

## DECOMMISSIONING AGREEMENT

This DECOMMISSIONING AGREEMENT (this “Agreement”) dated as of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) is made by and among the Town of Hoosick (the “Town”) and Hawthorn Solar, LLC (“Owner”, together with the Town, the “Parties”).

WHEREAS, Owner intends to build a solar energy generation project along Pine Valley Road and Fords 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 shall provide to Town a copy of the payment and performance bond from its construction contractor which provides a financial guarantee that the construction of the Project will be completed once it started. At the completion of construction of the Project, and prior to the project entering commercial operation, Owner agrees to provide to the Town a decommissioning performance bond substantially similar to **Exhibit A1** or a standby letter of credit substantially similar to **Exhibit A2** (either being the “Decommissioning Security”) to the Town, as determined by the Hoosick Town Board, as financial security to ensure proper decommissioning of the Project in accordance with the Decommissioning Plan and attached herein as **Exhibit B** (the “Decommissioning Plan”). The Decommissioning Security is required to be in place prior to start of commercial operations of the Project and the amount of the Decommissioning Security shall be in accordance with **Schedule 1**. Owner agrees to ensure the Town always has an up to date copy of the Decommissioning Security on hand, and will provide an up to date copy upon fifteen (15) days-notice from the Town.

The Parties agree that the Decommissioning Security shall be used solely to pay for any decommissioning costs of the Project to the extent Owner does not decommission the Project in accordance with the process established in Section 2 herein.

Provided Owner complies with its obligations to maintain the Decommissioning Security at the required amounts in accordance with this Agreement, Owner shall have no further obligations in connection with providing any additional financial security with respect to decommissioning during the operation of the Project. In the event the Town uses any amounts received from the Decommissioning Security 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, as described in the Decommissioning Plan, may commence 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”, a template for same attached and incorporated herein as **Exhibit C**), or;
  - b. The Project ceases to be operational for more than twelve (12) consecutive months (the date that is twelve (12) consecutive months after the Project ceases to be operational shall be the “Discontinued Operations Date”).

If Owner does not fully decommission the Project within one-hundred and eighty (180) days after either the Owner Decommissioning Notice or the Discontinued Operations Date, as applicable, the Town shall provide written notice to Owner (the “Town Decommissioning Notice”, a template for same attached and incorporated herein as **Exhibit D**) requesting that the Project be decommissioned in accordance with the Decommissioning Plan.

If Owner fails to provide a reasonable explanation for the delay in the decommissioning activities of the Project within thirty (30) day of receiving the Town Decommissioning Notice, the Town may call on the Decommissioning Security and use the proceeds of the Decommissioning Security to proceed with the decommissioning of the Project in accordance with the Decommissioning Plan.

If Owner does provide a reasonable explanation for the delay in the decommissioning activities and is continuing to work towards the decommissioning of the Project, then the Owner shall continue the work required to proceed with the decommissioning of the Project and the Town shall not call on the Decommissioning Security nor shall the Town use any proceeds of the Decommissioning Security to proceed with the decommissioning of the Project. The previous sentence notwithstanding, if, under any circumstance, Owner does not fully decommission the Project in accordance with the Decommissioning Plan within one-hundred and eighty (180) days of its receipt of the Town Decommissioning Notice, then the Town may call on the Decommissioning Security and use the proceeds of the Decommissioning Security to proceed with the decommissioning of the Project.

3. If, in accordance with the procedure described in Section 2 herein, the Town calls on the Decommissioning Security and uses the proceeds of the Decommissioning Security to decommission the Project, upon completion of the decommissioning work in accordance with the Decommissioning Plan, any and all amounts remaining from the Decommissioning Security 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. In the event Owner assigns this Agreement in any way, they shall, within fifteen (15) days, provide Town with notice of the new Owner, contact information therefor, and an updated Decommissioning Security, reflecting the new owner. 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 provide to the Town, in lieu of the Decommissioning Security in Exhibit A, a letter of credit, cash, or any other reasonably equivalent financial instrument as Decommissioning Security.

5. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery by commercial courier, (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith. Any notice so given shall be deemed to have been given upon receipt or refusal to accept delivery. Unless changed in accordance with the preceding provisions, the addresses for notices given pursuant to this Agreement shall be as:

If to Owner:

If to Town:

Hawthorn Solar, LLC  
2045 Lincoln Hwy  
Edison, NJ 08817

Town of Hoosick  
New York State Armory  
80 Church Street,  
Hoosick Falls, NY 12090

Attn: Eric Millard, Chief Commercial  
Officer

Attn: Town Supervisor

6. The obligation of updating this Notice provision lies with the party making a change. In the event this Agreement is assigned, or any addresses are changed, the other party will be deemed to have provided appropriate notice so long as sent pursuant to paragraph 5, and will bear no further responsibility for notice other than sending to the most recent address provided pursuant to this Agreement.
7. The Parties agree that this Agreement shall be construed and enforced in accordance with and governed by the laws of New York.

8. 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.

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 HOOSICK

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

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

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

HAWTHORN SOLAR, LLC

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

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

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

# Schedule 1

## Decommissioning Security Amounts

<b>Timing</b>	<b>Amount</b>
1 year after Commercial Operation	\$650,613

Values Based on Decommissioning Estimate of \$650,613.10 in 2023 Dollars, which will be reviewed and increased based on a decommissioning estimate performed every five (5) years until the project is decommissioned.

# Exhibit A1

## Form of Decommissioning Performance Bond

Bond No. \_\_\_\_\_ Commercial Operation Date. \_\_\_\_\_

### Know All by These Presents,

That we, **PRINCIPAL NAME**  
**PRINCIPAL ADDRESS**  
**CITY, STATE, ZIP**

(hereinafter called the Principal), as Principal, and

a corporation duly organized under the laws of the State of **New York** (hereinafter called the Surety), as Surety, are held and firmly bound unto

**OBLIGEE NAME**  
**OBLIGEE ADDRESS**  
**CITY, STATE, ZIP**

(hereinafter called the Obligee), in the maximum penal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) (hereinafter called the Maximum Penal Sum); for the payment of which we, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WHEREAS, the Principal has entered into a certain agreement known as the Decommissioning Agreement (hereinafter called the Agreement) with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ for the decommissioning of a 20MWac solar photovoltaic system facility on Pine Valley and Ford Roads in the Town of Hoosick, New York, which is hereby referred to and made a part hereof as if fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal shall well and truly keep, do and perform each and every, all and singular, the matters and things in said Agreement set forth and specified to be by said Principal kept, done and performed, at the times and in the manner in said Agreement specified, or shall pay over, make good and reimburse to the above named Obligee, all loss and damage which said Obligee may sustain by reason of failure or default on the part of said Principal so to do, then this obligation shall be null and void; otherwise shall remain in full force and effect, subject, however, to the following conditions:

1) In the event the Principal, fails to undertake and complete Decommissioning as defined in the decommissioning plans, the Obligee may make a claim against this bond.

2) The liability of the Surety will be determined by the number of whole years since the Commercial Operation Date in accordance with Schedule 1. In no event, shall the liability of the Surety exceed either the then current liability determined by the number of whole years since the Commercial Operation Date in accordance with Schedule 1, or the the Maximum Penal Sum to the Obligee, regardless of the number of years this bond is extended or renewed.

3) The Surety's obligation under this bond shall arise after the Principal fails to complete decommissioning as described in the decommissioning plans. Upon notice of the Principal's default under the Agreement the Surety may take one of the following actions:

- a) Arrange for the Principal's performance under the Agreement, or,
- b) Undertake and perform decommissioning itself, or through its agents or its independent contractors, in accordance with the terms and conditions of the Agreement, or,
- c) Waive its right to perform and complete decommissioning under the Agreement, and after investigation, determine the amount for which it may be liable to the Obligee, as the case may be, and as soon as practicable after the amount is determined, tender payment therefore to the Obligee, as the case may be.

