

**Local Law \_\_\_ of 2021****A Local Law repealing and replacing  
Local Law 1 of 2019 titled “Commercial Solar Energy Systems”**

BE IT ENACTED by the Town Board of the Town of Westerlo, County of Albany as follows:

**Section One. Title**

This local law shall be known as the “Commercial and Residential Solar Energy Systems” law.

**Section Two. Authority**

This local law is adopted pursuant to sections 10 and 22 of the Municipal Home Rule Law. This Local Law shall supersede the provisions of Town Law to the extent it is inconsistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

**Section Three. Purpose**

The purpose of this local law shall be to repeal and replace existing laws, rules and regulations related to commercial solar energy systems and provide for appropriate siting, development, and decommissioning of commercial and residential solar energy systems subject to reasonable conditions to reduce potential impacts to adjoining properties and the community.

**Section Four. Definitions**

1. BATTERY: One or more devices (typically called “cells”), however electrically connected, capable of storing and delivering electricity by electrochemical means. This law does not apply to batteries in consumer products or combustion-powered motor vehicles.
2. BATTERY ENERGY STORAGE SYSTEM (“BESS”): An energy storage system incorporating batteries for storage of electricity, as defined and regulated by the Town’s Battery Energy Storage System Law.
3. COMMERCIAL SOLAR ENERGY SYSTEM: A Solar Energy System, as defined herein, which is intended to be utilized for any purpose other than direct private (not shared) residential or agricultural use, including community-based systems.
4. EXPEDITED PROCESS: The application, review, and approval process for any Solar Energy meeting the criteria set forth in Section Nine herein.
5. GRID-TIED: Connected to the public utility electrical grid in a way accepted and approved by the local electrical utility through a reversible meter supplied by the local electrical utility
6. GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System, as defined herein, that is directly installed in or on the ground and is not attached or affixed to an existing structure. Also referred to as a “freestanding” Solar Energy System.

7. INVERTER: A device which converts direct-current (DC) electricity to alternating-current (AC) electricity.
8. MATURE FOREST - A mature forest is any unimproved land in excess of one (1) acre with trees that are predominantly six (6) inches in diameter or more.
9. PRIME FARMLAND, PRIME SOILS AND PRIME SOIL LANDS - Agricultural land meeting (1) the national parameters for “Prime Farmland” as described in the then current guidelines set forth in the National Soil Survey Handbook § 622.03/Farmland Classification, as amended from time to time; and (2) “farmland of statewide importance,” pursuant to the State of New York classification system for Albany County, including the areas in the Town depicted on the Map annexed as Appendix D to this law.
10. RESIDENTIAL SOLAR ENERGY SYSTEM: A Residential Solar Energy System, as defined herein, which is intended to be used solely in a direct private (not shared) residential or agricultural capacity.
11. SOLAR COLLECTOR: Those parts of a Solar Energy System which receive Solar Energy prior to conversion.
12. SOLAR ENERGY: Radiant energy (direct, diffuse, and/or reflected) received from the sun.
13. SOLAR ENERGY SYSTEM: An arrangement or combination of components and structures designed to provide heating, cooling, hot water, or electricity through the process of collecting, converting, storing, protecting against unnecessary dissipation, and/or distributing solar energy.
- 14: STORAGE SYSTEM: An arrangement or combination of components and structures within or connected to a Solar Energy System, designed to store and controllably deliver electricity generated within or by a Solar Energy System. The means of storage within a Storage System may include, but are not limited to, batteries, flywheels, and elevated water tanks.
15. WATT (“W”): A unit of power. A power of one thousand watts (1000 W) is also referred to as one kilowatt (“kW”). A power of one million watts (1,000,000 W) is also referred to as one megawatt (“MW”).

### **Section Five. Applicability**

This Law is applicable to all Solar Energy Systems for which a building permit or Special Use Permit has not yet been issued by the Town. However, any modification, expansion, or alteration of an existing system, or of a system approved but not yet constructed, shall be subject to the terms and provisions set forth herein. All applications hereunder shall be submitted on the application forms designated by the Town.

