

RESOLUTION 2022 – 127

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE BOROUGH OF
MOUNT ARLINGTON, COUNTY OF MORRIS, STATE OF NEW JERSEY,
(A) AUTHORIZING A SECOND AMENDMENT TO THE LANDFILL SOLAR
PROJECT GROUND LEASE; AND, (B) AUTHORIZING A UTILITY AND
ACCESS EASEMENT AGREEMENT IN CONNECTION WITH
THE LANDFILL SOLAR PROJECT**

WHEREAS, the Borough of Mount Arlington, in the County of Morris, State of New Jersey (the "Borough"), is a municipality of the State of New Jersey which, among other things, exercises powers pursuant to the New Jersey Local Housing and Redevelopment Law, *N.J.S.A. 40A:12A-1 et seq.* (the "Redevelopment Law"); and

WHEREAS, pursuant to the Redevelopment Law, the Borough designated Block 8, Lot 3 on the Tax Maps of the Borough, better known as the former Mount Arlington Landfill, as an "area in need of redevelopment" (the "Redevelopment Area") in accordance with the Redevelopment Law; and

WHEREAS, on October 6, 2015, the Borough Council of the Borough of Mount Arlington (the "Borough Council") had adopted Ordinance No. 11-15, approving and adopting the Mount Arlington Landfill Redevelopment Plan (the "Redevelopment Plan") for the Redevelopment Area, all in accordance with the Redevelopment Law; and

WHEREAS, on April 12, 2016, the Borough Council, acting in its capacity as a Redevelopment Entity for the Borough, adopted Resolution 2016-76 designating HESP Solar, LLC ("HESP" or "Redeveloper") as redeveloper of the Redevelopment Area; and

WHEREAS, on May 17, 2019, the Borough and the Redeveloper entered into a certain Redevelopment Agreement, as amended from time to time (together, the "Redevelopment Agreement"), pursuant to which the Redeveloper redeveloped the Redevelopment Area in accordance with the Redevelopment Plan, and did, or will also: (i) design, develop, finance, construct, operate and maintain a grid-connected photovoltaic solar power system in the Redevelopment Area with an output of approximately 1.6 megawatts (MW) (direct current) of power, as approved by PJM, including but not limited to all solar energy panels, mounting systems, carports, tracking devices, inverters, switches, meters, conduits, wires, controls, integrators, security systems and other related equipment and components installed in the Redevelopment Area, electric lines and conduits required to connect such equipment to the delivery point, protective and associated equipment, improvements, and other tangible and intangible assets, contracts, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of same; and, (ii) construct all necessary on- and off-site infrastructure improvements (as more specifically described in the Redevelopment Agreement as either the "Project" or the "Redevelopment Project"); and

WHEREAS, on March 28, 2017, the Borough and the Redeveloper entered into an accompanying Ground Lease, which was amended on May 17, 2019 by Amendment No. 1 to

the Ground Lease, and which may be amended from time to time, including as set forth in this Resolution (together, the "Ground Lease"); and

WHEREAS, the Borough and the Redeveloper also entered into a Solar Power Energy Services Agreement, as the same may be amended and supplemented from time to time (the "Power Purchase Agreement" and, together with the Redevelopment Agreement and the Ground Lease, the "Agreements"); and

WHEREAS, on April 6, 2021, the Borough adopted a Resolution consenting to the assignment of the Agreements from HESP Solar to Mt. Arlington I Solar, LLC (the "Project Company"), an affiliate of HESP Solar, in accordance with the terms of the Agreements; and

WHEREAS, in September 2021, the Borough adopted a Resolution consenting to, among other things (and to the extent required by the terms of the Agreements), the sale of the Project Company to an indirect subsidiary of Greenbacker Renewable Energy Corporation ("Greenbacker"), and otherwise approved and consented to the undertaking of certain investments in connection therewith; and

WHEREAS, subsequent to the foregoing, the Redeveloper proceeded with the undertaking, development and construction of the Project, which has resulted in a change in the description of the Premises, as that term is defined in the Ground Lease (to now include and identify the Project "as built"); and

WHEREAS, the parties have also determined that, in connection with performance under the Agreements and in connection with access to and use of the Redevelopment Area, it is necessary for the Borough to convey, to the Project Company, a use and access easement in connection with a *portion* of certain Borough owned property located upon Block 8, Lot 17.01 on the official Tax Maps of the Borough (the "Property"), for purpose of access to the Redevelopment Area and maintenance of certain utility poles within the Property, all of which inure to the ultimate benefit of the Borough; and

WHEREAS, to memorialize the foregoing, the Borough desires to enter into (A) a Second Amendment to the Ground Lease (the "Second Amendment"), in substantially the form appended hereto as Exhibit A, and which shall be in such form as be agreed to by the Borough with the advice of the Borough Attorney; and, (B) a Utility and Access Easement Agreement (the "Easement Agreement"), in substantially the form appended hereto as Exhibit B, and which shall be in such form as be agreed to by the Borough with the advice of the Borough Attorney; and

WHEREAS, the Borough Council is desirous of adopting this Resolution to authorize all of the foregoing.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Mount Arlington, County of Morris, State of New Jersey, as follows:

Section 1. The above Recitals are incorporated herein by reference as if set forth in full herein.

Section 2. The Borough hereby approves and authorizes entry into, respectively, both (A) the Second Amendment to the Ground Lease, in substantially the form appended hereto as Exhibit A; and, (B) the Easement Agreement, in substantially the form appended hereto as Exhibit B, which shall each be in such form as be agreed to by the Borough with the advice of the Borough Attorney. The Borough Council further authorizes and directs such Borough personnel as may be necessary, including the Mayor, Business Administrator and Clerk, to execute both the Second Amendment and the Easement Agreement, and to do all things necessary to implement the provisions of the same.

Section 3. This Resolution shall take effect immediately.

I HEREBY CERTIFY this to be a true and correct Resolution of the Mayor and Borough Council of the Borough of Mount Arlington, and adopted on October 4, 2022.

A handwritten signature in black ink, appearing to read "Matthew N. Bansch", written over a horizontal line.

