

**TOWN OF LEICESTER
LOCAL LAW NO. ___5___ OF THE YEAR 2019**

A Local Law Entitled “Adding Solar Energy Systems Section to the Zoning Ordinance of the Town of Leicester.”

Be it enacted by the Town Board of the Town of Leicester as follows:

A new section 8. A. shall be added to the Zoning Ordinance of the Town of Leicester and shall be entitled “Solar Energy Systems” and shall read as follows;

Section 8. A. Solar Energy Systems.

A. Authority and Legislative Intent.

The Town Board of the Town of Leicester states the following as its findings and legislative intent:

1. This Local Law establishing regulations for Solar Energy Systems (as hereafter defined) is adopted pursuant to New York State Town Law §§261, 263 and 264, which authorize the Town of Leicester to adopt zoning provisions that advance and protect the health, safety, and welfare of the community.
2. The Town Board of the Town of Leicester recognizes that solar energy is a clean, readily available and renewable energy source and the Town of Leicester intends to thoroughly accommodate the use of Solar Energy Systems.
3. However, the Town Board finds it is necessary to properly site and regulate Solar Energy Systems within the boundaries of the Town of Leicester to protect residential uses, Prime Farmland (as hereafter defined) and farm operations, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Leicester, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Leicester.
4. Prior to the adoption of this Local Law, no specific procedures existed to address the regulation and siting of Solar Energy Systems. Accordingly, the Town Board finds that the promulgation of this Section is necessary to direct the location, size and construction of these systems.

5. In addition, the Town Board believes it to be necessary to regulate and govern the proper and timely removal of Solar Energy Systems upon such systems becoming non-functional or when they are no longer being utilized.

B. Definitions.

The following definitions shall apply to this Section:

Applicant - The person or entity submitting an application and seeking an approval under this Section; the owner of a Solar Energy System or a proposed Solar Energy System project; the operator of Solar Energy System or a proposed Solar Energy System project; any person acting on behalf of an Applicant, Solar Energy System or proposed Solar Energy System. Whenever the term “applicant” or “owner” or “operator” are used in this Section, said term shall include any person acting as an applicant, owner or operator.

Building-Integrated Solar Energy System - A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

Building-Mounted Solar Energy System - Any Solar Energy System that is affixed to the side(s) or rear of a Building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a Building.

Glare – The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

Ground-Mounted Solar Energy System - Any Solar Energy System that is affixed to the ground either directly or by support structures or other mounting devices where such structure and mounting exists solely to support the Solar Energy System.

Prime Farmland - Land, designated as “Prime Farmland” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses. It has the soil quality, growing season, and moisture supply needed to produce economically sustained high yields of crops when treated and managed according to acceptable farming methods, including water management. In general, Prime Farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to

water and air. Prime Farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

A map showing Prime Farmland within the Town of Leicester is available at the Town Clerk's office and is made a part of these regulations as "Exhibit 1," which is styled "Town of Leicester – Prime Farmland Soils Showing an Area of Environmental Importance."

Roof-Mounted Solar Energy System - A Solar Energy System mounted on the roof of any legally permitted Building or structure and wholly contained within the limits of the roof surface.

Solar Panel - A photovoltaic device capable of collecting and converting solar energy into electrical energy.

Solar Energy Equipment - Electrical energy devices, material, hardware, inverters, or other electrical equipment and conduit that are used with Solar Panels to produce and distribute electricity.

Solar Energy System - An electrical energy generating system composed of a combination of both Solar Panels and Solar Energy Equipment.

Type 1 Solar Energy System – A Ground-Mounted Solar Energy System intended to produce energy for onsite consumption or credit for onsite consumption for a Building, single-family Dwelling, Multiple Dwelling, business or farm. Said system shall be considered an Accessory Use (as defined in Section 4.), designed and intended to generate electricity solely for use on the premises, potentially for multiple tenants, through a distribution system that is not available to the public.

Type 2 Solar Energy System – A Ground-Mounted Solar Energy System intended to produce energy for offsite sale to and consumption by one or more customers.

