

## DECOMMISSIONING AGREEMENT

This **DECOMMISSIONING AGREEMENT** ("Agreement") dated as of May \_\_, 2024 ("Effective Date") is made by and among the **Town of Forestburgh**, a municipal corporation under the laws of the State of New York with offices at 332 King Road, Forestburgh, New York 12777 ("Town"), **NY Forestburgh I, LLC**, a New York limited liability company with its principal office at 560 Davis Street, Suite 250, San Francisco, California 94111 ("Solar Project Developer") and **2380 State Route 42, LLC**, a New York limited liability company having a mailing address of 33 Lower Main Street, P.O. Box 384, Callicoon, New York 12723 ("Owner"). The Town, Solar Project Developer and Owner are collectively referred to herein as the "Parties".

WHEREAS, Solar Project Developer intends to permit, construct, operate and maintain solar energy facilities with an aggregate size of approximately 5.0 Megawatts of alternating-current nameplate capacity that will generate electric power ("Project") on a portion of the Owner's property, more particularly identified on the Town tax map as Section 30, Block 2, Lot 1.2 ("Property"); and

WHEREAS, the Town Planning Board conducted reviews as required under the Code of the Town, including the Solar Energy Systems of the Zoning Law and issued the necessary approvals to construct the Project ("Approvals") at a meeting on March 26, 2024. The Approvals were issued on the condition that, among other things, the applicant submit a final decommissioning plan ("Decommissioning Plan") and Decommissioning Bond or other security (as defined below) acceptable to the Town, providing the Town with access to funds for the Decommissioning (as defined below) of the Project on the terms and conditions set forth under this Agreement; and

WHEREAS, the Parties now desire to enter into this Agreement as required by the Town and to agree upon terms and conditions of the financial security to be provided to the Town for the purpose of Decommissioning the Project.

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

1. Prior to issuance of a building permit ("Permit Date"), the Solar Project Developer shall post Decommissioning Bond with the Town ("Decommissioning Bond") executed by an approved surety licensed in New York State in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000.00) Dollars ("Initial Bond Amount") for the benefit of the Town upon the terms and conditions set forth in this Agreement. At the end of each one-year period following the date the Project first commercially operates ("Commercial Operations Date"), Solar Project Developer shall renew the Decommissioning Bond at a value of the Initial Bond Amount, together with an additional two (2%) percent annual compounding escalation amount on the anniversary or the Commercial Operations Date ("COD Anniversary Date"), in accordance with Exhibit A, Decommissioning Bond Schedule.

Upon posting of the Decommissioning Bond, the Solar Project Developer will provide the Town with specific contact information (e.g. name, title, phone number and email) for the financial provider that issued the Decommissioning Bond. Any Decommissioning Bond shall contain provisions that the surety consents to the jurisdiction of the courts in Sullivan County, New York, that any litigation involving the surety or Decommissioning Bond shall be venued in the courts in Sullivan County, New York, and that the Decommissioning Bond

shall not expire or terminate by reason of time or deadline, or a failure to pay the bond premium, without the express written consent of the Town, Solar Project Developer, and/or the successors of each, including any successors in title to the Project, which successors shall additionally be responsible for renewing such Decommissioning Bond as long as the Project remains in commercial operation, which is expected to be for a period of thirty (30) years.

The Parties agree that the Bond shall be used solely to pay for any Decommissioning costs of the Project pursuant to the terms and conditions of this Agreement. Except as provided in the next paragraph, Solar Project Developer shall have no further payment obligations in connection with Decommissioning during the operation of the Project provided that Solar Project Developer comply with posting renewing the Decommissioning Bond in accordance with this Agreement.

Nonetheless, in the event the actual Decommissioning costs at the time of Decommissioning exceed the amount covered by the Decommissioning Bond, Solar Project Developer, including any successor in title to this Project, shall be responsible for any such excess costs, provided such excess costs are not as a result of the Town using any amount covered by the Decommissioning Bond for any reason other than to pay for Decommissioning costs of the Project. The Owner and Solar Project Developer reserve all rights to review the Town's actual costs expended for Decommissioning.

The Town will have no right to use any amount from the Decommissioning Bond for any reason other than to pay for Decommissioning costs related to the Project pursuant to the terms and conditions of this Agreement. Costs of Decommissioning under this Agreement shall include labor, equipment, materials, professional services and any other costs reasonably associated with the restoration and Decommissioning of the Project as further defined below, whether by the Town's own forces, professionals or contractors.

2. Decommissioning as used in this Agreement shall mean in general the removal and disposal of all structures, equipment and accessories, including subsurface foundations and all other material, concrete, or debris, that were installed in connection with the Project to the extent contemplated under the Decommissioning Plan, and the reasonable restoration of the parcel or parcels of land on which the Project is built to either of the following, at the Solar Project Developer's option ("Decommissioning"):
  - i. regrading, and seeding the project site to the extent contemplated under the Decommissioning Plan, or
  - ii. the condition proposed by Solar Project Developer or its successor, and as agreed upon with both the Owner and the Town.
  