**NOTWITHSTANDING ANYTHING CONTAINED IN THE AGREEMENT TO THE CONTRARY, THE LIABILITY OF THE PRINCIPAL AND SURETY UNDER THIS BOND IS LIMITED TO THE TERM BEGINNING THE \_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_, AND ENDING THE \_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_, AND ANY EXTENSIONS OR RENEWALS OF THE REFERENCED AGREEMENT SHALL BE COVERED UNDER THIS BOND ONLY WHEN CONSENTED TO IN WRITING BY THE SURETY. IT IS FURTHER AGREED THAT REFUSAL BY THE SURETY TO EXTEND THE TERM OF THIS BOND SHALL NOT CONSTITUTE A DEFAULT BY THE PRINCIPAL, AND SHALL NOT GIVE RISE TO A CLAIM OR DEMAND AGAINST THE SURETY UNDER THIS BOND. IN THE EVENT THE SURETY ELECTS NOT TO RENEW THIS BOND, THE SURETY SHALL PROVIDE THE OBLIGEE WITH AT LEAST SIXTY (60) DAYS WRITTEN NOTICE PRIOR TO ANY ANNUAL RENEWAL OF THE SURETY'S INTENT TO TERMINATE THIS BOND.**

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee named herein, as the case may be, or their heirs, executors, administrators or successors of the Obligee, as the case may be.

**PRINCIPAL**

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

**SURETY**

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



# Exhibit A2

## Form of Decommissioning Standby Letter of Credit

IRREVOCABLE STANDBY DOCUMENTARY CREDIT NO.

-----  
BENEFICIARY: | APPLICANT:  
THE TOWN OF Hoosick |

-----  
ADVISING BANK: | AMOUNT: USD [SCHEDULE 1]

-----  
DATE AND PLACE OF EXPIRY:

AT COUNTER OF ISSUING BANK  
-----

\* .  
FULL NAME AND ADDRESS OF THE APPLICANT:

\* .  
WE HEREBY ISSUE OUR IRREVOCABLE CREDIT NO: [ ] IN YOUR  
FAVOR FOR THE ACCOUNT OF HAWTHORN SOLAR, LLC  
(THE ''OWNER'') FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE

AGGREGATE USD (U.S. DOLLARS [SCHEDULE 1]  
ONLY) AVAILABLE BY YOUR DRAFTS AT SIGHT ON  
[BANK NAME]  
TRANSACTION SERVICES, [BANK ADDRESS] WHEN  
ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

.

1. YOUR SIGHT DRAFT DRAWN ON US IN THE FORM OF ANNEX A HERETO  
(THE ''SIGHT DRAFT''); AND

.

2. A DATED PAYMENT CERTIFICATE PURPORTEDLY SIGNED BY A DULY  
AUTHORIZED OFFICIAL OF THE TOWN OF HOOSICK IN THE FORM OF  
ANNEX B HERETO (THE ''PAYMENT CERTIFICATE'').

.

\* MULTIPLE DRAWINGS ARE PERMITTED IN AMOUNTS NOT TO EXCEED, IN  
COMBINATION, THE AGGREGATE AMOUNT.

.

\* FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST  
YOUR PAYMENT CERTIFICATE AND SIGHT DRAFT PRESENTED IN FULL  
COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF  
CREDIT ON OR BEFORE 5:00 P.M. NEW YORK TIME, ON THE EXPIRATION  
DATE HEREOF.

.

\* IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE  
DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR  
FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE OF THIS LETTER OF  
CREDIT UNLESS AT LEAST NINETY (90) DAYS PRIOR TO SUCH EXPIRATION  
DATE WE NOTIFY YOU BY REGISTERED LETTER OR OVERNIGHT COURIER,  
THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR  
SUCH ADDITIONAL PERIOD.

.

\* PAYMENT(S) FOR ANY CONFORMING DRAWINGS WILL BE MADE WITHIN THE  
GUIDELINES AS ESTABLISHED BY ISP98. SUBJECT TO DELAY DUE TO

FORCE MAJEURE, PAYMENT(S) FOR ANY CONFORMING DRAWINGS WILL BE MADE WITHIN THREE (3) BANKING DAYS OF PRESENTMENT. FOR THE PURPOSES OF THIS LETTER OF CREDIT, A BANKING DAY SHALL MEAN ANY DAY ON WHICH HSBC BANK USA, N.A. IS OPEN FOR CONDUCTING REGULAR BANKING BUSINESS IN NEW YORK.

.

