

QCELLS · AMENDMENT REQUEST

Draft Amendment Letter to Qcells / HQCA Counsel

For Fano review

To: hqca-legal@qcells.com Cc: Nicholas Gebhart (HQCA / Qcells, contact from prior correspondence)
Subject: RE: Theofanous Parcel 9 Option to Lease (4/17/2026 draft) — Lease Comments From: fanotheo@gmail.com

Send only after Dad's existing attorney (Wagner Law Firm or alternate counsel of his choice) reviews this letter. This is engineering opinion, not legal advice. If Wagner is unresponsive past Friday, switch to alternate counsel — the QCELLS draft has more open gaps than SunVest's and should not sit unaddressed.

Hi team,

Thank you for the Option to Lease and Site Lease Agreement draft dated April 17, 2026 for Parcel 9 (Millenium Drive, parcel 14-33-226-017). Steve and I have reviewed it and want to share comments before signing. Most are standard landowner protections and should be familiar to your legal team. Once they're addressed, we're prepared to move forward via DocuSign.

I'd also like to schedule a brief call to walk through any items where HQCA / Qcells wants to push back. Email is slower than voice for negotiations of this size.

Two preliminary housekeeping items before the substantive comments:

- The DOCX versions of the draft you sent contain blank form-field placeholders for the option payments, basic rent figure, escalator, parcel number, and several other economic terms; the PDF render is the only version with populated fields. Please confirm that the PDF version represents the operative terms, or provide a clean DOCX in which the financial terms are typed text rather than form-field controls.
- The body of the Lease (Basic Provisions and Section 2) defines the Option Period as three (3) years, but the Memorandum (Exhibit C) refers to it as "up to four (4) years." Please confirm three years as the controlling number and conform the Memorandum.

1. Decommissioning bond inserted (Section 20 amendment). The current draft does not require any decommissioning bond. We need a new sub-section requiring Tenant to post a decommissioning bond prior to the Commercial Operation Date, in surety bond or irrevocable letter of credit form only (no corporate guarantees). Bond amount based on an independent third-party engineer's removal-cost estimate, refreshed every three years with salvage value confirmed by independent appraisal each cycle. Battery-specific hazardous-disposal premium reflected in the engineering estimate. Bond replenished within thirty days if drawn down. Bond lapse triggers automatic Landlord termination right.

2. Insurance limits raised and environmental policy added (Section 11 amendment). General liability minimums of \$5M per occurrence and \$10M aggregate (current draft requires \$2M aggregate / \$1M per occurrence, which is well below industry standard for battery storage). A separate environmental and pollution liability policy of \$5M minimum, written on occurrence basis. Landlord named as additional insured automatically on all policies, not on request. Annual delivery of certificates without request. Sixty-day cancellation notice (not the default thirty). Coverage continues through the Tenant-removal window after termination.
3. Assignment threshold inserted (Section 14(a) amendment). Net worth threshold of \$50M minimum on any non-affiliate, non-Financing-Party assignment. Renewable assets under management of 100 MW minimum. 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. The current categories list under Section 14(a)(i)-(vii) is acceptable provided the threshold applies to any entity outside the affiliate / Financing Party / parent corporate structure.
4. Tax reimbursement language fixed (Section 12(a) amendment). Delete "directly" and "solely"; replace the operative phrase with "any increase in Taxes and Assessments accruing during the Term against the Premises 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. Tenant is also responsible for any tax increases that accrue during the Option Period to the extent attributable to the announced project.
5. Landlord termination for non-monetary breach (Section 16 / 17 amendment). Add 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. All Landlord terminations subject to a sixty-day cure period if the default is curable.
6. One-way environmental indemnification (new Section 21(d)). Insert a separate one-way environmental indemnification clause: Tenant indemnifies 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, and Landlord selects its own counsel. The existing Landlord-to-Tenant indemnity for pre-existing conditions in Section 24(c) stays one-way for pre-existing conditions only.
7. Financing Party cure period capped (Section 13(c)-(f) 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 posts or assumes the decommissioning bond. New-lease right under Section 13(f) limited to the unexpired Initial Term only — no automatic renewal-term inheritance. SNDA terms reciprocal — Lender honors Landlord's termination rights for environmental defaults, decommissioning-bond defaults, and insurance defaults regardless of monetary cure.