C. Zoning districts where allowed. Subject to the provisions of this Section, Solar Energy Systems shall be allowed as follows:

1. Building Integrated Solar Energy Systems are allowed in all zoning districts upon issuance of a building permit based on special application materials supplied by the Town Building and Code Department.
2. Building-Mounted Solar Energy Systems are allowed in all zoning districts upon issuance of a building permit based on special application materials supplied by the Town Building and Code Department.
3. Roof-Mounted Solar Energy Systems are permitted in all zoning districts, subject to the following:

- (a) The placement, construction and major modification of Roof-Mounted Solar Energy Systems shall only be permitted upon issuance of building permit based on specific application materials as may be supplied by the Town Building and Code Department.
 - (b) Height. Roof-Mounted Solar Energy Systems shall not exceed the maximum height restrictions within the zoning district in which they are located.
 - (c) Design standards. Roof-Mounted Solar Energy System installations shall comply with the following design standards:
 - (i) Solar Panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.
 - (ii) No part of a Roof-Mounted Solar Energy System shall extend above, beyond, or below the edge of the roof it is mounted to. Additionally, the Code Enforcement Officer may require, at his/her sole discretion, a minimum three (3) foot wide center walkway for safe access purposes.
 - (iii) If feasible, Solar Energy Equipment shall be installed inside walls and attic spaces to reduce their visual impact.
 - (iv) If feasible, Solar Panels affixed to a flat roof shall be placed below the line of sight from a public right of way
 - (d) Roof-Mounted Solar Energy Systems shall be exempt from Site Plan review under the local zoning code or other land use regulations, excepting the requirement to obtain a building permit as required in paragraph C. 3. above
4. Type 1 Solar Energy Systems are allowed as Accessory Uses and/or structures in all zoning districts.
- (a) The placement, construction and major modification of Type 1 Solar Energy Systems shall only be permitted upon issuance of building permit based on specific application materials as may be supplied by the Town Building and Code Department.
 - (b) Height. Type 1 Solar Energy Systems shall not exceed fifteen (15) feet at the highest point when oriented at maximum tilt.

- (c) Setbacks. Type 1 Solar Energy Systems setbacks shall be twice the standard setbacks for Buildings within the zoning district it is located, but in no event shall any such setback be less than twenty (20) feet.
 - (d) Coverage. Type 1 Solar Energy Systems ground coverage shall not exceed the allowable total surface or area coverage for accessory Buildings or structures within the zoning district in which it is located and in no event shall the combination of all accessory Buildings and structures located on the premises exceed 20% coverage of the entire area of such parcel. For purposes of this provision, coverage shall be calculated based upon the total surface area of the Solar Panels at minimum tilt.
 - (e) All Type 1 Solar Energy Systems located in Residential Districts (R) shall be installed in the side or rear yard.
 - (f) All applications for Type 1 Solar Energy Systems for businesses or farms, to the extent permitted by law, shall be subject to Site Plan review as may be provided for elsewhere in the Zoning Ordinance or as may be established by further action of the Town. Applications for Type 1 Solar Energy Systems for use on residential parcels may be subject to Site Plan review at the sole discretion of the Code Enforcement Officer.
 - (g) Pursuant to 6 NYCRR 617.5, Type I Solar Energy Systems to be used on residential parcels shall be deemed to be Type II Actions for purposes of review under the New York State Environmental Quality Review Act (16 NYCRR 617). All other Type 1 Solar Energy Systems shall be deemed to be Unlisted Actions pursuant to the New York State Environmental Quality Review Act.
5. Type 2 Solar Energy Systems are permitted only in Agricultural Districts (A) and are subject to the requirements set forth in this Section, including Site Plan review as may be provided for elsewhere in the Zoning Ordinance or as may be established by further action of the Town, and are allowed only after the issuance of a Special Use Permit pursuant to these provisions. Applications for the installation of a Type 2 Solar Energy System shall be reviewed by the Zoning Enforcement Officer and referred, with comments, to the Town of Leicester Planning Board (for Site Plan) and the Town of Leicester Board of Appeals (for Special Use Permit) for their review and action, which can include approval, approval on conditions, or denial.
- (a) Area where Type 2 Solar Energy Systems are not permissible. Notwithstanding the above, Type 2 Solar Energy Systems shall not be a permitted use within that portion of the Agricultural District (A) that is from the east side of the Genesee Valley Greenway to the Town boundary that runs along and south of the Genesee River as such area has been

determined to be an area of environmental importance and of a unique character to the community due to its proximity to the Genesee River and being a part of the Genesee Valley. Said area is shown on “Exhibit 1,” which is styled “Town of Leicester – Prime Farmland Soils Showing an Area of Environmental Importance.”