### **Section Six: Special Use Permits**

Any application for a special use permit shall be made in writing addressed to the Zoning Administrator and delivered or mailed to the Town Hall. Three (3) copies of the application and required information as set forth below shall be submitted. The application shall be accompanied by all of the following information, as required by the Town of Westerlo Planning Board (“Planning Board”) and prepared by a licensed engineer, architect, landscape architect or

surveyor, and certified by the seal and signature of such professions. After the Zoning Administrator reviews the application and supporting documentation, and determines that the same is complete, he/she shall submit the entire application, with supporting documentation, to the Planning Board for their review as set forth herein.

### 1. WAIVERS.

The Planning Board may, by unanimous approval, grant a waiver of certain provisions contained herein where by reason of the exceptional shape of a specific piece of property, or where by reason of exceptional topographic conditions, or where the specific issues of health, safety, or welfare of the neighborhood outweigh the strict application of this chapter, and such strict application of this chapter would result in extreme practical difficulties upon the owner(s) of such property(ies); provided, however, that such relief may only be granted without detriment to the public good and without substantially impairing the intent and purposes of these regulations. In granting such waiver, the Planning Board may require such conditions as will, in its judgement, secure substantially the objectives of the standards or requirement so waived.

### 2. MODIFICATIONS.

The standards and requirements of this chapter may be modified by the Planning Board in the case of subdivisions, complete communities, neighborhood units or other large-scale developments which, in the judgement of the Planning Board, achieve substantially the objective of the regulations contained herein and which are further protected by such covenant or other legal provisions as will ensure conformity to and achievement of the plan. Such developments must still comply with all applicable standards for subdivision development as set forth in this chapter.

### 3. APPLICATION PROCEDURE.

- a) Applications for waivers and modification shall be submitted in writing by the applicant at the time the application is filed with the Building Inspector. The application shall state fully the grounds and all the facts relied upon by the applicant.
- b) Applications for reconsideration shall be submitted to the Building Inspector, in writing by the applicant, not less than 14 calendar days in advance of a regularly scheduled Planning Board meeting at which reconsideration is desired.

## **Section Seven: Residential Solar Energy Systems**

### 1. APPLICABILITY

This provision shall apply to Residential Solar Energy Systems. Residential Solar Energy Systems are permitted in Rural Residential/Agricultural Districts in the Town subject to the conditions set forth in Subsection 2 below.

### 2. PROCEDURE

All Residential Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the International Building Code, International Fire Protection Code, and NAFPA 70.

**a) ROOFTOP AND FLUSH-MOUNT SOLAR ENERGY SYSTEMS**

Solar Energy Systems that are installed on rooftops and/or are flush with existing legal structures are permitted in all zoning districts in the Town, subject to the following conditions:

- i) A building permit shall be required for installation of all rooftop and flush-mounted Solar Energy Systems.
- ii) The structure upon which the Solar Energy System is installed must:
  - 1) be legally permitted and comply with the height limitations for the subject zoning district as set forth in the Zoning Law; and
  - 2) comply with all setback requirements for the subject zoning district as set forth in the Zoning Law.
- iii) The Solar Energy System must be installed a minimum of three feet (3 ft) away from any chimney and shall not be installed on any roof overhangs.
- iv) Solar Energy Systems installed on any pitched roof shall not extend more than eighteen inches from the surface of the angle of the roof.
- v) The Westerlo Fire Company must be informed of the installation of the Solar Energy System so they can bring the necessary equipment to break into the roof to alleviate the smoke and take other needed actions in case of a fire at the premises.

**b) GROUND-MOUNTED AND FREESTANDING SOLAR ENERGY SYSTEMS**

Ground mounted and freestanding Solar Energy Systems shall be permitted as an accessory structure in the Rural Residential/Agricultural Districts in the Town, subject to the following conditions:

- i) No ground-mounted system shall be permitted on a nonconforming lot, as the same is defined in the Zoning Law.
- ii) All Solar Energy Systems shall be designed and installed in conformance with the applicable International Building Code, International Fire Prevention Code and NAFPA 70 Standards.
- iii) A building permit shall be required for installation of all ground-mount and freestanding Solar Energy Systems. In the event that the proposed Solar Energy system requires a Special Use Permit (see subsection ix below) no building permit shall be issued until and unless a Special Use Permit has first been issued by the Planning Board.
- iv) All Solar Collectors shall be installed at least fifty feet (50 ft) from any lot line and must be located in compliance with NYS Department of Environmental Conservation (“DEC”) and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands.

