

FULL AUDIT · CLAUSE BY CLAUSE

SunVest BESS Lease — Full Clause Audit

For Fano + Dad's attorney review · 20 min read

SV BESS Beechcraft, LLC — Option and Land Lease (5/1/2026 draft)

Property: Lot 27, Terra Cotta Tech Unit Two — Crystal Lake, IL. Parcel 14-33-226-016. Owner: Steven Theofanous and Fano Theofanous, 50/50 tenants in common. Tenant: SV BESS Beechcraft, LLC (Delaware), c/o SunVest Solar, LLC. Signing officer: Tim Polz. Source draft:

C:\Users\Stefa\Downloads\SV BESS Beechcraft LLC - Option and Land Lease (5.1.2026).pdf Audit date: 2026-05-10. Auditor: Stefano Theofanous (GOROSHI LLC).

What this lease is worth

The lease pays \$52,500 in option payments over three years — \$10,000 at signing, \$17,500 on the first anniversary, \$25,000 on the second. If SunVest exercises the option and starts operating, base rent is \$75,000 per year for the first 5 megawatts of installed capacity, plus \$15,000 per year for each additional megawatt. At the 10 MW SunVest is contemplating, year-one operating rent is \$150,000.

The escalator is the greater of 2% or CPI, which is the right structure — fixed escalators erode in real value over a 25-year term. The operating term is 25 years from commercial operation, with two five-year renewal options exercisable by SunVest. Maximum term is 35 years.

At 2% annual escalation, 25 years of operating rent total \$4.83M and 35 years total \$7.0M. With option payments, the deal is worth \$4.9M to \$7.1M before tax across its possible life. These figures assume SunVest exercises the option, completes construction, and operates for the full term — none of which the lease guarantees.

For comparison, the QCELLS deal on parcel 14-34-401-009 pays \$100,000 per year combined for both QCELLS parcels with a 2.25% flat escalator, totaling roughly \$2.5M over 20 years and \$5.4M over 35. The two deals are on different parcels and can both be signed.

Why I would not sign as drafted

The draft has eight critical issues and six smaller ones. Each critical issue is a documented predatory pattern that landowner attorneys flag in standard-form energy leases. SunVest's legal team has seen all of these requests before; most will be accepted with minimal pushback. Sequencing this wrong — signing first, negotiating later — gives away leverage that cannot be recovered.

1. Owner has no termination rights for non-monetary breach

Section 9.1 reads: "Owner shall not have the right to terminate this Agreement in the event of a Non-Monetary Breach by Project Company." Translated: if SunVest commits an environmental violation, lets insurance lapse, abandons the site, or files for bankruptcy, you cannot terminate. The only way out is non-payment of rent for thirty or more days.

SunVest meanwhile retains a unilateral right to terminate at will on sixty days' notice (Section 2.2(d)).

This asymmetry is on every list of clauses landowner attorneys say to never accept. The amendment is straightforward: parallel termination rights for material non-monetary breach (with a sixty-day cure period if curable), failure to commence construction within twenty-four months of option exercise, abandonment defined as 180 consecutive days of non-operation after commercial operation, bankruptcy filing or insolvency, and lapse of insurance for more than thirty days.

2. Decommissioning bond fails in three places

Section 4.4(c) governs the bond that ensures the site gets cleaned up at end-of-life. It has three failures, each independent.

The bond is established "beginning on the first day of the Operating Term" — after construction is complete. Industry best practice posts the bond before construction begins. If SunVest goes bankrupt during the construction phase, you have equipment on your land and no money to remove it.

The permitted forms include "corporate guarantee from an investment grade company." Corporate guarantees are worthless if the company that issued them goes bankrupt — that's the entire point of requiring a bond. The forms must be limited to surety bond or irrevocable letter of credit only.

The Net Removal Cost is calculated as removal cost minus salvage value, with no requirement that salvage value be independently verified. Developers routinely overstate salvage value to reduce required bond amounts. For battery storage specifically, salvage value is often negative — cells are hazardous waste, you pay to dispose of them. Salvage value must be confirmed by independent third-party appraisal, re-assessed every three years, with the bond increased if salvage value drops below the assumed figure.