- (b) Special Use Permit Application Requirements. For a Special Use Permit application, the Applicant shall submit the Site Plan application provided to the Planning Board, any information required by the Code Enforcement Officer and the following documents and information:
 - (i) If the property of the proposed project is to be leased, proof of legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements.
 - (ii) Plans and drawings for the Type 2 Solar Energy System signed by a Professional Engineer showing the proposed layout of the Solar Energy System along with providing a description of all components, existing vegetation, any proposed clearing and grading of the lot(s) involved, any anticipated or possible storm water or erosion disturbances, and utility lines (both above and below ground) on the site and adjacent to the site.
 - (iii) Submitted plans and drawings shall show all property lot lines and the location and dimensions of all existing Buildings or structures and uses on any parcel within 500 feet of the outer perimeter of the Solar Energy System.
 - (iv) Equipment specification sheets shall be provided for all Solar Panels, significant components, mounting systems, and inverters that are to be installed.
 - (v) A Property Operation and Maintenance Plan which describes all ongoing or periodic maintenance of the Solar Energy System and property upkeep, such as mowing and trimming.
 - (vi) Clearing, grading, storm water and erosion control plan. Applicant shall submit an engineered Storm Water and Erosion Control Plan to the Town of Leicester Engineer for its review and approval which shall demonstrate that post development runoff, storm drainage and erosion will not be negatively impacted by placement of the Type 2 Solar Energy System on the site.
 - (vii) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Leicester Planning

Board, Town of Leicester Board of Appeals, Town Attorney or Code Enforcement Officer.

- (viii) At its sole discretion, the Town of Leicester Planning Board and/or the Town of Leicester Zoning Board of Appeals may refer an application for a Type 2 Solar Energy System to one or more private consultants for review to assist such Board in properly fulfilling its duties. Such consultants may include a professional engineer, attorney, planning consultant or other specialist. All expenses incurred by the Town (through either Board) for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, either Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Any such deposit shall be held in a non-interest bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Should such deposit be depleted prior to final approval, either Board may require that additional monies be deposited with the Town before further review of the application will continue. A reviewing Board may suspend indefinitely the review of any application as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants. Any such suspension shall supersede any Town of New York State law, rule or regulation relating to the timing of issuance of decisions for such applications.

- (ix) Decommissioning Plan. To ensure the proper removal of Type 2 Solar Energy Systems after such improvements are no longer reasonably operable or have been abandoned, a Decommissioning Plan shall be submitted as part of the application. The Decommissioning Plan must specify that after the Type 2 Solar Energy System is no longer operational or has been abandoned, it shall be removed by the Applicant or any subsequent owner of the improvements and/or the subsequent owner of the property upon which the improvements are placed. The Decommissioning Plan shall run to the benefit of the Town of Leicester and be executed by the Applicant as well as the owners of the real property upon which the Solar Energy System is to be located and such signatures shall be notarized in a format that allows the plan to be recorded at the Office of the Livingston County Clerk. Such plan shall, prior to commencement of construction, be recorded at the office of the

Livingston County Clerk as irrevocable deed restrictions indexed against the property upon which the Solar Energy System is to be constructed. The intent of the above provisions is so that all future owners of such properties will be obligated to comply with the Decommissioning Plan requirements if the Applicant or then owner of the Solar Energy System fails to do so.

The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution and a cost estimate detailing the projected cost of executing the Decommissioning Plan, which is to be prepared by a Professional Engineer or reputable contractor. Cost estimations shall take into account inflation and shall be based on the operating life expectancy of the system.

- A. Prior to obtaining a building permit and as a condition to any Special Use Permit being issued, the Applicant must provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Leicester at its discretion) for the removal of the Type 2 Solar Energy System, with the Town of Leicester as the designated assignee/beneficiary, in an amount approved by the Planning Board which is equal to 110% of the estimated removal cost. The bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal. Each year after a Type 2 Solar Energy System has been constructed, and no later than ten (10) days prior to the anniversary date of the issuance of the building permit for such system, the then owner/permit holder for the system shall provide the Town of Leicester with written proof that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above.
- (x) If a Type 2 Solar Energy System is proposed to be developed on land that is or could be in agricultural production, Applicant shall demonstrate how the proposed development complies with the then current guidelines as may be established by the New York State Department of Agriculture and Markets relating to Agricultural Mitigation for Solar Energy Projects.

