

## DECOMMISSIONING AGREEMENT

This DECOMMISSIONING AGREEMENT (this “Agreement”) dated as of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) is made by and among the Town of Dryden (the “Town”) and [NY Dryden I, LLC] (“Owner”, together with the Town, the “Parties”).

WHEREAS, Owner intends to build a solar energy generation project on Dryden Road in the Town (the “Project”);

WHEREAS, the Parties wish to enter into this Agreement to set forth terms and conditions of having funds available to pay for the costs of any decommissioning of the Project; and

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

1. At the start of construction of the Project, Owner agrees to deposit [sixty-thousand dollars (\$60,000)] in a special purpose account designated in writing by the Town (the “Decommissioning Account”). At the end of each anniversary year of operation of the Project (the “Anniversary Date”), Owner agrees to deposit an additional 2.5% of the then existing amount in the Decommissioning Account on the Anniversary Date, as described in greater detail on Schedule I attached hereto. The Parties agree that the amount in the Decommissioning Account shall be used solely to pay for any decommissioning costs of the Project. Provided Owner complies with its obligations to deposit funds into the Decommissioning Account in accordance with this Agreement, Owner shall have no further payment obligations in connection with funding the Decommissioning Account during the operation of the Project; provided, however, in the event the actual decommissioning costs exceed the amount in the Decommissioning Account, Owner shall be responsible for any such excess costs, provided such excess costs are not as a result of the Town using any amount in the Decommissioning Account for any reason other than to pay for decommissioning costs of the Project in accordance with this Agreement. In the event the Town uses any amount in the Decommissioning Account for any reason other than to pay for decommissioning costs in accordance with this Agreement, the Town shall be responsible to pay for such amount used and shall indemnify and hold harmless Owner and the landowner of the Project, if different from Owner, from any claim, loss, damage, liability or costs (including any reasonable attorney costs) arising from such use of funds for reasons other than to pay for decommissioning costs in accordance with this Agreement.

2. 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 Account may be used) for the following reasons: (a) Owner provides written notice to the Town of its intent to retire or decommission the Project (the “Owner Decommissioning Notice”), (b) construction of the Project has not started within eighteen (18) months of site plan being approved by the Town, or (c) the Project ceases to be operational for more than twelve (12) consecutive months. The Town shall provide Owner thirty (30) days written notice (the “Town Decommissioning Notice”) prior to the commencement of any decommissioning of the Project by the Town. In event the Owner fails to decommission the Project within one-hundred eighty (180) days after providing Owner Decommissioning Notice or fails to respond with a reasonable explanation for the delay in the construction or cessation of operation of the Project within 30 days of the Town Decommissioning Notice, the Town may commence the decommissioning of the Project. For the purposes of this Agreement, “ceases to be operational” shall mean no generation of electricity, other than due to repairs to the Project or causes beyond the reasonable control of Owner.

3. Upon removal of the infrastructure and disposal of any component of the Project from the site on which the Project is built, or in the event the Town becomes owner of the Project, any and all amount remaining in the Decommissioning Account shall be returned to Owner.

4. 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 heirs, executors, administrators, successors and assigns. Owner may assign this Agreement to any subsidiary, or purchaser or transferee of the Project. The Parties agree to execute and deliver any additional document or take any further action as reasonably requested by the other party to effectuate the purpose of this Agreement. The Parties agree that Owner shall have the option to replace the funds in the Decommissioning Account with a commercially reasonable decommissioning bond.

5. The Parties agree that this Agreement shall be construed and enforced in accordance with and governed by the laws of New York.

6. 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.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused their names to be signed hereto by their respective representatives thereunto duly authorized as of the date first above written.

TOWN OF DRYDEN

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[NY DRYDEN I, LLC]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT

SCHEDULE I

Decommissioning Fund (Deposits)		
Timeframe (Year)	Amount (\$)	Cumulative (\$)
Start of Construction	60,000	60,000
1	1,500	61,500
2	1,538	63,038
3	1,576	64,613
4	1,615	66,229
5	1,656	67,884
6	1,697	69,582
7	1,740	71,321
8	1,783	73,104
9	1,828	74,932
10	1,873	76,805
11	1,920	78,725
12	1,968	80,693
13	2,017	82,711
14	2,068	84,778
15	2,119	86,898
16	2,172	89,070
17	2,227	91,297
18	2,282	93,580
19	2,339	95,919
20	2,398	98,317