

QCELLS · CLAUSE-BY-CLAUSE AUDIT

QCELLS Parcel 9 BESS Lease — Full Audit

For Fano review

HQCA Energy Solutions, LLC — Option to Lease and Site Lease Agreement (4/17/2026 draft)

Property: Millenium Drive, Crystal Lake, IL 60012. Parcel 14-33-226-017 ("Parcel 9"). Owner: Steve Theofanous and Fano Theofanous (50/50 tenants in common, marital signatures still blank in draft).

Tenant: HQCA Energy Solutions, LLC (Delaware) — Qcells subsidiary. Counsel: hqca-legal@qcells.com.

Source draft:

00_ORIGINALS/QCELLS_PARCEL_9/Theofanous_Parcel_9_Option_to_Lease_and_Site_Agreement_-_4.17.26_-_Crystal_Lake,_IL_Qcells_Draft_4.17.26.docx.pdf (28 pages). DOCX vs PDF check: two identical DOCX copies (SHA1 c82ffc5675cd3c5caef4e5d0d2f65118a21aa5d6). DOCX leaves all economic terms blank (form-field placeholders); the dollar figures and parcel number live in the PDF render only. The PDF is the authoritative version of this draft. The DOCX is unusable for signature without re-keying the financials. Flag for Qcells counsel: ship a single executed-form PDF as the canonical reference, not a form-field DOCX. Audit date: 2026-05-13. Auditor: Stefano Theofanous (GOROSHI LLC). Engineering opinion, not legal advice.

What this lease is worth

The lease pays \$30,000 in option payments across three years (\$7,500 + \$10,000 + \$12,500), a \$25,000 one-time construction bonus paid within thirty business days after the Lease Commencement Date, and \$50,000 per year in Basic Rent starting at Commercial Operation Date with a flat 2.25% annual escalator. The Initial Term is twenty years from Commercial Operation Date; Tenant has three five-year renewal options exercisable on thirty days' notice, taking the maximum term to thirty-five years. Governing law is Illinois; venue is McHenry County.

At 2.25% flat escalation, twenty years of Basic Rent total \$1,243,925 and thirty-five years total \$2,605,775. With option payments and construction bonus, the deal is worth between \$1.30M and \$2.66M nominal pre-tax across its possible life. These figures assume HQCA exercises the option, completes construction, and operates for the full term — none of which the lease guarantees.

For comparison the SunVest BESS deal on the adjacent parcel (14-33-226-016, "Lot 27") pays \$150,000 per year at 10 MW with a CPI-floor escalator (greater of 2% or realized CPI) over a 25-year base term. Year-one rent is 3.0x higher and the escalator structure compounds harder. The two leases are on different parcels and can both be signed. Combined SunVest plus QCELLS expected NPV is approximately \$1.7M to \$1.9M before tax.

Read carefully: this is the smallest of the three pending deals. The numbers are real but modest, and the draft has more open landowner-protection gaps than the SunVest draft did. Treat the deal as a candidate for amendment-or-walk, not auto-sign.

Why I would not sign as drafted

The draft has eight critical issues and six smaller ones. Five of the eight are structural deficiencies — gaps the lease simply doesn't address at all (no decommissioning bond, no environmental insurance, no continuing-liability assignment standard, no salvage-value verification, no rollback-tax responsibility). The other three are one-sided clauses that need to become symmetric. None of these are aggressive landowner asks; every one of them is industry-standard amendment language that any energy-lease counsel will recognize.

1. No decommissioning bond required AT ALL (Section 20, Section 6)

This is the single largest gap in the draft. SunVest's draft had a flawed bond (corporate guarantees permitted, posted after construction). QCELLS's draft contains no decommissioning bond requirement at all. Section 20 (Surrender of Possession) requires Tenant to "commence to decommission, dismantle and remove the Facility...and restore the Premises to its original condition" — but there is no financial assurance, no surety bond, no letter of credit, no escrow, no third-party guarantee. If HQCA Energy Solutions, LLC dissolves (Delaware LLC, opaque parent capitalization), the landowner inherits a battery storage installation with no funded path to remove it.

For battery storage specifically this is worse than for solar. Decommissioning a 5-10 MW BESS site in 2026 dollars runs \$400K to \$1.2M per industry estimates. Battery cells are hazardous waste with negative salvage value — landowners pay disposal vendors to take them. A bare lease with no bond and no continuing-liability assignment is the worst-case configuration for end-of-life.

