

TOLLING AGREEMENT

^{22nd} THIS TOLLING AGREEMENT (this "Tolling Agreement") is made and entered into this 22nd, day of November, 2021 (the "Effective Date"), by and among North Annville Township (the "Township") through their counsel Anthony Sherr, Esquire, Sherr Law Group, LLP, and Lebanon Solar I, LLC, ("Applicant"), through its counsel Elizabeth A. Dupuis, Esquire, Babst Calland Clements & Zomnir, P.C. (each of the Township and Applicant are a "Party" and collectively the "Parties").

Recitals:

WHEREAS, Applicant filed a Conditional Use Application ("CUA") with the Township on May 3, 2021, to obtain conditional use approval for a solar farm in the Township;

WHEREAS, the Township scheduled an initial hearing on the CUA for June 24, 2021, which was later postponed pursuant to a written agreement that required the Township hold the initial hearing prior to Monday, September 13, 2021;

WHEREAS, the Township rescheduled the initial hearing on the CUA for September 9, 2021, which was canceled;

WHEREAS, the Applicant has filed a Complaint in Mandamus with the Lebanon County Court of Common Pleas docketed to 2021-01236 ("Complaint"), which Complaint was filed on October 11, 2021;

WHEREAS, upon receipt of the Complaint, the Township filed an Answer and New Matter on November 10, 2021, which is pending response from Applicant;

WHEREAS, the Township has now scheduled and advertised a hearing on the CUA for November 23, 2021;

WHEREAS, the Parties have agreed to reschedule the hearing scheduled for November 23, 2021, with no prejudice to either party, and further agree by mutual consent, that a first hearing on the CUA will be opened and held on January 25, 2022, with a second hearing day scheduled for January 26, 2022, at the Union Water Works Fire Hall, Annville, Pennsylvania, each hearing to start at 6:30 p.m.

WHEREAS, in an effort to avoid expense related to further litigation on the Complaint, the Parties have agreed to enter into this Tolling Agreement to preserve each Party's respective interests and claims with respect to the Complaint while allowing time for the parties to proceed with the hearing to determine the merits of the CUA.

NOW, THEREFORE, for good and valuable consideration, the Parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and are incorporated herein by this reference as though set forth in full.

2. Effective Date. This Tolling Agreement shall be effective as of the Effective Date.

3. Tolling Agreement. As of the Effective Date, further action, required by either party, on the Complaint and litigation related thereto, shall be tolled until such time as the hearing on the CUA is completed and a decision is rendered. At that time, the Applicant will either elect to voluntarily dismiss the Complaint with prejudice or will elect to proceed on its Mandamus Action. However, the parties further agree that if no election is made by Applicant within 45 days of the date the decision is rendered by the township on the CUA, the township may file a Motion for Non Pros, which the Applicant will not contest.

4. Certain Defenses Preserved. By entering into this Tolling Agreement, the Parties do not acknowledge the existence or validity of any claims of the other Party, and they expressly reserve any and all defenses to the claims of the other Party. The Township agrees that Applicant's participation in any hearings on the CUA does not in any way waive Applicant's deemed approval argument detailed in the Complaint.

5. Benefit of Counsel. Each of the Parties has had the benefit of counsel of their choice and has been offered a sufficient opportunity to review this Tolling Agreement with counsel of their choice. The Parties further acknowledge that they have, individually or through their respective counsel, participated in the preparation of this Tolling Agreement, and it is understood that no provision hereof shall be construed against anyone by reason of the Party having drafted or prepared this Tolling Agreement and no canon of construction shall be applied that resolves ambiguities against the drafter of a document.

6. Jurisdiction and Governing Law. Any dispute regarding the interpretation of this Tolling Agreement will be submitted to the Courts in Lebanon County, Pennsylvania. This Tolling Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard for its conflicts of law.

7. Counterparts. This Tolling Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Tolling Agreement may be delivered by facsimile, electronic mail or other electronic transmission with the same effect and delivery of an original.

8. Representations. Each of the persons executing this Tolling Agreement represents and warrants that he or she has the full legal power, capacity, and authority to bind the Party on behalf of whom he or she is acting, and that this Tolling Agreement constitutes a legal, binding obligation of the Party enforceable in accordance with its terms.

9. Binding Effect. This Tolling Agreement shall be binding upon the heirs, personal representatives, partners, administrators, successors and assigns of each of the Parties.

10. Amendments and Extensions. This Tolling Agreement may not be modified, altered or amended except by a writing signed by or on behalf of all of the Parties hereto. This Tolling Agreement may be extended by further written agreement signed by or on behalf of all of the Parties hereto.

11. Notice. For purposes of any notices under this Tolling Agreement, the following contacts/addresses shall be used:

Township:

North Annville Township Board of Supervisors
c/o Paul C. Bametzreider, Esquire
Reilly Wolfson
1601 Cornwall Road
Lebanon, PA 17042
paulb@reillywolfson.com

w/copy to counsel:

Anthony Sherr, Esquire
SHERR LAW GROUP, LLP
101 W. Airy Street, Suite 100
Norristown, PA 19401
tsherr@sherrlawgroup.com

Applicant:

Eric Holton
Lebanon Solar I, LLC/Enel Green Power North America, Inc.
100 Brickstone Square, Suite 300
Andover, MA 01810
eric.holton@enel.com

Steven M. Lucas, Esquire
Lebanon Solar I, LLC/ Enel Green Power North America, Inc.
slucas@rousepc.com

w/copy to counsel:

Elizabeth A. Dupuis, Esquire
BABST, CALLAND CLEMENTS & ZOMNIR, P.C.
330 Innovation Boulevard, Suite 302
State College, PA 16803
bdupuis@babstcalland.com

Either Party shall promptly notify the other Party of a change in address and/or contact information.

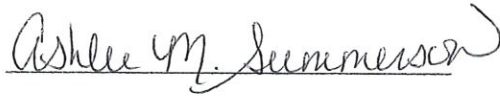
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IN WITNESS HEREOF, and intending to be legally bound hereby, each of the Parties has caused this Tolling Agreement to be executed as of the Effective Date.

WITNESS:




WITNESS:



TOWNSHIP:

By Counsel, SHERR LAW GROUP, LLP

By: 
_____ Anthony Sherr, Esquire

APPLICANT:

By Counsel, Babst Calland Clements &
Zomnir, P.C.

By: 
_____ Elizabeth A. Dupuis, Esquire