, except that Mineral Owner may disclose the compensation recited on Exhibit D to its professional advisors, attorneys, accountants and consultants or any governmental agency, or officer thereof, upon proper request or requirement therefor, where required, in accordance with applicable law, and Mineral Owner may further disclose such information in accordance with Section 7.3 herein. Notwithstanding anything herein to the contrary, all payments owed to Mineral Owner pursuant to this Section shall be nonrefundable once paid. Any accrued but unpaid portion of the fees owed to Mineral Owner pursuant to this Agreement shall be delivered in full upon any termination of this Agreement by Solar Company, and such obligation shall survive the termination of this Agreement.
- 2.6. **Agreements Concerning Use of the Access Corridors.** The Mineral Owner and any Mineral Lessee may use Access Corridors to access their operations on the Drill Sites; such access may include the export of Minerals and Mineral byproducts from any Mineral Activities pursuant to Section 2.7 below. Neither Mineral Owner nor any Mineral Lessee shall be permitted to conduct drilling or exploration activities on the Access Corridors, except as expressly stated in this Agreement. Solar Company agrees that no Solar Project improvements shall be constructed on the surface of the Access Corridors except that Solar Company shall be permitted to install, operate, maintain, repair, replace, and remove permanent above-ground and below-ground collection, transmission, and communication lines and related facilities across portions of the Access Corridors without needing any consent from the Mineral Owner, provided that (i) such improvements cross the Access Corridors as close to perpendicular (ninety (90) degrees) as possible, (ii) such facilities and appurtenances do not materially interfere with Mineral Owner's use and occupancy of the Access Corridors (but for the avoidance of doubt, underground collection lines that cross under the Access Corridors and overhead electric lines that cross over Access Corridors at a height of not less than twenty feet (20') are deemed to not materially interfere with Mineral Owner's use of the Access Corridors; provided that such lines comply with the distance setbacks in Section 2.2(B)(2) herein), and (iii) all facilities constructed by Solar Company must maintain at least two feet (2') of vertical and horizontal clearance between any existing pipelines within the Access Corridors and Mineral Owner's facilities within the Access Corridors. Written notice will be provided by Solar Company to the Mineral Owner and any Mineral Lessee of the locations of any facilities installed above or below the Access Corridors at least thirty (30) days prior to the installation of same. Each Party's right to use the Access Corridors is nonexclusive, as the Access Corridors may also be used by the other Party, other surface landowners, other mineral owners, other mineral lessees, and other authorized third parties. Each Party shall be responsible for its respective share of expenses for the

maintenance and repair of roads, gates, and other infrastructure within Access Corridors that are jointly used by the Parties, as determined according to the proportionate usage by each such Party, and the Parties shall reasonably cooperate and negotiate in good faith regarding same.

- 2.7. **Export of Minerals.** The Mineral Owner and any Mineral Lessee may use the Access Corridors to export Minerals and Mineral byproducts from the Mineral Activities from the Property. The Mineral Owner retains the right to use the Access Corridors to tie into or connect with any existing pipeline on or in close proximity to the Property so long as the construction of a new pipeline facility or connection does not interfere with the operation of the Solar Project. Notwithstanding anything herein to the contrary, Mineral Owner may construct, maintain, and operate pipelines for the transport of Minerals within the Access Corridors, so long as: (i) Mineral Owner provides notice to Solar Company as to the locations of all facilities and appurtenances to be located within the Access Corridors prior to construction thereof; and (ii) all facilities constructed by Mineral Owner must maintain at least two feet (2') of vertical and horizontal clearance between any existing facilities installed by Solar Company within the Access Corridors.