8. Casualty and condemnation symmetry (Section 14 amendment). Add reciprocal Landlord termination right under Section 14(a) for fire or environmental release rendering the Premises unsuitable for restoration to pre-Commercial-Operation-Date agricultural / open-space condition. Tenant bears the cost of restoration in any post-casualty scenario. In condemnation (Section 14(b)), clarify that Landlord receives the full fee-estate value, severance damages flow to Landlord, and Tenant's Collateral recovery does not reduce Landlord's fee-estate recovery.

9. Smaller items.

- Section 8(bb) "Permitted Use" — limit "incidental thereto" 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 — limit the 48-hour 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 — limit Landlord's interruption liability to gross negligence or willful misconduct; cap consequential damages at six months of base Rent.
- Section 20 Surrender of Possession — restore a twelve-month removal window after termination (or compress to four months with additional bond posting required if removal extends beyond schedule).
- Section 24(p) Notices — add a "with a copy to" line for Landlord's counsel (TBD) so that defaults cannot be triggered without counsel review.
- Section 24(d) Confidentiality — make it mutual; Tenant equally bound on Landlord's personal financial information.

Items we'd like to discuss on the call. An environmental baseline study at Tenant's expense, conducted by an independent firm of our choosing, before construction begins. Notification protocol — Landlord notified within twenty-four hours of any fire, leak, environmental release, or insurance claim. NFPA 855 compliance explicitly referenced for the fire safety plan. We're happy to provide our most recent property tax bill if useful for confirming the reimbursement mechanism.

Looking forward to the call.

Best regards,

Fano Theofanous (815) 355-3737 fanotheo@gmail.com

Stefano's notes (NOT in the email — for Fano's reference)

The non-negotiable items are 1, 2, 3, 4, and 5. Everything else is preferred but you can compromise without losing the load-bearing protections. If Qcells pushes back hard on those five, hold the line — SunVest is on the adjacent parcel and CP Development is the third option.

The decommissioning bond (item 1) is the single largest gap in the draft. The Monte Carlo simulation confirms the bond amendment contributes the most expected-value uplift of any single amendment

(approximately \$30K of the \$49K total package uplift comes from inserting the bond). It's also the single largest contributor to truncating the worst-case left tail. Without the bond, the as-drafted worst case is -\$4.87M; with the bond, it's roughly +\$28K.

The tone is intentionally calm. Qcells's lawyers have seen all of these requests in dozens of leases; most will be accepted as drafted. The fact that the draft omits items that SunVest already included (bond, environmental insurance, assignment threshold) suggests Qcells's standard-form may simply be older than SunVest's — these amendments bring the QCELLS draft up to current industry-standard landowner protections.

Voice negotiation moves faster than email. When they respond with counter-positions, schedule the call. Don't get stuck in a paragraph-by-paragraph email war.

This letter goes to your attorney first. They'll either approve as-drafted or red-line the language. Send their version, not mine. The same applies to the SunVest letter — counsel reviews before any signature on any of the three deals.

Wagner Law Firm has been unresponsive as of 2026-05-13. If they're still silent by Friday, switch to alternate energy-lease counsel. The QCELLS draft has more open gaps than SunVest's and should not sit unaddressed. Suggested alternates: any Illinois real-estate attorney with energy-lease experience (Levenfeld Pearlstein, Locke Lord, Faegre Drinker have McHenry County / Illinois energy practices). Two weeks of attorney delay is acceptable; six weeks is not.

The QCELLS deal is the smallest of the three pending offers (\$404K-\$454K expected NPV vs SunVest's \$1.36M-\$1.42M). Don't let urgency on closing it pressure the other deals — they're on different parcels. Sign each only when its terms are right.