Matthew N. Bansch, Borough Clerk

EXHIBIT A

FORM OF SECOND AMENDMENT TO GROUND LEASE

AMENDMENT 2 TO GROUND LEASE

BY AND BETWEEN

THE BOROUGH OF MOUNT ARLINGTON

AND

MOUNT ARLINGTON SOLAR 1, LLC

FOR

MOUNT ARLINGTON REDEVELOPMENT OF FORMER SANITARY LANDFILL

Dated: August __, 2022

THIS AMENDMENT NO. 2 TO GROUND LEASE (this "**Agreement**") dated as of the ____ day of August, 2022, by and between the **Borough of Mount Arlington, in the County of Morris, New Jersey** (the "**Borough**" or "**Lessor**"), a public body corporate and politic of the State of New Jersey, having its offices at 419 Howard Boulevard, Mount Arlington, New Jersey 07856, and **Mt. Arlington Solar 1, LLC**, a New Jersey limited liability company (the "**Redeveloper**" or "**Lessee**" and, together with the Borough or Lessor, the "**Parties**"), a New York limited liability company having its principal offices at 400 Rella Boulevard, Suite 160, Suffern, New York 10901.

WITNESSETH

WHEREAS, on October 6, 2015 the Borough Council of the Borough (the "**Borough Council**") adopted Ordinance No. 11-15, approving and adopting the Mount Arlington Landfill Redevelopment Plan (the "**Redevelopment Plan**") in accordance with the New Jersey Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "**Redevelopment Law**"); and

WHEREAS, the Redevelopment Plan relates to certain property within the Borough, specifically Block 8, Lot 3 on the Tax Map of the Borough (the "**Redevelopment Area**" or "**Site**"); and

WHEREAS, the Borough issued a Request for Proposals ("**RFP**"), soliciting responses from redevelopers interested in the redevelopment of the Redevelopment Area; and

WHEREAS, on December 1, 2015, HESP Solar, LLC ("**Redeveloper**") submitted a proposal regarding the Redevelopment Area to the Borough, that the Borough desired to further explore (the "**Redeveloper Response**"); and

WHEREAS, on April 12, 2016, the Borough Council, acting in its capacity as a redevelopment entity for the Borough, adopted Resolution 2016-76 designating HESP Solar, LLC as redeveloper of the Redevelopment Area; and

WHEREAS, on March 28, 2017, the Borough and HESP Solar, LLC, as the Redeveloper, entered into a Ground Lease (the "**Original Ground Lease**"), pursuant to which the Redeveloper is leasing the Premises (as defined in the Original Ground Lease) from the Borough, solely for the purpose of constructing and operating thereon the Project (as defined in the Original Ground Lease), conducting activities accessory to and related with such use, including, without limitation, the generation and sale of Energy (as defined in the Original Ground Lease), pursuant to the Original Ground Lease; and

WHEREAS, on May 17, 2019 the Borough and Redeveloper entered into Amendment No. 1 to the Original Ground Lease, to modify the time period within which the Redeveloper may complete construction of the Project; accelerate certain Fixed Net Rent payments made by the Redeveloper to the Borough; and, to modify the requirements of the restoration

bond that the Redeveloper is required to provide to the Borough in connection with the Project; and

WHEREAS, on April 6, 2021 by Resolution 2021-57, the Borough Council consented to the assignment of the Original Ground Lease from HESP Solar, LLC as Redeveloper, to Lessee; and

WHEREAS, on October 6, 2021 HESP Solar, LLC as Redeveloper assigned the Lease to Lessee; and

WHEREAS, the Borough and Lessee desire to further amend the Ground Lease to clarify and more particularly define the Premises, as that term is defined in the Original Ground Lease.

NOW, THEREFORE, in consideration of the mutual promises, representations, covenants and agreements contained herein, and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby and to bind their successors and assigns, do mutually promise, covenant and agree as follows:

Section 1. Exhibit A to the Original Ground Lease as stated in Section 1.2 thereof is hereby deleted in its entirety, and replaced with Exhibit A-1 hereto, being a legal description of the outbounds of the Premises, and with Exhibit A-2 hereto, being a map depicting the final entirety of the Premises.

Section 2. The Parties acknowledge and agree that the Original Ground Lease and Amendment No. 1 to Ground Lease, except for the amendments set forth herein, remain in full force and effect and have not otherwise been modified or amended. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. This Agreement may be executed in multiple counterparts each, of which, when taken together, shall constitute one and the same original instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

ATTEST

LESSOR:

BOROUGH OF MOUNT ARLINGTON,
IN THE COUNTY OF MORRIS,
NEW JERSEY

By: 
Michael Stanzilis, Mayor

ATTEST

LESSEE:
MT. ARLINGTON SOLAR 1, LLC

By: _____
Name:
Title:

STATE OF NEW JERSEY:

SS:

COUNTY OF MORRIS :

I CERTIFY that on _____, 2022, Michael Stanzilis personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized and did execute this instrument as Mayor of the Borough of Mount Arlington, in the County of Morris, New Jersey; and,
- (c) executed the instrument as the act of the Borough of Mount Arlington, in the County of Morris, New Jersey.

Notary Public

STATE OF NEW JERSEY:

SS:

COUNTY OF _____:

I CERTIFY that on August _____, 2022, _____ personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized and did execute this instrument as authorized officer of Mt. Arlington Solar 1, LLC, a New Jersey limited liability company; and,
- (c) executed the instrument as the act of Mt. Arlington Solar 1, LLC.

Notary Public

EXHIBITS A-1 AND A-2

(Legal Description and Map, respectively)

GLADSTONE DESIGN, Inc.

Consulting Engineers
Land Surveyors
Landscape Architects
Land Planners

265 Main Street, P.O. Box 400
Gladstone, New Jersey 07934
T: (908) 234-0309
F: (908) 719-3320
www.gladstonedesign.com

Ronald A. Kennedy, P.E.; P.P.; CME; LEED AP
Kurt T. Hanie, P.L.S.
Robert C. Morris
Robert C. Moschello, P.E.