- v) All Solar Collectors shall be installed so as to prevent any glare and heat that is perceptible beyond subject property's lot lines.
- vi) All Solar Collectors shall have a maximum height of twelve feet (12 ft) from ground elevation, measured from the base of the unit or support structure, as it touches the ground. Any applicant wishing to have a Solar Collector with a greater height must first petition for and secure a variance from the Zoning Board of Appeals.
- vii) No other component of the Solar Energy System shall produce sound or vibration perceptible beyond the subject property's lot line.
- viii) If a Storage System incorporating batteries is included in the proposed project, the Storage System as a whole must meet the provisions of the Town's Battery Energy Storage System Law, and the batteries of the Storage System must be placed in a secure container or enclosure meeting the requirements of the International Building Code, International Fire Prevention Code and NAFPA 70. When the batteries are no longer in use, they shall be disposed of in accordance with the International Building Code, International Fire Prevention Code and NAFPA 70 as well as the local laws of the Town, and any other applicable laws or regulations.
- ix) A Special Use Permit from the Planning Board is required for all ground-mounted and freestanding Solar Energy Systems greater than twenty feet (20 ft) in height or greater than thirty feet (30 ft) in length, or if the Solar Collector surface area is greater than four hundred square feet (400 sf) in the aggregate. The Planning Board shall follow the Special Use Permit procedure as set forth in the Town Zoning Law.

## **Section Eight: Commercial Solar Energy Systems**

### **1 .APPLICABILITY**

This provision shall apply to Commercial Solar Energy Systems. Commercial Solar Energy Systems are permitted in Rural Residential/Agricultural Districts in the Town subject to the conditions set forth in Subsection 2 below. No ground-mounted system shall be permitted on a nonconforming lot, as the same is defined in the Zoning Law.

### **2. GENERAL REQUIREMENTS**

All Commercial Solar Energy Systems require issuance of a Special Use Permit and are subject to site plan review approval by the Planning Board as set forth in the Zoning Law and in accordance with the following specifications:

- a) All Commercial Solar Energy Systems shall be designed by a NYS licensed architect or licensed engineer and installed in conformance with the applicable International Building Code, International Fire Prevention Code and NAFPA 70 Standards.

- b) A building permit shall be required for installation of all commercial Solar Energy Systems, which permit shall only be issued after a Special Use Permit has first been issued by the Planning Board.
- c) All Solar Collectors shall be installed at least one hundred feet (100 ft) from any lot line, and must be located in compliance with DEC and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands.
- d) All Solar Collectors shall be installed so as to prevent any glare and heat that is perceptible beyond subject property's lot lines as determined by a glare study conducted prior to submission of the applications and documented as part of the application.
- e) All Solar Collectors shall have a maximum height of twelve feet (12 ft) from ground elevation. Any applicant wishing to have a Solar Collector with a greater height must first petition for and secure a variance from the Zoning Board of Appeals.
- h) No other component of the Solar Energy Systems shall produce sound or vibration perceptible beyond the subject property's lot line.
- i) All buildings and accessory structures, other than the actual Solar Collectors associated with the Commercial Solar Energy system shall be in compliance with the height limitations in the Zoning Law.
- j) All buildings and accessory structures associated with Commercial Solar Energy Systems shall be a minimum of one hundred feet (100 ft) from any lot line.
- k) A Commercial Solar Energy, inclusive of buildings and accessory structures, shall only cover a particular parcel as set forth herein, with a maximum coverage of a parcel being twenty (20) acres:
- i) For lots consisting of three (3) acres to ten (10) acres, the maximum total coverage shall be one-third (33 1/3%) of the entire parcel;
  - ii) For lots consisting of ten (10) acres to twenty (20) acres, the maximum total coverage shall be two-fifths (40%) of the entire parcel;
  - iii) For lots consisting of twenty (20) acres to thirty (30) acres, the maximum total coverage shall be one-half (50%) of the entire parcel; and
  - iv) For any parcel thirty (30) acres and more, the maximum total coverage shall be twenty (20) acres.
- l) If a Storage System incorporating batteries is included in the proposed project, the Storage System as a whole must meet the provisions of the Town's Battery Storage Law, and the batteries of the Storage System must be placed in a secure container or enclosure meeting the requirements of the International Building Code, International Fire Prevention Code and NAFPA 70. When the batteries are no longer in use, they shall be disposed of in accordance with the International Building Code, International Fire Prevention Code and NAFPA 70 as well as the local laws of the Town, and any other applicable laws or regulations.