### 3. MINERAL ACTIVITIES.

- 3.1. **Rights to Mineral Activities Reserved.** Mineral Owner reserves for itself and its successors and assigns and any Mineral Lessee the right to use the Drill Sites and Access Corridors for the purpose of conducting Mineral Activities in its sole discretion provided such activities are in compliance with applicable laws, rules, and regulations and with the terms of this Agreement. The Mineral Owner and Mineral Lessee and or any third party related to the Mineral Owner and Mineral Lessee agree that their conduct of the Mineral Activities shall not cast a shadow on any part of the Surface Lands. Notwithstanding anything herein to the contrary, the location of temporary oil and gas drilling equipment shall not be deemed to interfere with the free flow of sunlight over or across the Surface Lands, so long as such temporary drilling equipment does not remain on the Property for a period of longer than one hundred eighty (180) days. No Minerals or Mineral Interest is conveyed in this Agreement; all such Minerals and Mineral Interests are retained and reserved to Mineral Owner.
- 3.2. Intentionally Deleted.
- 3.3. **No Restriction.** The Parties acknowledge that as of the Effective Date, the Mineral Owner has no personal knowledge of any active oil and gas well on the Surface Lands, and has not conducted any other operations to extract Minerals from the Surface Lands. Mineral Owner also represents that it has no personal knowledge of any Mineral Lessees holding rights to use the Surface Lands as of the Effective Date; provided, however, that the foregoing representation is not intended to apply to any recorded oil and gas lease, pipeline easement agreement, or utility line easement that exists as of the Effective Date. The Parties agree that the rights granted to the Mineral Owner and any Mineral

Lessee pursuant to the terms and conditions of this Agreement and the rights owned by the Mineral Owner pursuant to the terms of its Mineral Interest shall not be restricted in any manner outside of the Drill Sites and Access Corridors, except as described in this Agreement, so long as this Agreement remains in full force and effect.

- 3.4. **No Abandonment.** So long as this Agreement is in effect, the Parties' failure to drill an oil or gas well or use any Surface Lands for their respective operations shall not be deemed or construed to waive, abandon, or impair the rights of that Party to thereafter use any Surface Lands for the purposes designated herein.

**4. NOTICE TO THIRD PARTIES.**

The recording of this Agreement in the official public records of the County, shall serve notice to all third parties, including parties that obtain any interest in the Surface Lands or the Minerals, of the Parties' rights under this Agreement. This Agreement shall be recorded by Solar Company at its own expense, and a copy of the recorded Agreement shall be provided to Mineral Owner within thirty (30) days of the recordation of same.

**5. DAMAGE TO FACILITIES.**

The Mineral Owner and any Mineral Lessee and the Solar Company each agree to indemnify and hold the other harmless for any physical damages to the other's equipment, facilities, and improvements on the Surface Lands and for physical injuries to any person resulting or arising directly from the indemnifying party's use of or operations on the Surface Lands. This indemnification shall survive the termination of this Agreement for forty eight (48) months after Solar Company permanently removes the Solar Project improvements (and any replacements thereof) from the Property, or until such later time as any subsurface damages are inherently discoverable and apparent from an inspection of the surface of the Property. This indemnification shall not apply to losses, damages, claims, expenses and other liability to the extent caused by any negligent or deliberate act or omission on the part of the indemnified party.

**6. SUCCESSORS AND ASSIGNS, COVENANTS RUNNING WITH THE SURFACE AND MINERAL ESTATES.**

- 6.1 **Successors and Assigns.** The terms and conditions of this Agreement, including the obligation to pay the compensation recited on Exhibit D, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns, and shall be covenants running with the land and the interests in the mineral and the surface estates held by the Parties hereto. In the event that the Mineral Owner enters into a lease of or otherwise grants or conveys its Minerals after the Effective Date, then such lease or other conveyance shall be made expressly subject to this Agreement. Solar Company agrees that any assignment or transfer of Solar Company's rights and obligations under the Solar Lease Agreement, in whole or in part, or any grant or conveyance to a third party of Solar Company's rights to construct any portion of the Solar Project after the Effective Date of this Agreement shall be made

expressly subject to this Agreement. In the event either Party has a successor and or an assignee (including any Mortgagee (as defined below)), which it may do without prior consent from the other Party, then that Party (or the applicable successor or assign) shall notify the other Party in writing that such an event has taken within fifteen (15) days of the event and provide the other Party with such successor's or assigns notice address, but in no event shall any Party's failure to timely deliver such notice be a default under this Agreement or affect the enforceability of this Agreement; provided, however, that the other Party shall not be held responsible for failure to adhere to its notice obligations related to the third-party successor or assignee under this Agreement until such notice has been provided.

6.2 **Multiple Mineral Owners.** If Mineral Owner consists of more than one person or entity, then each reference herein to "Mineral Owner" shall include each person and entity signing this Agreement as or on behalf of Mineral Owner. In the event that this Agreement is not executed by one or more of the persons or entities comprising Mineral Owner herein, then this Agreement shall nonetheless be effective and shall bind all those persons and entities who have signed this Agreement.