June 15, 2022
1037-03

**DEED DESCRIPTION
OF A
PROPOSED LEASE AREA
OVER LOT 3 BLOCK 8
BOROUGH OF MOUNT ARLINGTON
MORRIS COUNTY, NEW JERSEY**

BEGINNING at a point in the northerly sideline of Berkshire Avenue (50 foot right of way per tax map – unimproved) where the same is intersected by the line dividing Lots 3 and 17.01 Block 8, said point being distant 496.60 feet measured North 81°40'48" West along said northerly sideline of Berkshire Avenue from the westerly terminus of a curve having a radius of 17.12 feet and an arc distance of 21.97 feet and connecting said northerly sideline of Berkshire Avenue with the westerly sideline of Southard Road (33 foot right of way per tax map - unimproved) and from said beginning point running; thence

1. North 81°40'48" West, a distance of 155.40 feet along said line dividing Lots 3 and 17.01 Block 8 to a point; thence

Along a line crossing Lot 3 Block 8, the following twenty-nine courses being courses 2 through 30 inclusive:

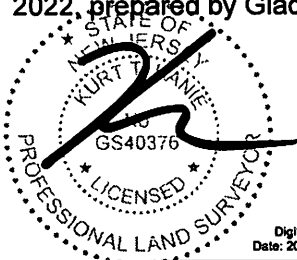
2. North 08°19'12" East, a distance of 51.00 feet to a point; thence
3. North 34°25'00" West, a distance of 49.00 feet to a point; thence
4. North 17°00'00" West, a distance of 32.00 feet to a point; thence
5. North 08°00'00" West, a distance of 32.00 feet to a point; thence
6. North 00°00'00" East, a distance of 17.50 feet to a point; thence
7. North 10°00'00" East, a distance of 13.00 feet to a point of curvature; thence
8. Northeasterly along a curve bearing to the right having a radius of 60.00 feet, an arc distance of 51.86 feet, a central angle of 49°31'21", a chord bearing of North 34°45'40" East and a chord distance of 50.26 feet to a point of compound curvature; thence
9. Easterly along a curve bearing to the right having a radius of 30.00 feet, an arc distance of 17.01 feet, a central angle of 32°28'39", a chord bearing of North 75°45'40" East and a chord distance of 16.78 feet to a point of tangency; thence
10. South 88°00'00" East, a distance of 71.57 feet to a point; thence
11. North 88°00'00" East, a distance of 45.00 feet to a point; thence



12. South 85°00'00" East, a distance of 33.00 feet to a point; thence
13. North 30°45'00" East, a distance of 476.00 feet to a point; thence
14. South 87°45'00" East, a distance of 161.50 feet to a point; thence
15. South 64°00'00" East, a distance of 36.00 feet to a point; thence
16. South 41°00'00" East, a distance of 42.00 feet to a point; thence
17. South 25°00'00" East, a distance of 60.00 feet to a point; thence
18. South 40°00'00" East, a distance of 51.00 feet to a point; thence
19. South 31°00'00" East, a distance of 20.00 feet to a point; thence
20. South 22°00'00" East, a distance of 69.50 feet to a point; thence
21. South 33°00'00" East, a distance of 34.00 feet to a point; thence
22. South 02°00'00" East, a distance of 61.50 feet to a point; thence
23. South 09°00'00" West, a distance of 76.00 feet to a point; thence
24. South 30°00'00" West, a distance of 174.00 feet to a point; thence
25. South 36°00'00" West, a distance of 100.00 feet to a point; thence
26. North 90°00'00" West, a distance of 202.00 feet to a point; thence
27. North 82°00'00" West, a distance of 41.00 feet to a point; thence
28. South 71°30'00" West, a distance of 86.00 feet to a point; thence
29. South 87°00'00" West, a distance of 106.19 feet to a point; thence
30. South 08°19'12" West, a distance of 4.08 feet to the point and place of beginning.

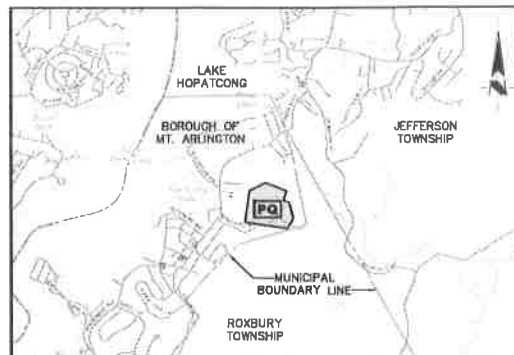
CONTAINS: 7.325 Acres / 319,094 Square Feet - subject to easements, covenants, agreements and restrictions of record.

The foregoing description was prepared in accordance with a map entitled "Lease and Easement Exhibit Plan, HESP Solar, Lot 3 Block 8, Borough of Mount Arlington, Morris County, New Jersey," dated June 15, 2022, prepared by Gladstone Design, Inc.



Digitally signed by Kurt Hanie
Date: 2022.06.10 09:52:03-04'00'