- m) All concentrated electrical assemblies (including but not limited to switchgear, grid connection, and inverters) within a Commercial Solar Energy System shall:
- i) meet all requirements and provisions of the current National Electrical Code and all other applicable regulations;
  - ii) contain sensors for at least fire, smoke, and arcing, said sensors to be continuously remotely monitored by a competent central station operated or retained by the owner of the system; and
  - iii) contain automatically triggered fire retardant and suppressant systems rated for electrical fires and releasing only materials not having toxic effect on responders and neighbors to the system.
- n) The site of each Commercial Solar Energy System shall be equipped with remotely monitored surveillance cameras facing inward, especially to all concentrated electrical assemblies, as well as outward.
- o) Each Commercial Solar Energy System shall have signage clearly readable from outside the site carrying emergency phone numbers and other useful contact information.

### 3. PROCEDURE

#### a) SITE PLAN

All applications for Commercial Solar Energy Systems shall include a professionally prepared site plan containing the following in accordance with the site plan requirements of the Zoning Law. In addition to said requirements, the site plan shall also include and/or comply with the following:

- i) All signage pertaining to the Commercial Solar Energy System shall be indicated on the site plan and shall be in conformance with the sign requirements in the Zoning Law.
- ii) All Commercial Solar Energy Systems shall be sited in a manner to minimize the visual effect on the immediate neighbors and general environment.
- iii) The site plan shall include a Visual Environmental Assessment Form (Visual EAF), landscaping plan, and visual assessment report, including appropriate modeling and photography assessing the visibility from key points identified in the Visual EAF, existing tree lines, surrounding topography, and proposed elevation.
- iv) Proposed landscaping, screening, and/or earth berming to minimize the potential visual impacts associated with the Commercial Solar Energy System and its accessory buildings, structures, and/or equipment. If the same is deemed inadequate by the Planning Board, additional landscaping, screening and/or earth berming may be required to mitigate visual and aesthetic impacts. The landscaping plan must be approved by the Planning Board. The actual landscaping must be supervised by the Code Enforcement Officer supported by the Town Engineer

v) Any associated structure shall be screened, placed underground, depressed, earth bermed, or sited below the ridgeline to the greatest extent feasible, particularly in areas of high visibility, and the same shall be noted in the site plan. Where feasible, all utilities serving the site shall be underground.

vi) A lighting plan shall be included with the site plan. Exterior lighting in accordance with “dark sky” guidelines may be provided for associated accessory structures and access entrances as may be determined appropriate for security purposes only unless required by a federal, state, or local authority.

vii) The site plan shall also include written confirmation from the local electrical utility that the electrical grid to which the Commercial Solar Energy System is connected has the capacity to receive the energy generated from the Commercial Solar Energy System.

viii) The site plan shall identify all existing and proposed access routes to the site, including road, electric power, emergency access, land-based telephone line connection, and other utilities, existing and proposed, within the property boundaries of the proposed location. Whenever possible, existing roadways shall be used for access to the site.

ix) The site plan shall include fencing of not less than seven feet (7 ft) in height, as currently set forth in the version of the National Electric Code that is current as of the date of the application.

x) The site plan shall provide for placement of noise-producing equipment such that placement of the same minimizes noise impacts on adjacent properties.

xi) The site plan shall include description of the process or processes to be used to set the poles for the Solar Collectors, specifically indicating where the poles will be set by 'pounding' or will the screw tooling be used. Demonstration of process and noise shall be part of the applicant's process. Any use of equipment that will generate installation noise shall be restricted to commence no earlier than 8:00 am weekdays Monday-Friday. Notification to abutters or residents within one thousand feet (1000 ft) of noise-producing installation work shall be provided identifying the dates, times, and durations of such work.

xii) Siting Considerations. It is a goal of the Town to preserve, to the maximum extent practicable, agricultural land with Prime Farmland and Prime Soils and Mature Forests. No large-scale WECS project shall be permitted on:

(a) any site that is Prime Farmland or which contains Prime Soils or

(b) any site that either

(i) contains more than one (1) acre of Mature Forest at the time the application was filed or

(ii) was a Mature Forest one (1) year prior to the submission of an application for a large-scale WECS project. The applicant may

submit information to demonstrate that the soils on the proposed project site are not Prime Soils or have poor drainage.

