

DECOMMISSIONING PLAN

I. DECOMMISSIONING: INTRODUCTION

1.1 Delaware River Solar LLC and its affiliates NY Farmington I, LLC, NY Farmington II, LLC, and NY Farmington III, LLC (“System Operators”) propose to build three 2.338 Mega Watt (“MW”) alternating current (AC) photovoltaic (“PV”) solar facilities (“Solar Facilities”) on parts of the property located at 466 Yellow Mills Road, Palmyra, New York (“Project Site”) in the Town of Farmington (“Town”) under New York State’s Community Solar initiative. The Solar Facilities are planned to have a nameplate capacity totaling approximately 7.0 megawatts AC (each Solar Facility having a rated capacity of 2.338 MW) and be built on the private land leased from the property owners Roger and Carol Smith (“Property Owners”).¹

1.2 This Decommissioning Plan (“Plan”) lays out the activities, rights and responsibilities involved in preparation for and conclusion of the operations of a Solar Facility, dismantling of its system and equipment and removal of component parts and waste from the site, and lastly restoring the land to its pre-construction condition pursuant to the Farmington Town Code, Special Use Permit conditions, and this agreement. See Town Code §165.65.3 [H] (Abandonment and Decommissioning).

1.3 The Solar Facilities that are the subject of this Decommissioning Plan are expected to have a useful lifecycle of at least thirty (30) years and the lease agreement between DRS and the Property Owners has a thirty (30) year lease term, subject to five-year extensions and other provisions. This Plan presumes that the Solar Facilities will be dismantled, and the Project Site restored to a state similar to its pre-construction condition, at the thirty (30) year anniversary of the Solar Facilities’ first commercial operation date (“Expected Decommissioning Date”). However, this Plan also covers the situation of abandonment of the Solar Facilities, for any reason, prior to the Expected Decommissioning Date, and extension of the Expected Decommissioning Date, should such occur. Decommissioning of a Solar Facility will occur at some point in time in the future, and the parties have set forth their expectations and responsibilities regarding such activity in this document.

1.4 This Plan is based on current best management practices and

¹ In the event a Project Site should involve a leaseholder(s) in addition to property owners, the term “Property Owner” as used in this Decommissioning Plan to describe the rights and responsibilities of the parties shall be expanded to include such leaseholder, subject to the property owners’ and leaseholders’ own arrangements regarding the leasehold apart from, but secondary to, the decommissioning process and responsibilities provided herein for Property Owners (now including the leaseholder(s)).

procedures. This Plan may be subject to revision based on new standards and emergent best management practices at the time of decommissioning, if agreed then in writing by all existing signatories or their successors.

1.5 This Decommissioning Plan is agreed to remain viable and enforceable as long as a Solar Facility exists in whole or part on or near² the Project Site, and the Project Site remains incompletely restored as provided herein, plus such additional periods as needed to enforce the provisions of this Plan.

1.6 As used in this Decommissioning Plan, “decommissioning” consists of the approved process for dismantling of the Solar Facilities, removal of their component parts and related waste from the Project Site, as well as restoring the land to its pre-Solar Facility condition as provided herein, preferably in an orderly and timely manner. See Town Code § 165-65.3 [H][5][a].³

II. DECOMMISSIONING: WHEN TO BE IMPLEMENTED

2.1 The Decommissioning Process provided in this Plan may be invoked by any Party upon written notice to all other signatories at such time as conditions exist or reasonably appear to exist to decommission a Solar Facility that is being shut down and removed, or has been abandoned.

2.2 Conditions when this Decommissioning Plan may be invoked consist of the following situations: (1) the Solar Facility is no longer authorized to exist and/or operate on the Project Site, such as in the case of a loss of lease rights, eminent domain condemnation, or regulatory prohibition such as a loss of special use permit privileges or other termination of operating authority; (2) the Solar Facility fails to generate and transmit electricity at a rate of more than ten percent (10%) of its rated capacity over a continuous period of one year, unless such energy generation was limited by RG&E, New York State, or another controlling energy

² In case, for example, some solar arrays are blown off the Project Site by storms/high winds, or are vandalized and dragged onto neighbors' properties and so are not actually sited on the Project Site anymore.

³ Decommissioning and removal.

(a) Decommissioning and removal of a commercial solar PV system shall consist of: [1] Physical removal of all aboveground and below-ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site. [2] Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations. [3] Restoration of the ground surface and soil. [4] Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.

regulatory body beyond the control of the System Operator, for which exception the System Operator has the burden of proof; (3) the Solar Facility is damaged in whole or substantial part, and will not be repaired or replaced within six (6) months; (4) the Solar Facility or Project Site is abandoned, or reasonably appears abandoned, as defined more specifically in Section 2.3; (5) initial construction of the Solar Facility has commenced after site plan approval but is not completed within eighteen months of issuance of the first building permit for the project, or is not completed within any subsequent extensions for construction of the Solar Facility granted by the Planning Board; and/or (6) an emergency situation exists when area persons, property or environment are, or are reasonably believed to be, subjected to harm as a result of Solar Facility equipment or operations if decommissioning is not undertaken promptly.

2.3 As used in this Plan, abandonment may be reasonably found by the Code Enforcement Officer and/or the Planning Board for purposes of invoking this Decommissioning Plan and its provisions when:

- a) System Operator provides notice of its abandonment of the Solar Facility;
- b) evidence of abandonment is observed from the System Operator, such as by admissions, failures to provide required reports or responses in a timely manner, failures to comply with requirements of the Special Use Permit and/or Town Code; failure to pay periodic costs associated with the services provided by the Town's Engineering Firm for tasks involved with assisting the Town to supervise their Solar Facility within a reasonable time; failure to provide a suitably authorized person to accompany the Code Enforcement Officer within forty-eight hours of a request to enter its Solar Facility; failure to comply with a decommissioning schedule without adequate explanation for the delay and without a feasible plan acceptable to the Town to resume diligent decommissioning work; failure to timely comply with the Decommissioning Process of this Decommissioning Plan; failure to provide the requisite surety in time or as otherwise required; and/or the failure of a new property owner and/or system operator to adhere to this Decommissioning Plan in writing and adopt these same rights and responsibilities within ninety days of the transfer of ownership;
- c) evidence of abandonment is observed at the Project Site, such as non-operational Solar Facility equipment, obstructed or damaged solar panels, failed landscape plantings, damaged fencing or signage, unplowed access road and/or substantial debris on site—any existing for an unreasonable amount of time;
- d) contract (Distributed Generation Interconnection Agreement) between the System Operator and local utility receiving electricity generated by solar

energy from the Solar Facility is terminated or breached (and written notice of such event is stated by one of the parties in writing in some form);

e) Solar Facility fails to generate and transmit electricity at a rate of more than ten percent (10%) of its rated capacity over a continuous period of one year, or such other period provided by the Planning Board if it grants an extension of such period prior to the expiration of such one year period; and/or

f) initial construction of the Solar Facility has commenced after site plan approval but is not completed within eighteen months of issuance of the first building permit for the project, or is not completed within any subsequent extensions for construction of the Solar Facility granted by the Planning Board.

2.4 Before any finding of abandonment may be made based on circumstances existing for an unreasonable period of time, the Code Enforcement Officer and/or Planning Board shall take into consideration whether a permit is required to remedy the apparent problem, whether the System Operator and/or Property Owner has been actively engaged in securing the necessary permit, and whether the unreasonable delay is fairly attributable to the permitting authority in whole or substantial part—which time should not be attributed to the System Operator and/or Property Owners on the issue of abandonment.