- (c) Special Use Permit and Site Plan Approval Standards.
- (i) Height. Type 2 Solar Energy Systems shall adhere to the height requirements of the underlying zoning district.
 - (ii) Setbacks. Type 2 Solar Energy Systems shall be sited to create a front setback of no less than 200 feet from public roadways and setbacks of 100 feet from all side and rear property lines. In addition, no Type 2 Solar Energy System shall be located closer than 300 feet from any residential structure located on another parcel.
 - (iii) Lot/Parcel Size. Type 2 Solar Energy Systems shall be located on parcels with a minimum lot size of 25 acres.
 - (iv) Lot/Parcel Coverage. Type 2 Solar Energy Systems are permitted to cover up to 80% of any lot or parcel that does not contain Prime Farmland. If a Type 2 Solar Energy System is to be constructed on a parcel or parcels that contain Prime Farmland, in no instance shall more than 10% of the Prime Farmland on any given lot be permitted to be used, developed or covered for purposes of Type 2 Solar Energy Systems. It is the intent of this restriction to protect the valuable resource and benefits of Prime Farmland and it is the express intention of the Town of Leicester that no variance or hardship request be granted to permit increased coverage by Type 2 Solar Energy Systems on Prime Farmland by any board or commission or other agency having legal authority to consider and grant such a variance or hardship request. The coverage area shall be determined by the area covered by the perimeter of the Solar Energy System at minimum tilt.
 - (v) Fencing and Screening. All Type 2 Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed and maintained on the entrance and perimeter of the fencing. The fencing and the system may be required to be further screened by landscaping to avoid adverse aesthetic impacts. The Planning Board shall provide for enhanced screening and buffering for Type 2 Solar Energy Systems that are placed adjacent to residentially zoned areas or abut a public road.
 - (vi) Number of Type 2 Solar Energy Systems allowed per lot. Only one Type 2 Solar Energy System shall be allowed per lot or parcel, regardless of lot size.

- (vii) Recent Subdivision of Lot/Parcel. In order to prevent circumvention of the size and coverage restrictions set forth above, when considering such restrictions, the Zoning Board of Appeals shall consider the lot or parcel to be the smallest configuration of the physical area where the Type 2 Solar Energy System is being proposed that has existed as a separate lot or parcel (with its own Tax Identifier Map Parcel Number) in the official tax records of the Town of Leicester within the five (5) years immediately preceding the application seeking approval for such Type 2 Solar Energy System. This provision is specifically intended to prevent any owner of land from combining multiple parcels of land in order to permit siting of a larger Type 2 Solar Energy Systems than would have been otherwise allowable pursuant to these regulations.
- (viii) Vegetation and Habitat. Type 2 Solar Energy System owners/developers shall develop, implement and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, owners/developers shall use native plant species and seed mixes.
- (ix) Any Type 2 Solar Energy System shall be accessible for all emergency service vehicles and personnel.
- (x) After completion of a Type 2 Solar Energy System, the Applicant shall provide a post- construction certificate from a Professional Engineer registered in New York State that the project complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans.
- (xi) Compliance with regulatory agencies. The Applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county and local agencies having jurisdiction and approval powers related to the completion of a Type 2 Solar Energy System.
- (xii) Any application under this Section shall meet any substantive Site Plan requirements as may be provided for elsewhere in the Zoning Ordinance or as may be established by further action of the Town, or that in the judgment of the Leicester Town Planning Board, are applicable to the system being proposed.