Amendment: insert a new Section 20(d) requiring Tenant to post a decommissioning bond prior to Commercial Operation Date, in surety bond or irrevocable letter of credit form only (no corporate guarantees). Bond amount based on independent third-party engineer estimate updated every three years. Salvage value confirmed by independent appraisal each cycle. Bond replenished within thirty days if drawn. Lapse triggers automatic Owner termination right.

2. Insurance limits are inadequate; no environmental policy required (Section 11)

Section 11 requires only \$2,000,000 general aggregate / \$1,000,000 per occurrence commercial general liability, plus property loss insurance on the Facility (no minimum). There is no environmental or pollution liability coverage required at all. Each Party is named as additional insured "as its interest may appear" — language that has no operative meaning and provides no enforcement hook.

For context: SunVest's draft required \$4M aggregate. The Moss Landing battery fire (January 2025) deposited approximately 55,000 pounds of heavy metals within a one-mile radius and triggered the largest lithium-ion battery cleanup in EPA history. Vistra was held liable under CERCLA. A \$2M aggregate policy is insufficient by a factor of ten or more for that class of event.

Amendment: raise general liability to \$5M per occurrence and \$10M aggregate. Add a separate environmental and pollution liability policy of \$5M minimum, written on an occurrence basis. Owner named as additional insured automatically on all policies, with annual delivery of certificates without request. Sixty-day cancellation notice (not the default thirty). Coverage continues through the six-month Tenant-removal window after termination.

3. Assignment threshold is non-existent (Section 14(a))

Section 14(a) lets Tenant assign without Landlord's consent to any of seven categories: affiliates, controlled entities, financing parties, future power purchasers, asset-purchase successors, joint-venture entities, or merger/acquisition successors. There is no net-worth threshold whatsoever. A \$1M LLC with no operating history qualifies as a "joint venture partner" under category (vi). SunVest's draft at least required \$10M net worth + 10 MW under management; QCELLS's draft requires zero.

This is worse than industry-standard predatory language. The category list reads as if it was drafted to permit the broadest possible assignment, with no protection for the landowner. Combined with the no-bond gap above, this creates a chain in which the operating lease can be assigned to a shell, the shell can underperform on decommissioning, and Landlord has no funded remedy.

Amendment: insert net worth threshold of \$50M minimum and renewable assets under management of 100 MW minimum on any non-affiliate, non-Financing-Party assignment. Original Tenant remains jointly and severally liable for five years post-assignment. Landlord has approval right (not unreasonably withheld) for any non-affiliate, non-Financing-Party assignment. Assignee must post or assume the decommissioning bond at assignment. Original Tenant's affiliate guarantee (parent Qcells / Hanwha) survives any assignment until Bond is replenished by successor.

4. Tax reimbursement uses both "directly" and "solely" (Section 12(a))

Section 12(a) requires Tenant to pay "any increase in Taxes and Assessments accruing solely during the Term against the Premises to the extent resulting directly from the presence of the Facility on the Premises." Two restrictive words stack: "directly" and "solely." If the McHenry County assessor characterizes part of an increase as a market-driven reassessment or as a regional industrial-corridor effect, HQCA can decline to reimburse the non-"direct" component.

Additionally, Illinois imposes rollback taxes when agricultural property is converted to non-agricultural use — typically three to five years of recaptured back-taxes on conversion. The current draft is silent on rollback-tax responsibility.

Amendment: delete "solely" and "directly"; replace with "substantially as a result of, or contributed to by, the installation, presence, or operation of the Facility." Add an explicit Tenant obligation to pay any rollback taxes owed if the parcel loses an agricultural exemption due to the conversion. Add a requirement that Tenant reimburse pre-COD increases that occur during the Option Period as well, if attributable to the announced project.

5. Mutual indemnification is too thin for environmental risk (Section 21, Section 24(c))

Article 21 (Mutual Indemnification) flows both directions — each party indemnifies the other for its own negligence or willful misconduct. Article 24(c) does contain a Landlord-to-Tenant indemnity for

pre-existing contamination, but the reverse (Tenant-to-Landlord indemnity for new contamination caused by the Facility) is buried inside the mutual structure of Article 21 and requires proof of Tenant negligence.

Under CERCLA, property owners can be named as Potentially Responsible Parties for contamination on their land regardless of fault. If HQCA contaminates the parcel through normal operation (cell degradation, electrolyte leak, thermal runaway), and that contamination requires EPA cleanup, the mutual-indemnification structure in Article 21 may not protect Landlord — Tenant can argue no negligence and decline to indemnify.