2.5 The time when abandonment shall be deemed to occur for a Solar Facility for purposes of this Agreement shall be as of the earliest of any the following events: (i) date of a written notice or admission of abandonment by the System Operator or Property Owners that comes to the Town's attention; (ii) date 180 days after a determination of abandonment by the Code Enforcement Officer and demand that either construction of a Solar Facility be completed or a completed Solar Facility resume or reach operation of no less than 80% of rated capacity without such compliance; (iii) date on which a failure to appeal a determination of abandonment by the Code Enforcement Officer to the Town Board under Town Code § 165-65.3 [H][8] finally deems the Solar Facility abandoned and the special use permit revoked; (iv) a finding of abandonment by the Planning Board based on substantial evidence appropriate to the issue after notice and a hearing, if requested; (v) revocation by the Planning Board of the Special Use Permit to operate the Solar Facility at the Project Site; (vi) a finding of abandonment by the Planning Board based on substantial evidence appropriate to the issue after notice and a hearing, if requested; and/or (vi) revocation by the Town Board of the Special Use Permit to operate the Solar Facility at the Project Site.

2.6 In the event the Solar Facility is damaged in whole or substantial part and will not be repaired or replaced, the System Operator shall notify the other

parties of its decision in writing promptly and invoke this Decommissioning Plan. In the event the Solar Facility is damaged in whole or substantial part and is not repaired or replaced within a reasonable time or within ninety (90) days, the Town may request the System Operator to disclose its plan to address the damage and is entitled to a written answer within sixty (60) days; if the System Operator fails to answer the Town's inquiry or provides a nonspecific answer that does not provide for repair or replacement within a reasonable time from the damage sustained, such nonresponsive reply may be found to constitute evidence of abandonment.

2.7 Similarly, in the event the Solar Facility fails to generate and transmit electricity for a month at a rate of more than ten percent (10%) of its rated capacity, the System Operator shall notify the other Parties of that situation within sixty (60) days of such event and shall explain the basis for the low rate, if known, and advise of the System Operator's plan to address the low rate level of electricity generation and raise it to 80% of its Solar Facility's rated capacity for electricity generation within six months. Such plan shall include monthly reporting of the current generation rate to the Town until the reports indicate three consecutive months meeting the 80% rated capacity level. In the event the System Operator fails to adequately address the low level generation as required, and/or the Solar Facility fails to make substantial improvement in meeting its 80% rated capacity level over a six month period and System Operator's plan is not producing its scheduled results, such inadequate response and/or feeble persistent performance may be found to be evidence of abandonment.

2.8 Upon cessation of operations of a Solar Facility, either by choice of the System Operator, by regulatory authority, or by abandonment, and in the event the System Operator and/or Property Owner does not first invoke this Decommissioning Plan, after undue delay the Town may notify and instruct the System Owner and Property Owners to implement this Decommissioning Plan. See Town Code § 165-65.3 [H] [7], [8].⁴

⁴ Determination of abandonment. Upon a determination by the Code Enforcement Officer that a commercial solar PV system has been abandoned, the Code Enforcement Officer shall notify the system owner, landowner and permittee by certified mail:

In the case of a facility under construction, to complete construction and installation of the facility within 180 days; or

In the case of a fully constructed facility that is operating at a rate of less than 10% of its rated capacity, to restore operation of the facility to no less than 80% of rated capacity within 180 days, or the Town will deem the system abandoned and commence action to revoke the special use permit and require removal of the system.

Failure to perform notification. Being so classified, if either the system owner, landowner and/or permittee fails to perform as directed by the Code Enforcement Officer within the one-hundred-eighty-day period, the Code Enforcement Officer shall notify the system owner, landowner and permittee, by certified mail, that the solar PV system has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing said notice. The notice shall also state that the permittee may appeal the Code Enforcement Officer's determination to the Town Board and request a public hearing upon the matter.

2.9 The Parties agree that the main Decommissioning Process contained in Section 3.5 of this Decommissioning Plan (subsections A-Q) shall be completed by System Operator and/or Property Owners within one year of the first written notification given by any Party to invoke this Decommissioning Plan.

III. DECOMMISSIONING: HOW TO BE IMPLEMENTED

3.1 The Decommissioning Process described below in Section 3.5 may be undertaken by any of the undersigned Parties under this Decommissioning Plan. In the absence of exigent circumstances, the preferred priority of responsibility for carrying out the Decommissioning Process under this Decommissioning Plan for a Solar Facility lies first with the System Operator, alternatively or secondarily the Property Owner, and lastly the Town of Farmington.

3.2 Delaware River Solar LLC and/or its operating affiliates NY Farmington I, LLC, NY Farmington II, LLC, and/or NY Farmington III, LLC, and/or any successors, as System Owners, will manage and coordinate the Decommissioning Process for a Solar Facility being decommissioned as provided under Section 3.5.

3.3 In the event of an emergency, all Parties able to act shall intervene as soon as practicable to prevent as much harm to area persons, property and environment as can be managed under the circumstances.

Decommissioning by System Operators

3.4 At such time as a System Operator determines to cease a Solar

Said appeal and request for hearing must be made and received by the Town Board within 30 days of mailing notice. Failure by the permittee to submit an appeal and request for hearing within the thirty-day period will result in the special use permit being deemed revoked as stated herein. In the event the permittee appeals the determination of the Code Enforcement Officer and requests a hearing, the Town Board shall schedule and conduct said hearing within 60 days of receiving the appeal and request. In the event a hearing is held, the Town Board shall determine whether the solar PV system has been abandoned, whether to continue the special use permit with conditions as may be appropriate to the facts and circumstances presented to the Board or whether to revoke the special use permit and order removal of the solar PV system.

Upon a determination by the Code Enforcement Officer or Town Board that a special use permit has been revoked, the decommissioning plan must be implemented and the system removed within one year of having been deemed abandoned or the Town Board may cause the removal at the owner's and/or landowner's expense. If the owner and/or landowner fails to fully implement the decommissioning plan within one year of abandonment, the Town Board may collect the required surety and use said funds to implement the decommissioning plan.

Facility operation, either independently or in conjunction with another Solar Facility, such System Operator shall take all necessary and appropriate measures to terminate operation of such Solar Facility safely and begin the Decommissioning Process provided below under this Decommissioning Plan, either individually for a single Solar Facility or jointly if additional Solar Facilities are to be decommissioned at the same time.

Decommissioning Process

3.5 The basic Decommissioning Process as provided in this Decommissioning Plan shall consist of the following thirty sequential steps, which generally proceed in the reverse order of the development and installation processes of the Solar Facility and assume adequate time for an orderly decommissioning process. The order indicated is the present preferred procedure, but some Decommissioning Process actions may be taken out of order if warranted by circumstances and the Code Enforcement Officer approves.

