

TOWN OF LYSANDER SOLAR ENERGY SYSTEM DECOMMISSIONING AGREEMENT

This Solar Energy System Decommissioning Agreement (“Agreement”) is entered into this ____ day of _____, 2024 by and among **3354 COLD SPRINGS SOLAR, LLC**, with offices at 55 Technology Drive, Suite #102 Lowell, Massachusetts 01851 (the “Operator”) and the **TOWN OF LYSANDER**, a municipal corporation duly organized and existing under the laws of New York, with offices at 8220 Loop Road, Baldwinsville, New York 13027 (the “Town”) (together with the Operator, “Parties,” and each individually referred to as a “Party”).

RECITALS

WHEREAS, on _____, 2024, based on the Operator’s applications, and after a duly noticed public hearing, the Town of Lysander Town Board (the “Town Board”) issued site plan approval _____, 2024 (the “Approvals”) for the Operator’s proposed solar energy facility (the “Project”) on real property located at 3400 Cold Springs Road, Lysander, New York (S.B.L. No. 064.-03-02.1) (the “Property”). A copy of the Town Board resolution granting the Approvals is attached hereto as **Exhibit A** and is incorporated herein; and

WHEREAS, the Town Code requires the Operator to decommission the Project, including removal of all Project ancillary components (together the “Solar Energy System” or “Project”) and restoration of the Property, either at the end of each Project’s useful life or upon inactivity of each Project for a certain period of time, as further described in this Agreement; and

WHEREAS, as a condition to providing the Approvals, the Town requires that the Operator execute and file with the Town Clerk a decommissioning bond, subject to and in accordance with certain terms and conditions more particularly described herein; and

WHEREAS, the Town determined that the sum of \$148,807.21 (the “Decommissioning Cost”) is the amount sufficient for the removal of the Project and subsequent restoration of the Property, based upon the Decommissioning & Site Restoration Plan prepared by New Leaf Energy, dated June 30, 2023 and attached hereto as **Exhibit B** (the “Decommissioning Plan”); and

NOW THEREFORE, for and in consideration of the foregoing recitals, mutual agreements, covenants and promises set forth in this Agreement, and other good and valuable consideration, the Parties agree as follows:

SECTION 1. INCORPORATION OF PREAMBLE.

The Preamble shall be incorporated into and become an enforceable part of this Agreement.

SECTION 2. EFFECTIVE DATE.

This Agreement shall be effective upon its execution by all parties hereto. This Agreement may be executed in multiple counterparts. By executing and delivering this Agreement, the Town affirms its approval of the Decommissioning Plan for the Project dated June 30, 2023.

SECTION 3. TIME FRAME FOR DECOMMISSIONING.

- A. Pursuant to the terms of this Agreement, the Operator shall remove the Project and all associated equipment, structures, including any fencing, access roads, and/or subsurface wires and restore the Property in the manner set forth in the Decommissioning Plan, which are made a part of this Agreement by reference herein, either (i) at the end of the Project's useful life or (ii) if the Project is not active and in continuous service for more than twelve (12) consecutive months ("Operational Cessation").
- B. If Operational Cessation has occurred, the Town shall provide written notice of the same to the Operator. The Operator shall commence the removal of the Solar Energy System and the restoration of the portion of the Property upon which each Solar Energy System is located following such notice, and decommissioning of each Solar Energy System and restoration of the appropriate portion of the Property as required pursuant to the applicable Decommissioning Plan shall be completed within twelve (12) months, or as soon as feasible given weather restrictions.

SECTION 4. DECOMMISSIONING BOND.