Amendment: insert a new Section 21(d) — one-way environmental indemnification flowing from Tenant to Landlord for all contamination, pollution, and hazardous-material releases caused by or arising from the Facility, including CERCLA, RCRA, and Illinois Environmental Protection Act liability, regardless of negligence. Survives lease termination indefinitely. Tenant pays defense costs upfront, not by reimbursement. Landlord selects its own counsel. The existing Landlord-to-Tenant indemnity in Section 24(c) stays one-way for pre-existing conditions.

6. No Owner termination rights for non-monetary breach (Section 16 / 17)

Section 16 (Default) and Section 17 (Remedy Provisions) entitle Landlord to terminate after a thirty-day monetary cure or sixty-day non-monetary cure, but the practical termination universe is narrow. The lease does not give Landlord termination rights for:

- Abandonment of operations (no definition, no trigger);
- Failure to commence construction within a defined window after Option exercise;
- Insurance lapse beyond thirty days;
- Bankruptcy filing by Tenant;
- Environmental violation by Tenant.

Compare to Section 14(a) (Casualty) where Tenant gets a unilateral fire-event termination right. The structure is asymmetric — Tenant exits on its terms, Landlord does not.

Amendment: insert express Landlord termination rights for: (a) failure to commence construction within twenty-four months of Option exercise, (b) abandonment defined as 180 consecutive days of non-operation after Commercial Operation Date with no resumption plan filed, (c) Tenant bankruptcy filing or insolvency, (d) lapse of required insurance for thirty or more days, (e) failure to post or maintain the decommissioning bond per amended Section 20(d). All Landlord terminations subject to a sixty-day cure period if the default is curable.

7. Casualty + Condemnation asymmetry (Section 14)

Section 14(a) gives Tenant the right to terminate "if at any time during the Term...all or substantially all of the Premises or Collateral shall be damaged and or destroyed by fire or other casualty." Landlord receives no parallel right. The same fire that destroys the Facility may also contaminate Landlord's remaining property — and Landlord is locked into the lease.

Section 14(b) (Condemnation) splits net proceeds "in proportion to the fair value of Landlord's and Tenant's respective interests" — but the Collateral provision diverts proceeds attributable to "the Collateral" entirely to Tenant. Since the Facility (batteries, inverters, transformers) is defined as Collateral

and survives as personal property under Section 9, the residual fee-estate proceeds payable to Landlord may be small.

Amendment: add reciprocal Landlord termination right under Section 14(a) for a fire or environmental release rendering the Premises unsuitable for restoration to pre-COD agricultural / open-space condition. Require Tenant to bear the cost of restoration in any post-casualty scenario. In condemnation, clarify that Landlord receives the full fee-estate value, that severance damages flow to Landlord, and that Tenant's Collateral recovery does not reduce Landlord's fee-estate recovery.

8. Financing Party cure period extends with no upper bound (Section 13(c)-(f))

Section 13(c) (Financing Party Cure Rights) gives any Financing Party an additional thirty days for monetary defaults and ninety days for non-monetary defaults beyond Tenant's cure periods. Section 13(c) also says: "The commencement of a judicial or non-judicial foreclosure proceedings by a Financing Party shall be deemed the commencement of a non-monetary cure provided that the Financing Party thereafter diligently prosecutes the same." The phrase "diligently prosecutes" is undefined and could extend foreclosure for years.

During the extended Financing Party cure period, the lease does not require the lender to pay Rent. So Landlord can be unpaid for months while a foreclosure plays out, then face a new tenant (purchaser at foreclosure) on the original lease terms with no opportunity to renegotiate.

Section 13(f) further requires Landlord to enter into a new lease on identical terms if a Financing Party requests one within ninety days of termination — locking Landlord into terms that may be decades stale at that point.

Amendment: cap the Financing Party cure period at sixty days total including any foreclosure delay. Require the Financing Party to pay Rent during any cure period in which Landlord would otherwise have terminated. Successor lender or foreclosure-buyer must post or assume the decommissioning bond. New-lease right under Section 13(f) limited to the unexpired Initial Term only (no automatic renewal rights). SNDA terms must be reciprocal — Lender honors Landlord's termination rights for environmental defaults, decommissioning-bond defaults, and insurance defaults regardless of monetary cure.

Smaller items worth raising

Section 8(bb) Permitted Use is defined as "installation, construction, operation, interconnection, disconnection, maintenance, alteration, repair, improvement, replacement, reconstruction and removal of the Facility and uses incidental thereto." The word "incidental" is undefined — limit it expressly to direct BESS operations and grid-services activities. Exclude data-center colocation, retail energy sales to third parties on-site, and any non-BESS use.