A. Notification of the cessation of Solar Facility operations and invocation of the Decommissioning Process for that Solar Facility shall be provided to the Town of Farmington in writing at least thirty (30) days in advance of any commencement of decommissioning activities which follow. Such written notice shall constitute commencement of the Decommissioning Process for that Solar Facility. At the time of this Plan, stakeholders warranting notification of the commencement of the Decommissioning Process for a Solar Facility consist of:

- Property Owners
- The Town of Farmington
- Public Electric Provider contracting with System Operator regarding the Solar Facility's energy generation
New York State Energy Research and Development Authority (NYSERDA)

B. The Town of Farmington may, or upon receipt of a request therefore will, provide written notice of the Decommissioning Process for the Solar Facility to other local, state and/or federal agencies or authorities warranting such notice, and other stakeholders. At the time of this Plan, stakeholders warranting notification of the Decommissioning Process consist of:

- Property Owners
- The Town of Farmington
- Public Electric Provider contracting with System Operator regarding the Solar Facility's energy generation
- New York State Department of Environmental Conservation

- United States Army Corps of Engineers
- Local fire departments
- Ontario County Soil & Water Conservation District
- New York State Department of Agriculture and Markets
(NYSDAM)

C. System Operator shall apply for all required permits needed from agencies or authorities other than the Town anticipated to be involved in the Decommissioning Process due to decommissioning circumstances invoking their jurisdiction and authority. Such agencies may consist of Ontario County Soil & Water Conservation District, New York State Department of Agriculture and Markets, New York State Department of Environmental Conservation, and/or the U.S. Army Corps of Engineers, depending on the circumstances. All permits necessary for decommissioning activities at the time must be obtained prior to commencement of decommissioning and site restoration work.

D. System Operator shall apply for all required permissions needed from the Town to decommission the Solar Facility, such as a demolition permit, approval of a decommissioning mobilization plan, and an amended site plan by the Planning Board. Such application shall demonstrate applications made to other relevant agencies or authorities for required permit approvals. A demolition permit shall not be issued without approval of a decommissioning mobilization plan by the Planning Board, and shall be in conformity to it. An approved decommissioning mobilization plan shall consist of the following items: (1) any revision to this Decommissioning Plan agreed by all Parties; (2) specific proposed schedule for decommissioning activities, including a timeframe for the completion of site restoration, with identification of entities performing the work; (3) an updated Decommissioning Cost Estimate based on current costs, and separating out remaining Solar Facilities that will not be decommissioned at such time; (4) confirmation of a current and viable Surety in place and on file with the Town Clerk sufficient to cover all current costs of the proposed decommissioning (and a surety sufficient to cover the expected current Decommissioning Costs for any remaining Solar Facilities not being decommissioned at this time); (5) results of the Special Use Permit soil sampling protocol provided in Condition No. 7 from within the past year; (6) identification of all permits required from other agencies or authorities for the decommissioning of this Solar Facility and a plan for obtaining such permits showing their applications and current status of such applications; (7) a list of all improvements to the Project Site from construction and operation of the Solar Facility that the Property Owners want kept on the property despite the Decommissioning Process, and the

basis for such request;⁵ (8) an amended site plan depicting at least the location of the area to be decommissioned, erosion and sediment control measures, construction staging area, construction access point, and any re-fencing required; (9) a plan for restoration of the Project Site to its pre-Solar Facility condition, including appropriate remediation activities such as decompaction and reseeded with choice of cover, mulch and tackifier; and (10) retention and identification of an appropriate and qualified Environmental Monitor to oversee present Decommissioning Process activities as provided under the Town Code, Special Use Permit conditions, and this Decommissioning Plan; as well as any other information needed by, or useful to, the Planning Board in evaluating the proposed Decommissioning Process and decommissioning mobilization plan at that time.

E. Solar Facility Interconnection Agreement(s) with the Public Electric Provider of record shall be terminated, with notice to the Town, and Disconnection(s) will be scheduled.

F. Once Planning Board provides necessary approvals and Town Demolition Permit is issued, schedule and attend a pre-demolition meeting with Town of Farmington to discuss Decommissioning Process activities and concerns.

G. Erosion and sediment controls shall be installed at the Project Site.

H. The Solar Facility shall be physically disconnected from utility connections, and utility facilities needed only to support the Solar Facility shall be removed from the Project Site by the utility.

I. Obtain soil sampling results under Special Use Permit Condition No. 7 protocol, if last testing result was more than a year prior to the Decommissioning Process. Compare final soil sampling protocol test results to benchmarks. Determine what adjustments, if any, must be made to restore the ground surface and current soils of the associated lot for the Solar Facility to their benchmark status, subject to minor deviations as are acceptable to the landowners, the Planning Board, the Ontario County Soil and Water Conservation District and the State Department of Agriculture and Markets. Plan to implement needed adjustments, if any.

⁵ Need this provision so Planning Board can make the needed finding to permit retention of land or landscaping modifications desired as required by Town Code. §165-65.3[H][5][b]: "Upon petition to the Planning Board, the Board may permit the system owner to leave certain underground or aboveground improvements in place, provided the owner can show that such improvements are part of a plan to redevelop the site, are not detrimental to such redevelopment and do not adversely affect community character or the environment."

J. Dismantle solar arrays: remove rack wiring; remove solar panels from racks; dismantle racks; remove rack support posts; collect all such component parts and remove them from the Project Site. Component parts shall be disposed of at an authorized recycler or waste facility, or reused or resold for further use using best management practices at the time.

K. Electrical and electronic equipment, including transformers and inverters, shall be removed from the Project site and then disposed off-site by a facility authorized to handle such material, or reused or resold for further use using best management practices at the time.

L. All above-ground and underground electrical interconnection and distribution cables (including conduits) not owned by the utility shall be removed and disposed off-site by a facility authorized to handle such material using best management practices at the time.

M. Concrete pads and/or foundations shall be removed from the Project site and then disposed off-site by a facility authorized to handle such material using best management practices at the time.

N. Remove all solid and liquid waste, hazardous waste and contaminants not contained in benchmark soil sampling from the Project Site in accordance with local, state and federal waste disposal regulations.

O. Access roads will be removed, except for portions of which the landowner wishes to retain and has received such approval from the Town of Farmington (and such request should be made as part of the requested decommissioning mobilization plan), or portions needed for the continued operation of the remaining system(s) if all systems are not decommissioned together.

P. Fencing shall be removed from the Project site and then disposed off-site at a facility authorized to handle such material, except for portions of which the landowner wishes to retain and has received such approval from the Town of Farmington and such request should be made as part of the requested decommissioning mobilization plan. In the instance where fewer than all three systems are decommissioned together, fencing will be realigned or newly installed to enclose the remaining systems as approved by the Town.

Q. Landscaping not necessary to the operations of the Solar Facility or remaining solar facilities will be removed in conjunction with the amended site plan; provided that the Property Owners may retain any

landscaping not needed for any Solar Facility on their property for their use as provided under the Town Code and Special Use Permit approval, and such request should be made as part of the requested decommissioning mobilization plan.

R. With the foregoing main Decommissioning Process completed and all physical components and waste removed from the Project Site, the Decommissioning Process then turns to site restoration. Site restoration shall be completed in accordance with the Town Code, the Special Use Permit provisions, this Decommissioning Plan, NYSDAM's *Guidelines*, and any future adjustments approved by the Town as part of the requested decommissioning mobilization plan. As its end goal, the restoration part of the Decommissioning Process is intended to restore the Project Site to a state similar to its pre- construction condition, as described in Site Plan Sheet S-2 – Abandonment and Decommissioning Notes, the Special Use Permit and this Decommissioning Plan, as may be modified by agreement at the time of planning for the Decommissioning Process. Detailed restoration steps follow.

