

FRON bn, LLC (Frontier Solar)
Third Supplemental Response to Siting Board Staff's First Request for Information
Case No. 2023-00360

Request No. 1:

Submit a copy of the leases or purchase agreements, including options, separate agreements, or deeds that Frontier Solar has entered into in connection with the proposed solar facility, including the agreements for each of the parcels of the project

Response No. 1:

Due to file size limits, please find the FRON bn, LLC ("Frontier Solar" or "Project")'s redacted lease, purchase, and easement agreements attached as separate documents.

Supplemental Response:

Please see attached.

Responding Witness: Joseph Albrecht

COVER PAGE TO ENERGY EASEMENT OPTION AGREEMENT

Grantor	Joseph Larry Nalley and Connie Ann Nalley, husband and wife
Grantee	FRON bn, LLC, a Delaware limited liability company
Premises	Certain real property located in Marion County in the Commonwealth of Kentucky, more particularly described in the attached <u>Exhibit A</u> (" Premises ")
Option Term End Date	████████████████████
Easement Area Width	Not to exceed one hundred fifty (150) feet
Option Payment	One-time payment of ██, payable to Grantor (or Grantor's payment designee, as applicable) ██
Easement Fee	One-time payment, payable to Grantor (or Grantor's payment designee, as applicable), in an amount equal to ██ pertaining to collector lines, transmission lines and/or other utility lines to be installed on the Premises paid within ██
Addresses for Notice	<p><u>If to Grantor:</u> Joseph Larry Nalley and Connie Ann Nalley 2950 Springfield Road Lebanon, KY 40033 Email: _____</p> <p><u>If to Grantee:</u> BrightNight, LLC 515 North Flagler Drive, Suite P-200 West Palm Beach, FL 33401 Attn: Legal Email: legal@brightnightpower.com</p>

Energy Easement Option Agreement

This Energy Easement Option Agreement (“**Agreement**”) is made as of the latest date of signature below (“**Effective Date**”) between Grantor and Grantee. Grantor and Grantee are referred to individually herein as “**Party**” and are collectively referred to as “**Parties**”.

RECITALS

- A. Grantor is the owner of the Premises.
- B. Grantee is exploring the possibility of developing, owning and operating an energy generation and/or storage facility (“**Project**”).
- C. Grantee desires to obtain certain easements, easement rights and other rights, and Grantor desires to grant certain easements and other rights, on the Premises for energy purposes.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. OPTION AND EASEMENT

Section 1.1 Option. Grantor grants to Grantee an exclusive option (“**Option**”) to acquire the Energy Easement (as defined below) on the following terms and conditions:

- (a) Option Term. The term of the Option shall begin on the Effective Date and expire [REDACTED] (“**Option Term**”).
- (b) Use of Premises During Option Term. During the Option Term, Grantee and its employees, agents and contractors shall have a non-exclusive right to enter the Premises and the right of ingress and egress over and across the Premises for the purposes of (i) surveying the Premises and (ii) performing such test and studies on, over, under, and across the Premises as Grantee may desire in connection with the Option, including without limitation, environmental, avian and cultural resource assessments, and geotechnical, foundation and soil testing, provided that such activities do not unreasonably interfere with Grantor’s use of the Premises.
- (c) Exercise of Option. Grantee may exercise the Option by giving written notice to Grantor (“**Option Notice**”) at any time during the Option Term. Upon delivery of the Option Notice, the Energy Easement shall automatically become effective, and Grantor and Grantee shall be subject to all of the terms and conditions of this Agreement with respect to the Energy Easement and all related rights and obligations.

Section 1.2 Energy Easement.

- (a) Upon Grantee’s exercise of the Option, Grantor grants to Grantee, an exclusive, irrevocable, perpetual right and easement on, along, over, under and across a portion of the Premises (“**Easement Area**”) for the purposes of developing, constructing, reconstructing, erecting, improving, replacing, relocating, removing from time to time, maintaining, and using overhead and underground wires and cables, a line or lines of towers or poles with such wires and cables

suspended therefrom for the transmission or collection of electrical energy and/or for communication purposes (hereinafter, "Facilities") and other appliances and fixtures for use in connection with said towers, wires and cables on, along, over, under and across the Easement Area ("Energy Easement"). Such activities may be conducted by Grantee, its employees, contractors or agents, licensees or permittees. Following the completion of the initial construction of the Facilities, the Easement Area shall not exceed the Easement Area Width.