\* ALL PAYMENT MADE BY US UNDER THIS LETTER OF CREDIT WILL BE MADE ACCORDING TO YOUR INSTRUCTIONS AND WILL BE DISBURSED FROM OUR OWN FUNDS. IF REQUESTED BY YOU, PAYMENT UNDER THIS LETTER OF CREDIT MAY BE MADE BY WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK FUNDS TO YOUR ACCOUNT IN A BANK ON THE FEDERAL RESERVE WIRE SYSTEM.

.

\* ONLY YOU MAY MAKE ANY PAYMENT CERTIFICATE AND SIGHT DRAFT UNDER THIS LETTER OF CREDIT.

.

ANY SIGHT DRAFT DRAWN HEREUNDER MUST BE MARKED DRAWN UNDER  
[BANK NAME]  
[BANK ADDRESS]  
STANDBY LETTER OF CREDIT NO. DATED ....., [YEAR].

.

\* THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. SUCH UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REFERENCE TO ANY DOCUMENT OR INSTRUMENT REFERRED TO HEREIN OR IN WHICH THIS LETTER OF CREDIT IS REFERRED OR TO WHICH IT RELATES (INCLUDING, WITHOUT LIMITATION, THE AGREEMENT) AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR INSTRUMENT.

.

\* WE HEREBY AGREE WITH YOU THAT EACH DULY COMPLETED PAYMENT CERTIFICATE AND SIGHT DRAFT DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON

PRESENTATION TO US ON OR BEFORE THE EXPIRY DATE. THE OBLIGATION  
OF [BANK NAME] UNDER THIS LETTER OF CREDIT IS THE  
INDIVIDUAL OBLIGATION OF [BANK NAME] AND IS IN NO WAY  
CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO.

.

\* THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY  
PRACTICES 1998 (ISP 98), ICC PUBLICATION NO. 590.

.

\* PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF  
CREDIT TO THE ATTENTION OF OUR STANDBY LETTER OF CREDIT UNIT,  
INCLUDING THE LETTER OF CREDIT REFERENCE NUMBER AS IT APPEARS  
ABOVE.

.

\* PLEASE SEND ALL CLAIMS AND CORRESPONDENCE TO THE FOLLOWING  
ADDRESS:

[BANK NAME & ADDRESS]

.

.

-----  
AUTHORIZED SIGNER

ANNEX A TO IRREVOCABLE STANDBY LETTER OF CREDIT NO:[-]

SIGHT DRAFT

LETTER OF CREDIT NO. \_\_\_\_\_

DATE OF LETTER OF CREDIT: \_\_\_\_\_

DATE OF DRAFT: \_\_\_\_\_

FOR VALUE RECEIVED

PAY ON DEMAND TO:-----, U.S. \_\_\_\_\_ DOLLARS (U.S.  
\$ \_\_\_\_\_). THE AMOUNT OF THIS DRAFT DOES NOT EXCEED THE AMOUNT AVAILABLE TO BE DRAWN BY  
THE BENEFICIARY UNDER THE LETTER OF CREDIT.

CHARGE TO ACCOUNT OF [NAME OF OWNER].

DRAWN UNDER [NAME OF BANK] LETTER OF CREDIT NO. \_\_\_\_\_.

\_\_\_\_\_

AS BENEFICIARY

BY: \_\_\_\_\_

[NAME AND TITLE]

TO: [BANK NAME & ADDRESS]

ANNEX B TO IRREVOCABLE STANDBY LETTER OF CREDIT NO:[-]

PAYMENT CERTIFICATE

[BANK NAME & ADDRESS]

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NO: [INSERT NUMBER]

THE UNDERSIGNED, A DULY AUTHORIZED OFFICIAL OF THE UNDERSIGNED BENEFICIARY, HEREBY CERTIFIES TO **[BANK NAME]** WITH REFERENCE TO THE IRREVOCABLE STANDBY LETTER OF CREDIT NO. [-] ("LETTER OF CREDIT"), THAT OWNER HAVING PROVIDED THE LETTER OF CREDIT TO THE TOWN OF HOOSICK ("TOWN") AS SECURITY FOR PERFORMANCE UNDER THE DECOMMISSIONING AGREEMENT DATED X/X/XXXX BY AND BETWEEN THE TOWN AND HAWTHORN SOLAR, LLC ("AGREEMENT") IN THE AGGREGATE AMOUNT OF [INSERT AMOUNT] ("LETTER OF CREDIT AMOUNT"):