KURT T. HANIE, P.L.S.
PROFESSIONAL LAND SURVEYOR
NJ LICENSE No. GS40376



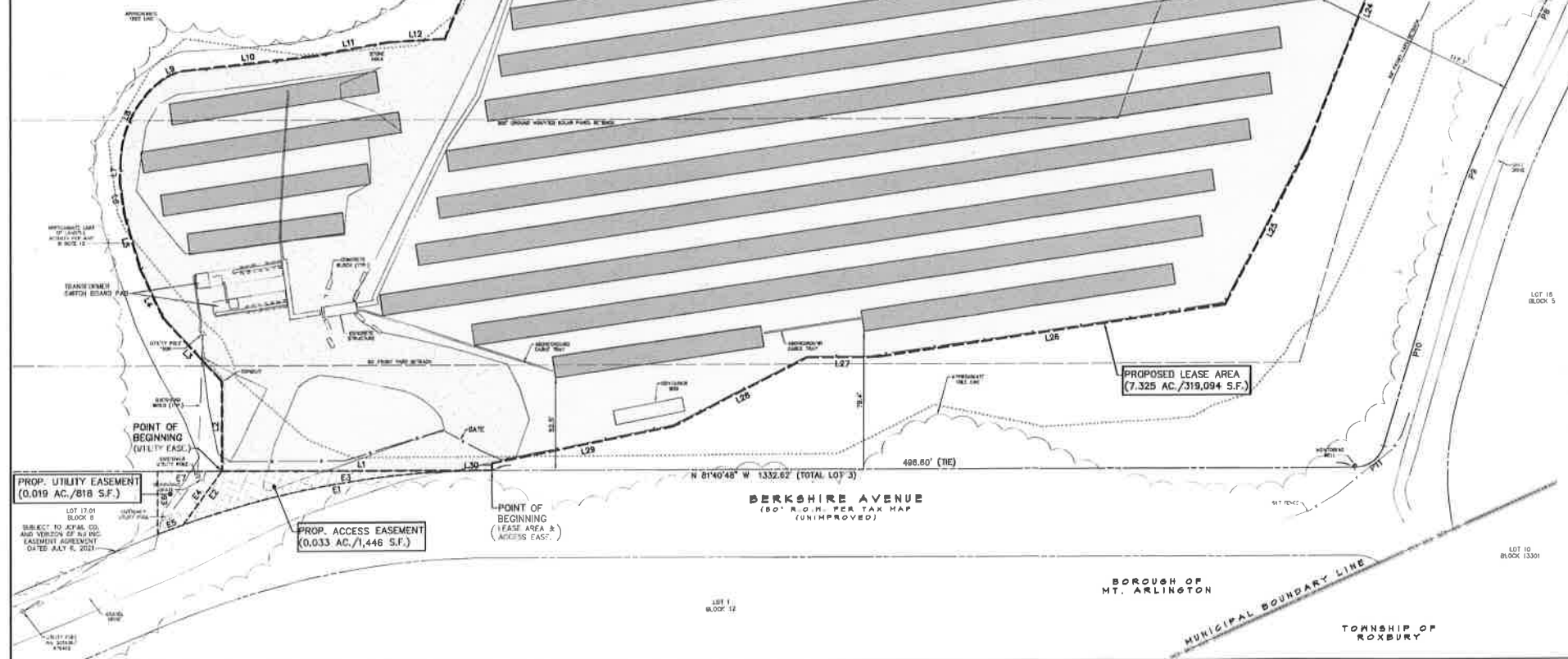
VICINITY MAP
USGS QUADRANGLE - STANHOPE & DOVER, NJ
SCALE: 1"=200'

GENERAL NOTES:

- THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE FOLLOWING:
 - MAP ENTITLED "AS-BUILT PLAN, HESP SOLAR, LOT 3 BLOCK 8, BOROUGH OF MOUNT ARLINGTON, MORRIS COUNTY, NEW JERSEY" DATED OCTOBER 12, 2021 AND LAST REVISED JUNE 15, 2022, PREPARED BY GLADSTONE DESIGN, INC.
 - PLANS ENTITLED "PRELIMINARY AND FINAL MAJOR SITE DEVELOPMENT PLANS, HESP SOLAR, LOT 3 BLOCK 8, BOROUGH OF MOUNT ARLINGTON, MORRIS COUNTY, NEW JERSEY," DATED SEPTEMBER 04, 2019 AND LAST REVISED FEBRUARY 06, 2022, PREPARED BY GLADSTONE DESIGN, INC.
 - MAP ENTITLED "AS-BUILT PLAN, HESP SOLAR, LOT 3 BLOCK 8, BOROUGH OF MOUNT ARLINGTON, MORRIS COUNTY, NEW JERSEY" DATED OCTOBER 12, 2021 AND LAST REVISED JUNE 15, 2022, PREPARED BY GLADSTONE DESIGN, INC.
- UNDERGROUND IMPROVEMENTS AND/OR UNDERGROUND ENCROACHMENTS, IF ANY, ARE NOT SHOWN HEREON.
- PRELIMINARY SUBJECT TO THE PROVISIONS OF SUCH STATEMENTS OF FACT THAT A CURRENT TITLE SEARCH MAY REVEAL.
- ONLY A PORTION OF LOT 3 BLOCK 8 SHOWN HEREON. SEE MAP IV NOTE 1A FOR ENTIRE PROPERTY.

PROPERTY LINE / CURVE TABLE						
LINE/CURVE	RADIUS/DIRECTION	LENGTH	DELTA	TANGENT	DIRECTION	CHORD
P1	S 135°24'4" W	23.87				
P2	S 15°01'1" W	122.89				
P3	S 10°00'0" W	50.84				
P4	S 88°12'0" W	108.38	100°41'00"	88.33	S 33°18'0" E	88.72
P5	S 88°12'0" W	88.17				
P6	S 88°12'0" W	78.68	100°10'00"	42.17	S 62°30'0" E	75.88
P7	S 88°12'0" W	78.68	100°10'00"	42.17	S 62°30'0" E	75.88
P8	S 88°12'0" W	88.17				
P9	S 88°12'0" W	102.45	100°10'00"	80.33	S 78°34'0" E	102.34
P10	S 88°12'0" W	113.85				
P11	S 88°12'0" W	113.85	100°10'00"	12.70	S 81°33'0" E	113.44

PROPOSED LEASE AREA
(7.325 AC./319,094 S.F.)



EASEMENT LINE / CURVE TABLE						
LINE/CURVE	RADIUS/DIRECTION	LENGTH	DELTA	TANGENT	DIRECTION	CHORD
E1	S 33°18'0" E	100.24	100°10'00"	37.88	S 88°12'0" W	174.83
E2	S 33°18'0" E	27.52				
E3	S 88°12'0" W	100.24				
E4	S 88°12'0" W	17.82				
E5	S 33°18'0" E	100.24	100°10'00"	37.88	S 88°12'0" W	174.83
E6	S 88°12'0" W	25.82				
E7	S 88°12'0" W	38.02				

LEASE LINE / CURVE TABLE						
LINE/CURVE	RADIUS/DIRECTION	LENGTH	DELTA	TANGENT	DIRECTION	CHORD
L1	S 88°12'0" W	155.40				
L2	S 88°12'0" W	88.00				
L3	S 88°12'0" W	48.00				
L4	S 88°12'0" W	20.00				
L5	S 88°12'0" W	22.00				
L6	S 88°12'0" W	15.00				
L7	S 88°12'0" W	15.00				
L8	S 88°12'0" W	59.30	100°10'00"	37.87	S 33°18'0" E	59.30
L9	S 88°12'0" W	42.00				
L10	S 88°12'0" W	71.57				
L11	S 88°12'0" W	45.00				
L12	S 88°12'0" W	33.00				
L13	S 88°12'0" W	41.00				
L14	S 88°12'0" W	188.33				
L15	S 88°12'0" W	38.00				
L16	S 88°12'0" W	42.00				
L17	S 88°12'0" W	80.00				
L18	S 88°12'0" W	11.00				
L19	S 88°12'0" W	23.00				
L20	S 88°12'0" W	68.00				
L21	S 33°18'0" E	34.00				
L22	S 88°12'0" W	61.00				
L23	S 88°12'0" W	16.00				
L24	S 33°18'0" E	174.00				
L25	S 33°18'0" E	400.00				
L26	S 88°12'0" W	203.00				
L27	S 88°12'0" W	41.00				
L28	S 33°18'0" E	88.00				
L29	S 88°12'0" W	108.00				
L30	S 88°12'0" W	4.00				



GLADSTONE DESIGN, Inc.