(b) Upon Grantee's exercise of the Option, Grantor grants to Grantee, easements over, across and on the Premises outside the Easement Area for ingress to and egress from the Easement Area and Facilities (whether located on the Premises, on adjacent property or elsewhere) for purposes of constructing, repairing, or monitoring the Facilities, by means of roads and lanes thereon if existing, or otherwise by such route or routes as Grantee may construct from time to time ("Access Easement") (the Energy Easement and Access Easement are collectively, the "Easement"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Grantor and Grantee and their respective transferees, successors and assigns, and all persons claiming under them. Grantee agrees to use commercially reasonable efforts to locate access roads, if any, so as to minimize the interruption of Grantor's operations on the Premises.

(c) Grantee shall make good faith efforts to consult with Grantor on the site development plan prior to finalizing the location of the Easement Area, and consider any suggestions or concerns Grantor may have with the location of the Easement Area and shall implement those that, in Grantee's sole discretion, are reasonable and do not negatively impact the Project. The anticipated location of the Easement Area is depicted on the attached Exhibit A-1. A legal description of the Easement Area shall be attached to this Agreement as Exhibit B after Grantee's selection of the Easement Area. Grantee shall use commercially reasonable efforts to minimize interference with Grantor's farming operations and to locate the Easement Area along existing roads. Grantee shall compensate Grantor for crop damage occurring during construction of the Facilities, as set forth in Section 4.2.

(d) Grantee shall have the right to clear and to keep the Easement Area free and clear of any permanent buildings, combustible material and any and all other new permanent structures. Grantee shall have the right to trim or remove brush, trees or other hazards on the Premises which, in the reasonable opinion of Grantee, may interfere with Grantee's exercise of its rights hereunder. Once Grantee begins construction of the Facilities, Grantor may not place or plant any trees, or build any permanent structures or improvements within the Easement Area or on the Premises that would impede or interfere with transmission of electrical energy, without the prior written consent of Grantee.

(e) Grantor hereby grants to Grantee all other rights and privileges necessary and incidental to the full use and enjoyment of the Easement for the purposes permitted in this Agreement.

Section 1.3 Grantee's Improvements. All Facilities constructed, installed or placed on the Premises by Grantee pursuant to this Agreement shall be the sole property of Grantee and Grantor shall have no ownership or other interest in any Facilities on the Premises. The Facilities are and shall remain personalty of the Grantee, notwithstanding any present or future common ownership of the Facilities and the Premises. Grantee shall, at its sole cost and expense, maintain

Grantee's Facilities in good condition and repair, ordinary wear and tear excepted. All Facilities constructed, installed or placed on the Premises by Grantee pursuant to this Agreement may be moved within the Easement Area, replaced, repaired or refurbished by Grantee at any time.

ARTICLE 2. TERMINATION

Section 2.1 Termination of Agreement. The occurrence of any of the following events shall terminate this Agreement:

(a) Grantee's failure to exercise the Option within the Option Term.

(i) If Grantee fails to exercise the Option within the Option Term, Grantee shall record a document in the public records of the county in which the Premises is located releasing Grantor and the Premises from the terms of this Agreement.

(b) The written agreement of the Parties to terminate this Agreement;

(c) Grantee's execution and delivery of written notice of termination to Grantor, in Grantee's sole and absolute discretion, as to all or any portion of the Easement Area.

ARTICLE 3. PAYMENTS

Section 3.1 Option Payment. [REDACTED]

[REDACTED] Grantee shall pay Grantor (or, if applicable, Grantor's payment designee) the Option Payment as set forth on the cover page. Grantee, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time during the Option Term upon thirty (30) days' written notice to Grantor.

Section 3.2 Easement Payment. As consideration for granting the Energy Easement, Grantee shall pay Grantor (or, if applicable, Grantor's payment designee) the Easement Fee as set forth on the Cover Page.

Section 3.3 Payment Upon Termination. If Grantee terminates this Agreement, Grantee will only be obligated to pay Grantor any amounts due and owing prior to the date of such termination. If Grantee terminates this Agreement prior to the date upon which any payments would be due and owing, then no such payment will be due or owing to Grantor.

ARTICLE 4. INDEMNIFICATION; CROP DAMAGES AND INSURANCE

Section 4.1 Indemnification. Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively the "**Indemnified Party**") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Grantor, any operations or activities conducted on the Premises by any person or entity other than Grantee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or

omission on the part of the Indemnified Party. This indemnification shall survive the termination of this Agreement.

Section 4.2 Crop Damages.