#### b) DECOMMISSIONING PLAN

The application shall also include a decommissioning plan, consistent with the decommissioning requirements under Subsection 4(f) (“Decommissioning”) which ensures that the site of the Commercial Solar Energy System will be restored to a natural, useful, non-hazardous condition (preferably the site’s original condition prior to construction) including removal of all above-and below-ground equipment, structures and foundations; disposal of all solid and hazardous waste; restoration of the surface grade and soil after removal of equipment, and re-vegetation of restored soil areas with any landscaping and grading approved under the decommissioning plan; and the plan shall include a timeframe for the completion of the site restoration work.

The decommissioning plan must be implemented upon abandonment and/or in conjunction with removal of the facility as defined in Subsection 4(f). A permit for removal activities shall be obtained from the Code Enforcement Department prior to any decommissioning work. Compliance with the decommissioning plan shall be a condition of the Special Use Permit issued under this section. In addition to all other requirements set forth in Subsection 4(f), the decommissioning plan must include:

- i) photographs of the property prior to construction;
- ii) a timeframe for the completion of the site restoration;
- iii) a cost estimate detailing the projected cost of executing the decommissioning plan prepared by the Town Engineer supported as needed by a professional engineer or contractor. Cost estimates shall take inflation into account. As part of the approval process for the application, this cost estimate must be approved by the Town Board advised by the Town Engineer. This cost estimate may be taken into consideration by the Town when determining the decommissioning security requirements set forth in Subsections 4(f) and 4(g) but will not be binding upon the Town. Final determination of the security amount shall be at the discretion of the Town Board in consultation with the Town's engineer; and
- iv) details on how the removal of the solar energy system and all related equipment and structures will be conducted and how the remediation of soil and vegetation will be conducted to restore the site to its original condition prior to construction or in a natural condition with any landscaping and grading.

#### c) LEASE

Where a Commercial Solar Energy System is to be located on private lands owned by a party other than the applicant, a copy of the lease agreement with the property owner must accompany the Special Use Permit application, and shall remain on file with the Building Department.

#### d) ESCROW FOR PROFESSIONAL SERVICES

The applicant for a Commercial Solar Energy System shall be responsible for reimbursing the Town for the cost of the engineering and legal review by a Town designated engineer or attorney.

i) The Applicant shall execute the Town's escrow agreement and deposit with the Town Clerk funds commensurate with the scale of the project and sufficient to reimburse the Town for all reasonable costs of its consultant evaluation connection with the review of any application. An initial deposit of twenty-five hundred dollars (\$2,500.00) (the "Initial Deposit") shall be filed with the application. The Town will maintain such funds in escrow and pursuant to the terms of the escrow agreement which shall be binding on the applicant and Town. The Town's consultants/experts shall invoice the Town for their services in reviewing the application.

ii) The total amount of the funds needed as set forth in this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. In the event the Planning Board determines that the Initial Deposit will be insufficient for review of the application, the Building Department shall notify the applicant, and the applicant shall supplement the escrow fund within thirty (30) days of notice from the Building Inspector of the estimated amount of the review fees necessary to process the application.

iii) Should the sums being maintained in the escrow account by the Town of Westerlo become reduced to the point where there remains one thousand dollars (\$1000.00) or less in said escrow account, upon receipt of written notice of such balance from the Town, Applicant will be required to replenish the escrow account with a deposit of an amount acceptable to the Town, which may be specified in the written notice. Failure on the part of Applicant to timely make such replenishment may result in the suspension of all activities by the Town in connection with the review or determination of any pending Application(s). In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be refunded to the Applicant.