Consulting Engineers
Land Surveyors
Landscape Architects
and Planners
265 Main Street, P.O. Box 400
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NJ Certificate of Accreditation
No. 2471A2854490
Donald A. Kennedy, P.E., P.L.S., C.E.L.T., F.E.D. AP
Kurt T. Hanke, P.L.S.
Robert C. Mann
Robert C. Mann, P.E.



HESP SOLAR
LOT 3 BLOCK 8
BOROUGH OF
MOUNT ARLINGTON
MORRIS COUNTY
NEW JERSEY

LEASE AND EASEMENT EXHIBIT PLAN

DATE: JUNE 15, 2022
SCALE: 1"=33'
SHEET NO. 1037-03
JAG
SHEET NO. 1 OF 1

EXHIBIT B
FORM OF EASEMENT AGREEMENT

UTILITY AND ACCESS EASEMENT AGREEMENT

THIS AGREEMENT AND GRANT OF UTILITY AND ACCESS EASEMENT (the “**Easement Agreement**” or “**Agreement**”) is made August___, 2022, between the **BOROUGH OF MOUNT ARLINGTON**, in the County of Morris, New Jersey, a public body corporate and politic of the State of New Jersey, having its offices at 419 Howard Boulevard, Mount Arlington, New Jersey 07856 (the “**Grantor**” or the “**Borough**”), and **MT. ARLINGTON SOLAR 1, LLC**, a New Jersey limited liability company (the “**Redeveloper**” or “**Grantee**” having an address at 1 Paragon Drive, Suite 255, Montvale, New Jersey 07645.

WHEREAS, Grantor is the owner of certain real property identified as Block 8, Lot 17.01 on the official Tax Maps of the Borough of Mt. Arlington, Morris County, New Jersey (“**Lot 17.01**”); and

WHEREAS, the Grantee has redeveloped an adjoining parcel known as Block 8, Lot 3, which is also used to provide electrical services to the Borough through solar photovoltaic systems located thereon (the “**Redevelopment Area**”); and

WHEREAS, Grantee requires limited use of a portion of Lot 17.01 (the “**Property**”), as more fully described in Exhibit A attached to and made part of this Easement Agreement, for purpose of access to the Redevelopment Area and maintenance of certain utility poles within the Property, all of which inure to the ultimate benefit of the Borough; and

WHEREAS, the Grantee and Grantor intend to enter into this Agreement, to permit the access and maintenance described herein by the Grantee through and over the Property, and to the Redevelopment Area, all for the purposes herein expressed.

NOW, THEREFORE, the parties, intending to be legally bound, agree as follows:

Subject to the terms and conditions of this Easement Agreement, the Grantor for itself, its successors and assigns, hereby grants to Grantee, its successors and assigns:

1. Grant of Easement.

1.1 A 20-foot wide easement (the “**Utility Easement**”) over a portion of the Property, centered on the utility poles and lines depicted on Exhibit A attached to and made a part of this Easement Agreement (the “**Utility Easement Area**”), to construct, reconstruct, operate, inspect, renew, replace, improve, maintain, redesign, alter, relocate, extend and remove overhead, underground and ground level facilities (the “**Facilities**”), as may be deemed necessary or convenient by Grantee for electric purposes for the use and benefit of the Redevelopment Area and/or adjacent lands on, over, under and across along and beyond the Property which benefit from the Grantee’s operations upon the Redevelopment Area.

1.2. An easement over the shaded portion of the Property depicted on Exhibit A attached to and made a part of this Easement Agreement (the “**Access Easement Area**”), for the purpose of ingress and egress over the Property for access to the Redevelopment Area as and when required by

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maintenance, operations and services providers operated, directed or under the control of or by the Grantee, for the operations, maintenance and upkeep of the Redevelopment Area, and Grantee's operations thereon.

1.3 Grantor's obligations under this Easement Agreement shall run to the benefit of Grantor's lessees, licensees, invitees, successors and assigns.

1.4 The Easements granted hereunder shall expire coterminously with the expiration of that certain Ground Lease dated as of March 28, 2017, as amended from time to time, between the Borough and HESP Solar, LLC, and assigned by HESP Solar, LLC to Grantee herein, with the consent of Grantor.

2. Condition of Easement Areas.

2.1 The Utility Easement Area and the Access Easement Area are jointly referred to as the "Easement Areas". Grantee agrees that its exercise of both the easements granted and conveyed in this Easement Agreement is subject to the "AS IS" condition of the Easement Areas, including all defects, latent and patent. Grantor makes no representation as to the condition of the Easement Area or its suitability for the uses intended by Grantee. Grantee agrees that any and all precautions required by Grantee for the safe use of the Easement Areas for the purposes set forth herein shall be performed by Grantee and/or its contractors at no cost or obligation to the Grantor.

2.2 Grantee shall be solely responsible, at its sole cost and expense, to take all steps necessary and desirable to prevent any injury or damage to all persons and property in, on or about the Easement Areas arising in connection with the use of the Easement Areas granted in this Easement Agreement.

3. Construction; Maintenance and Repair; Limitation.

3.1 Grantee or Grantee's contractors, sub-contractors, and designees (collectively, the "**Grantee Designees**"), at no cost or expense to Grantor, may demolish, construct and reconstruct improvements in the Easement Areas for the purposes conveyed hereby, consistent with the terms of this Agreement (Grantee's improvement, renovation, demolition, construction and reconstruction in the Easement Areas shall be collectively referred to in this Agreement as the "**Work**"). Grantor has had opportunity to review, and hereby approves of, the contemplated Work, which is depicted on **Exhibit B** annexed hereto.