- A. The Operator hereby agrees to execute and file with the Town Clerk a bond in a form acceptable to the Town Attorney which shall identify the Town as an Obligee and/or Beneficiary consistent with this Agreement (the "Decommissioning Bond"). The Decommissioning Bond shall also identify the landowner of the Property as a co-beneficiary of the Decommissioning Bond. The Decommissioning Bond, or a renewal or replacement thereof, shall be in place until the removal of the Solar Energy System, and in the amount of \$148,807.21 representing the estimated cost of removal of the Solar Energy System and restoration of the Property in accordance with the Decommissioning Plan. The Parties agree that the Decommissioning Bond shall be used solely to pay for any decommissioning costs of the Project pursuant to the terms and conditions of this Agreement and the Decommissioning Plan. The Operator shall have no further payment obligations in connection with decommissioning the Project during the operation of the Project, provided that the Operator complies with posting the Decommissioning Bond in accordance with this Agreement.
- B. Should the Decommissioning Bond be cancelled for any reason during the life of the Project, the Operator shall replace the respective Decommissioning Bond with an alternative form of surety acceptable to the Town Attorney within sixty (60) days of such cancellation.

SECTION 5. OBLIGATIONS, DUTIES, AND RIGHTS OF THE TOWN.

- A. The Operator agrees that the Decommissioning Bond shall not be released except in accordance with the terms of the Decommissioning Plan, dated June 30, 2023, and this Agreement, and not until the removal and restoration of the Solar Energy System have been completed. Upon full and proper decommissioning of the Project, the Operator shall have no further obligation to the Town.

- B. If the Operator fails to complete the required removal of the Project and restoration of the Property as is required herein within the time limitations required hereunder (“Operator Default”), the Town shall be entitled to utilize the applicable Decommissioning Bond to the extent necessary, in the Town’s reasonable discretion, to complete the removal and disposal of the Project, including removal of all energy facilities, structures and equipment, access roads, subsurface wires and footings, and restore the portion of the Property upon which the respective Project is located. Prior to such action by the Town or its designated agents, the Town shall first notify the Operator, in writing, and provide opportunity for the Operator to cure the Default. The written notice from the Town to the Operator shall describe the Operator Default and the action required to correct it. If such Default has not been corrected and arrangements reasonably acceptable to the Town have not been made within ninety (90) days, the Town may take steps it deems reasonable to correct the Default.
 1. In the event that the Town elects to use a Decommissioning Bond, in whole or in part, as described in this Section 5, it shall notify the Operator accordingly, in writing and, within thirty (30) days of such writing, the Town may make a claim and/or draw on the applicable Decommissioning Bond in an amount equal to the cost of completing the removal of the Project and the restoration of the Property. However, the Town will have no right to use any amount of funds from a Decommissioning Bond for any reason other than to pay for decommissioning costs related to a Project pursuant to the terms and conditions of this Agreement and pursuant to the Decommissioning Plan, and any breach by the Town of the foregoing will be deemed a default under this Agreement (“Town Default”), and the Town shall be responsible to pay for such amount used.

 2. In the case of either an Operator Default or a Town Default, the non-defaulting party shall be entitled to seek damages and injunctive relief, and the defaulting party shall indemnify and hold harmless the non-defaulting party from any claim, loss, damage, liability, or costs (including any reasonable attorneys’ fees) arising from such default, but not including the negligence or willful misconduct by the defaulting party or any of its employees, contractors, agents, or assigns. Nothing in this Section 5 shall infer any obligation or responsibility, financial or otherwise, on the landowners of the Property (or any landowner’s assigns) for any costs of decommissioning the Project.

SECTION 6. OBLIGATIONS, DUTIES, AND RIGHTS OF THE OPERATOR.

- A. The Operator shall deliver to the Town Decommissioning Bond for the removal and disposal of the Project and restoration of the Property, which Decommissioning Bond shall be in a form that is satisfactory to the Town Attorney.
- B. The Operator agrees that the Decommissioning Bond shall not be released except in accordance with the terms of this Agreement. The Operator further agrees that the Decommissioning Bond shall not be released in full, unless another method of security is provided, or until the removal and restoration has been completed.
- C. In the event the Town has the right to perform the decommissioning of the Project pursuant to the terms and conditions set forth in Section 5 of this Agreement, the Operator (or its successors or assigns) agrees to provide the Town reasonable access, to the extent that Operator has the right to give such access, on the Property to decommission the Project and restore the associated portion of the Property and shall defend, hold harmless, and indemnify the Town for any and all claims, liability, loss or damage arising out of its exercise of its right to decommission the Project and restore the associated portion of the Property as provided for in this Agreement, except in cases of negligence or willful misconduct by the Town or any of its employees, contractors, or agents.
- D. The Operator shall at all times provide the Town forthwith (no more than thirty (30) days after transfer) with the name of the current Operator(s) of the Project.