6.3 **Mortgage Provisions.** Solar Company shall have the right at any time to mortgage, pledge, encumber, sale and/or collaterally assign to any entity (each, a "Mortgagee") all or any part of Solar Company's interest under this Agreement without the consent of Mineral Owner. Each Mortgagee shall have the right to do any act or thing required to be performed by Solar Company under this Agreement, and any such act or thing performed by a Mortgagee shall be as effective to prevent a default under this Agreement and/or a forfeiture of any of Solar Company's rights under this Agreement as if done by Solar Company itself. In the event that the Mortgagee becomes the owner of the Solar Project, then the terms and conditions of this Agreement, including the obligation to pay the compensation recited on Exhibit D, shall be binding upon the Mortgagee.

## 7. GOVERNING LAW AND ENFORCEMENT

7.1. **Governing Law.** This Agreement is governed by and interpreted under the laws of the State of Texas, without regard to its choice of law rules, and is enforceable in the state district courts having jurisdiction in the County, and the Parties hereby waive the right to remove or transfer such dispute to any other venue.

7.2. Enforcement.

(A) In addition to other rights and remedies hereunder or at law or in equity, and without limitation of any of the foregoing, this Agreement may be enforced by Mineral Owner or Solar Company, or their respective successors or assigns (each an "Enforcement Party"). If a party fails to perform or observe any obligation or condition (including failing to pay the additional compensation referred to in Exhibit D) to be performed or observed under this Agreement and is given written notice of that default, and if the defaulting party fails to correct or commence correction of the

default within thirty (30) days after that notice, and to thereafter diligently pursue the correction of the default, an Enforcement Party shall be permitted to pursue all of its damages at law or in equity, including monetary damages, except that Mineral Owner shall only have the right to terminate this Agreement if (i) Solar Company defaults in its obligation to pay any amount of the compensation described on Exhibit D after receipt of written notice of such default the expiration of the thirty-day notice and cure period, and (ii) Mineral Owner thereafter provides a second notice to Solar Company and any Mortgagee of which Mineral Owner has received notice with a header reading "SURFACE USE AGREEMENT PAYMENT DEFAULT NOTICE" stating that Mineral Owner shall have the right to terminate this Agreement if Solar Company and/or any Mortgagee does not pay the amount owed within thirty (30) days after such notice, and then the Solar Company and any Mortgagee fail to pay the amount owed within thirty (30) days after receipt of such second written notice.

### 7.3. Confidentiality.

- (A) The Parties agree that any Dispute and any negotiations, mediation and litigation proceedings between the Parties in relation to any Dispute shall be confidential and will not be disclosed to any third party.
- (B) The Parties further agree that any information, documents or materials produced for the purposes of, or used in, negotiations, mediation or litigation of any Dispute shall be confidential and will not be disclosed to any third party.
- (C) Without prejudice to the foregoing, the Parties agree that disclosure may be made:
  - (1) In order to enforce any of the provisions of this Agreement pursuant to a court judgment.
  - (2) To the auditors, accountants, financial advisors, legal advisers, insurers and Affiliates of that Party to whom the confidentiality obligations set out in this Agreement shall extend.
  - (3) Where that Party is under a legal or regulatory obligation to make such disclosure but limited to the extent of that legal obligation.
  - (4) With the prior written consent of the other Party.
  - (5) When ordered by a court of competent jurisdiction.
  - (6) If such information is in the public domain by reason of prior publication through no act or omission of either Party or any Affiliate of either Party.

- (7) If such information was already known to either Party at the time of disclosure and which such Party is free to use or disclose without breach of any obligation to any person or entity.
- (8) To Mineral Owner's family, including all devisees or descendants of Mineral Owner by will or intestacy, or to any prospective purchaser of the Property, Surface Lands, or Mineral Owner's interest under the Solar Lease Agreement or this Agreement.
- (9) To any surface lessee or tenant of Mineral Owner on the Property.

## 8. GENERAL PROVISIONS

- 8.1. **Amendment.** No amendment to this Agreement is effective unless made in writing and signed by authorized representatives of all Parties.
- 8.2. **Severability.** Each provision of this Agreement is severable, and if any provision is determined to be invalid, unenforceable or illegal by a court, arbitrator of competent jurisdiction or by operation of any applicable law, this invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement that are valid, enforceable and legal.
- 8.3. **No Waiver.** No waiver or consent, express or implied, by any Party to or of any breach or default by any Party in the performance by such Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such Party of the same or any other obligations of such Party hereunder. Failure on the part of a Party to complain of any act of any Party or to declare any Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder until the applicable statute of limitation period has run.
- 8.4. **Entire Agreement.** This Agreement incorporates all of the covenants and understandings between Mineral Owner and Solar Company concerning the subject matter hereof and such agreements, covenants, and understandings are merged into this Agreement. No prior agreement or understanding, whether oral or written, between Mineral Owner and Solar Company shall be valid or enforceable unless expressly embodied in this Agreement. If any provision of this Agreement conflicts with the terms of the Solar Lease Agreement, then the terms of this Agreement shall control.