- (xiii) The Planning Board shall be required to hold a public hearing relating to Site Plan for any Type 2 Solar Energy System.
- (xiv) Prior to determination or issuance of any permit, all Type 2 Solar Energy System applications shall be subject to review pursuant to the New York State Environmental Quality Review Act (6 NYCRR 617). All applications (Site Plan and Special Use Permit) for approval of a Type 2 Solar Energy System shall be deemed to be a Type I Actions for purposes of compliance with the New York State Environmental Quality Review Act (6 NYCRR 617.4 (a) (1) and (2) specifically allow the Town to classify such actions in addition to the list established by such statute) with The Leicester Planning Board and the Leicester Zoning Board of Appeals conducting a coordinated review.
- (xv) The development and operation of a Type 2 Solar Energy System shall not have a significant adverse impact on fish, wildlife or plant species or their critical habitats, or other significant habitats identified by the Town of Leicester or other federal or state regulatory agencies. The Leicester Town Planning Board and the Leicester Zoning Board of Appeals may impose conditions on its approval of any Site Plan or Special Use Permit under this Section to enforce the standards referred to in this Section or to discharge its obligations under the State Environmental Quality Review Act.
- (xvi) Time limit on completion. After receiving Site Plan approval and Special Use Permit approval of a Type 2 Solar Energy System, an Applicant shall obtain a Building Permit within twelve (12) months of such approvals or the approvals shall automatically terminate and be deemed null and void. Additionally, the Applicant shall complete construction of an approved (Site Plan and Special Use Permit) Type 2 Solar Energy System within twelve (12) months of obtaining a Building Permit as provided for above, or the approvals shall automatically terminate and be deemed null and void and be of no force an effect at law.
- (xvii) General complaint process. During construction, the Code Enforcement Officer can issue a stop work order at any time for any violations of a Special Use Permit approval or condition, Site Plan approval or condition or Building Permit. After construction is complete, the permit holder of a Type 2 Solar Energy System shall establish a contact person, including name and telephone number for receipt of any complaint concerning any permit, approval, maintenance, or operational requirements.

(xviii) Inspections. Upon reasonable notice, the Town of Leicester Code Enforcement Officer, or his or her designee, may enter a lot or parcel upon which a Solar Energy System has been approved for the purpose of determining compliance with any requirements or conditions of this Section or any approval given or permit issued pursuant to this Section. Twenty-four (24) hours' notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a Type 2 Solar Energy System shall be inspected by a New York State licensed Professional Engineer that has been approved by the Town of Leicester at any time upon a determination by the Town's Code Enforcement Officer that damage to such system may have occurred, and a copy of the written inspection report shall be submitted to the Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder, owner or operator and shall be reimbursed to the Town of Leicester within thirty 30 days after delivery to the permit holder of an invoice substantiating such charges. Any failure to pay such reimbursable charges may result in revocation of any Special Use Permit granted. The Town of Leicester reserves the right to levy all such un-reimbursed expenses onto the real property tax bill associated with the real property upon which the Solar Energy System is located.

- D. General regulations. The placement, construction and major modification of all Solar Energy Systems within the boundaries of the Town of Leicester shall be permitted only as follows:
1. Any inconsistent provisions of the Code of the Town of Leicester which purport to or may be interpreted to allow Solar Energy Systems in other districts are hereby superseded.
 2. All Solar Energy Systems existing on the effective date of this Section shall be "grandfathered" and allowed to continue as they presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. New construction other than routine maintenance on pre-existing systems shall comply with the requirements of this Section.
 3. No Solar Energy System shall hereafter be used, erected, moved, reconstructed, changed or altered except in conformity with these regulations.
 4. Any applications (including variance applications) pending for Solar Energy Systems on the effective date of this Section shall be subject to the provisions of this Section.