3. Insurance limits are too low and you are not auto-named

Section 4.6 requires only \$1M property, \$2M bodily injury, and \$4M aggregate general liability. There is no environmental or pollution liability coverage required at all. You are added as additional insured only "promptly upon written request" — meaning the policy may not name you when the loss occurs.

For context: the Moss Landing battery storage fire in 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, the operator, was held liable under CERCLA. Battery storage carries documented environmental risk that general liability does not cover.

The amendment: \$5M per occurrence and \$10M aggregate general liability, \$5M minimum environmental and pollution liability as a separate policy, automatic naming of Owner as additional insured on all policies, annual delivery of certificates without request, sixty-day cancellation notice instead of thirty, and continued coverage through the twelve-month removal period after termination.

4. Indemnification is mutual; environmental should be one-way

Article VI's indemnification flows both directions — each party indemnifies the other for its own operations. For ordinary tort liability this is fine. For environmental contamination it is not.

Under CERCLA, property owners can be named as potentially responsible parties for contamination on their property even when a tenant caused it. If SunVest contaminates the parcel, files for bankruptcy, and dissolves, you may face EPA enforcement directly.

The amendment is a separate one-way environmental indemnification clause: SunVest indemnifies you for all contamination, pollution, and hazardous material releases caused by or arising from the Energy Facilities, including CERCLA, RCRA, and state environmental statute liability, regardless of negligence. The indemnification survives lease termination indefinitely. SunVest pays defense costs upfront, not by reimbursement, and you select your own counsel.

5. Assignment threshold is shell-company tier

Section 7.2(c) allows SunVest to assign the lease without your consent to any third party with \$10M net worth and 10 MW of renewable assets under management. A \$10M LLC with one 10 MW project has barely enough capital to survive a single bad year, much less honor a 35-year lease.

The amendment: net worth threshold of \$50M minimum, renewable assets under management of 100 MW minimum (proof of operating capability across multiple sites), original Tenant remains jointly and severally liable for five years post-assignment, you have approval right (not unreasonably withheld) for any non-affiliate non-Lender assignment, and the assignee posts a new decommissioning bond at assignment.

6. Lender protections lack reciprocal Owner protection

Section 7.1 grants SunVest's lenders broad rights — foreclose, assume the lease, demand a new agreement post-bankruptcy on the same terms. The cure period is "extended" if lenders are prevented from foreclosing by court order, with no upper bound.

This is standard developer-side language. What it lacks is the matching landowner protection that should always come with it. The amendment: a hard cap of sixty days total on lender cure period including any foreclosure delay, continued rent payment by the lender during cure, requirement that any successor lender or foreclosure-buyer post a new decommissioning bond and assume all obligations including environmental, and reciprocal language in the SNDA where the lender honors your termination rights for environmental defaults.

7. Owner improvement consent is in Tenant's "sole discretion"

Section 1.5(c) prohibits any improvement on the Property without "Project Company's sole discretion" approval. "Sole discretion" means SunVest can reject any improvement for any reason or no reason — even on portions of your land they don't lease.

One-line amendment: change "sole discretion" to "reasonable discretion, not to be unreasonably withheld, conditioned, or delayed." This is standard contract polish and SunVest should accept it without discussion.

8. Tax reclassification clause uses "solely"

Section 3.2(b) requires SunVest to reimburse property tax increases that result "solely as a result of the installation of the Energy Facilities." The word "solely" is a high bar. If your tax bill goes up partly because of SunVest and partly because of a countywide reassessment, SunVest can argue the increase wasn't "solely" their fault.

The amendment: change "solely" to "substantially as a result of, or contributed to by." Add an explicit obligation that SunVest pays any rollback taxes if the parcel loses its agricultural exemption.