## 9. NOTICES AND CONTACT INFORMATION

- 9.1. **Notices.** All notices required or permitted under this Agreement must be in writing and delivered by mail (postage prepaid), by hand delivery, or by nationally recognized overnight courier to the address of the receiving Party set out in Schedule 1 attached hereto and made a part hereof or to the appropriate party's successors and assigns pursuant to Section 6.1. Notice may also be delivered by electronic mail or facsimile sent to the electronic mail address or

facsimile number of the receiving Party set out in Schedule 1 (if such information is provided) provided that a confirmation of delivery must be obtained by the sender and retained as proof of delivery. Either Party may change its respective address as provided in this Section effective three (3) business days after giving written notice of the change to the other Party as provided in this Agreement.

- 9.2. **Effective.** Notices are effective when received by the recipient during the recipient's regular business hours.
- 9.3. **Non-compliance.** Notices which do not comply with the requirements of this Agreement are ineffective and do not impart actual or any other kind of notice.

## 10. EXECUTION IN COUNTERPARTS

This Agreement may be executed as one document signed by the Solar Company and the Mineral Owner, or the Parties may join by execution of a counterpart, with the same effect as if both Parties executed this Agreement. Executed signature pages from different originals of this Agreement may be combined to form a single original Agreement for recording purposes.

*[Signatures on Following Page]*

Executed to be effective as of the Effective Date set forth above.

MINERAL OWNER:

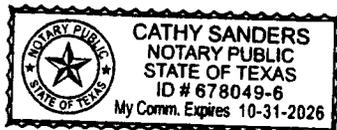
By: *John Mast*  
JOHN C. MAST  
Agent and Attorney-in-Fact for  
PATRICIA MAST GEORGE

STATE OF TEXAS                   §  
  §  
COUNTY OF NACOGDOCHES   §

BEFORE ME, the undersigned authority, on this day of 8<sup>th</sup>, August 2023 personally appeared JOHN C. MAST, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for purposes and consideration therein in the capacity herein stated.

*Cathy Sanders*  
Notary Public

My commission expires: 10-31-2026



SOLAR COMPANY:

Middlebrook Solar LLC

By: *Jeffrey Sabins*

Print Name: Jeffrey Sabins

Print Title: Chief Development Officer

THE STATE OF TEXAS §

§

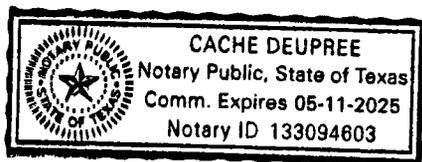
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared **Jeffrey Sabins**, the Chief Development Officer of Middlebrook Solar LLC, a limited liability corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for purposes and consideration therein expressed on behalf of limited liability corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on 28<sup>th</sup> day of August, 2023.

*Cache Deupree*  
Notary Public, State of Texas

Commission No. 133094603



SCHEDULE 1

Parties' Notice Addresses

MINERAL OWNER :

Patricia Mast George

P. O. Box 635025

Nacogdoches, TX 75963-5025

Email [jmast72@yahoo.com](mailto:jmast72@yahoo.com)

SOLAR COMPANY:

Middlebrook Solar LLC

9111 Jollyville Road, Ste 115

Austin, TX 78759

Email: [henriette@solarproponent.com](mailto:henriette@solarproponent.com)

EXHIBIT A

Description of the Property

Landowner 8-A & 8-B

Parcel ID: Part of 10821, 11602

96.00 acres of land, more or less, out of the Antonio Sanches Survey, A-501, Nacogdoches County, Texas, and being described in that certain Warranty Deed dated May 4, 1951 from L. V. Johnson, et al to A. T. Mast and H.R. Mast, and recorded in Volume 218, Page 129 of the Deed Records of Nacogdoches County, Texas.