S. Clean up contaminants in the soil at the Project Site, if any, occasioned by the construction and/or operation of the Solar Facility—or as may have resulted from other sources but warrant clean up before the decommissioning restoration process proceeds to remedy the problem efficiently and ensure the decommissioning restoration process is effective when effectuated and will not be negated by the contaminants remaining in the soils. The parties accept that the need to clean up contaminants on the Project Site from non-Solar Facility sources will generate delay to the Decommissioning Process and agree that such delay is acceptable and extends remaining time frames in this Decommissioning Plan provided the clean-up process is being actively and reasonably conducted.

T. Restore soils at the Project Site to their benchmark status, subject to minor deviations as are acceptable by the Property Owners, the Planning Board, the Ontario County Soil and Water Conservation District and the State Department of Agriculture and Markets.

U. Decompact compacted soils as necessary to remediate compacted land at the Project Site occasioned by construction, operations and removal of the Solar Facility. Compacted land shall be decompacted to a depth of 18 inches with a tractor-mounted deep ripper or heavy-duty chisel plow. After decompaction, soil compaction results shall be no more than 250 pounds per square inch (PSI) throughout the decompacted 18 inch depth as measured with a soil penetrometer.

V. Following decompaction, all rocks four inches and larger in size unearthed from decompaction shall be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil shall be replaced to original depth and with similar characteristics as the benchmark Agricultural and Environmental Parameters, and the original contours will be reestablished where possible. All rocks four inches and larger from topsoil shall be removed from the surface of the topsoil before reseeding the area.

W. Follow the New York State Standards and Specifications for Erosion and Sediment Control (latest version) for soil restoration, seeding, mulching, and/or any other applicable sections as required or as agreed by the parties to stabilize and re-vegetate the lot being decommissioned. Seed all agricultural areas from which the vegetation was removed or destroyed with native seed mixes or plants specified by the landowner or as otherwise recommended in NYSDAM's fertilizer, lime and seeding guideline [https://www.agriculture.ny.gov/ap/agservices/Fertilizer_Lime_and_Seeding_Recommendations.pdf]. Soil amendments should be applied as necessary so that restored agricultural areas' soil properties, at minimum, reasonably reflect the pre-construction soil test results or as otherwise agreed to by the involved parties to enable resumed agricultural use.

X. Erosion and sediment controls shall be removed when directed by the Code Enforcement Officer.

Y. After conclusion of removal of physical facilities and waste and restoration of the land, decompaction and reseeding, upon receipt of an appropriate request, consider consenting to reduce the Surety to an amount projected to be needed to reseed the disturbed areas in the event such restoration fails during the post-decommissioning monitoring period and any other relevant restoration concerns at the time.

Z. Close out Town permits including the filing of the Notice of Termination (NOT) with the Town (MS4) and with NYSDEC. Also close out the demolition permit.

AA. Monitor the site restoration process for two years. Town Code § 165-65.3 [F][1][b][4][g]: "Following site restoration, the project sponsor is to provide a monitoring and remediation period of no less than two years. General conditions to be monitored include topsoil thickness, relative content of rack and large stones, trench settling, crop production, drainage and repair of severed subsurface drain lines, fences, etc." Also, monitor vegetative cover.

See also *Guidelines*: On site monitoring shall be conducted

seasonally at least three times during the growing season (Spring, Summer, Fall). Monitoring is required to identify any remaining impacts directly associated with the construction of the project on agricultural lands proposed to remain or resume agriculture production, including the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring observations can be made. NYSDAM expects the Project Company (or its contractor) to retain the EM for follow-up monitoring and remediation (as needed) in agricultural areas. Monitoring is limited to the restored agricultural area. Non-project related impacts affecting the restored project area will be discussed with NYSDAM staff and considered for omission from future monitoring and remediation. The EM is expected to record the following observations from onsite inspections:

- Topsoil Thickness and Trench Settling—The EM observations may require small hand dug holes to observe the percentage of settled topsoil in areas where the topsoil was stripped, or trenching was performed without stripping topsoil. Observations concerning depth of topsoil deficiencies shall require further remediation by re-appropriating additional topsoil. Acceptable materials for remediation are known areas of native excess topsoil (according to records of project specific excess topsoil disposal spread within the original LOD) or imported topsoil free of invasive species that is consistent with the quality of topsoil on the affected site. The activities that follow are not necessary for restored agricultural lands on which the farmer or landowner has commenced activities, including agricultural activities or other use that tend to reverse restoration or create conditions that would otherwise trigger restoration. Should NYSDAM contend upon inspection that conditions indicate that post-construction restoration activities were improperly performed or insufficient, NYSDAM may inform the project company and NYSERDA for further investigation and remediation.

- Excessive Rock (>4-inches)- -Determined by a visual inspection of disturbed areas as compared to unaffected portions of the same field located outside the construction area. Observations concerning excess stone material in comparison to off-site conditions shall require further remediation including removal and disposal of all excess rocks and large stones.

- Soil Compaction-Project-affected agricultural soils should be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made at regular intervals of distance throughout the access or work areas, including each soil type identified on the affected agricultural areas. Where representative soil density of the affected area exceeds the

representative soil density of the unaffected areas, additional decompaction may be required. Consultation with NYSDAM staff and the agricultural producer(s) should be conducted prior to scheduling additional decompaction. If warranted, decompaction to a depth of 18-inches with a tractor mounted deep ripper or heavy-duty chisel plow. Restoration of displaced topsoil to original depth and re-establish original contours where possible. Decompaction deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional soil compaction. Oversized stone/rock (four-inches) material that is uplifted/unearthed to the surface as a result of the deep shattering will be removed.

- Drainage—The EM shall visually inspect the restored agricultural areas in search of pervasive stunted crop growth due to seasonal saturation, not previously experienced at the site and not resulting from the agricultural producer's irrigation management or due to excessive rainfall. Identified areas of stunted crop growth shall be compared to the nearest undisturbed adjacent areas under a substantially equivalent terrain and crop management plan. Drainage observations should be evaluated to determine if the project affected surface or sub-surface drainage during construction or restoration. Project caused drainage issues affecting or likely to reduce crop productivity of the adjacent areas will have to be remediated via a positive surface drainage, sub-surface drainage repair or an equivalent.

- Agriculture Fencing and Gates—The EM shall inspect Project associated fencing and gates (installed, altered or repaired) within the Project's LOD associated with agricultural activities for function and longevity. The Project Company is responsible during the Monitoring and Remediation Phase for maintaining the integrity of Project associated fencing and gates. The Project Company (or its contractor) shall consolidate each applicable growing season's observations into an annual report during the monitoring period and shall be provided upon request to NYSDAM. Annual reports should include date-stamped photographs illustrating crop growth in comparison with unaffected portions the agricultural areas. The EM shall record observations of the establishment of the desired crop and subsequent crop productivity within restored agricultural areas and shall be evaluated by comparing its productivity to that of the nearest adjacent undisturbed agricultural land of similar crop type within the same field. If a decline in crop productivity is apparent the Project Company as well as other appropriate parties must determine whether the decline is due to project activities. If project activities are determined to be the primary detrimental factor, the project EM will notify NYSDAM concerning unsuccessful restoration and to potentially schedule a

NYSDAM staff field visit. If project restoration is determined to be insufficient, the Project Company will develop a plan for appropriate rehabilitation measures to be implemented. NYSDAM staff will review and approve said plan prior to implementation. Additional monitoring may be required depending on additional restoration activities needed.