(a) Grantee shall pay Grantor crop damages for all crops that are removed or damaged as a direct result of Grantee's Option Term activities and/or construction of the Facilities on the Premises, as calculated below ("**Crop Damages**"). Crop Damages attributable to Grantee's Option Term activities will be paid within a reasonable period of time, [REDACTED] after such damage occurs. [REDACTED]

Crop damages will be calculated by the following formula:

[REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(b) Grantor Records. Promptly after construction activities on the Premises, Grantee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Grantor. [REDACTED]

[REDACTED] Grantor may submit records and documentation ("**Grantor Records**") that Grantor believes accurately reflect the [REDACTED]. For purposes of the foregoing, "Grantor's Records" shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Grantee's sole cost and expense. Grantee shall remit payment for any Crop Damage to Grantor [REDACTED] following Grantee's receipt of the results of the impartial party's calculation.

Section 4.3 Insurance.

(a) Prior to entry on the Premises, Grantee shall obtain and maintain the following insurance covering the Facilities and Grantee's activities on the Premises at all times during the term.

(i) Commercial General Liability insurance with coverage of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate.

(ii) Commercial Automobile Liability insurance with coverage of at least one million dollars (\$1,000,000) per occurrence.

(b) Such insurance coverage for the Facilities and Premises may be provided as part of a blanket policy that covers other facilities or properties as well. A combination of primary and umbrella/excess policies may be used to satisfy limit requirements. All insurance policies provided hereunder shall (i) be written on an occurrence basis, and (ii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to Grantor. Grantees agree to endeavor to provide not less than ten (10) days' notice before insurance is terminated or otherwise cancelled. Grantee's policies shall contain a clause making them primary and non-contributory and provide Grantor with additional insured status solely with respect to Grantee's activities on the Premises.

(c) Upon Grantor's request Grantee shall deliver to Grantor certificates of insurance evidencing the above-required coverage. Grantor's failure to request, review or accept such certificate shall in no way limit or relieve Grantee of the duties and responsibilities to maintain insurance as set forth in this Agreement.

ARTICLE 5. ASSIGNMENT; ENCUMBRANCE OF AGREEMENT

Section 5.1 Right to Encumber.

(a) Grantee may at any time mortgage all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any entity, including, but not limited to, any tax equity investor ("Lender") without the consent of Grantor. Any Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Grantee's interests subject to the lien of Lender's mortgage by foreclosure or otherwise assumes the obligations of Grantee directly.

(b) Grantor and Grantee agree that, once all or any part of Grantee's interests in the Agreement are mortgaged or assigned to a Lender, they will not modify or terminate this Agreement without the prior written consent of the Lender.

(c) Grantor agrees that any Lender or investor shall have the right to make any payment and to do any other act or thing required to be performed by Grantee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent a default under this Agreement and any forfeiture of any of Grantee's rights under this Agreement as if done by Grantee itself.

(d) During the time all or any part of Grantee's interests in the Agreement are mortgaged or assigned to any Lender, if Grantee defaults under any of its obligations and Grantor is required to give Grantee notice of the default Grantor shall also be required to give Lender notice of the default. If Grantor becomes entitled to terminate this Agreement due to an uncured default by Grantee, Grantor will not terminate this Agreement unless it has first given written notice of the

uncured default and of its intent to terminate this Agreement to the Lender and has given the Lender at least thirty (30) calendar days to cure the default to prevent termination of this Agreement. If within such thirty (30) day period the Lender notifies the Grantor that it must foreclose on Grantee's interest or otherwise take possession of Grantee's interest under this Agreement in order to cure the default, Grantor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Grantee's interest under this Agreement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Grantee. The time within which Lender must foreclose or acquire Grantee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(c) The acquisition of all or any part of Grantee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Grantor nor constitute a breach or default of this Agreement by Grantee, and upon the completion of the acquisition or conveyance Grantor shall acknowledge and recognize Lender as Grantee's proper successor under this Agreement upon Lender's cure of any existing Grantee defaults and assumption of the obligations of Grantee under this Agreement prospectively.

(f) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Grantor agrees, upon request by any Lender within sixty (60) calendar days after the rejection or termination, to execute and deliver to Grantee or Lender a new Agreement for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Grantee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new agreement Grantee, or Lender shall (i) pay Grantor any amounts which are due Grantor from Grantee, (ii) pay Grantor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new agreement and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Grantee under this Agreement to the extent Grantee failed to perform them prior to the execution and delivery of the new agreement.