Section 10(jj) Security requires Landlord to give 48 hours' written notice before any entry on the Ground Space. For a parcel Landlord owns this is excessive — limit the notice requirement to specific equipment areas (the immediate fence-line around the Facility) and preserve Landlord's right to inspect adjacent areas without notice.

Section 10(kk) Interruption of Electrical Output lets Tenant claim Rent abatement and lost-energy damages if Landlord's "acts or omissions" cause interruption. The language is overbroad — limit to gross negligence or willful misconduct, and cap consequential damages at six months of base Rent.

Section 20 Surrender of Possession gives Tenant a six-month removal window after termination. Industry standard is twelve months and SunVest's draft offered twelve. Restore the twelve-month window or compress to four months and require Tenant to post additional bond if the removal extends beyond schedule.

Section 24(p) Notices lists fanotheo@gmail.com as the Landlord notice address with no copy-to attorney. Add a "with a copy to" line for the Landlord's counsel (Dad's existing attorney or alternate counsel of his choice) — without it, defaults can be triggered without Wagner or any other reviewer ever seeing them.

Exhibit C / Memorandum says the Option Term is "up to four (4) years" while the body of the Lease (Basic Provisions + Section 2) says three (3) years. This is a draft inconsistency that must be reconciled before signing. Confirm three (3) years as the controlling number and conform Exhibit C.

What's already good in this draft

The CPI escalator is structurally absent (flat 2.25%) which is a downside — but the three-year option period is reasonable for the size of the project. Illinois governing law with McHenry County venue keeps any dispute local. The Memorandum of Lease is included and recordable in the McHenry County real-estate records, providing public notice of the leasehold encumbrance. Section 9 explicitly severs the Facility as personal property — important for Landlord because it keeps the BESS off the property tax assessment of the underlying real estate (subject to clauses 12). Section 3(t) (Access and Investigations) requires Tenant to indemnify Landlord during the Option Period for any entry-related losses. Section 2(p) requires the Option Payment within 45 business days of Effective Date — locks in payment timing. Section 22 (Landlord's Representations) is reasonable in scope. Section 24(d) Confidentiality binds only Landlord — make it mutual but the structure is at least explicit. Section 27(a) Governing Law is Illinois — no Delaware forum-shopping. Section 27(c) Jury Trial waiver is mutual.

Bottom-line recommendation

Do not sign as drafted. Send the amendment letter at QCELLS_AMENDMENT_REQUEST_DRAFT_2026_05_13.md to HQCA / Qcells counsel (hqca-legal@qcells.com) once your attorney clears it. The eight critical amendments are all industry-standard landowner protections; Qcells's legal team has seen all of them in dozens of leases. Most will be accepted as drafted.

Hold the line on three items: (1) the decommissioning bond, (2) the environmental insurance + indemnification combination, (3) the assignment threshold. These three are the load-bearing protections

in a 35-year BESS lease — without them the deal asymmetry is severe enough that the expected NPV becomes negative in a meaningful share of paths (see QCELLS_PARCEL9_MONTE_CARLO_REPORT_2026_05_13.md).

The deal is not the largest of the three pending offers. SunVest at \$150K/yr clears more present value across its life than QCELLS does even on a fully-amended basis. If Qcells refuses any of the three load-bearing amendments and the negotiation stalls, walk — SunVest is on the adjacent parcel and CP Development is the third option. QCELLS does not have leverage; this is not their only Crystal Lake project.

Reconcile the four-year vs three-year Option Period inconsistency between the Memorandum (Exhibit C) and the Basic Provisions before any signature. Either is acceptable; the inconsistency is not.

Get the McHenry County assessor's written view on tax reclassification impact on Parcel 9 specifically before signing. The amended Section 12(a) language only helps if the tax-delta magnitude is known.

This deal is signable on amended terms. As drafted, it isn't.

Sources: QCELLS Parcel 9 lease draft cited above; SunVest reference framework at SUNVEST_AUDIT_2026_05_10.md; doctrine at ENERGY_LEASE_AUDIT_RESEARCH.md; financial model at QCELLS_PARCEL9_FINANCIAL_MODEL_2026_05_13.md; Monte Carlo at QCELLS_PARCEL9_MONTE_CARLO_REPORT_2026_05_13.md; risk scenarios at QCELLS_PARCEL9_RISK_SCENARIOS_2026_05_13.md. Extracted lease text at qcels_parcel9_lease_extracted.txt. Engineering opinion only — Dad's existing attorney (Wagner Law Firm or alternate counsel of his choice) must review every amendment before signature.