3. The Parties agree that the Decommissioning process of the Project may commence (and the funds to pay for the cost of any such Decommissioning from the Decommissioning Bond may be called on by the Town in the event of a failure or default by the Solar Project Developer) for the following reasons (each, a "Triggering Event"):
  - a) Solar Project Developer provides written notice to the Town of its intent to retire or decommission the Project ("Solar Project Developer Decommissioning Notice");

- b) Commercial operation of the Project has not started within twelve (12) months of the completion of construction; unless extended by the Town due to circumstances beyond the reasonable control of the Solar Project Developer;
- c) The Project "ceases to be operational" (as defined below) for more than three (3) consecutive months; or
- d) Failure to keep in effect a Decommissioning Bond that meets the requirements of this Agreement (including escalation in amount pursuant to paragraph I), including failure to renew the Decommissioning Bond at least thirty (30) days prior to expiration with written notice and proof provided to the Town that the renewed Decommissioning Bond is in fact renewed and paid in full.

In the event the Solar Project Developer fails to initiate Decommissioning of the Project within one-hundred ninety (90) days after any Triggering Event, or Solar Project Developer fails to provide a reasonable explanation for the delay or cessation of operation of the Project, then the Town will have the additional right to give Solar Project Developer written notice of its intent to Decommission the Project through use of the Decommissioning Bond ("Town Decommissioning Notice"), and if Solar Project Developer does not cure the Triggering Event or initiate Decommissioning of the Project or provide a reasonable explanation for the delay or cessation of operation of the Project within thirty (30) days following receipt of such notice, then the Town may commence Decommissioning of the Project, including through use of the Decommissioning Bond.

For the purposes of this Agreement, "ceases to be operational" shall mean that the Project is no longer generating at least fifty (50%) percent of the energy it was originally designed to generate, other than due to repairs to the Project or causes beyond the reasonable control of Solar Project Developer. Any one of the Triggering Events outlined in this Section 3 shall be deemed a Triggering Event based upon which the Town shall have the right to demand Decommissioning pursuant to the terms and conditions of this Agreement.

- 4. In the event the Town exercises the right to perform the Decommissioning itself pursuant to the terms and conditions set forth herein, Solar Project Developer (and/or its successors or assigns) and Owner (and/or any of Owner's successors or assigns) hereby agree that the Town has an immediate right of reasonable access on Owner's property and to the Solar Project Developer's personal property and fixtures to decommission the Project and the Solar Project Developer (and/or its successors or assigns) and shall defend, hold harmless and indemnify the Town, including for any professional, expert and attorneys' fees, for any and all claims, liability, loss or damage arising out of its exercise of its right to Decommission the Project as provided for herein, except in cases of gross negligence or willful misconduct by the Town or any of its employees, contractors, or agents. For clarity, nothing in this Section 4 or this Agreement shall negate any obligation or responsibility, financial or otherwise, of the Solar Project Developer for any costs of Decommissioning the Project.
- 5. Upon Decommissioning of the Project to the satisfaction of the Town consistent with the Decommissioning Plan, the Solar Project Developer shall have no further obligation to the

Town and the Decommissioning Bond to the extent not used will be promptly returned and released.

6. This Agreement may not be amended or modified except by written instrument signed and delivered by the Parties. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, including a successor to the Solar Project Developer.
7. Prior to commencing the decommissioning of the Project, Solar Project Developer shall provide the Town with proof that it and any of its contractors or subcontractors or professionals carry sufficient Workers' Compensation and Automobile insurance coverage for its employees.
8. The Parties agree to execute and deliver any additional documents or take any further action as reasonably requested by another Party to effectuate the purpose of this Agreement.
9. The Parties agree that this Agreement shall be construed and enforced in accordance with and governed by the laws of New York. Excepting any litigation involving the Decommissioning Bond, in the event of any litigation involving this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, disbursement and other litigation expenses from the other parties.
10. This Agreement may be executed through separate signature pages or in any number of counterparts, and each of such counterparts shall, for all purposes, constitute one agreement binding on all parties.
11. Any and all notices required to be sent by the parties shall be addressed as follows: By certified mail or nationally recognized overnight courier service,

To the Town:  
Town of Forestburgh  
Attention: Town Supervisor and Town Attorney  
332 King Road  
Forestburgh, New York 12777

To Solar Project Developer:  
NY Forestburgh I, LLC  
Attn: Elinor Beitler  
560 Davis Street, Suite 250  
San Francisco, California 94111

To Owner:  
2380 State Route 42, LLC  
33 Lower Main Street, P.O. Box 384  
Callicoon, New York 12723

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first written above.

TOWN: Town of Forestburgh

\_\_\_\_\_  
By: Daniel S. Hogue, Jr. Supervisor

SOLAR PROJECT DEVELOPER:

NY Forestburgh I, LLC

\_\_\_\_\_  
By:

OWNER:

2380 State Route 42, LLC

By: Delaware River Land & Timber, its Sole Member

\_\_\_\_\_  
By: Howard Siegel, Authorized Signatory

Exhibit

A

Decommissioning Bond Schedule

**NY Forestburgh I, LLC**  
**MW AC**  
**Annual Escalator**

**5.0**  
**2%**

Anniversary of COD

Bond Amount

1	\$	255,000
2	\$	260,100
3	\$	265,302
4	\$	270,608
5	\$	276,02
6	\$	281,541
7	\$	287,171
8	\$	292,915
9	\$	298,773
10	\$	304,749
11	\$	310,844
12	\$	317,060
13	\$	323,402
14	\$	329,870
15	\$	336,467
16	\$	343,196
17	\$	350,060
18	\$	357,062
19	\$	364,203
20	\$	371,487
21	\$	378,917
22	\$	386,495
23	\$	394,225
24	\$	402,109
25	\$	410,151
26	\$	418,355
27	\$	426,722
28	\$	435,256
29	\$	443,961
30	\$	452,840