Smaller items worth raising

Section 5.6's nuisance waiver should be limited to ordinary operational effects — you reserve the right to claim nuisance for events causing material harm to your remaining use of the Property. Section 5.1's lien waiver should be limited to operational liens (mechanics, materialmen) and preserve your statutory landlord's lien for unpaid rent under Illinois law. Section 10.5 lets SunVest force you to re-execute a new agreement at any time "for legal or regulatory requirements" — limit this to specific regulatory triggers and preserve your right to negotiate new terms in any such re-execution. Section 5.4 grants SunVest exclusivity over the entire Property for "any energy storage facility or other energy facility" — reserve your right to install self-use solar (rooftop or own-consumption only), EV charging for your own use, and energy-efficiency equipment such as geothermal. Section 10.8's confidentiality is one-sided — make it mutual so SunVest is equally bound on your personal financial information.

What's already good in this draft

The CPI-floor escalator is the right structure — fixed escalators are inflation traps. The 3-year option period is shorter than industry-standard 4-5 years. The tax-increase reimbursement clause exists at all (most form leases omit it). The 12-month removal obligation is explicit. SunVest pays for the survey. Collector lines under 138kV must be buried for aesthetics. Construction staging gets restored within 60 days of completion. Spousal signatures are explicitly required. Early termination by SunVest before year 11 of operations triggers a one-year severance payment. Illinois governing law with McHenry County venue keeps any dispute local — no forum shopping.

How this compares to the other two bidders

You have three offers on three different parcels. They are not competing — you can sign all three on different land.

QCELLS (Hanwha) is on parcel 14-34-401-009, the 4501 East Terra Cotta Avenue lot. The terms are \$100,000 per year combined for both QCELLS parcels, 2.25% flat escalator, 20-year operating term,

three 5-year renewal options. Nicholas Gebhart has explicitly asked for marital status to finalize. That deal is one document away from execution.

SunVest is on parcel 14-33-226-016, this lot. Once amended, \$150,000 per year for 10 MW with the CPI-floor escalator, 25-year operating term, two 5-year renewals. Highest year-one rent of the three.

CP Development was audited earlier — see CP_Development_Audit_v2_FINAL.pdf. Confirm with them whether their offer is still active. If yes, audit the current draft against the same standards.

Combined operating-term revenue across SunVest and QCELLS is approximately \$7.3M over 25 years and \$12.4M over 35 years, plus \$85,000 to \$90,000 in option payments across both deals.

Recommended sequence

Lock QCELLS first. They are DocuSign-ready and need only marital status from Fano and Steve. This is the shortest path to the first signed deal and removes negotiating pressure from the SunVest discussion.

Send SunVest the amendment letter (drafted at BILL_FRENCH_AMENDMENT_REQUEST_DRAFT_2026_05_10.md) within five business days. Bill French has followed up three times; further silence risks SunVest losing patience or moving the project to a different parcel. The letter is calm and businesslike — most requests will be accepted with minimal pushback.

Re-engage CP Development to confirm whether their offer is still open. If yes, audit it against the same framework.

Have Dad's existing attorney (Wagner Law Firm or alternate counsel of Dad's choice) review the amendment letter before sending. Wagner has not responded to outreach as of 2026-05-13 — if no response by end of week, retain an energy-lease-experienced Illinois attorney directly rather than wait. This audit is engineering opinion, not legal advice. Do not sign anything without independent counsel review and an independent appraisal of fair-market BESS lease rates in McHenry County. Confirm with the McHenry County assessor in writing what tax reclassification impact would be before signing any of the three.

Sources: lease draft cited above; research framework at ENERGY_LEASE_AUDIT_RESEARCH.md; prior audits at CP_Development_Audit_v2_FINAL.pdf, Hanwha_Lease_Audit_v1.pdf, LEASE_AUDIT_Parcel17_Theofanous.pdf; SunVest email thread provided 2026-05-10. Backup of v1 draft at _VAULT/SUNVEST_AUDIT_2026_05_10_v1_pre_rewrite_2026_05_10.md.