- If the standards found in the NYSDAM's *Guidelines* cannot be met, the Department shall be contacted for acceptable alternatives.

BB. In the event vegetative cover failed to grow and stabilize in disturbed areas, remediate problem areas by reseeding such areas with choice of cover, mulch and tackifier.

CC. Once the Project Site has been properly and fully decommissioned (including complete restoration and monitoring and any needed remediation), consent to terminate the Surety.

DD. At the conclusion of the Decommissioning Process, the Property Owners shall apply to the Planning Board to merge the subdivided parcel containing the decommissioned Solar Facility back into the original parcel at 466 Yellow Mills Road, Palmyra, New York.

3.6 In the case of incomplete construction of a Solar Facility, the Decommissioning Process shall consist of the reversal of the steps taken in partial construction of the Solar Facility, together with clean-up of the site and restoration of the soils to their benchmark status—the same Decommissioning Process as for decommissioning after ceasing operations hereunder as is applicable to the situation.

Decommissioning Schedule

3.7 System Operators can reasonably state today that the decommissioning and site restoration process is expected to take approximately four (4) months from the start of permitted decommissioning site work, to receiving a certificate of compliance from the Town of Farmington that decommissioning has been completed. Such work is construction activity and is therefore subject to weather and seasonal conditions that may affect such work, and by any development and construction best practices, and applicable permits that are subject to change over time.

3.8 System Operators are aware and accept that the Town Code holds them responsible to physically remove all components of a Solar Facility within one year of abandonment. Town Code § 165-65.3 [H][4]. In addition, this

Decommissioning Plan requires System Operators and Property Owners (and leaseholders, if any) to also physically remove all components of a Solar Facility being decommissioned within one year of notification of decommissioning, unless extended for good cause by the Planning Board. All site restoration shall be completed within one year of completion of removal of all Solar Facility components and waste, unless extended for good cause by the Planning Board. The Town Code and Special Use Permit provide for a two-year monitoring period following site restoration, and such are incorporated herein by this reference. Town Code § 165-65.3 [F][1][b][4][g]; Special Use Permit Condition No. 48.

Decommissioning by Property Owner

3.9 At such time as a Property Owner determines that a Solar Facility situate on his or her property shall cease operations and be removed from the Project Site he or she controls, either independently or in conjunction with another Solar Facility, such Property Owner shall first request the System Operator to take all necessary and appropriate measures to terminate operation of such Solar Facility safely and begin the Decommissioning Process provided under this Decommissioning Plan. Such request shall be in writing with a copy provided promptly to the Town. In such case, the System Operator shall proceed to manage the Decommissioning Process thereafter under Section 3.5 as if it had itself initially determined to cease operation of the Solar Facility. In the event the System Operator fails to comply with the Property Owner's request and does not manage the Decommissioning Process as provided under Section 3.5, the Property Owner may assume the System Operator's responsibilities under the Decommissioning Process without waiving any rights the Property Owner may have against the System Operator, and shall so notify the Town of such decision, and accept the resulting responsibility. Alternatively, the Property Owners may themselves abandon the Solar Facility on the Project Site, or request the Town to take over the Decommissioning Process, while recognizing that the Property Owners and System Operator shall be held jointly and severally liable to the Town for the resulting expenses incurred by the Town.

Decommissioning by Town of Farmington

3.10 In the event a System Operator or Property Owner requests the Town to commence or complete the Decommissioning Process, or a Solar Facility has been abandoned (and/or the Decommissioning Process itself has been abandoned by the lack of activity over a sustained period when decommissioning tasks should have been undertaken or completed) and neither System Operator or Property Owner is actively and substantively engaged in the Decommissioning Process as provided herein, or a Solar Facility has become, or is reasonably believed to be

becoming, unsafe to area persons, property or environment for which situation the Town reasonably believes in good faith it must act promptly to remedy and/or prevent further harm, then the Town shall have the right, at its option, to intervene and commence or complete the Decommissioning Process as provided herein at the expense of the System Operator and Property Owners.

3.11 In the event the Town exercises its option under this Decommissioning Plan to intervene to commence or complete the Decommissioning Process for a Solar Facility, by providing written notice (such as email notice) to the System Owner and Property Owners for the Solar Facility at issue, the Town is hereby granted irrevocable authority to immediately enter upon the Project Site of a Solar Facility to be decommissioned in order to take emergency preservation and/or remediation measures and/or to carry out the Decommissioning Process with all necessary or advantageous equipment and labor (either by itself and staff or through arrangements with others authorized or appropriate such as the local utility provider, government agencies and/or competent contractors). The 48-hour notice provided for in Special Use Permit Condition No. 53 shall not apply or constrain Town action under these exigent circumstances. Entry of the Town and/or its staff, consultants, agents and contractors onto the Project Site is by irrevocable consent under the circumstances described in Section 3.10, and it is expressly agreed now and for the future that no criminal and/or civil liability shall lie for such entry and presence on a Project Site.

3.12 Under its option to intervene, the Town may enter the Project Site to be decommissioned and take temporary possession of that Project Site for the purpose of carrying out the Decommissioning Process (as the Town sees fit under the circumstances), and take possession and control over the Solar Facility and its component parts and all items found at the Project Site. Taking such limited and temporary control of the lot and its contents to decommission the Solar Facility under this Decommissioning Plan shall not impose any duties or responsibilities upon the Town as property owner or system operator due simply to its presence on the property or its control of Solar Facility components and waste needed to complete the Decommissioning Process; rather the Town shall be deemed as acting only as constructive or contractual agent for Property Owners and/or System Operator with their full rights and consent to remove and dispose of the Solar Facility and restore the land, and the Town is entitled to be fully compensated for the incurrence of all related expenses involved in such work.

3.13 Under its option to intervene, the Town shall dismantle the Solar Facility and remove its parts and waste from the Project Site. In such circumstance, unless otherwise agreed in writing by the System Operator, Property Owners and Town, the failure of Property Owners and/or System Operator to timely decommission a Solar Facility themselves as required shall be deemed a forfeiture of their ownership interests and rights in the Solar Facility equipment and materials

on the Project Site so that the Town has no obligation to look after any interests of the System Operator or Property Owners, and has no obligation to protect, preserve or salvage any equipment, assets or land on the Project Site. Further, the Town may dismantle the Solar Facility with dispatch as it sees fit and convenient, and without regard to any resale, return or salvage value of component parts. The Town shall take possession and dispose of the Solar Facility parts and waste with an appropriate disposal facility under the circumstances, even if not employing the process, techniques or facilities that the System Operator or Property Owners would have chosen.

3.14 Under the Town's option to intervene, nothing in the general sequence of the Decommissioning Process in this Decommissioning Plan prevents the Town from employing other sequences or techniques of removal and/or restoration of the land. The Town is not constrained to complete the Decommissioning Process in one year, or in any particular time, but may complete the decommissioning tasks as it finds feasible under the circumstances.

3.15 Under the Town's option to intervene, and during its temporary possession and control of the Project Site to be decommissioned under this Decommissioning Plan, Special Use Permit and/or Town Code, the Town is not obligated to compensate Property Owners or System Operator for such possession or exclusion of use, is not responsible for any taxes or charges associated with such temporary possession of the Project Site, and is not responsible for contamination of the property already present at the time of taking possession, nor responsible for contamination continuing, increasing or additionally occurring during the Town's possession necessary to complete the Decommissioning Process.