#### e) NOTIFICATION

Within five (5) days of filing an application for a Commercial Solar Energy System, the applicant shall post a sign (in a form that conforms to the sample attached as Exhibit I) on the lot that is the subject of the application. The sign is intended to provide the public with notice that an application for an Approval is pending. The applicant shall be responsible for maintaining the sign. The sign shall satisfy the following criteria and standards:

i) The sign should be installed in a location that is visible to the public; and not less than fifteen feet (15 ft), and not more than thirty feet (30 ft), from the edge of

pavement of the nearest road providing access to the property that is the subject of the application, but the Building Inspector shall have discretion in determining the proper location of the sign (or multiple signs if the Building Inspector shall determine such to be needed). In the event the subject parcel does not have frontage on a public road, or is located in a densely, populated area, the Building Inspector shall determine, after consultation with the applicant and landowner, an appropriate location for the sign.

ii) The sign shall be in a standard format, color, font and style to be determined by the Building Inspector.

iii) The sign shall state, in words or substance, the following information:

- a) an application for an approval has been filed with the Town of Westerlo;
- b) the telephone number of the Building Department; and
- c) the Town website for further information regarding the application/project.

iv) The sign shall remain installed on the property until all public hearings are completed. If a second public hearing is required, the sign shall be reinstalled ten (10) days prior to a second or subsequent hearing. A continuation of a hearing shall be construed, for the purpose of this subsection, as a “second” hearing.

#### 4. ONGOING REQUIREMENTS:

##### a) STATUS OF SYSTEM

i) The owner of the Commercial Solar Energy System shall provide to the Building Department on an annual basis on the anniversary date of the commencement of operation of the commercial solar energy system documentation from the utility company verifying that said system is active.

ii) The owner of the Commercial Solar Energy System shall on a quarterly basis have a licensed contractor perform comprehensive inspection and service, along with such repairs as may be needed, and document that activity to the Building Department on a form provided by the Building Department.

##### b) PERSISTENCE OF OBLIGATIONS

Any subsequent owner or operator of the permitted Commercial Solar Energy System operating under a Special Use Permit granted under this law shall be bound to all requirements or conditions under the Zoning Code, established by the Planning Board, or otherwise set forth in the Special Use Permit, including compliance with the decommissioning plan and consent from the permit holder to allow the Town to enter onto the subject property for inspection or removal and restoration under Subsection 4(f).

##### c) CHANGES OF OWNERSHIP OR OPERATORSHIP

i) At least thirty (30) days prior to any change of ownership or operatorship of the permitted Commercial Solar Energy System, the current owner shall file with the

Building Inspector, the Supervisor's Office, and Town Clerk complete contact information and document the management structure and personnel and the ultimate ownership of each of the companies that obtain ownership.

ii) There shall be a reassessment of the Payment in Lieu of Taxes ("PILOT") with each change of ownership` due to the economic impact to the Town and PILOT.

iii) The new owner shall, no later than when taking control of the system, completely update all informative signing per Section Eight, Subsection 2(o) above.

#### c) PREPARATION FOR CONTINGENCIES

I) The owner or operator of the Commercial Solar Energy System shall retain and pay for availability of suitably skilled, equipped, and licensed or certified repair crews (likely contractors) who can be alerted by the monitoring set forth in Subsection 2(m) or a call to the posted emergency number and who can be at the site within one hour 24/7.

ii) The owner or operator of the Commercial Solar Energy System shall bear full responsibility for timely, competent, and effective address to any fires, downed wires, or other problematic contingencies as may occur at the Commercial Solar Energy System, and shall annually recertify that capability in a form acceptable to the Building Department and Fire Company.

iii) The owner or operator of the Commercial Solar Energy System shall offer training to the Fire Company and other first responders on how to coordinate with crews dispatched by the owner or operator of the Commercial Solar Energy System to address fires, downed wires, or other problematic contingencies at the Commercial Solar Energy System.

iv) The owner or operator of the Commercial Solar Energy System shall compensate the Fire Company for the costs of dealing with deal with fires, downed wires, or other problematic contingencies at the Commercial Solar Energy System.