\_\_\_\_\_ HAWTHORN SOLAR, LLC, HAS FAILED TO PERFORM ITS OBLIGATIONS UNDER THE TERMS AND CONDITIONS OF THE AGREEMENT

IN WITNESS WHEREOF, THE BENEFICIARY HAS EXECUTED AND DELIVERED THIS PAYMENT CERTIFICATE AS OF THE \_\_\_\_\_ DAY OF \_\_\_\_\_

\_\_\_\_\_  
AS BENEFICIARY

BY: \_\_\_\_\_

# **Exhibit B**

## **Decommissioning Plan**

**Exhibit C**  
**Form of Owner Decommissioning Notice**

VIA CERTIFIED MAIL OR WITH OTHER PROOF OF DELIVERY

Hawthorn Solar, LLC  
2045 Lincoln Hwy  
Edison, NJ 08817

[DATE]

Town of Hoosick  
New York State Armory  
80 Church Street  
Hoosick Falls, NY 12090  
Attn: Town Supervisor

RE: Owner Decommissioning Notice

To Whom it May Concern,

Reference is made to that certain Decommissioning Agreement (the “Agreement”) dated \_\_\_\_\_, 202\_ by and between the Town of Hoosick (the “Town”) and Hawthorn Solar, LLC (“Owner”, together with the Town, the “Parties”).

Owner is providing this letter dated \_\_\_\_\_, \_\_\_\_\_ as the Owner’s Decommissioning Notice under the Agreement and indicates Owner’s intent to retire and decommission its solar facility in accordance with the Decommissioning Plan included in the Agreement.

A copy of the Decommissioning Security is attached to this Owner Decommissioning Notice and is in full force and effect and will not be returned to Owner until completion of the activities described under the Decommissioning Plan.

Owner acknowledges that the Town can provide the Town Decommissioning Notice if Owner does not complete its decommissioning activities with 180 days of the date of this Owner’s Decommissioning Notice. Further, if Owner fails to provide a reasonable explanation for any delay in completing its decommissioning activities within 30 days of receipt of the Town Decommissioning Notice, or fails to complete its decommissioning activities for any reason within 180 days of receipt of the Town Decommissioning Notice, the Town will have the ability to call upon the Decommissioning Security to complete the activities described under the Decommissioning Plan.

Sincerely,

\_\_\_\_\_  
**Hawthorn Solar, LLC**



**Exhibit D**  
**Form of Town Decommissioning Notice**

VIA CERTIFIED MAIL OR WITH OTHER PROOF OF DELIVERY

Town of Hoosick  
New York State Armory  
80 Church Street  
Hoosick Falls, NY 12090

[DATE]

Hawthorn Solar, LLC  
2045 Lincoln Hwy  
Edison, NJ 08817

To Whom it May Concern,

Reference is made to that certain Decommissioning Agreement (the “Agreement”) dated \_\_\_\_\_, 202\_ by and between the Town of Hoosick (the “Town”) and Hawthorn Solar, LLC (“Owner”, together with the Town, the “Parties”).

The Town is providing this letter dated \_\_\_\_\_, \_\_\_\_\_ as the Town Decommissioning Notice under the Agreement.

Owner has:

- Failed to complete activities under its Decommissioning Plan within 180 Days of providing an Owner Decommissioning Notice. Such Notice was dated \_\_\_\_\_, \_\_\_\_\_
  
- The solar Facility ceased operation for 12 consecutive months on \_\_\_\_\_, \_\_\_\_\_ (the “Discontinued Operations Date”) and Owner has failed to complete activities under its Decommissioning Plan within 180 Days of the Discontinued Operations Date.

If Owner fails to provide a reasonable explanation for any delay in completing its decommissioning activities within 30 days of receipt of this Town Decommissioning Notice, or fails to complete its decommissioning activities for any reason within 180 days of receipt of the Town Decommissioning Notice, the Town will have the ability to call upon the Decommissioning Security to complete the activities described under the Decommissioning Plan.

Sincerely,

\_\_\_\_\_  
**Town of Hoosick**