Landowner 9

Parcel ID: Part of 10821

100.00 acres of land, more or less, out of the Antonio Sanches Survey, A-501, Nacogdoches County, Texas, and being the "Third Tract" described in a deed dated April 10, 1943 from L.K. Walker, sole owner of L. K. Walker Lumber Company and Walker Lumber Company to H.R. Mast and A. T. Mast, and recorded in Volume 161, Page 467 of the Deed Records of Nacogdoches County, Texas.

Landowner 10

Parcel ID: Part of 10821

190 acres of land, more or less, out of the Antonio Sanches Survey, A-501, and the G. T. Petty Survey, A-432, Nacogdoches County, Texas, and being the "First Tract" and "Second Tract" described in a deed dated July 27, 194 from J. L. Hooks and wife, Edna Hooks to H.R. Mast and A. T. Mast, and recorded in Volume 162, Page 319 of the Deed Records of Nacogdoches County, Texas.

Landowner 11

Parcel ID: Part of 10821

1000.75 acres of land, more or less, out of the Antonio Sanches Survey, A-501, Nacogdoches County, Texas, and being the "First Tract" and "Second Tract" described in a deed dated April 10, 1943 from L.K. Walker, sole owner of L. K. Walker Lumber Company and Walker Lumber Company to H.R. Mast and A. T. Mast, and recorded in Volume 161, Page 467 of the Deed Records of Nacogdoches County, Texas.

Landowner 12

Part of 10821 & Part of 11593

230 acres of land, more or less, out of the Antonio Sanches Survey, A-501, Nacogdoches County, Texas, and being described in the following five (5) tracts: Tract 1: 25 acres, more or less, out of the Antonio Sanches Survey, A-501, Nacogdoches County, Texas and being further described as the second tract in that certain deed dated October 21, 1935 from F. C. Johnson, et al to L. G. Johnson and recorded in Volume 150, Page 492 of the Deed Records of Nacogdoches County, Texas. Tract 2: 55 acres, more or less, out of the Antonio Sanches Survey, A-501,

Nacogdoches County, Texas and being further described as two tracts in that certain deed dated November 22, 1943 from R. B. Johnson and wife, Iva Johnson to H. R. Mast and A. T. Mast and recorded in Volume 159, Page 476 of the Deed Records of Nacogdoches County, Texas. Tract 3: 25 acres, more or less, out of the Antonio Sanches Survey, A-501, Nacogdoches County, Texas and being further described as the second tract in that certain deed dated January 10, 1943 from Annie Collins to W. C. Spurlin and recorded in Volume 161, Page 70 of the Deed Records of Nacogdoches County, Texas. Tract 4: 50 acres, more or less, out of the Antonio Sanches Survey, A-501, Nacogdoches County, Texas and being further described as two tracts in that certain deed dated June 21, 1943 from Lee Bradshaw, et ux to H. R. Mast and A. T. Mast and recorded in Volume 162, Page 437 of the Deed Records of Nacogdoches County, Texas. Tract 5: 75 acres, more or less, out of the Antonio Sanches Survey, A-501, Nacogdoches County, Texas and being further described as the "2nd Tract", "3rd Tract", and "4th Tract" in that certain deed dated October 19, 1943 from Edgar H. Johnson, et ux to H. R. Mast and A. T. Mast and recorded in Volume 163, Page 11 of the Deed Records of Nacogdoches County, Texas.

Landowner 17

Parcel ID: Part of 11593

157.30 acres of land, more or less, out of the Antonio Sanches Survey, A-501, Nacogdoches County, Texas, and further described as two tracts in that certain deed dated February 15, 1943 from T. D. Phillips and wife, Bessie Phillips to A. T. Mast and H. R. Mast, and recorded in Volume 159, Page 194 of the Deed Records of Nacogdoches County, Texas.

Landowner 18

Parcel ID: 5400

108.1 acres of land, more or less, out of the George A. Pollett Survey, A-46, Nacogdoches County, Texas, and being the same land described as TRACT 1 in a deed dated September 17, 2019 from George S. Meisenheimer, Jr, Trustee to Meisenheimer Investments LLC, and recorded at #2019-7451 of the Official Public Records of Nacogdoches County, Texas.

Landowner 19

Parcel ID: 5400

71.25 acres of land, more or less, out of the George A. Pollett Survey, A-46, Nacogdoches County, Texas, and being the same land described in a deed dated March 15, 1943 from W.M. Russell to A.T. Mast and H.R. Mast, and recorded in Volume 159, Page 190 of the Deed Records of Nacogdoches County, Texas.