#### d) INSURANCE

The owner of the Commercial Solar Energy System shall secure and at all times maintain a commercial insurance policy with a face value at least equal to the greater of the actual cost of creating and commissioning that system and the decommissioning estimate set forth in Subsection 4(e), including coverage for the Town of Westerlo and its officials, employees, and agents as insureds. The policy shall be issued by an agent or representative of an insurance company licensed to do business in New York State, and shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days written notice in advance of the cancellation of the insurance.

i) Renewal or replacement policies of certificates shall be delivered to the town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.

ii) Within fifteen (15) days of issuance of the Special Use Permit, and prior to construction of a permitted solar energy system, the system owner shall deliver to the Town a copy of each of the policies of certificates representing the insurance in the required amounts.

iii) Failure to comply with the foregoing shall automatically deem the Special Use Permit revoked without further proceeding. Written revocation of the Special Use Permit shall be forwarded to the system owner within five (5) days of the revocations.

e) INDEMNIFICATION

Any Special Use Permit issued hereunder shall contain a provision requiring the holder of the permit, to the extent permitted by law, to defend, indemnify, protect, save, hold harmless and exempt the town, officials of the Town, its officers, agents, servants, and employees, from any and all penalties, damage, or charges arising out of claims, suits, demands causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of or are caused by the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a solar energy system within the Town. Reasonable attorney's fees, consultant's fees and expert witness fees are included in those costs that are recoverable by the Town.

f) DECOMMISSIONING

The owner of a Commercial Solar Energy System shall annually, by January 15, file a declaration with the Town of Westerlo certifying the continuing safe operation of said system installed subject to these regulations. At the time that a system owner plans to abandon or discontinue operation of a solar energy system, such owner must notify the Town by certified U.S. Mail of the proposed date of abandonment, or discontinuance of operations.

i) Commercial Solar Energy Systems are deemed abandoned after:

a) twelve (12) months without electrical energy generation;

b) eighteen (18) months after issuance of all municipal permits if construction is not complete;

c) upon the effective date of notice of abandonment the applicant or subsequent owner provides to the Town; or

d) upon a failure to file a declaration as set forth above.

ii) Within ninety (90) days after a commercial solar system is deemed abandoned, the system must be removed and the property restored to its original condition by the applicant or any subsequent owner as set forth below. Applications for extensions are reviewed by the Planning Board and may be granted for a period of thirty to ninety (30-90) days at the discretion of the Planning Board.

iii) Removal and restoration shall include:

- a) removal of all infrastructure and accessory structures and/or equipment such as panels, collectors, support units (including all underground wiring), mounts, equipment shelters and security barriers from the property;
  - b) removal of all above- and below-ground equipment, structures and foundations;
  - c) proper disposal of all solid and hazardous waste from the site in accordance with local and state solid waste disposal regulations;
  - d) restoration of the surface grade and soil after removal of equipment; and
  - e) re-vegetation of restored soil areas.
- iv) Remediation of soil and vegetation shall be conducted according to the approved decommissioning plan described in Subsection 3(b).
- v) Upon the applicant or subsequent owner's failure to comply with the decommissioning requirements set forth herein or in the decommissioning plan, the Town may remove the subject Commercial Solar Energy System and restore the site upon notification to, and at the sole cost and expense of, the applicant or subsequent owner.

g) SURETIES

The owner of the Commercial Solar Energy System shall deposit and maintain with the Town Clerk security in an amount sufficient to pay for the costs and expenses of removal of the solar energy system and related equipment and structures and the restoration of the site as follows:

- i) The security may be in the form of cash, letter of credit, bond, or another instrument acceptable to the Town's attorney and the Town Board and shall remain in full force and effect until all equipment, structures, and materials of the subject Commercial Solar Energy System have been properly removed and site restoration is complete.
- ii) The security amount shall be determined by the Town Board in consultation with an engineer designated by the Town. The amount of the security shall be sufficient, during the first five (5) years of operation, to cover:
  - a) costs to deconstruct and dispose of all equipment, structures and materials related to the subject Commercial Solar Energy System; and
  - b) costs to restore the site; and all fees, costs and expenses incurred by the Town to administer and enforce the decommissioning process, such amount to be re-evaluated every five (5) years thereafter and, if necessary, adjusted to reflect prevailing costs and expenses.
- iii) If the amount of the security does not fully cover such fees, costs and expenses ("Costs") or if the Town cannot recover adequate proceeds of the security, then the owner and operator of the subject Commercial Solar Energy System and the

owner of the property on which the subject Commercial Solar Energy System is sited shall be jointly and severally, and corporately and personally, liable for the Costs not recovered. In addition, the Town may assess such Costs against the property, which assessment shall constitute a lien on the property, and which amount may be collected in the same manner as real property taxes.