SECTION 7. NOTICES.

Any notices required or permitted to be given under this Agreement: (a) shall be in writing signed on behalf of the Party making the same; (b) shall be deemed given or delivered (i) if delivered personally, when received, or (ii) if sent from within the United States by certified mail, postage prepaid, return receipt requested, on the third business day after mailing; and (c) shall be addressed to each Party as set forth below, or at such other address as the Parties shall designate in writing by personal delivery, certified mail, or overnight courier service:

To the Town: Town Supervisor
 Town of Lysander
 8220 Loop Road
 Baldwinsville, New York 13027

To the Operator: 3354 Cold Springs Solar, LLC
 55 Technology Drive
 Suite #102
 Lowell, Massachusetts 01851

SECTION 8. BINDING EFFECT.

This Agreement shall run with the land and is binding upon the Parties hereto, as well as their heirs, executors, administrators, legatees, distributees, lessees, tenants, personal or legal representatives and successors and assigns.

SECTION 9. TERM OF AGREEMENT.

This Agreement shall continue for the life of the Solar Energy Systems, unless terminated (i) by the Town upon release of the Operator from this Agreement or (ii) upon the termination of this Agreement by mutual agreement of the Parties.

SECTION 10. RECORDING.

The Operator shall cause this Agreement to be recorded in the office of the County Clerk, Onondaga County, and the Parties hereto agree to execute any and all documents necessary for such recording.

SECTION 11. ENTIRE AGREEMENT.

This Agreement and the attachments hereto constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, documents, and proposals, oral or written, between the Parties with respect thereto.

SECTION 12. USE OF TERMINOLOGY.

Use of the term "Operator" in this Agreement is for convenience only and should not be considered as a limitation on those parties who may be subject to and bound by the provisions of this Agreement and any amendments thereon. Use of the term "Town" in this Agreement is for convenience only and may include agents or representatives of the Town. The word "Property" shall refer to the real property located at 3400 Cold Springs Road, Lysander, New York (S.B.L. No. 064.-03-02.1)

SECTION 13. AMENDMENTS.

This Agreement may be amended, only in writing and by agreement of all Parties to this Agreement. An increase or decrease in the amount of the Decommissioning Bond does not constitute an amendment to this Agreement.

SECTION 14. GOVERNING LAW.

This Agreement, and any amendments thereto, shall be governed by the laws of the State of New York and shall be enforceable only in a New York State court of competent jurisdiction.

SECTION 15. SEVERABILITY.

If a court of competent jurisdiction determines that any provision of this Agreement is unenforceable, such determination shall not affect the remaining provisions, which shall remain in full force and effect.

-Signature Page to Follow-

IN WITNESS WHEREOF, the Parties have executed this Agreement by affixing the signatures of the undersigned duly authorized representatives as of the date appearing in the spaces indicated.

TOWN OF LYSANDER

By: _____

Name: _____

Title: _____

Dated: _____

3354 COLD SPRINGS SOLAR, LLC

By: _____

Name: _____

Title: _____

Dated: _____

ACKNOWLEDGEMENTS

STATE OF _____)

:SS

COUNTY OF _____)

On the ____ day of _____, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or provided to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF _____)

:SS

COUNTY OF _____)

On the ___ day of _____, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or provided to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

EXHIBIT A
PROJECT APPROVALS

EXHIBIT B
DECOMMISSIONING PLAN