3.16 All damages, losses and claims for damages against the Town and its staff, consultants, agents and/or contractors for their entry, presence and/or decommissioning work on the Project Site for removal and disposal of the Solar Facility and its component parts, as well as for work to manage all kinds of waste and contamination, and land restoration efforts, are hereby waived by Property Owners, and System Operators and their owners, except for demonstrated willful malfeasance.

IV. FINANCIAL PLAN

4.1 As required by the Town Code, the Planning Board has established a financial plan to ensure that financial resources will be available to fully decommission the Project Site when such time arrives and that such financial resources come from the system operator and/or the property owners. The Planning Board's Financial Plan is set forth in this Section IV of the

Decommissioning Plan and consists of several components contained in the Special Use Permit, Final Site Plan, and this Decommissioning Plan. The Planning Board's Financial Plan consists of three main parts: (1) ensuring that the Solar Facility and its operation do not generate unexpected costs to decommission by detailed advance planning and periodic soil sampling; (2) providing financial security to the Town to ensure that all foreseeable decommissioning costs are borne by the parties (system operators and property owners) which or who are creating the circumstances when decommissioning will become necessary at some point in the future; and (3) a contractual and legal commitment by the system operator and property owners to cover any additional expenses reasonably incurred to complete the Decommissioning Process that exceed the surety amount.

4.2 As part of its Financial Plan to forestall unexpected costs of decommissioning, the Planning Board has endeavored in this Decommissioning Plan to detail the Decommissioning Process for the various kinds of decommissioning circumstances that could take place in future decades. This Decommissioning Plan lays out the procedures and standards for decommissioning in extensive detail to facilitate understanding of the various steps, rights and responsibilities involved in decommissioning under various scenarios, and so reduce future issues and disputes, and thus reduce delays, disputes and litigation. Some parts of the Planning Board's effort to manage decommissioning and its financial effects include regular soil sampling to detect possible contaminant problems early so that the problem may be addressed while the expense to do so is manageable for the system operator and/or property owner. The Financial Plan details the various tasks of decommissioning in this Decommissioning Plan and attaches an expense value to each such task if a third party were to have to undertake such work at the present time, and totals such amounts to determine the minimum amount of surety to be provided by the system operator and/or property owner for the benefit of the Town in the form desired. Dismantling and removal of a Solar Facility and restoration of the land are relatively simple procedures for which the surety should be sufficient under foreseeable circumstances and is so calculated by the Town's engineer. Also, the surety amount is re-evaluated every three years to ensure that the amount of surety available to the Town if needed to take over decommissioning remains sufficient to cover anticipated decommissioning expenses at current pricing levels or as regulatory requirements change, etc. Finally, the Financial Plan set forth in this Decommissioning Plan makes provision for unexpected decommissioning costs, such as failure of the surety, costs that exceed foreseeable decommissioning expenses provided for in the surety, and unforeseen costs involved for cleaning up unanticipated contaminants needed to restore the land to its pre-construction condition. Such provisions are set forth in the following sections for the Surety and Additional Responsibilities.

V. SURETY

5.1 As provided in the Town Code, the System Operator and/or Property Owners of a Solar Facility on a Project Site shall provide financial assurance to the Town prior to construction, and during operations, decommissioning and restoration of the land, that funds will be available to the Town sufficient to cover all foreseeable costs of fully decommissioning such Solar Facility at such Project Site when the time for decommissioning comes. Such financial assurance shall consist of an irrevocable surety in sufficient amount and acceptable form by a reliable source and A-rated institution on which the Town alone may draw to cover Town expenses incurred in decommissioning the Solar Facility and restore the property in the event that the Property Owners and/or System Operators are unable or unwilling to do so within the time required.

5.2 As confirmed and implemented by approvals of the Planning Board and Town Board, the Town selects its specific forms of surety ("Surety") in this Decommissioning Plan as follows: (1) for the construction phase of a Solar Facility on a Project Site, System Operator and/or Property Owners shall provide a Letter of Credit from an A-rated financial institution containing the provisions of Sections 5.3 and 5.4 in the amount specified in Section 5.6; and (2) after the conclusion of the construction phase, and for the operations and decommissioning phases, the Letter of Credit shall be replaced with a Maintenance Bond from an A-rated financial institution containing the provisions of Sections 5.3, 5.4 and 5.5 in the amount specified in Section 5.6, as may be adjusted in the future under Section 5.10.

5.3 The Surety shall be irrevocable and state on its face that it is expressly held by and for the sole benefit of the Town of Farmington. No Parties other than the Town shall have the right or ability to demand payment under the Surety. Such Surety or its supporting funding are not assets of any Party hereto other than the Town until finally released by the Town formally in writing at the conclusion of the Decommissioning Process for a Solar Facility and after all associated costs incurred by the Town have been paid.

5.4 Property Owners and/or System Operators shall direct the Surety source to provide the Town with all the same notices regarding the Surety for its benefit that the Surety source provides to Property Owners and/or System Operators, and at the same time.

5.5 The Surety shall be maintained by Property Owners and/or System Operators to be valid and in full force and effect for the entire existence and duration of the Solar Facility operation, expected to last for thirty years, together with the time involved in any extensions, decommissioning work and restoration work to reclaim the Project Site for agricultural use again or another purpose approved by the Planning Board, as well as requisite post-decommission monitoring and any

remediation; provided that such Surety may be replaced by another surety approved by the Planning Board and Town Board under Section 5.10 as long as a surety approved by the Planning Board and Town Board remains valid and available to the Town to cover its expenses under Section 5.9 at all times throughout the entire existence and duration of the Solar Facility operation and Decommissioning Process until drawn on and fully depleted.

5.6 The initial amount of the Surety at this time for each of the three Solar Facilities covered by this Decommissioning Plan and Financial Plan has been deemed to be \$_____.⁶ This Surety amount has been determined by the Town engineer based on reasonable current estimate of expenses for the various tasks outlined in the Decommissioning Process of this Decommissioning Plan. See Section 3.5 (Decommissioning Process). A list of those Decommissioning Process steps and their estimated current expense approved by the Town engineer for each of the Solar Facilities is contained in Appendix I, II and III, and incorporated herein as the basis for the initial Surety amount. The salvage values of valuable recyclable materials (solar panels, aluminum, steel, copper, etc.), if any, shall not be factored into the estimated costs for purposes of assessing the required Surety.

5.7 The approved Surety shall be established and effective for each Project Site, with documented evidence of such fact filed with the Town Clerk prior to issuance of a building permit for such Project Site and the commencement of any construction work.

5.8 The Parties agree that the Surety shall be used solely to pay for expenses incurred by the Town to commence or complete the Decommissioning Process and recover related expenses as provided under this Decommissioning Plan.