Landowner 20

Parcel ID: 5400

91.1 acres of land, more or less, out of the George A. Pollett Survey, A-46, Nacogdoches County, Texas, and being the same land described in a deed dated February 17, 1956 from R.L. Turner et ux to A.T. Mast and H.R. Mast, and recorded in Volume 256, Page 340 of the Deed Records of Nacogdoches County, Texas.

Landowner 21

Parcel ID: 5400

711.16 acres of land, more or less, out of the George A. Pollett Survey, A-46, and the A. L. Martin Survey, A-370, Nacogdoches County, Texas, and being the same land described in a deed dated October 11, 1948 from Donald Eugene Brightwell et ux, Dorothy Brightwell to A.T. Mast and H.R. Mast, and recorded in Volume 187, Page 102 of the Deed Records of Nacogdoches County, Texas.

Landowner 22

Parcel ID: 5400

48.0 acres of land, more or less, out of the George A. Pollett Survey, A-46, Nacogdoches County, Texas, and being the same land described in a deed dated October 11, 1948 from Eula Stone et vir T.W. Stone to A.T. Mast and H.R. Mast, and recorded in Volume 169, Page 584 of the Deed Records of Nacogdoches County, Texas.

Landowner 23

Parcel ID: 5400

53.0 acres of land, more or less, out of the George A. Pollett Survey, A-46, Nacogdoches County, Texas, and being the same land described in a deed dated July 13, 1948 from Eula Stone et vir T.W. Stone to A.T. Mast and H.R. Mast, and recorded in Volume 181, Page 598 of the Deed Records of Nacogdoches County, Texas.

Landowner 24

Parcel ID: 5400

31.25 acres of land, more or less, out of the Henry Rauet Survey, A-465, Nacogdoches County, Texas, and being the same land described in a deed dated October 18, 1927 from Mrs. E.A. Blount to Arthur Forney, and recorded in Volume 119, Page 126 of the Deed Records of Nacogdoches County, Texas.

Landowner 25

Parcel ID: 5400

10.0 acres of land, more or less, out of the A.L. Martin Survey, A-370, Nacogdoches County, Texas, and being the same land described in a deed dated April 22, 1964 from Delpha Stone et al to H.R. Mast et al and recorded in Volume 320, Page 555 of the Deed Records of Nacogdoches County, Texas.

Landowner 26

Parcel ID: 5400

30.0 acres of land, more or less, out of the A.L. Martin, A-370, Nacogdoches County, Texas, and being the same land described as in a deed dated June 9, 1944 from J.F. Cromer to A.T. Mast and H.R. Mast, and recorded 166, Page 96 of the Deed Records of Nacogdoches County, Texas.

Landowner 27

Parcel ID: 5400

2.5 acres of land, more or less, out of the George A. Pollett Survey, A-46, Nacogdoches County, Texas, and being the same land described as in a deed dated February 17, 1949 from F.W. Johnson et ux, Lou Ella Johnson to A.T. Mast and H.R. Mast, and recorded 175, Page 238 of the Deed Records of Nacogdoches County, Texas.

Landowner 28

Parcel ID: 5400

26.25 acres of land, more or less, out of the R. Hotchkiss Survey, A-247, Nacogdoches County, Texas, and being the same land described as 1st Tract in a deed dated February 22, 1943 from E.A. Stanfiled to A.T. Mast et al, and recorded in Volume 161, Page 507 of the Deed Records of Nacogdoches County, Texas.

Landowner 29

Parcel ID: 5400

125.0 acres of land, more or less, out of the A.L. Martin Survey, A-370, Nacogdoches County, Texas, and being the same land described as 2nd Tract in a deed dated February 22, 1943 from E.A. Stanfiled to A.T. Mast et al, and recorded in Volume 161, Page 507 of the Deed Records of Nacogdoches County, Texas.

Landowner 30

Parcel ID: 5400

160.0 acres of land, more or less, out of the A.L. Martin Survey, A-370, Nacogdoches County, Texas, and being the same land described in a deed dated January 4, 1946 from J. Thomas Hall to A.T. Mast et al, and recorded in Volume 170, Page 286 of the Deed Records of Nacogdoches County, Texas.