3.2 Grantee or Grantee's Designees, at no cost or expense to Grantor, shall take all steps necessary and desirable to accomplish the safe and efficient completion of its Work and to prevent damage to all areas and improvements adjoining the Easement Areas, which may include entering into an agreement with a third party to perform the Work at its or at the third party's own cost and expense. Grantor shall bear no responsibility for the costs and expenses of the Work.

3.3 Grantee shall, at its sole cost and expense, maintain and repair all of Grantee's improvements contained in the Easement Areas, which may include entering into an agreement with one or more Grantee Designees to perform such maintenance and repairs at its or

at such Grantee Designee's own cost and expense. The Grantor shall have no responsibility whatsoever to maintain or repair any of the Grantee's improvements in the Easement Areas.

3.4 Grantee shall be responsible to repair any damage to improvements on or in the Easement Areas or on or in the Grantor's Property caused by or through the exercise of the rights granted hereunder. In the event that any such repairs are not accomplished within a reasonable period of time after notice of the need for such repair(s) has been received by the Grantee from the Grantor, then Grantor shall have the right to effect such repairs at the cost and expense of Grantee.

4. Indemnification.

4.1 Grantee shall indemnify, defend, save, and hold harmless the Grantor, and its affiliates, and their respective officers, employees, agents, successors and assigns (collectively, the "**Indemnitees**"), from and against any and all losses, claims, suits, actions, damages, expenses (including but not limited to attorneys' and experts' fees and litigation costs), and liabilities, including but not limited to those in connection with loss of life, bodily and personal injury, or damage to property (real or personal, and regardless of ownership), which occur or arise, in whole or in part, as a result of or in connection with any work or thing done, in, on or about the Easement Areas, or any part of the Easement Areas, or in connection with this Agreement, by Grantee.

5. No Waiver.

5.1 No extensions or indulgence granted to Grantee shall operate as a waiver of any of the Grantor's rights under this Easement Agreement. Conversely, no extensions or indulgence granted to Grantor shall operate as a waiver of any of the Grantee's rights under this Easement Agreement. Any remedy set forth in this Easement Agreement shall be in addition to all other remedies otherwise available to either Party in law or equity.

6. Headings.

6.1 The headings in this Easement Agreement are for convenience only, and are not a part of this Easement Agreement. The headings do not in any way define, limit, describe, or amplify the provision of this Easement Agreement, or the scope or intent thereof.

7. Counterparts.

7.1 This Easement Agreement may be executed in one or more counterparts, each of which is an original, and all of which together are a single agreement.

8. Entire Agreement.

8.1 This Easement Agreement is the final and exclusive agreement of the Grantor and Grantee regarding the subject matter of this Easement Agreement. This Easement Agreement supersedes all prior negotiations or agreements regarding the subject matter of this Easement Agreement, either written or oral.

9. Severability.

9.1 If any provision of this Easement Agreement is illegal or unenforceable, that provision is hereby severed from this Easement Agreement and the other provisions remain in effect.

10. Binding Effect.

10.1 The Easements granted under this Easement Agreement shall at all times be deemed to be, and shall be, a continuing covenant running with the land, and shall be binding upon and in favor of the Grantor, Grantee and their successors and assigns, subject however to the limitations on their duration set forth within Section 1.4 above as the same pertain to the Ground Lease.

11. Survival.

11.1 Any and all agreements set forth in this Easement Agreement which, by its or their nature, would reasonably be expected to be performed after the expiration or earlier termination of this Easement Agreement, shall survive and be enforceable after the expiration or earlier termination of this Easement Agreement. Any and all liabilities, actual or contingent, which shall have arisen during the term of this Easement Agreement, shall survive any termination of this Easement Agreement.

12. Governing Law, Forum Selection, Waiver of Jury Trial.

12.1 The Parties agree that this Agreement shall be governed by and interpreted according to the laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the Parties hereto irrevocably submits to, and consents to, the jurisdiction of the Superior Court of New Jersey, Morris County Vicinage, for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated thereby. Each of the Parties hereto irrevocably waives any objection to the laying of venue, or that any such action or proceeding brought in said Court has been brought in an inconvenient forum. The Parties further agree that any claims relating to or arising out of this Agreement and the transactions contemplated thereby shall be tried before a Judge and without a trial by jury, and irrevocably waive any right to a trial by jury to the extent permitted by law. This Agreement shall be binding on the Parties, their respective successors, assigns, heirs, administrators and executors.

13. Amendments.

13.1 This Easement Agreement may not be amended orally, but may only be amended by written agreement signed by both the Grantor and Grantee.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

GRANTOR:

ATTEST:

BOROUGH OF MOUNT ARLINGTON, IN
THE COUNTY OF MORRIS, NEW JERSEY



By: _____
Michael Stanzilis, Mayor

GRANTEE:
MT. ARLINGTON SOLAR 1, LLC

WITNESS:

By: _____
Name:
Title:

STATE OF NEW JERSEY:

SS:

COUNTY OF MORRIS :

I CERTIFY that on _____, 2022, MICHAEL STANZILIS personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized and did execute this instrument as Mayor of the Borough of Mount Arlington, in the County of Morris, New Jersey; and
- (c) executed the instrument as the act of the Borough of Mount Arlington, in the County of Morris, New Jersey.

Notary Public

STATE OF NEW JERSEY:

SS:

COUNTY OF _____:

I CERTIFY that on _____, 2022, _____
personally came before me and stated to my satisfaction that this person (or if more than one, each
person):

- (a) was the maker of the attached instrument;
- (b) was authorized and did execute this instrument as authorized officer of Mt. Arlington Solar 1, LLC, a New Jersey limited liability company; and,
- (c) executed the instrument as the act of Mt. Arlington Solar 1, LLC.

Subscribed and sworn to before me on the _____ day of _____, 2022

Notary Public

EXHIBIT A

Description of Easement Areas

GLADSTONE DESIGN, Inc.

Consulting Engineers
Land Surveyors
Landscape Architects
Land Planners

265 Main Street, P.O. Box 400
Gladstone, New Jersey 07934
T: (908) 234-0309
F: (908) 719-3320
www.gladstonedesign.com

Ronald A. Kennedy, P.E.; P.P.; CME; LEED AP
Kurt T. Hanie, P.L.S.
Robert C. Morris
Robert C. Moschello, P.E.