Section 5.2 Assignment. Grantee and any successor or assign of Grantee shall at all times have the right, without need for Grantor's consent, to grant co-easements, to one or more third parties with respect to all or any portion of the Easement Area; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Grantee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Grantee in the Easement Area or in any or all of the Facilities that Grantee or any other party may now or hereafter install on the Easement Area provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Grantee; and (iii) Grantee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Grantee assigns or conveys all of its interests under the Agreement to the assignee or transferee, in which event Grantee shall have no continuing liability. Upon any

assignment or transfer of any or all of Grantee's interests hereunder, Grantee shall provide notice of such assignment or transfer to Grantor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

ARTICLE 6. CONDEMNATION/FORCE MAJEURE

Section 6.1 Condemnation. If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Grantee's construction, installation or operation of Facilities on the Easement Area, the Parties shall either amend this Agreement to reflect any necessary relocation of the Facilities which will preserve the value and benefit of the Agreement to Grantee, together with any corresponding payments, or, at Grantee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Grantee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

Section 6.2 Proceeds. All payments made by a condemnor on account of a taking by eminent domain shall be the property of Grantor, except that Grantee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Facilities or the loss of any such Facilities or the use of the Easement Area pursuant to the Agreement. Grantee shall have the right to participate in any condemnation proceedings to this extent.

Section 6.3 Force Majeure. Neither Grantor nor Grantee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a force majeure, which shall mean an event beyond the control of the Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided that such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.

ARTICLE 7. DEFAULT

Section 7.1 Limitation on Remedies. Notwithstanding any other provision of this Agreement or any rights or remedies which Grantor might otherwise have at law or in equity, at all times while there are Facilities being constructed or located on the Premises Grantor shall not and hereby waives the right to commence any action or proceeding in which termination, cancellation, rescission or reformation of this Agreement is sought as a remedy and Grantor shall be limited to seeking damages in the event of any failure by Grantee to perform its obligations hereunder: [REDACTED]

Section 7.2 Specific Performance. Grantor acknowledges and agrees that should Grantor breach any of its obligations hereunder or otherwise fail to permit Grantee to exercise any of the rights and privileges granted herein, damages would be difficult to calculate and money damages would not be sufficient to compensate Grantee for such breach, and therefore, Grantor agrees that Grantee shall have the right to seek specific enforcement of this Agreement. [REDACTED]

ARTICLE 8. MISCELLANEOUS

Section 8.1 Notice. Notices, consents or other documents required or permitted by this Agreement shall be in writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five (5) calendar days of the date deposited in the mail sent to the physical address as set forth on the Cover Page, by certified mail or similar service, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical addresses below (or at such other address as either Party may designate upon written notice to the other Party in the manner provided in this paragraph).

Section 8.2 Hazardous Materials.

(a) Grantee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Grantee's operations, any substance which is defined as a "hazardous material", "toxic substance" or "solid waste" in any federal, commonwealth or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Grantor and is in full compliance with all applicable laws. Grantee shall consult with Grantor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises.

(b) Grantor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Grantor's operations, any substance which is defined as a "hazardous substance", "hazardous material", to "solid waste" in any federal, commonwealth or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Grantee and is in full compliance with all applicable laws. Grantor represents to Grantee that Grantor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Grantee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

Section 8.3 Title and Authority. Except to the extent otherwise stated in this Agreement, Grantor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Grantor has the full and unrestricted authority to execute and deliver this Agreement and to grant the easements and rights granted herein and Grantor shall deliver written evidence of such authority (including, without limitation, any and all consents or any other applicable documentation granting Grantor the authority to enter into and consummate this Agreement, any related agreements or the transactions contemplated hereunder). All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Grantor. When signed by Grantor, this Agreement constitutes a valid and binding agreement enforceable against Grantor in accordance with its terms. There are no encumbrances, liens or other title defects against the Premises. To the extent that any such encumbrances or other title defects could interfere

with the development, construction or operation of the Project or otherwise interfere with the rights of Grantee under this Agreement, Grantor shall reasonably cooperate with Grantee, at no out-of-pocket cost to Grantor, to take such actions required to remove or otherwise cure any such encumbrances or defects. There are no farm or other tenancies affecting the Premises except those disclosed by Grantee to Grantor in writing prior to or at the time of execution hereof.

Section 8.4 Quiet Enjoyment. As long as Grantee is not in default under this Agreement, Grantee shall have the quiet use and enjoyment of the Easement Area in accordance with the terms of this Agreement without any interference of any kind by Grantor or any person claiming through Grantor. Grantor and its activities on the Premises and any grant of rights Grantor makes to any other person shall not interfere with any of Grantee's activities pursuant to this Agreement, and Grantor shall not interfere with any of Grantee's activities pursuant to this Agreement.