5. This Section shall take precedence over any inconsistent provisions of the Zoning regulations contained within the Zoning Ordinance of the Town of Leicester.
6. For all Solar Energy Systems, no signage or graphic content may be displayed on the Solar Energy Equipment except the manufacturer's badge, safety information and equipment specification information.
7. For Type 2 Solar Energy Systems, a sign not to exceed nine square feet shall be displayed on or near the main access point and shall list the facility name, owner and phone number, disconnect and other emergency shutoff information, 24-hour emergency contact information, and it will be clearly displayed on a light reflective surface.
8. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
9. Payment in Lieu of Tax Agreement. The owners or developers and landowners of the property upon which a Type 2 Solar Energy Systems is to be developed shall be required to enter into a contract with the Town for payments in lieu of taxes pursuant to Real Property Tax Law §487 9.(a). Upon the owner or developer providing written notification to the Town of its intent to construct a Type 2 Solar Energy System, the Town Assessor or the Town Attorney on behalf of the taxing jurisdiction shall notify such owner or developer in writing within sixty (60) days of its intent to require a contract for payments in lieu of taxes.
 - (a) In no event shall such payment in lieu of tax agreement operate for a period of more than fifteen (15) years, commencing in each instance from the date on which the benefits of such exemption first become available and effective under Real Property Tax Law §487.
 - (b) In no event shall such payment in lieu of tax agreement require annual payments in an amount that would exceed the amount that would otherwise be payable but for the exemption under Real Property Tax Law §487.
 - (c) The payment in lieu of tax agreement shall run to the benefit of the Town of Leicester and be executed by the Applicant/developer as well as the owners of the real property upon which the Solar Energy System is to be located and such signatures shall be notarized in a format that allows the payment in lieu of tax agreement to be recorded at the Office of the Livingston County Clerk. Such payment in lieu of tax agreement shall, prior to commencement of construction, be recorded at the office of the Livingston County Clerk as a lien on the property upon which and indexed against the property upon which the Solar Energy System is to be constructed. The intent of the above provisions is so that should the Applicant/developer or owner of the Solar

Energy System default with regard to such payment in lieu of tax agreement, that such obligation will become the responsibility of the then owner of the property upon which the Solar Energy System is sited and that failure to satisfy the terms of such agreement will permit the Town of Leicester to enforce such agreement as against the owner of the real property and the real property.

- (d) At its sole discretion, the Leicester Town Board may refer an application for a Type 2 Solar Energy System to one or more private consultants to assist such Board in negotiating, drafting and/or reviewing the required payment in lieu of tax agreement. Such consultants may include a professional engineer, attorney, planning consultant or other specialist. All expenses incurred by the Town for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, the Town Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Any such deposit shall be held in a non-interest bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Should such deposit be depleted prior to final approval of the required payment in lieu of tax agreement, the Town Board may require that additional monies be deposited with the Town before further processing of the payment in lieu of tax agreement will continue. The Town Board may suspend indefinitely the negotiation and drafting and review of the payment in lieu of tax agreement as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants. Any such suspension shall supersede any Town of New York State law, rule or regulation relating to the timing of issuance of approvals for such payment in lieu of tax agreements.
- (e) No building permit may be issued for any approved Type 2 Solar Energy System until such time as a payment in lieu of tax agreement has been executed by all parties.

10. Community Benefit Agreement. The owners or developers and landowners of the property upon which a Type 2 Solar Energy Systems is to be developed shall be required to enter into a community benefit agreement with the Town for payment by the owners, developers or landowners to the Town of an agreed upon monetary amount or provision of a specified public improvement or improvements that shall act to offset the potential negative impacts that may be associated with a Type 2 Solar Energy System.

- (a) At its sole discretion, the Leicester Town Board may refer an application for a Type 2 Solar Energy System to one or more private consultants to assist such Board in negotiating, drafting and/or reviewing the required community benefit agreement. Such consultants may include a professional engineer, attorney, planning consultant or other specialist. All expenses incurred by the Town for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, the Town Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Any such deposit shall be held in a non-interest bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Should such deposit be depleted prior to final approval of the required community benefit agreement, the Town Board may require that additional monies be deposited with the Town before further processing of the community benefit agreement will continue. The Town Board may suspend indefinitely the negotiation and drafting and review of the community benefit agreement as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants.
 - (b) No building permit may be issued for any approved Type 2 Solar Energy System until such time as a community benefit agreement has been executed by all parties.
- 11. Road Use Agreement. Prior to issuance of any building permit for a Type 2 Solar Energy System and as a condition to any Special Use Permit being issued, the Applicant and its general contractor shall enter into a written Road Use Agreement benefitting the Town and in a format acceptable to the Town at its sole discretion. Such Road Use Agreement will require Applicant and its General Contractor to indemnify and hold the Town harmless from any and all damage to the roadways within the Town that may result from the development of Applicant's Type 2 Solar Energy System. As a part of such Road Use Agreement, Applicant shall provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Leicester at its sole discretion), benefitting the Town, that shall ensure the indemnification and hold harmless provisions stated above.
 - (a) In the event that any damage is done to any Town road as a result of the development of an Applicant's Type 2 Solar Energy System, said Applicant and/or its General Contractor shall be responsible to perform repairs to such

road that are acceptable to the Town Highway Superintendent in his/her reasonable discretion.