June 15, 2022
1037-03

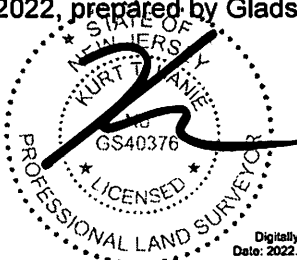
DEED DESCRIPTION OF A PROPOSED UTILITY EASEMENT OVER LOT 17.01 BLOCK 8 BOROUGH OF MOUNT ARLINGTON MORRIS COUNTY, NEW JERSEY

BEGINNING at a point in the line dividing Lots 3 and 17.01 Block 8, said point being distant 652.00 feet measured North $81^{\circ}40'48''$ West along said dividing line and the northerly sideline of Berkshire Avenue (50 foot right of way per tax map – unimproved) from the westerly terminus of a curve having a radius of 17.12 feet and an arc distance of 21.97 feet and connecting said northerly sideline of Berkshire Avenue with the westerly sideline of Southard Road (33 foot right of way per tax map - unimproved) and from said beginning point running; thence

1. South $44^{\circ}00'00''$ West, a distance of 37.50 feet crossing Lot 17.01 Block 8 to a point; thence
2. Westerly along the northerly sideline of Berkshire Avenue on a curve bearing to the left having a radius of 531.07 feet, an arc distance of 15.60 feet, a central angle of $01^{\circ}41'00''$, a chord bearing of South $77^{\circ}58'43''$ West and a chord distance of 15.60 feet to a point; thence
3. North $08^{\circ}19'12''$ East, a distance of 35.88 feet crossing Lot 17.01 Block 8 to a point; thence
4. South $81^{\circ}40'48''$ East, a distance of 36.50 feet along the line dividing Lots 3 and 17.01 Block 8 to the point and place of beginning.

CONTAINS: 0.019 Acres / 818 Square Feet - subject to easements, covenants, agreements and restrictions of record.

The foregoing description was prepared in accordance with a map entitled "Lease and Easement Exhibit Plan, HESP Solar, Lot 3 Block 8, Borough of Mount Arlington, Morris County, New Jersey," dated June 15, 2022, prepared by Gladstone Design, Inc.



Digitally signed by Kurt Hanie
Date: 2022.08.10 09:53:29-04'00'

KURT T. HANIE, P.L.S.
PROFESSIONAL LAND SURVEYOR
NJ LICENSE No. GS40376

\\res01\\Admin_Dept\\Jobs\\files - 1000-1099\\1037-03\\Survey Dept\\MB-UtilityEase.doc

GLADSTONE DESIGN, Inc.

Consulting Engineers
Land Surveyors
Landscape Architects
Land Planners

265 Main Street, P.O. Box 400
Gladstone, New Jersey 07934
T: (908) 234-0309
F: (908) 719-3320
www.gladstonedesign.com

Ronald A. Kennedy, P.E.; P.P.; CME; LEED AP
Kurt T. Hanie, P.L.S.
Robert C. Morris
Robert C. Moschello, P.E.

June 15, 2022
1037-03

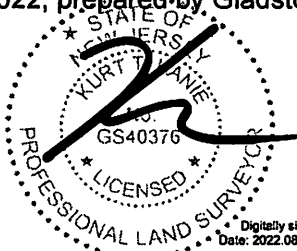
**DEED DESCRIPTION
OF A
PROPOSED ACCESS EASEMENT
OVER LOT 17.01 BLOCK 8
BOROUGH OF MOUNT ARLINGTON
MORRIS COUNTY, NEW JERSEY**

BEGINNING at a point in the northerly sideline of Berkshire Avenue (50 foot right of way per tax map – unimproved) where the same is intersected by the line dividing Lots 3 and 17.01 Block 8, said point being distant 496.60 feet measured North 81°40'48" West along said northerly sideline of Berkshire Avenue from the westerly terminus of a curve having a radius of 17.12 feet and an arc distance of 21.97 feet and connecting said northerly sideline of Berkshire Avenue with the westerly sideline of Southard Road (33 foot right of way per tax map - unimproved) and from said beginning point running; thence

1. Westerly along said northerly sideline of Berkshire Avenue on a curve bearing to the left having a radius of 531.07 feet, an arc distance of 180.74 feet, a central angle of 19°29'59", a chord bearing of South 88°34'12" West and a chord distance of 179.87 feet to a point; thence
2. North 44°00'00" East, a distance of 37.50 feet crossing Lot 17.01 Block 8 to a point; thence
3. South 81°40'48" East, a distance of 155.40 feet along the line dividing Lots 3 and 17.01 Block 8 to the point and place of beginning.

CONTAINS: 0.033 Acres / 1,446 Square Feet - subject to easements, covenants, agreements and restrictions of record.

The foregoing description was prepared in accordance with a map entitled "Lease and Easement Exhibit Plan, HESP Solar, Lot 3 Block 8, Borough of Mount Arlington, Morris County, New Jersey," dated June 15, 2022, prepared by Gladstone Design, Inc.

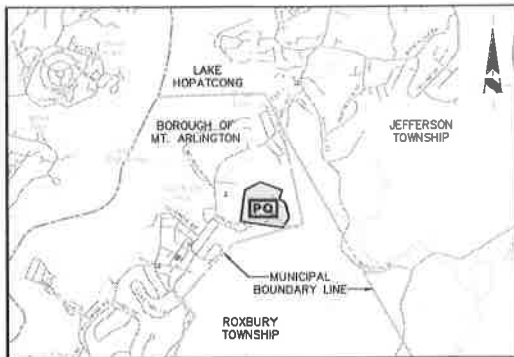


Digitally signed by Kurt Hanie
Date: 2022.06.10 09:50:30-04'00'