Landowner 31

Parcel ID: 5400

120.0 acres of land, more or less, out of the Isaac Rogers Survey, A-480, Nacogdoches County, Texas, and being the same land described in a deed dated March 23, 1944 from Sam Stripling to W.C. Spurling, and recorded in Volume 164, Page 16 of the Deed Records of Nacogdoches County, Texas.

Landowner 32

Parcel ID: 82504

80.0 acres of land, more or less, out of the R.H. Johnson Survey, A-314, Nacogdoches County, Texas, and being the same land described in a deed dated February 10, 1939 from Thos. E. Baker to W.C. Spurlin and recorded in Volume 142, Page 320 of the Deed Records of Nacogdoches County, Texas.

Landowner 33

Parcel ID: 82504

58.10 acres of land, more or less, out of the James M. Heaslet Survey, A-284, Nacogdoches County, Texas, and being the same land described in a deed dated May 25, 1945 from Clevan Coleman et ux, Rosie Coleman to A.T. Mast and H.R. Mast, and recorded in Volume 167, Page 452 of the Deed Records of Nacogdoches County, Texas.

Landowner 34

Parcel ID: 5400

55.0 acres of land, more or less, out of the A.L. Martin Survey, A-370, Nacogdoches County, Texas, and being the same land described in a deed dated December 8, 1967 from A.T. Mast, Jr. to John C. Mast. and recorded in Volume 782, Page 201 of the Official Public Records of Nacogdoches County, Texas.

Landowner 35

Parcel ID: Part of 11579

247.1 acres of land, more or less, out of the Antonio Sanchez Survey, A-501, Nacogdoches County, Texas, and being the same land described in a deed dated October 31, 1946 from R.N. Wilson to A.T. Mast and H.R. Mast, and recorded in Volume 173, Page 312 of the Deed Records of Nacogdoches County, Texas.

Landowner 36

Parcel ID:11579

335.0 acres of land, more or less, out of the Antonio Sanchez Survey, A-501, Nacogdoches County, Texas, and being the same land described in a deed dated January 2, 1946 from W.A. Parrott and A.R. Parrott to A.T. Mast and H.R. Mast, and recorded in Volume 170, Page 200 of the Deed Records of Nacogdoches County, Texas.

Landowner 37

Parcel ID:11579

196.0 acres of land, more or less, out of the Thomas J. Lambert Survey, A-339, Nacogdoches County, Texas, and being the same land described in a deed dated January 2, 1946 from Nellie Mae Stripling to A.T. Mast and H.R. Mast, and recorded in Volume 189, Page 40 of the Deed Records of Nacogdoches County, Texas.

Landowner 38

Parcel ID:11579

88.4 acres of land, more or less, out of the Thomas J. Lambert 37 Survey, A-339, Nacogdoches County, Texas, and being the same land described in a deed dated December 31, 1945 from J.E. Stone and Clyde Stone to A.T. Mast and H.R. Mast, and recorded in Volume 169, Page 397 of the Deed Records of Nacogdoches County, Texas.

Landowner 39

Parcel ID:11579

61.0 acres of land, more or less, out of the Antonio Sanchez Survey, A-501, Texas, and being the same land described in a deed dated November 9, 1948 from Jimmie Jones et vir, Joe Jones to A.T. Mast and H.R. Mast, and recorded in Volume 175, Page 145 of the Deed Records of Nacogdoches County, Texas.

Landowner 42

Parcel ID:11579

101.0 acres of land, more or less, out of the J.M. Esparza Survey, A-199, Nacogdoches County, Texas, and being the same land described as 101 Acres in a deed dated April 17, 1952 from Mrs. Ada Spurlin et al to A.T. Mast and H.R. Mast, and recorded in Volume 227, Page 332 of the Deed Records of Nacogdoches County, Texas.

Landowner 43

Parcel ID: 5400

99.0 acres of land, more or less, out of the J.M. Esparza Survey, A-199, Nacogdoches County, Texas, and being the same land described as 100 Acres in a deed dated April 17, 1952 from Mrs. Ada Spurlin et al to A.T. Mast and H.R. Mast, and recorded in Volume 227, Page 332 of the Deed Records of Nacogdoches County, Texas.

Landowner 45

Parcel ID: 8062

138 acres of land, more or less, out of the Jose Maria Esparza Survey, A-199, Nacogdoches County, Texas, and further described as tract "(b)" of "(3)" in that certain Partition Deed dated March 14, 1966 from Hollis Mast Barron, et al to Hollis Mast Barron et al, and recorded in Volume 335, Page 151 of the Deed Records of Nacogdoches County, Texas.