Section 8.5 Cooperation; Setback; Further Assurances. Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Grantor shall cooperate with Grantee and use Grantor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Grantee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Grantor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder thereof with any rights granted to Grantee under this Agreement. Grantor shall also cooperate with Grantee to obtain and maintain any permits needed for the Facilities. Grantor hereby waives any and all setback requirements allowed by law.

Section 8.6 Estoppel Certificates. Within fifteen (15) calendar days of receipt of a request from Grantee or from any existing or proposed Lender, Grantor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement, (b) certifying to the best of Grantor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature thereof) and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Grantee and any existing or proposed Lender, investor, and purchaser. The failure of Grantor to deliver such statement within such time shall be conclusive evidence upon Grantor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Grantee under this Agreement.

Section 8.7 Running with the Land. The burdens of the Easements and all other rights granted to Grantee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Grantor and all heirs, legal representatives, successors, assigns, permittees, licensees, Grantees, employees and agents of Grantor. The Agreement and Easements shall inure to the benefit of Grantee and its successors, assigns, permittees, licensees and Grantees.

Section 8.8 Entire Agreement. It is mutually understood and agreed that this Agreement, together with any payment designation forms, constitutes the entire agreement between Grantor and Grantee with regard to the subject matter herein and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings,

representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

Section 8.9 Legal Matters.

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth where the Premises is located.

(b) Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Grantor and Grantee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement.

Section 8.10 Waiver. Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

Section 8.11 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

Section 8.12 Memorandum. Grantor and Grantee shall execute, in recordable form, and Grantee shall then record, a memorandum of this Agreement (in a form substantially similar to the form attached as Exhibit C) ("Memorandum"). In the event the Option is exercised, Grantee shall have the right to file an amendment to the Memorandum revising the legal description of the Easement Area with the legal description provided by Grantee's surveyor. Grantor hereby grants Grantee the right to execute such amendment to the Memorandum without obtaining the prior consent of Grantor and without requiring Grantor's signature. Grantee shall provide a copy of each such amendment to Grantor within sixty (60) calendar days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit B. Grantor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Grantor, Grantee agrees to provide a recordable acknowledgment of such termination to Grantee.

Section 8.13 Multiple Owners. The parties comprising Grantor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Grantor shall resolve any dispute they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Grantor under this Agreement or the performance of any obligation owed to Grantor under this Agreement and shall not join Grantee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Grantee under this Agreement in any way; provided, this will not limit the rights of Grantor under this Agreement to enforce the obligations of Grantee under this Agreement and so long as all parties comprising Grantor agree on pursuing such right or remedy and so notify Grantee in writing.

Section 8.14 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

Section 8.15 Cover Page. The terms of the Cover Page attached hereto are incorporated into this Agreement and all terms therein shall apply to defined terms used herein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the Effective Date.

GRANTOR:

Joseph Larry Nalley
Name: Joseph Larry Nalley

Dated: 2-23-24

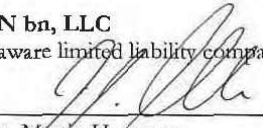
Connie Ann Nalley
Name: Connie Ann Nalley

Dated: 2-23-24

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the Effective Date.

GRANTEE:

FRON bn, LLC
a Delaware limited liability company

By: 
Name: Martin Hermann
Title: Manager

Dated: 3/28/2024

By: _____
Name: Ron Kiecana
Title: Chief Development Officer

Dated: _____

EXHIBIT A

DESCRIPTION OF PREMISES

Marion County, Kentucky

Parcel 1:

Tax ID No: 055-005

A triangular tract of land with the house located thereon situated on the West side of the Lebanon-Springfield Turnpike and containing approximately 1-1/2 acres, more or less, and being bounded on the South by the property of Maxie Avritt; on the North by the property of Ray Mattingly; and on the East by said Lebanon-Springfield Turnpike.

THERE IS EXCEPTED out of the above-described property, a certain tract of land consisting of approximately 0.53 acres conveyed as a permanent right of way to the Commonwealth of Kentucky, Department of Highways by Deed dated May 25, 1978, and of record in Deed Book 115, at page 298, in the office of the Marion County Court Clerk.

Being the same property conveyed to Joseph Larry Nalley and Connie Ann Nalley, husband and wife by Deed Book 165, Page 52 of the Marion County, Kentucky Clerk's Office.

Parcel contains 1.20 acres, more or less

The Property contains 1.20 acres, more or less

EXHIBIT A-1
ANTICIPATED LOCATION OF EASEMENT AREA

Exhibit A-1

EXHIBIT B
EASEMENT AREA

[To be provided]

Exhibit B

EXHIBIT C
MEMORANDUM
[Attached]

Exhibit C