- (b) Such repairs shall be completed within sixty (60) days of when written notice of a demand to repair was personally served or sent via certified mail to Applicant or its General Contractor. Should Applicant or its General Contractor fail to effectuate such repairs within sixty (60) days, or within a different timeline at the discretion of the Highway Superintendent, the Town shall be permitted to execute on the irrevocable financial security bond (or other form of surety) with written notice to Applicant or its General Contractor.
- (c) The provisions of the Road Use Agreement required hereby and the requisite financial security bond (or other form of surety) shall remain in full force and effect for no less than one year after all construction has been completed and the project has been certified as complete by a professional engineer.
- (d) No building permit may be issued for any approved Type 2 Solar Energy System until such time as a Road Use Agreement has been executed by all parties.

E. Abandonment and Decommissioning.

1. If the use of an approved Solar Energy System is discontinued, the permit holder, owner or operator shall provide written notice to the Code Enforcement Officer within thirty (30) days of such discontinuance. In any case, Solar Energy Systems are considered inoperative and abandoned after 90 days without electrical energy generation which is consumed onsite (or credit for onsite consumption is received) for Type 1 Solar Energy Systems or without production of energy and offsite sale to and consumption by one or more customers for Type 2 Solar Energy Systems.
2. Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a Solar Energy System shall be made by the Town Code Enforcement Officer, who shall provide the permit holder, owner or operator and owner of the real property upon which the Solar Energy System is located with written notice by personal service or certified mail, return receipt requested. Any appeal by the permit holder, owner or operator of the Code Enforcement Officer's determination of abandonment or inoperability shall be filed with the Town of Leicester Zoning Board of Appeals within thirty (30) days of the Code Enforcement Officer causing personal service or mailing certified mail his written determination upon the permit holder, owner or operator and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent

jurisdiction grants a stay or reverses said determination. At the earlier of 91 days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals and/or permits granted or issued for the Solar Energy System shall automatically expire.

3. Removal. All Solar Energy Systems (and related infrastructure) shall be dismantled and removed immediately from a Lot where the Special Use Permit or Site Plan approval has been revoked by the Town of Leicester Zoning Board of Appeals or the Town Planning Board respectively, or if the Solar Energy System has been deemed by the Code Enforcement Officer to be inoperative or abandoned for a period of more than 90 days and the Lot shall be restored to its pre-development condition. The responsibility to dismantle and remove and all such costs of removal shall be the responsibility of the permit holder, system owner of the Solar Energy System and/or the owner of the property on which such Solar Energy System is located. If the permit holder, system owner or owner of the property does not dismantle and remove said Solar Energy System as required, the Town Board may, after a hearing at which the permit holder or system owner and property owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and levy all related expenses associated with the removal onto the real property tax bill associated with the property upon which the Solar Energy System was located, regardless of who the permit holder is/was.
 - (a) Removal of all Type 2 Solar Energy Systems shall be in accordance with the Decommissioning Plan required by section C. 5. (b) (ix) above. In the event that permit holder, the then owner of the Type 2 Solar Energy System, or the property owner fails to remove all equipment, infrastructure or appurtenances thereto, the Town shall be permitted at its sole discretion to utilize the financial security bond (or other form of surety) provided for in the Decommissioning Plan or to exercise its right after notice as provided for above, to dismantle and remove said facility and levy all related expenses associated with the removal onto the real property tax bill associated with the property upon which the Solar Energy System was located, regardless of who the permit holder is/was.

F. Revocation.

If the Applicant violates any of the conditions of its Special Use Permit, Site Plan approval or violates any other local, state or federal laws, rules or regulations, such violation shall be grounds for revocation of the Special Use Permit or Site Plan Approval. Revocation may occur after the applicant is notified in writing of the violations and the Town of Leicester Zoning Board of Appeals holds a hearing on same as provided for herein.

G. Interpretation; conflict with other law.

In its interpretation and application, the provisions of this Section shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. This Section is not intended to interfere with, abrogate or annul other rules, regulations or laws, provided that whenever the requirements of this Section are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards shall govern.

H. Severability.

If any section, subsection, phrase, sentence or other portion of this Section is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

This Local Law shall take effect immediately upon filing with the Secretary of State of New York.