#### H) BOND

The owner of the Commercial Solar Energy System shall also provide the Town with a decommissioning bond that will be in an amount reviewed by the Planning Board, determined by the Town Board, and in no case less than the cost estimate developed by a NYS Licensed Professional Engineer or Architect designated by the applicant.

i) The estimate shall be based on the size and scope of construction of the subject Commercial Solar Energy System. The cost estimate shall cover the complete removal of the subject Commercial Solar Energy System and all remediation to the site.

ii) In the event the bonding company is responsible for the removal of the subject Commercial Solar Energy System, the remediation must be done to the satisfaction of the Town.

iii) If the owner fails to decommission the subject Commercial Solar Energy System in accordance with the requirements stated, the bonding company will become responsible for the decommissioning of the system.

iv) The bond shall be in the form acceptable to the Town Attorney, which includes, but is not limited to, the letter of credit, perpetual bond, or combination thereof. The bond for the restoration of the site will include an escalator of two percent (2%) annually for the life of the subject Commercial Solar Energy System, with review no longer than five (5) years by the Planning Board, determination by the Town Board, and shall be adjusted, if deemed necessary, by the Town Board. If the bond is deemed to be adjusted, the applicant shall have ninety (90) days from date of notice to provide an adjusted bond.

### **Section Nine. Expedited Process**

#### 1. APPLICABILITY

This section shall apply to Solar Energy Systems with a rated maximum power of twenty-five kilowatts (25 kW) or less, which are Grid-Tied, and which do not include or incorporate a Storage System, notwithstanding the use of the Solar Energy System. No ground mounted system, however, shall be permitted on a nonconforming lot, as the same is described in the Zoning Law, and all ground-mounted systems must meet the set-back requirements set forth for said zoning district in the Zoning Law.

#### 2. PROCEDURE

To request Expedited Process, the applicant shall submit to the Town Building Department/Code Enforcement Officer the following:

- a) A completed application on the form provided by the Town, showing all the criteria stated above for Expedite Process are met;
- b) A set of project plans which includes, at a minimum:
  - i) The project address;
  - ii) Section, block and lot number of the subject property (tax identification number);
  - iii) Property owner's name, address and telephone number; and
  - iv) Name, address and telephone number of the person preparing the plans.
- c) A site plan showing the location of the major components of the Commercial Solar Energy System and other equipment to be located on a roof or legal accessory structure, along with all defined setbacks and height measurements for all ground mounted systems. The plan should set forth the relative location of the components at the site, including but not limited to, location of the Solar Collector(s), existing electrical service location, utility meter, inverter location, system orientation and tilt angle, and the access and pathways that are compliant with International Fire Prevention and Building Code, if applicable.

### 3. APPROVAL

Once the application and all required supporting documentation is submitted to the Building Department/Code Enforcement Officer and the Fire Company, the Building Department/Code Enforcement Officer is satisfied that all of the necessary plans and information have been included, and the Fire Company has communicated its approval, the Building Department/Code Enforcement Officer shall issue a combined building and electrical permit for the subject Solar Energy System.

#### **Section Ten. Fees**

The Town Board shall establish by resolution, which may be amended from time to time, a schedule of fees to cover costs associated with application and permitting, review and approval, and monitoring. Fees may include the reasonable costs of an independent technical assessment of the application by a consultant.

#### **Section Eleven. Severability**

Each separate provision of this local law shall be deemed independent of all other provisions herein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

#### **Section Twelve. Conflict With Other Laws**

Where this Law differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, the more restrictive or protective law of the Town and the public shall apply.

**Section Thirteen. Repeal Of Other Laws**

All local laws in conflict with provisions of this Local Law are hereby superseded. This Local Law supersedes any inconsistent provisions in the Town of Westerlo Code relating to zoning.

**Section Fourteen. Effective Date**

This Local Law shall take effect immediately, as provided by law, upon filing with the Secretary of State.

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