KURT T. HANIE, P.L.S.
PROFESSIONAL LAND SURVEYOR
NJ LICENSE No. GS40376

EXHIBIT B

Description of Work to be undertaken by Grantee



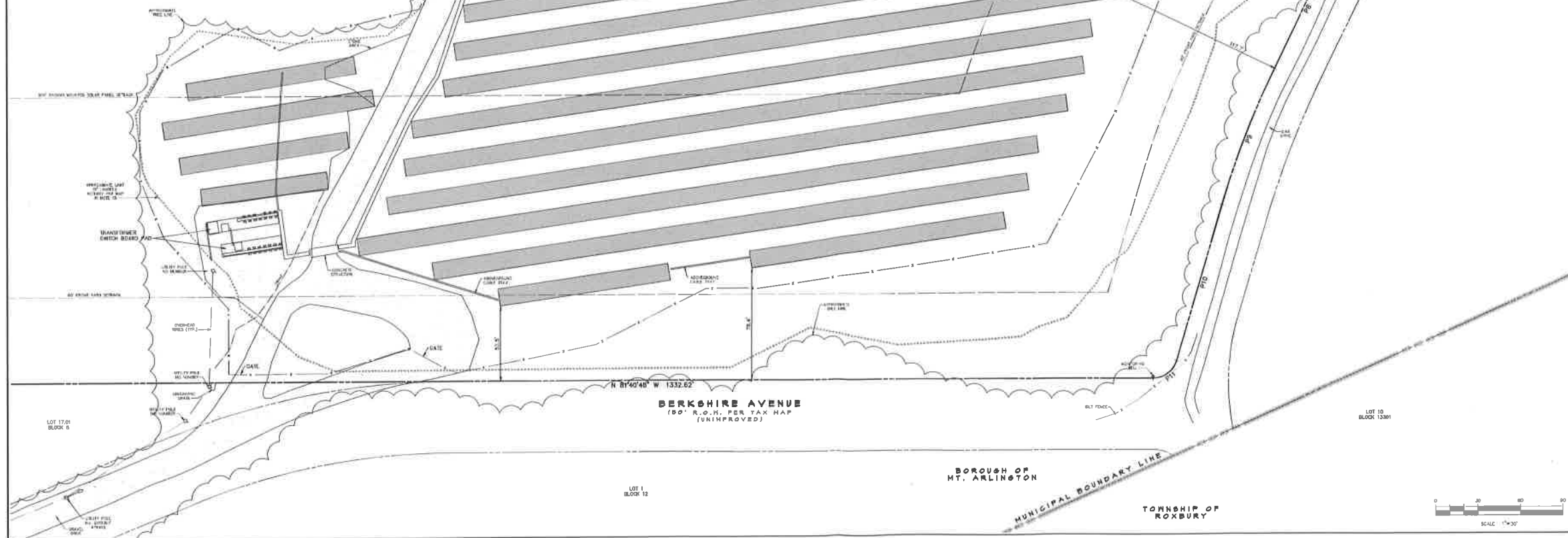
VICINITY MAP
USGS QUADRANGLE - STAMFORD & DOVER, NJ
SCALE: 1"=100'

LOT 3
BLOCK 8
N/T THE BOROUGH OF
MOUNT ARLINGTON
AND OR PER PO 183
AND P/O OR 1848 P.O. 21
15.640 ACRES / 15.640 A.C.

GENERAL NOTES:

1. THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE FOLLOWING:
A. MAP ENTITLED "MOUNTAIN LAND TITLE SURVEY, TAX MAP LOT 3 BLOCK 8, BOROUGH OF MOUNT ARLINGTON, MORRIS COUNTY, NEW JERSEY" DATED OCTOBER 12, 2021, PREPARED BY GLADSTONE DESIGN, INC.
B. PLANS ENTITLED "PRELIMINARY AND FINAL MAJOR SITE DEVELOPMENT PLANS, HESP SOLAR, LOT 3 BLOCK 8, BOROUGH OF MOUNT ARLINGTON, MORRIS COUNTY, NEW JERSEY," DATED SEPTEMBER 24, 2019 AND LAST REVISED FEBRUARY 18, 2020, PREPARED BY GLADSTONE DESIGN, INC.
C. AS-BUILT FIELD WORK PERFORMED BY GLADSTONE DESIGN, INC. BETWEEN AUGUST 2021 AND OCTOBER 12, 2021.
2. UNDERGROUND IMPROVEMENTS AND/OR UNDERGROUND ENCROACHMENTS, IF ANY, ARE NOT SHOWN HEREON.
3. PRELIMINARY SUBJECT TO THE FINDINGS OR SUCH STATEMENTS OF FACT THAT A CURRENT TITLE SEARCH MAY REVEAL.

LINE / CURVE TABLE						
LINE/CURVE	RADIUS/DIRECTION	LENGTH	DELTA	TANGENT	DIRECTION	CHORD
P1	S 123°13' W	83.12'				
P2	S 89°15' W	22.84'				
P3	S 10°51' W	50.84'				
P4	70.22	108.26	100°47'50"	83.22'	S 12°18' E	95.72'
P5	S 80°15' E	88.17'				
P6	88.07	10.81	133°04'30"	43.11'	S 80°33' E	15.88'
P7	82.88	10.84	143°36'30"	42.49'	S 79°17' E	14.97'
P8	S 24°02' W	82.17'				
P9	84.87	10.40	134°12'00"	39.57'	S 29°24' E	10.50'
P10	S 104°11' W	113.80'				
P11	113.11	28.47	177°33'00"	12.73'	S 4°33' E	28.46'



REVISIONS		
NO.	DATE	DESCRIPTION



KEY MAP
HESP
SOLAR



GLADSTONE DESIGN, Inc.

Consulting Engineers
Land Surveyors
Landscape Architects
Land Planners

241 Main Street, 3rd Floor
Haddonfield, New Jersey 07934
T: (856) 234-4599
F: (856) 779-5320

NJ Certificate of Authorization
No. 247022803400

Donald A. Kennedy, P.E., P.F., C.E., L.E.E.D. AP
Kurt T. Hane, P.L.S.
Bryan C. Morris
Robert C. Musicki, P.E.



KURT T. HANE, P.L.S.
NJ PROFESSIONAL LAND SURVEYOR
LICENSE NO. 6545318

HESP SOLAR
LOT 3 BLOCK 8
BOROUGH OF MOUNT ARLINGTON
MORRIS COUNTY
NEW JERSEY

AS-BUILT PLAN

DATE OCTOBER 12, 2021	
SCALE 1" = 30'	JOB NO. 1037-03
DESIGNED JAG	SHEET NO. 1 OF 1
CHECKED KTH	