5.9 In the event a System Operator and/or Property Owner is unwilling or unable to commence or complete the Decommissioning Process as required when invoked under this Decommissioning Plan within the time required, the Town shall become entitled to draw upon the Surety without any other Party's consent in order to pay for expenses incurred or to be incurred by the Town to carry out the responsibilities of the System Operator and/or Property Owner under this Decommissioning Plan and Town Code, or to effectuate the Town's own rights under this Decommissioning Plan, the Special Use Permit and/or Town Code regarding decommissioning issues. Such draw may be made in the Town's discretion and in advance of work performed, services provided or materials secured, or afterwards. The Town may draw the entire sum of the Surety at once in

⁶ Amount of surety must be specified in the financial plan. Check with Town Engineer for revised assessment of expenses based on full Decommissioning Process in Section 3.5 (e.g., decompaction expense).

advance without demonstration of need to provide convenient funding for the various Decommissioning Process tasks remaining to be accomplished. In the event the Town's expenses to complete the Decommissioning Process for a Solar Facility are less than the amount of funds drawn from the Surety, such excess funds shall be returned to the entity funding the Surety after completion of the full Decommissioning Process.

5.10 The amount of the required Surety may be adjusted by the Town Board upon receipt of such a recommendation from the Planning Board based on an updated cost estimate for the Decommissioning Process prepared by the Town engineer in accordance with this Decommissioning Plan and relevant circumstances existing or foreseeable at that time. The Town also reserves the right to change the form and source of Surety as part of the tri-annual review of the amount of Surety provided in the Town Code and Special Use Permit Condition No. 25, provided that adequate reasonable time is made available to System Operators and/or Property Owners to accommodate the change—and further provided that the Town remains covered by a surety during the time involved in accommodating the change made by the Town Board. Any revised required surety is to be filed with the Town Clerk's office within the time required by the Town Board.

5.11 Upon completion of the main Decommissioning Process or conclusion of the Decommissioning Process, the System Owner and/or Property Owners may petition the Town Board to reduce or terminate the Surety for the decommissioned Solar Facility even if not coincident with the tri-annual review of the Surety under SUP Condition No. 25. Note that there is still a two-year monitoring period following conclusion of the main Decommissioning Process that is the responsibility of System Operator and/or Property Owners. SUP Condition No. 48. Consequently, reducing or terminating the Surety is likely to be a two-step process: reduction of the amount of Surety at the conclusion of the main Decommissioning Process (§ 3.5 (A-Q)); and termination of the Surety at the conclusion of the post-decommissioning monitoring and any remediation required. See Section 3.5 (R-BB).

5.12 No reduction in the Surety may be approved or obtained until after the final soil sampling protocol results under SUP Condition No. 7 are received by the Town as part of the Decommissioning Process and evaluated by the Planning Board. As part of consideration of a petition at the time of decommissioning to reduce or terminate the surety, the Planning Board shall have assessed the final soil sampling results and consulted with the Code Enforcement Officer and Town engineer to determine whether there have been any significant deviations in the Agricultural and Environmental Parameters under SUP Condition No. 7 from benchmarks or other conditions that will or may involve significant clean-up and/or restoration costs not covered by the Surety. The Planning Board shall provide its findings on the issue to the Town Board. If the Planning Board determines that the Project Site does not require significant clean-up and/or restoration costs not

covered by the Surety, then upon such a report, and upon a request to reduce the amount of the Surety, the Town Board may determine that the Surety may be reduced at the conclusion of the main Decommissioning Process to cover only those potential future expenses involving restoration and possible remediation. Alternatively, the Planning Board and/or Town Board may conclude that the Project Site conditions and issues warrant retaining or otherwise adjusting the Surety to the circumstances then existing.

5.13 At the conclusion of the two-year monitoring period and any remediation period, and with approval of the Planning Board having found that the Project Site has been effectively restored to its pre-construction condition or such other condition as the Property Owners and Planning Board find acceptable, upon request to finally terminate the Surety the Town Board shall so consent.

5.14 In the event ownership of a Solar Facility is transferred to a different entity, the new owner and/or system operator (transferee) shall file evidence of its own financial surety of the same financial quality in the then-currently-required surety amount with the Town Board at the time of transfer, and every three years thereafter, as provided herein. The new owner and/or system operator shall further adhere to this Decommissioning Plan in writing the same as and adopt these same rights and responsibilities as set forth herein. The failure of a new owner and/or system operator to adhere to this Decommissioning Plan in writing and adopt these same rights and responsibilities within ninety days of the transfer of ownership shall constitute evidence of abandonment of the current Solar Facility on the Project Site.

5.15 In the event ownership of a Project Site is transferred to a different entity, the new owner shall further adhere to this Decommissioning Plan in writing the same as and adopt these same rights and responsibilities as set forth herein as the prior property owner. The failure of a new property owner to adhere to this Decommissioning Plan in writing and adopt these same rights and responsibilities within ninety days of the transfer of ownership shall constitute evidence of abandonment of the current Solar Facility on the Project Site.

VI. ADDITIONAL RESPONSIBILITIES

6.1 Property Owners and/or System Operators remain responsible to remediate problems with the Project Site attributable to the construction, operation, or decommissioning of a Solar Facility arising after the main Decommissioning Process and during the restoration, monitoring and remediation periods.

6.2 Property Owners and/or System Operator remain responsible to, and agree to, indemnify the Town for all its expenses incurred in dealing with, and carrying out, the decommissioning and restoration work that was the initial

responsibility of Property Owners and/or System Operator. The Surety, however revised, shall not constitute the total financial responsibility of Property Owners and/or System Operators to the Town. All expenses incurred by the Town for, and related to, intervening to commence and/or complete the Decommissioning Process for the Solar Facility on the Project Site shall be the responsibility of the System Operator and Property Owners, who agree to hold the Town harmless from such expenses. Such reimbursable expenses shall include, without limitation by reason of specification, reasonable attorney, engineer and other consultant fees and disbursements, as well as costs for contractors, transport of materials, and disposal fees, etc. If the Surety is insufficient to cover all such expenses, then such uncovered expenses shall be apportioned jointly and severally to the System Operator, its owner if the owner has exercised control over the management or operations of the Solar Facility within three years of abandonment, and the Property Owners. Any costs incurred by the Town in connection with intervening to commence and/or complete the Decommissioning Process for the Solar Facility on the Project Site that are not paid for or covered by the required Surety, including legal costs, shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town. In addition, the Town may also commence suit in court against appropriate parties to collect its decommissioning expenses from responsible parties.

6.3 The indemnification provisions agreed to in this Decommissioning Plan survive any breach or termination of this Decommissioning Plan in order to effectuate those provisions and hold the Town harmless for any expenses incurred in connection with the Decommissioning Process of these Solar Facilities constructed and operated for the benefit of System Operators and Property Owners.

6.4 Each System Operator is responsible to remedy contaminations to soils and water on the Project Site resulting from its Solar Facility equipment or operations, and this responsibility shall remain beyond its period of control and until the Solar Facility is decommissioned and the Project Site restored to its pre-construction condition.

6.5 The parties shall promptly notify each other in writing of any significant matter of which they become aware pertaining to: (1) any damage to or loss of the use of the Solar Facility or that could reasonably be expected to adversely affect the Solar Facility; and/or (2) any contamination or suspected contamination of the Project Site.

6.6 All Property Owners and System Operator have the responsibility to

keep the Town provided with current addresses for receipt of Town notices. Town provision of written or electronic notice to Property Owners and/or System Operator according to the current addresses on record with the Town at the time for Property Owners and/or System Operator shall constitute sufficient notice of Town action to the Property Owner and/or System Operator involved at such time regardless of whether the Property Owner or System Operator actually receives such notice at such address, receives such notice late, or receives such notice at all.