Landowner 47

Parcel ID: Part of 13680

75 acres of land, more or less, being the Burton Collins 30 acre survey, A-167, the Chas. Hoya 15.2 acre survey, A-868, and 29.8 acres of the J. A. Prado Survey, A-426, Nacogdoches County, Texas, and being described in that certain deed dated May 12th, 1943 from F. H. Goldsberry to Claud Spurlin, and recorded in Volume 162, Page 31 of the Deed Records of Nacogdoches County, Texas.

Landowner 48

Parcel ID: Part of 13680

80 acres of land, more or less, being the Priscilla Cooper Survey, A-169, Nacogdoches County, Texas, and being described in that certain deed dated August 6th, 1941 from Dr. Milton Finney Smith et al, to W. C. Spurlin, and recorded in Volume 156, Page 64 of the Deed Records of Nacogdoches County, Texas.

Landowner 50

Parcel ID: 73988

113.1 acres of land, more or less, being a part of the B. C. P. Harrell Survey, A-276, and the A. Morales Survey, A-366, Nacogdoches County, Texas, and being described in that certain Warranty Deed dated November 24, 2009 from Dianne N. House to HGT Group, LP, and recorded in Volume 3169, Page 254 of the Official Public Records of Nacogdoches County, Texas.

Landowner 51

Parcel ID: 75735

36.70 acres of land, more or less, being a part of the C. G. Judkins Survey, A-309, Nacogdoches County, Texas, and being described in that certain Warranty Deed dated November 23rd, 2001 from Dianne Newsom House, as Independent Executor of the Estate of Elizabeth Spradley Bauman to HGT Group, LP, and recorded in Volume 3641, Page 160 of the Official Public Records of Nacogdoches County, Texas.

Landowner 52

Parcel ID: Part of 13680

44 acres of land, more or less, being the C. M. Hill Survey, A-832, Nacogdoches County, Texas, and being described as the "Second Tract" in that certain Warranty Deed dated April 26th, 1948 from J. R. Gray and L. B. Mast to H. R. Mast and A. T. Mast, and recorded in Volume 184, Page 345 of the Deed Records of Nacogdoches County, Texas.

Landowner 53

Parcel ID: Part of 13680 & Part of 74018

150 acres of land, more or less, being a part of the Asa Dossett Survey, A-182, and the C. G. Judkins Survey, A-309, Nacogdoches County, Texas, and being described in that certain Correction Warranty Deed dated August 22th, 2001 from Elizabeth Spradley, et al, to George F. Middlebrook, III, et al, and recorded in Volume 1686, Page 219 of the Official Public Records of Nacogdoches County, Texas.

Landowner 57

Parcel ID: 60105

17.5 acres of land, more or less, being part of the A. Sanches Survey, A-501, Nacogdoches County, Texas, and being described as "(7) Tract No. 92" in the "First" property of that certain Deed dated August 24th, 1992 from Stewart S. Barron to George F. Middlebrook, III, and recorded in Volume 821, Page 225 of the Real Property Records of Nacogdoches County, Texas.

Landowner 58

Parcel ID: 60105

26.45 acres of land, more or less, being the J. L. Henderson Survey, A-780, Nacogdoches County, Texas, and being described in that certain Warranty Deed dated February 5th, 1934 from S. E. Deshazo and wife Leona Deshazo to H.R. Mast, and recorded in Volume 129, Page 614 of the Deed Records of Nacogdoches County, Texas.

Landowner 61

Parcel ID: 60105 & Part of 13680

160 acres of land, more or less, being the H. L. Henderson Survey, A-691, Nacogdoches County, Texas, and being described in that certain Warranty Deed dated June 5th, 1922 from H I Henderson et al to W. C. Spurlin, and recorded in Volume 108, Page 428 of the Deed Records of Nacogdoches County, Texas.

EXHIBIT B

Description of the of Oil, Gas and Mineral Lease(s)

Interest in and to coal, lignite, oil, gas and other minerals, and all rights incident thereto, Inherited from mother and father, A. T. Mast, Jr. and Patricia Lee R. Mast. Probate Cause No. 2002-1006, Nacogdoches County, Texas (A. T. Mast, Jr.) that pertain to Exhibit A above.

EXHIBIT C  
Exhibit C-1 – Depiction of Drill Site(s)  
and Depiction of Access Corridor(s)

PRELIMINARY PLATS