6.7 If the owner or operator of a Solar Facility changes or the owner of the property changes, the Special Use Permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the Special Use Permit, Site Plan Approval, and Decommissioning Plan. A new owner or operator of the Solar Facility shall notify the Code Enforcement Officer of such change in ownership or operator in writing within thirty (30) days of the ownership change, in addition to the required notice of change in the Solar Facility's annual report.

6.8 The System Operator, for itself and its owner, and Property Owners hereby agree that any sale or transfer of their interest, in whole or part, in the lot or Solar Facility located thereon covered by this Decommissioning Plan shall be contingent on the buyer or transferee of their interest agreeing to be bound to the terms and provisions of this Decommissioning Agreement in writing, the same as the seller or transferor of the interest was; and the Town shall be deemed a third-party beneficiary of any such sale or transfer with respect to this Decommissioning Plan succession provision and entitled to enforce this provision against successor buyers and/or transferees of Property Owners and/or System Operators.

6.9 Property Owners and/or System Operators shall provide the Town with a copy of any agreement between Property Owners and System Operators regarding decommissioning of a Solar Facility other than the Decommissioning Plan to which the Town is a party, provided that specific financial terms need not be disclosed.

6.10 The Environmental Monitor employed by Property Owners and/or System Operators regarding the Solar Facility shall be on site whenever construction, decommissioning or restoration work is occurring on a Solar Facility, and be available upon demand from the Code Enforcement Officer for any issue involved with the Decommissioning Plan or the decommissioning or restoration processes. In addition, the Environmental Monitor must coordinate an appropriate schedule for inspections with the Ontario County Soil and Water Conservation District and/or the New York State Department of Agriculture and Markets to protect the affected lands to the greatest extent possible. Finally, any change in Environmental Monitor and/or its contact information during the life of the Solar Facility shall be promptly provided to the Code Enforcement Officer.

6.11 In the event a Property Owner and/or System Operator resorts to court action against the Town, its agencies, or Code Enforcement Officer or other Town personnel engaged in official duties to resolve a dispute involving continuance of operations of a Solar Facility (which could result in decommissioning) or decommissioning-related issues, which action prompts the Town to incur legal expenses for attorney fees and associated filing fees and other litigation expenses in order to respond in court so as to protect its rights and interests, such Property Owner and/or System Operator commencing court action shall be responsible to indemnify the Town for its legal fees and expenses incurred in responding to the litigation commenced by Property Owner and/or System Operator, including appeals and claims about Property Owner's and/or System Operator's indemnification of the Town's legal fees and expenses. In the event the Town commences court action against a Property Owner and/or System Operator to protect or enforce the Town's rights or responsibilities under the Town Code, these Special Use Permit conditions or a Town contract, regarding a Solar Facility's continuance of operations or decommissioning-related issues, and substantially prevails in an order, judgment or settlement, such Property Owner and/or System Operator shall be responsible to indemnify the Town for its legal fees and expenses incurred in such litigation, including appeals and claims about Property Owner's and/or System Operator's indemnification of the Town's legal fees and expenses. A Property Owner and/or System Operator required to indemnify the Town for legal fees and litigation expenses shall pay such obligation in full within thirty days of written notice of the indemnification amount sought by the Town. The failure of a Property Owner and/or System Operator to pay such indemnification amount on time shall entitle the Town to recover such amount from the Surety provided to the Town by Property Owner and/or System Operator in connection with the Solar Facility. Alternatively, in addition to any other remedies available to the Town under law or equity, any indemnification amount not paid or covered by Property Owner's and/or System Operator's Surety shall be assessed against the associated lot and Property Owner's property at 466 Yellow Mills Road, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and with the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

VII. MISCELLANEOUS MATTERS

Environmental Effects

7.1 The Parties are aware that decommissioning activities, particularly the removal of project components, could result in environmental effects similar to those

incurred during the construction phase. For example, there is the potential for disturbance (erosion/sedimentation) to adjacent watercourses or significant natural features. Mitigation measures similar to those employed during the construction phase of the Solar Facilities will be implemented as set forth in the Decommissioning Process procedure and StormWater Pollution Prevention Plan. These mitigation measures will remain in place until the site is stabilized in order to mitigate erosion and silt/sediment runoff and any impacts on significant natural features or water bodies located adjacent to the Project Site.

7.2 Road traffic will temporarily increase due to the movement of decommissioning crews and equipment. There may be an increase in particulate matter (dust) in adjacent areas during the decommissioning phase. Decommissioning activities may lead to temporary elevated noise levels from machinery and an increase in trips to and from the Project Site. Decommissioning work is agreed to be undertaken during daylight hours and conform to any applicable restrictions.

7.3 System Operators will establish, and provide to the Parties prior to the commencement of the Decommissioning Process, current policies and procedures to maximize recycling and reuse of Solar Facility system components and waste and will work with manufacturers, local subcontractors, and waste firms to segregate material to be disposed of, recycled, or reused.

Safety

7.4 All equipment and solar panels brought to a Project Site for use in connection with a Solar Facility shall be safe and in good working order, and shall further be appropriately certified as safe for use by appropriate organizations such as the Environmental Protection Agency, Underwriter's Laboratory, and state and federal entities establishing electrical and/or building codes. If storage batteries are included as equipment utilized by a Solar Facility, such storage batteries shall be certified as meeting the requirements of all federal and state energy, fire prevention, electrical and building codes when in use, and when no longer used shall be disposed of in accordance with the laws and regulations of the Town, if any, and any applicable federal, state or county laws or regulations to ensure safe and responsible disposal, recycling or reuse.

7.5 Access to each Project Site shall be maintained throughout the year and all foreseeable conditions, including snow removal acceptable to the local fire department.

Legal

7.6 The failure of either Party to enforce any of the provisions of this

Decommissioning Plan, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision in any other instance or of any other provision in any instance.

7.7 This Agreement may not be amended or modified except by written instrument signed and delivered by the Parties to the other Parties.

7.8 This Decommissioning Plan is binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and assigns. System Operators may assign this Agreement to any subsidiary, or purchaser or transferee of the Solar Facility upon the assumption of these rights and responsibilities to such acquiring entity, and with Town Board and Planning Board approval, which approval shall not be unreasonably withheld.

7.9 The Parties agree that this Decommissioning Plan shall be construed and enforced in accordance with and governed by the laws of the State of New York.

7.10 This Decommissioning Plan is the result of multiple sources and inputs in a public process and the final approved version shall not be construed against any Party as drafter.

7.11 This Decommissioning Plan 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.

7.12 Each Party represents and acknowledges that the undersigned signatory for such Party is fully authorized to, and intends to, bind such Party to this agreement.

7.13 This Decommissioning Plan shall be recorded with the Register of Deeds promptly after execution by all parties.

IN WITNESS WHEREOF, the Parties to this Decommissioning Plan have caused their respective authorized representatives to execute and accept the terms, conditions and responsibilities set forth herein as of the dates accompanying their signatures.

NY Farmington I, LLC

NY Farmington II, LLC

NY Farmington III, LLC

By:

By:

By:

Name:

Name:

Name:

Title:

Title:

Title:

Date:

Date:

Date:

Delaware River Solar,
LLC

Property Owner

Property Owner

By:

By:

By:

Name:

Name:

Name:

Title:

Title:

Title:

Date:

Date:

Date:

Town of Farmington

By:

Name:

Title:

Date:

