

**TOWN OF FARMINGTON PLANNING BOARD
DELAWARE RIVER SOLAR
DECOMMISSIONING PLAN APPROVAL**

PB #1006-18

APPLICANT: Delaware River Solar, LLC, on behalf of the property owners Roger and Carol Smith, 466 Yellow Mills Road, Palmyra, N.Y 14522

ACTION: Acceptance of Draft Decommissioning Plan for Smiths, their property and Delaware River Solar LLC and Affiliates and Successors

WHEREAS, the Town of Farmington Planning Board (hereinafter referred to as Planning Board), by resolution (File # PB 1006-18) adopted on September 16, 2020, required the preparation of a Draft Decommissioning Plan for Smiths, their property and Delaware River Solar LLC and Affiliates and Successors (hereinafter referred to as Decommissioning Plan); and

WHEREAS, the Conditional Approval of the Special Use Permit for any of Lots #1, #2, or #3 of the Roger and Carol Smith Subdivision located at 466 Yellow Mills Road, Palmyra, New York, shall not take effect unless and until an approved Decommissioning Plan is agreed to and executed by each Applicant, System Operator and the Town for such lot and filed with the Town Clerk; and

WHEREAS, the Special Use Permit also required approved surety for such lots under this authorization and the Decommissioning Plan and Agreement that is to be in effect with evidence of such surety's existence and validity on file with the Town Clerk; and

WHEREAS, as a condition of the Special Use Permit approval granted on September 16, 2020 (File #PB1006-18), and prior to the commencement of any construction or operation of a proposed solar farm on lots #1, #2, or #3 of the Roger and Carol Smith Subdivision, Applicants and/or System Operators shall provide to the Town a financial plan in an approved Decommissioning Plan containing an irrevocable surety in sufficient amount and acceptable form by a reliable source entity on which the Town alone may draw to cover Town expenses incurred in decommissioning the solar farm and restore the property in the event that the Applicants and/or System Operators are unable or unwilling to do so within the time required. Applicants and/or System Operators shall remain responsible to reimburse the Town for expenses incurred in connection with their lots and solar farms in this Action in the event actual decommissioning and restoration costs and related expenses including Town engineering and legal fees exceed the surety available; and

WHEREAS, as a condition of the Special Use Permit approval, and prior to the commencement of any construction or operation of a solar farm, and before the Special Use Permit is valid, the surety approved in the financial plan and Decommissioning Plan shall be provided in fact for each proposed solar farm and a record evidencing such fact shall be filed with the Town Clerk. Such surety shall be maintained by Applicants and/or System Operators and shall continue to be kept valid for the entire existence and duration of the solar farm operation, expected to last for thirty years, together with the time involved in any extensions, decommissioning the solar farm, restoration work to reclaim the underlying land for agricultural use again, and post-decommission

monitoring, unless the property owners obtain appropriate approval from the Planning Board to use their property for a different permitted use (and then to restore the property to condition for that next approved use); and

WHEREAS, as a condition of the Special Use Permit approval, Applicants 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 Applicants and/or System Operators, and at the same time; and

WHEREAS, the Planning Board has received on June 11, 2021 a Draft Decommissioning Plan and Financial Plan for the above referenced Action, prepared by Town Special Legal Counsel and Town Staff (Director of Planning and Development, Town Code Enforcement Officer and Town Engineer); and

WHEREAS, the Planning Board has reviewed said Document and received public comment thereon at tonight’s meeting.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby accept the Draft Decommissioning Plan dated 6/11/21 as satisfying the conditions of Special Use Permit Approval contained in the above referenced File.

BE IT FURTHER RESOLVED, that the Planning Board does hereby direct the Clerk of the Board to submit the Draft Decommissioning Plan, having a revised date of 6/16/21 (the date of this resolution) to the Town Board for its review and consideration.

BE IT FINALLY RESOLVED, that prior to Town Board acting upon said Draft Decommissioning Plan, that surety amounts have been provided and filed with the Town Clerk for the construction of the three (3) solar sites identified in said Plan and that prior to the issuance of a Certificate of Compliance a Maintenance Bond is established for the removal and restoration of all three (3) in accordance with the conditions of approval in the Planning Board’s Special Use Permit identified above herein.

The above resolution was moved by MR. BELLIS and seconded by MR. VIETS at a Planning Board Meeting held on Wednesday, June 16, 2021. The following roll call vote was taken and recorded.

| | |
|------------------|---------|
| Adrian Bellis | Aye |
| Timothy DeLucia | Aye |
| Edward Hemminger | Aye |
| Shauncy Maloy | Excused |
| Douglas Viets | Aye |

Motion carried.

I, John M. Robortella, Clerk of the Board, do hereby certify the above resolution being acted upon and approved as part of the June 16, 2021, Planning Board Meeting.

John M. Robortella, Clerk of the Board L.S.

**TOWN OF FARMINGTON
DECOMMISSIONING PLAN
FOR SMITHS, THEIR PROPERTY AND
DELAWARE RIVER SOLAR LLC
AND AFFILIATES AND SUCCESSORS**

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**TOWN OF FARMINGTON
DECOMMISSIONING PLAN
FOR SMITHS' PROPERTY AND
DELAWARE RIVER SOLAR LLC
AND AFFILIATES AND SUCCESSORS**

This Approved Decommissioning Plan consists of two main parts: Part I—a Financial Plan including appropriate surety as required under the Town of Farmington Town Code; and Part II—an agreement for the rights and responsibilities of the parties involved in the full decommissioning process for the solar facilities and their sites addressed herein under the Town Code and authorized by the Planning Board Resolution of October 7, 2020, approving a Special Use Permit with conditions.

As an overview of the subject matter of this Approved Decommissioning Plan, Delaware River Solar LLC and its affiliates NY Farmington I, LLC, NY Farmington II, LLC, and NY Farmington III, LLC (“System Operators”) have proposed and received conditional approvals for the development of an approximately seven (7) Mega Watt (“MW”) alternating current (“AC”) photovoltaic (“PV”) solar farm (the “Project”) on an approximately 45.105 acre portion (“Project Site”) of a 135.3 acre property owned by Roger and Carol Smith (“Property Owners”)¹ located at 466 Yellow Mills Road, Farmington, New York in the Town of Farmington (“Town”) under New York State’s Community Solar Initiative (“Project”). The Project will include the construction, on-going operation, maintenance, and decommissioning of three (3) large-scale ground mounted solar facilities of 2.338 MW AC each, to be located on three (3) subdivided parcels on the Project Site (individually each is a “Solar Facility” and collectively the “Solar Facilities” and the three subdivided parcels on which each Solar Facility is located is a “Solar Facility Site”), and is expected to continue for at least thirty years. System Operators NY Farmington I, LLC, NY Farmington II, LLC, and NY Farmington III, LLC are also Solar Facilities owners at present, but may not be in the future, with system ownership potentially diverging from system operators of the Solar Facilities. For convenience, Delaware River Solar LLC and its affiliates are usually described as “System Operators” who are also System Owners through their ownership control over the Solar Facilities involved in the Project. When ownership aspects warrant ownership differentiation, such as with the transfer of ownership interests, then Delaware River Solar LLC and its affiliates are identified as a System Owner.

¹ In the event the 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)). Furthermore, “Property Owners” refers to successors to the Smiths’ property ownership and who have an ownership or possessory interest in the Project Site or a Solar Facility Site at the time of decommissioning.

PART I

FINANCIAL PLAN

A. Financial Plan Overview

1.1 As required by the Town Code and as provided in its Special Use Permit approval, the Planning Board has established this Financial Plan to ensure that financial resources will be available to fully decommission the Project Site when such time arrives and to ensure that such financial resources come from the System Operators and the Property Owners and not the Town. The Planning Board's Financial Plan is set forth in this Part I 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 sections: (1) ensuring that each Solar Facility and its operation do not generate unexpected decommissioning and site restoration costs by detailed advance planning and periodic soil sampling; (2) providing financial security to the Town to ensure that all foreseeable and full decommissioning costs are borne by the parties (System Operators and Property Owners) which or who are creating the circumstances when full decommissioning will become necessary at some point in the future; and (3) a contractual and legal commitment by the System Operators and Property Owners to pay any additional expenses reasonably incurred to complete the full decommissioning process that exceed the surety amount.

1.2 As part of its Financial Plan to forestall unexpected costs of decommissioning, the Planning Board has endeavored in Part II of this Decommissioning Plan to detail the full decommissioning process for the various kinds of decommissioning circumstances that could take place in future decades. Part II of 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 full decommissioning under various scenarios, and so reduce future issues and disputes, delays 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 Operators and/or Property Owners. The Financial Plan details the various tasks of full decommissioning in this Decommissioning Plan, contains an assessment of the economic costs to carry out those tasks approved by the Town Engineer, and totals such amounts to determine the minimum amount of surety to be provided for each Solar Facility by the System Operators and/or Property Owners for the benefit of the Town in the form desired. Also, the surety amount is re-evaluated every three years to ensure that the amount of surety available to the Town to take over decommissioning tasks if necessary remains sufficient to pay for all anticipated full decommissioning expenses at current pricing levels even if regulatory, removal or restoration requirements change. Finally, this Financial 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 Provisions and Additional Responsibilities.

B. Surety Provisions

2.1 As provided in the Town Code, each System Operator and/or Property Owners of a Solar Facility on a Solar Facility Site shall provide financial assurance to the Town prior to construction, and during operations and full decommissioning that funds will be available to the Town sufficient to cover all foreseeable costs of remediating construction damage or omissions as well as fully decommissioning such Solar Facility at such Solar Facility Site when the time for decommissioning comes in the event that the Property Owners and/or System Operators are unable or unwilling to do so within the time required. The terms “full decommissioning,” “fully decommissioned,” and “full decommissioning process” or some form thereof as used in this Decommissioning Plan means completion with Town approval for all three stages of the general decommissioning process adopted in this Decommissioning Plan: Basic Decommissioning Process; Site Restoration Process; and Post-Restoration Monitoring Period. See §§ 6.4, 6.6, 6.7.

2.2 As to be confirmed and implemented by approval of the Town Board, the Town selects its specific forms of surety in this Decommissioning Plan at this time in two overlapping parts consisting of two separate and independent sureties: a Letter of Credit for the initial construction period (“Construction Letter of Credit”), and the main and long-term surety to cover potential costs in connection with construction, operations and full decommissioning process for each Solar Facility in the form of a maintenance bond (“Surety”) as follows:

(1) *Construction Letter of Credit*: an irrevocable letter of credit from an A-rated financial institution for the sole benefit of the Town in the amount of \$ _____ shall be secured and made available to the Town prior to the commencement of construction of an approved Solar Facility to the conclusion of its construction, including clean-up and repair of damage from construction activity, and until a Town Board resolution accepts the Solar Facility as constructed according to its Final Site Plan, confirms that the construction activity has concluded with appropriate clean up and repairs, and releases the letter of credit. Such letter of credit shall be available to the Town to address all remediation issues related to proper and prompt construction of the proposed Solar Facility and associated area cleanup and repairs, such as Town work to install or correct erosion and sediment control measures, stormwater measures, Town roadway repairs, and final stabilization of the construction site; and

(2) *Surety in the form of a Maintenance Bond (“Surety”)*: a maintenance bond from an A-rated financial institution or better shall be secured and made available to the Town containing the following characteristics:

- a) 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 by resolution at the conclusion of the full decommissioning process and after all associated costs incurred by the Town under this Decommissioning Plan have been paid;
- b) Surety shall be valid and effective for a Solar Facility prior to the commencement of construction of such Solar Facility, with documented evidence of such fact filed with the Town Clerk prior to issuance of a building permit for such Solar Facility and Solar Facility Site and the commencement of any construction thereon;
- c) 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 a Solar Facility operation, expected to last at least for thirty years, plus such time involved in any extended operations, and the full decommissioning process; provided that such Surety may be replaced by another surety approved by the Town from time to time as long as the current approved surety remains valid and available to the Town to finance the full decommissioning of the Solar Facility at all times throughout the entire existence and duration of the Solar Facility operation until the approved replacement surety becomes effective, such documentation is filed with the Town Clerk, and the Town Board issues a resolution discharging the need for the superseded surety;
- d) 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; and
- e) Surety amounts for each of the three Solar Facilities which are the subject of this Financial Plan are calculated according to the full decommissioning process steps and their estimated current expenses contained in Appendix I annexed and incorporated herein as the basis for the initial Surety amounts. The salvage values of valuable recyclable materials incorporated in Solar Facility equipment brought to its Solar Facility Site

(such as solar panels, aluminum, steel, copper), if any, have not been factored into the estimated decommissioning costs for purposes of assessing the required Surety nor should they be in future reconsiderations of the sufficiency of any Surety. A separate Surety shall be established and maintained for each Solar Facility at its Solar Facility Site in accordance with this Financial Plan and the Decommissioning Plan. Evidence of the validity of such Sureties shall be filed with the Town Clerk prior to issuance of a building permit for a Solar Facility and the commencement of any construction work for it, and kept on file continuously so long as the Solar Facility remains to be fully decommissioned and until the Surety is replaced with an approved successor surety and the need for it discharged by Town Board resolution. The initial Surety amounts for each of the three Solar Facilities which are the subject of this Financial Plan are set forth as follows:

- i) The initial amount of the Surety for Solar Facility 1 on its Solar Facility Site of Town parcel 010.00-01-37.111, to be operated by NY Farmington I, LLC, is deemed to be \$151,956.
- ii) The initial amount of the Surety for Solar Facility 2 on its Solar Facility Site of Town parcel 010.00-01-37.112, to be operated by NY Farmington II, LLC, is deemed to be \$129,121.
- iii) The initial amount of the Surety for Solar Facility 3 on its Solar Facility Site of Town parcel 010.00-01-37.113, to be operated by NY Farmington III, LLC, is deemed to be \$136,041.

2.3 The amount of the required Surety may be adjusted by the Town Board upon receipt of such a recommendation from the Planning Board based upon approvals by the Town Engineer and Town Construction Inspector for an updated cost estimate for the full decommissioning process prepared by the System Operators and/or Property Owners in accordance with this Decommissioning Plan and relevant circumstances existing or foreseeable at that time. Once approved by the Town Board, the updated cost estimate shall supersede the existing Surety amount for a Solar Facility and become part of any Decommissioning Action Plan and subject to requirements for provision of the Surety within such time for compliance as the Town Board specifies. The Town also reserves the right to change the form and source of Surety as part of the tri-annual review of the 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 an approved surety during all 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.

2.4 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 for work performed, services provided or materials secured, or afterwards.

2.5 The parties agree that the Surety shall be used solely to pay for expenses incurred by the Town to commence or complete the full decommissioning process and to recover related expenses for doing the work of the System Operator and Property Owners such as equipment removal and site restoration work performed, clean-up or repair services provided, and/or materials secured or disposed of, and for other reimbursements as provided under this Decommissioning Plan attributable to their defaults.

2.6 In the event an ownership interest in a Solar Facility is to be transferred to a different entity, the transferring System Owner agrees to provide the Town prompt notice of a contractual commitment made to change ownership, as well as the identity and contact information of the new owner, at least thirty days in advance of the actual transfer of ownership. The transferring System Owner further agrees to maintain its Surety in place and to continue to provide such financial assurance to cover expenses for its Solar Facility interest under this Decommissioning Plan as long as some ownership interest is retained, or, in the case of a complete transfer of ownership, even after the new Solar Facility owner takes control until such time as the new System Owner provides a replacement surety approved by the Town for the Solar Facility being transferred and the need for the superseded Surety is discharged by Town Board resolution. At no time during the transfer of ownership of a Solar Facility shall a sufficient surety not be in place in favor of the Town and applicable to the Solar Facility being transferred.

2.7 In the event some ownership interest of the Project Site or a Solar Facility Site is to be transferred to a different person or entity, the transferring Property Owner agrees to provide the Town prompt notice of a contractual commitment made to change such ownership, as well as the identity and contact information of the new owner, at least thirty days in advance of the actual transfer of the property ownership. The transferring Property Owner further agrees to maintain its responsibilities under this Decommissioning Plan and to continue to fulfill its obligations under this Decommissioning Plan despite a transfer of ownership as long as some ownership interest is retained, or, in the case of a complete transfer of ownership, until such time as the new Property Owner commits to assume the responsibilities of property owners of the Project Site or a Solar Facility Site by a written commitment to this Decommissioning Plan signed by all parties. *But see* § 3.3.

2.8 Every new system operator, system owner, or property owner acquiring a direct legal, equitable or financial interest in the Project or some part of a Solar Facility or Solar Facility Site during the term of, but not a party to, this Decommissioning Plan shall commit to comply with the terms of this Decommissioning Plan and adopt such rights and responsibilities for its class of ownership interest(s) within ninety days of the acquisition of such ownership interest(s), or the failure to do so shall constitute evidence of abandonment of that current Solar Facility on its Solar Facility Site, with appropriate consequences under this Decommissioning Plan and Town Code.

C. Additional Responsibilities

3.1 System Operators and Property Owners of the Project or parts of the Project pertinent to a Solar Facility and its Solar Facility Site remain responsible for liabilities arising out of, or attributable to, the construction, operation, maintenance, repair and/or full decommissioning of each Solar Facility and its Solar Facility Site which they own or control. The Surety is not a complete substitute for such responsibility, but only a convenient means of discharge of such responsibility up to the designated surety amount when paid, and such System Operators and Property Owners remain legally and financially responsible for remediating the full extent of any such problems whether or not the Surety provides the expected financial assurance for which it was provided.

3.2 Property Owners and/or System Operator remain responsible to, and agree to, indemnify the Town for all reasonable expenses incurred in dealing with, and carrying out, the full decommissioning process that was the initial responsibility of Property Owners and/or System Operator to address. All reasonable expenses incurred by the Town for, and related to, intervention to commence and/or complete the full decommissioning process for a Solar Facility on its Solar Facility Site shall be the responsibility of the System Operator controlling such Solar Facility and Property Owners of such Solar Facility Site, who each agree to hold the Town harmless from all such expenses. Such reimbursable expenses shall include, without limitation by reason of specification, reasonable attorney and engineering fees, Code Enforcement Officer fees not covered by a permit, and other consultant fees and disbursements, as well as costs for contractors, transport of materials, and disposal fees, etc. Such expenses shall be paid jointly and severally by the System Operator in control of such Solar Facility, 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. As provided in the Town Code, any costs incurred by the Town in connection with its intervention to commence and/or complete the full decommissioning process for a Solar Facility on its Solar Facility 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 commence suit in court against appropriate parties to collect reimbursable expenses incurred in fully decommissioning a Solar Facility from the responsible parties.

3.3 Each System Operator and Property Owner is legally and financially responsible to remediate contamination and pollution to soils and water on the Solar Facility Site resulting from the equipment or operations of each Solar Facility it owns or controls, and, notwithstanding section 2.7, this responsibility shall remain beyond its period of control and until completion of the full decommissioning of a Solar Facility it owns or controls, or has owned or controlled, on a Solar Facility Site the Property Owner owns or has owned during Solar Facility operations, and until the need for the final Surety for such Solar Facility and Solar Facility Site is discharged by Town Board resolution.

PART II

DECOMMISSIONING PROCESS

A. Decommissioning: Introduction

4.1 This Part II of the Decommissioning Plan (“Decommissioning Process”) 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, restoring the land to its pre-construction condition and monitoring the site-restoration results pursuant to the Farmington Town Code, Special Use Permit conditions, and this agreement.

4.2 The Solar Facilities that are the subject of this Decommissioning Plan are expected to have an extended useful life, but decommissioning of each 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.

4.3 This Decommissioning Process is based on current best known management practices and procedures. This Decommissioning Process may be subject to revision based on new standards and emergent best management practices for the full decommissioning process herein at the time of decommissioning as provided in the Town Code, or if agreed then in writing by all existing signatories or their successors and approved by the Planning Board in a Decommissioning Action Plan at the time of decommissioning. *See* § 6.4 [D].

4.4 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 Solar Facility Site or Project Site remains incompletely restored as provided herein, plus such additional periods as needed to enforce the provisions of this Plan.

4.5 As used in this Decommissioning Plan, the general term “decommissioning” consists of the approved process for dismantling of a Solar Facility, and removal of its equipment, component parts and related waste from its Solar Facility Site, as well as restoring the Solar Facility Site to its pre-construction condition as provided herein and under the Town Code and Special Use Permit, preferably in an orderly and timely manner. As previously indicated, the terms “full decommissioning,” “fully decommissioned,” and “full decommissioning process” or some form thereof as used in this Decommissioning Plan means completion with Town approval for all three stages of the general decommissioning process adopted in this Decommissioning Plan: Basic Decommissioning Process; Site Restoration Process; and two-year Post-Restoration Monitoring Period. *See* § 2.1.

B. Decommissioning: When To Be Implemented

5.1 The Decommissioning Process provided in this Plan may be invoked by any party hereto 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 will be shut down and removed from its Solar Facility Site, or has been abandoned.

5.2 This Decommissioning Process may be invoked by any party when the following conditions exist or reasonably appear to exist based upon significant evidence:

- (1) a System Operator determines that the operation of a Solar Facility it owns or controls will be terminated, in which case decommissioning of the Solar Facility is warranted;
- (2) a Property Owner of a Solar Facility Site it owns or controls determines to withhold approval for use of the Solar Facility Site for further Solar Facility operations, in which case continued operation of a Solar Facility on such site will cease and decommissioning of the Solar Facility is warranted;
- (3) a Solar Facility is no longer authorized to exist and/or operate on its Solar Facility 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;
- (4) a 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 another

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.

period of up to a second year provided by the Planning Board if it grants an extension of such period prior to the expiration of such one year period for good cause such as such energy generation was limited by or other public electric provider contracting with the System Operator regarding the Solar Facility's energy generation, New York State, or another authorized energy regulatory body beyond the control of the System Operator, for which exception the System Operator has the burden of proof;

(5) a Solar Facility is damaged in whole or substantial part, and will not be repaired or replaced within six (6) months;

(6) a Solar Facility or its Solar Facility Site is abandoned, or reasonably appears abandoned based upon significant evidence, as provided more specifically in Section 5.3;

(7) initial construction of a Solar Facility has commenced after final site plan approval but is not completed within twelve 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;

(8) 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; and/or

(9) at any other time as may be provided in the Town Code.

5.3 As used in this Decommissioning Plan, abandonment of a Solar Facility may be reasonably found by the Town for purposes of invoking this Decommissioning Process and its provisions when there is significant evidence that:

A. A System Operator has provided notice of its abandonment of the Solar Facility to Property Owners, RG&E or other public electric provider contracting with the System Operator regarding the Solar Facility's energy generation, and/or the Town; or

B. Evidence of abandonment is observed from a System Operator, such as, by way of example:

1. Admissions indicating abandonment of a Solar Facility;
2. Failures to provide required reports or responses in a timely manner;
3. Failure to comply with requirements of the Special Use Permit;
4. Failure to comply with provisions of the Town Code;
5. Failure to pay required periodic costs within a reasonable time for services provided to carry out tasks involved with assisting the Town to supervise a Solar Facility, such as by the Town Engineer or Code Enforcement Officer (for charges not covered by permit fees);
6. Failure to provide a suitably authorized person to accompany the

- Code Enforcement Officer within forty-eight hours of a request to enter a Solar Facility;
7. 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 work to fully decommission a Solar Facility or Solar Facility Site;
 8. Failure to timely comply with the Decommissioning Process of this Decommissioning Plan;
 9. Failure to provide the requisite surety in time or as otherwise required; and/or
 10. 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; or

C. Evidence of abandonment is observed at the Project Site or Solar Facility Site, such as non-operational Solar Facility equipment, obstructed or damaged solar panels, overgrown trees or branches shading 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; or

D. A Solar Facility is no longer authorized to exist and/or operate on its Solar Facility Site, such as in the case of a loss of lease rights, eminent domain condemnation, or regulatory prohibition such as a lawful loss of Special Use Permit approval or other lawful termination of operating authority, and the System Operator or Property Owner does not promptly initiate the Decommissioning Process; or

E. Contract (Distributed Generation Interconnection Agreement) between the System Operator and RG&E or other public electric provider contracting with the System Operator regarding the Solar Facility's energy generation is terminated or breached (and written notice of such event is stated by one of the parties in writing in some form)—provided, however, that termination of such Contract shall not constitute evidence of abandonment in the event such Solar Facility continues to function to provide solar energy at about its rated capacity and is the subject of a different but state-approved contract or program related to distributed generation or sale of solar-sourced electricity, including related environmental attributes or credits; or

F. 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 another period of up to a second year provided by the Planning Board if it grants an extension of such period prior to the expiration of such one year period for good

cause such as such energy generation was limited by RG&E or other public electric provider contracting with the System Operator regarding the Solar Facility's energy generation, New York State, or another authorized energy regulatory body beyond the control of the System Operator, for which exception the System Operator has the burden of proof; or

G. Construction of a Solar Facility has commenced after final site plan approval but is not completed within twelve 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

H. A Solar Facility is damaged in whole or substantial part, and its System Operator has notified the Town the Solar Facility will not be repaired or replaced within six (6) months.

5.4 Before any finding of abandonment may be made based on circumstances existing for an unreasonable period of time, the Town 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.

5.5 In addition, before a finding of abandonment may be made, the Town shall take into consideration whether a System Operator or Property Owner has been in recent communication with the Town regarding problems with a Solar Facility operation or equipment that have created or contributed to conditions indicating abandonment, but has explained the problem(s) to the Town and advised of a viable plan in writing for returning the Solar Facility operation and/or equipment back to full functionality. Such communications in good faith are informal opportunities to cure obligation deficiencies and evidence that a Solar Facility has not been abandoned and warrants some additional time to address the issues as proposed. Still, the Town is not required to wait indefinitely or for an unreasonable period of time to have the problem(s) indicating abandonment corrected merely because of continuing communications from a System Operator and/or Property Owner, and Town Code requirements must be met or exemptions obtained through proper formal procedures. System Operators and/or Property Owners are entitled to formal opportunities to cure their problems, noncompliances and deficiencies as are provided in the Town Code.

5.6 The parties agree that the Basic Decommissioning Process contained in

Section 6.4 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 Process.

C. Decommissioning: How To Be Implemented

6.1 The Basic Decommissioning Process described below in Section 6.4 may be undertaken by any of the undersigned parties under this Decommissioning Plan as circumstances and actions warrant. 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. In the event of an emergency, however, all parties aware of the emergency and able to act shall intervene at the Solar Facility Site and Project Site if warranted as soon as practicable to prevent as much harm to area persons, property and environment as can be managed under the circumstances.

Basic Decommissioning Process

6.2 The Basic Decommissioning Process referenced in this Decommissioning Plan primarily addresses the physical dismantling and removal of Solar Facility equipment and waste material from the Solar Facility Site. As discussed below, the Basic Decommissioning Process may be adjusted by the approval of the Planning Board of a specific Decommissioning Action Plan containing requested modifications, and so the resulting and actual decommissioning process might not be entirely “basic” at the actual time of decommissioning. *See* § 6.4 [D].

6.3 When the time comes for a Solar Facility to terminate its operations, remove its equipment, waste and presence from the Solar Facility Site, and restore the Solar Facility Site to its pre-construction condition, this Basic Decommissioning Process shall be followed to the extent applicable. Thus, for a fully constructed and operating Solar Facility the entire Basic Decommissioning Process shall be followed, unless adjusted by an approved Decommissioning Action Plan. *See* § 6.4 [D]. But in the event of incomplete construction of a Solar Facility, for example, the Basic Decommissioning Process must be adjusted to begin with such Solar Facility as it exists at the point partially constructed, and shall consist of the reversal of the steps taken in partial construction of that Solar Facility, together with clean-up of the Solar Facility Site and restoration of the soils to their benchmark status with post-restoration monitoring. *See* §§ 6.4, 6.6, 6.7. The Decommissioning Process can occur for the entire Project at one time, or for one or more Solar Facilities at a time but not all at the same time, and the Basic Decommissioning Process shall be adjusted to accommodate the possibility of decommissioning of one, two or three Solar Facilities at different times.

6.4 The Basic Decommissioning Process means the steps shown below in order,

following a safe shutdown of the Solar Facility operation. Such decommissioning steps generally proceed in the reverse order of the 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 Basic Decommissioning Process actions may be taken out of order or omitted if warranted by circumstances and if first approved by the Town as part of an acceptable Decommissioning Action Plan. *See* § 6.4[D].

A. However occasioned, the permanent cessation of a Solar Facility operations shall result in the prompt notification of such cessation to all parties, and invocation of the Decommissioning Process for that Solar Facility provided to the parties 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 Decommissioning Plan, stakeholders warranting written notification of the commencement of the Decommissioning Process for a Solar Facility consist of:

- System Operator of Solar Facility being decommissioned
- Property Owners
- Town
- RG&E or other known public electric provider contracting with the System Operator regarding the Solar Facility's energy generation
- New York State Energy Research and Development Authority (NYSERDA)

B. In response to notice of commencement of the decommissioning process for a Solar Facility, the Town may provide written notice of such Decommissioning Process for that Solar Facility to other local, state and/or federal agencies or authorities warranting such notice, and other stakeholders. At the time of this Decommissioning Plan, stakeholders warranting notification of commencement of the Decommissioning Process for these Solar Facilities consist of:

- Property Owners
- Town
- RG&E or other 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 department
- Ontario County Soil & Water Conservation District
- New York State Department of Agriculture and Markets (NYSDAM)

C. All permits needed from agencies or authorities, other than the Town, involved in the Decommissioning Process for a Solar Facility due to decommissioning circumstances invoking their jurisdiction and authority must be first applied for before proceeding with the Town's process for decommissioning of the Solar Facility.

D. All required permissions needed from the Town to decommission a Solar Facility shall be applied for in writing soon after notice of commencement of the Decommissioning Process is made (and after all non-Town permits are applied for), with required fees paid. At present, applications required to decommission a solar facility in the Town consist of a demolition permit, an amended site plan for the Solar Facility Site after decommissioning, and a proposed Decommissioning Action Plan which specifies the particular steps and process for the full decommissioning of the Solar Facility at such time, discloses removal and disposal plans for Solar Facility equipment and materials, and may request adjustments to various general decommissioning requirements in the particular circumstances and under the Town Code.

Decommissioning Action Plan:

1. A proposed Decommissioning Action Plan shall contain the following provisions:

i) A specific proposed schedule for decommissioning activities, including a timeframe for the completion of the Decommissioning Process and Site Restoration Process, with identification of entities performing the work and their contact information;

ii) Identification of all permits required from other agencies or authorities for the decommissioning of this Solar Facility and a plan for obtaining such permits which shows their applications, current status of such applications, and expected time frame for permit issuance, if determinable;

iii) An updated decommissioning cost estimate for the particular Solar Facility at issue based on current costs, and separating out any joint costs with other Solar Facilities that may have been included in the previous estimate if other Solar Facilities are not also being decommissioned at the same time;

iv) 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 full decommissioning of the Solar Facility and Solar Facility Site being decommissioned;

v) Results of the soil sampling protocol from within the past year as required under Special Use Permit Condition No. 7, with comparison to benchmark criteria, and a proposed plan to address issues of significant deviation from benchmark criteria, if any;

vi) A plan depicting the location of the Solar Facility Site to be decommissioned, with erosion and sediment control measures, construction staging area, designated areas for temporary storage/stockpiling, construction access point, any re-fencing required, and other matters of note for the activities to be conducted;

vii) Identification of the various kinds of materials to be removed from the Solar Facility Site as indicated in the decommissioning cost estimations of Appendix I, and the plans for removal and disposal of such materials from the Solar Facility Site; note: all Solar Facility equipment and components, waste, concrete, road material and landscaping, etc., to be removed during the decommissioning process must be properly disposed of off-site by appropriate means: such as a return to the supplier or manufacturer, a sale to some party for further use or salvage, or resort to a facility lawfully authorized to handle and dispose of such material safely using best management practices at the time; and the proposed disposal destinations for each kind of removed materials shall be specified with such materials handler's name, contact information, and authorization to handle and dispose of such materials lawfully and safely;

viii) Reference to and description of an amended site plan proposal submitted or about to be submitted to the Planning Board to address the changed Solar Facility Site after the conclusion of the Basic Decommissioning Process and Site Restoration Process for such site;

ix) Retention and identification of an appropriate and qualified Environmental Monitor to oversee present full decommissioning activities as provided under the Town Code, Special Use Permit conditions, New York State Department of Agriculture and Markets' *Guidelines for Solar Energy Projects—Construction Mitigation for Agricultural Lands*, and this Decommissioning Action Plan;

x) Plan to re-merge the subdivided parcel for the Solar Facility Site being decommissioned back into the original parcel at 466 Yellow Mills Road in the Town of Farmington, New York; and

xi) Any other information as may be reasonably requested by the Planning Board in evaluating the proposed full decommissioning process and Decommissioning Action Plan.

2. A proposed Decommissioning Action Plan may also contain additional provisions, such as (xii) requests for changes to the Basic Decommissioning Process, Site Restoration Process and Post-Restoration Monitoring Period, with the basis for such modification request(s); (xiii) a list of all improvements to the property resulting from construction or operations of the Solar Facility or Solar Facility Site that the Property Owners desire to retain and not be removed during the full decommissioning process, and their plan for those proposed retained improvements as provided under the Town Code; (ivx) a description of the desired vegetative cover to be used to replace disturbed areas of the Solar Facility Site for the Site Restoration Process; and (vx) any other related matter desired to be brought to the Planning Board's attention at that time.

E. Termination of Solar Facility Interconnection Agreements with RG&E and/or other contracting public electric providers is to be initiated, with notice to the Town of such step provided promptly as well as all disconnection schedules determined by RG&E or other connected public electric providers.

F. Once the Planning Board approves a Decommissioning Action Plan for the Solar Facility, the Town will schedule a pre-demolition meeting with the System Operators and Property Owners to discuss full decommissioning activities, schedules, and concerns. Upon reasonable agreement about the full decommissioning steps to be taken in accordance with the approved Decommissioning Action Plan, the Town will issue a Demolition Permit for the full decommissioning process. A Demolition Permit shall not be issued without approval of a Decommissioning Action Plan for the Solar Facility at issue by the Planning Board and shall be in conformity to such Action Plan.

G. Erosion and sediment controls shall be installed at the Solar Facility Site in accordance with requirements of the New York State Department of Environmental Conservation and the Town.

H. The Solar Facility shall be physically disconnected from utility connections by RG&E and/or other connecting public electric providers so that energy no longer flows from the Solar Facility to the distribution equipment of RG&E and/or

other applicable public electric providers, who shall remove from the Solar Facility Site utility facilities used only to support the Solar Facility.

I. Comply with Special Use Permit Condition No. 7 for decommissioning, including, among other things, obtaining final soil sampling results, comparing final soil sampling protocol test results to benchmarks, and determining and planning for what adjustments, if any, must be made to restore the ground surface and current soils of the Solar Facility Site to their benchmark status, subject to minor deviations as are acceptable to the Property Owners, the Town, and the Ontario County Soil and Water Conservation District.

J. Physically 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 Solar Facility Site. Such 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 according to the approved Decommissioning Action Plan.

K. Electrical and electronic equipment, including transformers and inverters, shall be removed from the Solar Facility Site and 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 according to the approved Decommissioning Action Plan.

L. All above-ground and underground electrical interconnection and distribution cables (including conduits) not owned by RG&E and/or other applicable public electric providers shall be removed from the Solar Facility Site and disposed off-site by a facility authorized to handle such material using best management practices at the time according to the approved Decommissioning Action Plan.

M. Concrete pads and/or foundations shall be removed from the Solar Facility Site and then disposed off-site by a facility authorized to handle such material using best management practices at the time according to the approved Decommissioning Action Plan.

N. All solid and liquid waste attributable to the Solar Facility operations and equipment shall be removed from the Solar Facility Site in accordance with local, state and federal waste disposal regulations and the approved Decommissioning Action Plan.

O. Access roads shall be removed from the Solar Facility Site, except for portions permitted as part of an approved Decommissioning Action Plan, or portions

needed for the continued operation of the remaining Solar Facilities if all Solar Facilities are not decommissioned together.

P. Fencing shall be removed from the Solar Facility Site, except for portions permitted as part of an approved Decommissioning Acton Plan, or portions needed for the continued operation of the remaining Solar Facilities if all Solar Facilities are not decommissioned on the Project Site together—in which case fencing must be realigned or newly installed to enclose the remaining Solar Facilities as approved by the Town in the Decommissioning Action Plan.

Q. Landscaping required by the Special Use Permit shall be removed from the Solar Facility Site, except for portions permitted as part of an approved Decommissioning Acton Plan, or portions needed for the continued operation of the remaining Solar Facilities if all Solar Facilities are not decommissioned on the Project Site together.

Site Restoration Process

6.5 Upon completion of the forgoing Basic Decommissioning Process for a Solar Facility satisfactory to the Town, the Site Restoration Process shall follow and commence without undue delay in order to restore the Solar Facility Site to a state of vegetative cover and soils condition similar to its pre-construction condition, subject to adjustments approved by the Planning Board as part of a Decommissioning Action Plan. All Site Restoration Process work shall be completed within one year of completion of the Basic Decommissioning Process, unless extended for good cause by the Planning Board as part of an approved Decommissioning Action Plan, or suspended for a period of active and reasonable clean-up work for non-solar-operation contaminants or pollution being conducted pursuant to § 6.6 [A].

6.6 The Site Restoration Process shall mean the following actions in order:

A. Clean up contaminants and/or pollutants in the soils at the Solar Facility Site, if any, directly caused or contributed to by the construction, operation and/or decommissioning of the Solar Facility. In the event other contamination or pollution is discovered at the Solar Facility Site that would effectively preclude or impair the effectiveness of the Site Restoration Process if not also cleaned up at this time, then adequate time under the circumstances shall be allowed the Property Owners to have

their property cleared of such contamination or pollution; and the time to complete the Site Restoration Process for the Solar Facility Site is suspended for such period as such clean-up process is being actively and reasonably conducted, which activity weighs against other evidence of abandonment such as failure to complete the Site Restoration Process within one year.

B. Restore soils at the Solar Facility Site to their benchmark status, subject to adjustments approved by the Property Owners and Planning Board as part of a Decommissioning Action Plan, and the Ontario County Soil and Water Conservation District.

C. Decompact compacted soils as necessary to remediate compacted land at the Solar Facility 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.

D. 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 in accordance with the Special Use Permit Condition No. 7 and with the original contours reestablished where practical. All rocks four inches and larger from topsoil shall be removed from the surface of the topsoil before reseeding the area.

E. Follow the New York State Standards and Specifications for Erosion and Sediment Control (latest version) and the Town's MS4 Standards for soil restoration, seeding, mulching, and/or any other applicable sections to stabilize and revegetate the Solar Facility Site. Seed all agricultural areas from which vegetation was removed or destroyed with native seed mixes or plants specified by Property Owner or as otherwise recommended in the latest version of NYSDAM's fertilizer, lime and seeding guideline [currently https://www.agriculture.ny.gov/ap/agsservices/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 such adjustments approved as part of a Decommissioning Action Plan.

F. Seed any disturbed areas of the Solar Facility Site with choice of cover, mulch and tackifier. Monitor seeded areas to ensure vegetative growth. Site Restoration Process shall not be considered complete until sown vegetative cover on disturbed and/or decompacted areas stabilize with survivable plants.

G. The Town MS4 Officer shall file the Notice of Termination (“NOT”) pursuant to the State Pollution Discharge Elimination System general construction permit with the Town (MS4) and with New York State Department of Environmental Conservation. Erosion and sediment controls shall be removed as per the approved Decommissioning Action Plan upon receipt of written acceptance by the Town MS4 Officer.

H. Upon satisfactory completion of the Site Restoration Process for a Solar Facility or Solar Facilities, the Town Code Enforcement Officer shall issue a Certificate of Compliance to the effect that the Decommissioning Action Plan including a Basic Decommissioning Process and Site Restoration Process with approved adjustments has been completed, and close out applicable Town permits, such as the Demolition Permit.

Post-Restoration Monitoring Period

6.7 Upon the issuance of a Certificate of Compliance by the Town for a Solar Facility that has been decommissioned and the Solar Facility Site suitably restored to its pre-construction condition with approved adjustments, if any, a Post-Restoration Monitoring Period commences in accordance with the Town Code. For two years after the Certificate of Compliance the Solar Facility Site must be monitored for maintenance of a vegetative cover and other matters as provided in the Town Code, the Decommissioning Action Plan and the New York State Department of Agriculture and Markets’ *Guidelines for Solar Energy Projects—Construction Mitigation for Agricultural Lands*, as may be amended from time to time, with prompt remediation required at the expense of System Operator and Property Owners to address site restoration deficiencies that may develop during the Post-Restoration Monitoring Period.

6.8 Once a Solar Facility and Solar Facility Site have been fully decommissioned with satisfactory completion of all the provisions of the Basic Decommissioning Process, the Site Restoration Process, and the Post-Restoration Monitoring Period provided in the approved Decommissioning Action Plan for such Solar Facility, then upon application the Town Board shall adopt a resolution terminating the requirement to maintain any existing Surety applicable to the fully decommissioned Solar Facility and Solar Facility Site.

6.9 Finally, upon full decommissioning of a Solar Facility and Solar Facility Site, the Property Owners shall apply to the Planning Board and take all required action to merge the decommissioned Solar Facility Site back into the original parcel (Town Tax ID No. 10.00-1-37.110) at 466 Yellow Mills Road, Town of Farmington, New York.

D. Decommissioning: By Whom To Be Implemented

Decommissioning by System Operators

7.1 System Operators are primarily responsible for full decommissioning of their Solar Facility and should generally take the lead in initiating and completing the Decommissioning Process. At such time as a System Operator determines to cease a Solar Facility operation for whatever reason, such System Operator shall take all necessary and appropriate measures to shut down operation of such Solar Facility safely and begin the Basic Decommissioning Process provided 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.

7.2 Upon permanent or sustained cessation of operations of a Solar Facility, whether by choice of the System Operator or Property Owner, by regulatory authority, by abandonment, or some other cause, and in the event the System Operator and/or Property Owner does not first invoke this Decommissioning Plan, after undue delay under the circumstances the Town may notify and instruct the System Owner and Property Owners to implement this Decommissioning Plan, and their decommissioning responsibilities under this Decommissioning Plan shall commence for such Solar Facility.

7.3 System Operators reasonably expect that the Basic Decommissioning Process should take approximately six (6) months from the start of permitted decommissioning site work. Such work is construction activity and is therefore subject to weather and seasonal conditions that may affect such work, and applicable permits that are subject to change over time.

7.4 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. 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 and associated waste at the Solar Facility Site within one year of notification of decommissioning, unless extended for good cause by the Planning Board as part of an approved Decommissioning Action Plan. Furthermore, all site restoration work shall be completed within one year of completion of the Basic Decommissioning Process, unless extended for good cause by the Planning Board as part of an approved Decommissioning Action Plan.

Decommissioning by Property Owners

7.5 Each Property Owner (and any holder of a lease or other interest in the property) of a Solar Facility Site is also responsible for full decommissioning of a Solar Facility permitted on their property. 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 Solar Facility Site he or she controls, either independently or in conjunction with another Solar Facility, or for any other decommissioning situation arising for a Solar Facility permitted on their property in which the System Operator does not act appropriately under this Decommissioning Plan, 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 Basic 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 Basic Decommissioning Process thereafter under Section 6.4 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 Basic Decommissioning Process as provided under Section 6.4, or does not do so in a timely manner, the Property Owners shall assume the System Operator’s responsibilities under the Basic 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 to full decommission the Solar Facility and its Site. As long as one Property Owner undertakes to and does carry out the requisite full decommissioning work appropriately, he or she shall do so and the Town need not intervene except to fulfill its supervisory and approval responsibilities. Alternatively, all Property Owners may abandon the Solar Facility on the Solar Facility Site, or request the Town to take over the Basic Decommissioning Process for the Solar Facility on their property, while recognizing then 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 in undertaking the work to fully decommissioning such Solar Facility and Solar Facility Site.

Decommissioning by Town of Farmington

7.6 In the event a System Operator or Property Owner requests the Town to commence or complete the full decommissioning process, or a Solar Facility has been abandoned (and/or the Basic Decommissioning Process itself has been abandoned by the lack of activity over a sustained period when decommissioning tasks should have been undertaken or completed but 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 full decommissioning process as provided herein. Any such intervention by the Town shall be at the sole expense of the System Operator and Property Owners jointly and severally in accordance with the Financial Plan.

7.7 System Operators and Property Owners acknowledge that whether the Town must or should intervene and take possession and control of a Solar Facility and Solar Facility Site to commence or complete the full decommissioning process is wholly within their initial control as the Town has no reason nor desire to take over the decommissioning process as long as the full decommissioning process for the Solar Facility is being conducted in a proper and timely manner.

7.8 In the event the Town exercises its option under this Decommissioning Plan to intervene to commence or complete any part of the full decommissioning process for a Solar Facility, the Town shall do so by providing written notice thereof (such as email notice in an emergency) to the System Owner and Property Owners for the Solar Facility at issue. Upon such notice and exercise of its option to intervene, the Town is hereby granted irrevocable authority to immediately enter upon the Solar Facility Site of a Solar Facility to be decommissioned in order to take emergency preservation and/or remediation measures and/or to carry out any part of the full 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 7.6, and it is expressly agreed now and for the future that no criminal and/or civil liability shall be maintained or be maintainable for such entry and presence on a Solar Facility Site or the Project Site, and that no civil liability shall be maintained or be maintainable for Town conduct on a Solar Facility Site or the Project Site other than for criminal conduct carried out thereon.

7.9 Under its option to intervene, the Town may enter the Solar Facility Site to be decommissioned and take temporary possession and control of that portion of the Project Site and related common areas for the purpose of carrying out the Basic Decommissioning Process (as the Town sees fit under the circumstances), and shall further take possession and control over the Solar Facility and its component parts and all items found at the Solar Facility Site. Taking such limited and temporary control of the Solar Facility Site and its contents for decommissioning purposes 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 full 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 at the Solar Facility Site as provided in this Decommissioning Plan, the Special Use Permit, and the Town Code. The Town is entitled to be fully compensated for the incurrence of all related expenses involved in such work and System Operator and Property Owners shall reimburse the Town for its decommissioning and site restoration expenses in accordance with the Financial Plan.

7.10 Under its option to intervene, the Town shall dismantle the Solar Facility and remove its parts and waste from the Solar Facility Site and Project Site. In such circumstance, unless otherwise agreed in writing by the System Operator, Property Owners and Town at the time of decommissioning, 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 Solar Facility 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 Solar Facility 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.

7.11 Under the Town's option to intervene, nothing in the general sequence of the full 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 Basic Decommissioning Process in any particular time, but may complete the decommissioning tasks as it finds feasible under the circumstances by proceeding in good faith to remove the Solar Facility and restore the Solar Facility Site to its pre-construction condition when the tasks can be reasonably managed.

7.12 Under the Town's option to intervene, and during its temporary possession and control of the Solar Facility Site to be decommissioned under this Decommissioning Plan, 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 Solar Facility Site or 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 full decommissioning process.

7.13 All damages, losses and claims for damages against the Town and its employees, board members, other officials, consultants, agents and/or contractors for their entry, presence and/or full decommissioning work on the Solar Facility 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 criminal conduct.

PART III

ADDITIONAL PROVISIONS

8.1 Property Owners and System Operator have the responsibility to keep the Town provided with their current mailing addresses for receipt of Town notices, and so notices provided to Property Owners and/or System Operator according to the current addresses on record for them with the Town at the time 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. In exigent circumstances, notification of Town action may be effectively made by email to a valid email address for Property Owners and/or System Owners if followed reasonably promptly by mailed notices to the same effect.

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

8.3 All indemnification provisions agreed to in this Decommissioning Plan survive any breach or termination of this Decommissioning Plan until such time as the Town's Demolition Permit has been issued and closed out for all of the Solar Facilities and the entire Project Site and the Town Board has adopted a resolution finally discharging the need for a Surety regarding the Project or any part thereof.

8.4 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, a Solar Facility or part thereof, or such condition that could reasonably be expected to adversely affect a Solar Facility operation or equipment; (2) any contamination or pollution or suspected contamination or pollution of the Project Site or a Solar Facility Site; and/or (3) any fire or significant chemical release at a Solar Facility or its Solar Facility Site.

8.5 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, within sixty days of its execution, provided that specific financial terms need not be disclosed to the Town.

8.6 In the event the Distributed Generation Interconnection Agreement between RG&E and System Operators for these Solar Facilities and the Project is terminated or breached, in whole or part, and replaced with another contract to supply a different utility or other state-approved entity accepting solar-sourced energy generated by a Solar Facility (“public electric provider”), then System Operator shall promptly notify the Town of such situation and provide the Town with a copy of such contract or certificate of current participation in a state-approved solar energy program utilizing its functioning Solar Facility to avoid a finding of abandonment based on evidence of the lack of a valid Distributed Generation Interconnection Agreement between RG&E and System Operators for these Solar Facilities and the Project.

8.7 In the event a Property Owner and/or System Operator resorts to court action against the Town, its officials, 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 regarding a Solar Facility’s 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 adjudicated indemnification amount sought by the Town, with interest accruing thereafter at the maximum legal rate. 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 Solar Facility Site and/or Project Site 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, as provided under the Town Code.

8.8 The failure of any 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 such party's part of any such provision in any other instance or of any other provision in any instance.

8.9 This Agreement may not be amended or modified except by written instrument signed by all parties.

8.10 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 a Solar Facility upon the assumption of all Decommissioning Plan rights and responsibilities by such acquiring entity in writing, and with notice to the Town.

8.11 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, excluding choice of law provisions that might indicate non-New York substantive law could apply.

8.12 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.

8.13 This Decommissioning Plan may be executed through a single signing ceremony, by separate signature pages or by any number of counterparts, and each of such counterparts shall, for all purposes, constitute one agreement binding on all parties.

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

8.15 This Decommissioning Plan shall be recorded in the Office of the Ontario County Clerk and a copy of the filing thereof provided promptly to the Town Clerk after execution by all parties. No notice to proceed with Site construction shall be issued by the Code Enforcement Officer until such filings have occurred.

IN WITNESS WHEREOF, the parties to this Decommissioning Plan indicated below 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, as acknowledged by the Notary Public.

**NY Farmington I, LLC
as System Operator and
Owner**

By:

Name:

Title:

Date:

**NY Farmington II, LLC
as System Operator and
Owner**

By:

Name:

Title:

Date:

**NY Farmington III, LLC
as System Operator and
Owner**

By:

Name:

Title:

Date:

**Delaware River Solar, LLC
as System Operator and
owner of
NY Farmington I, LLC,
NY Farmington II, LLC,
and
NY Farmington III, LLC**

By:

Name:

Title:

Date:

Town of Farmington

By:

Name: Peter Ingalsbe

Title: Supervisor

Date:

Property Owner

By:

Name: Carol Smith

Date:

Property Owner

By:

Name: Roger Smith

Date:

DECOMMISSIONING PLAN ACKNOWLEDGMENT

State of New York)
County of Ontario) ss.:

On the ____ day of _____ in the year 2021 before me, the undersigned Notary Public, personally appeared each of the signatories listed above (Carol Smith, Roger Smith, Peter Ingalsbe, _____) personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and each acknowledged to me that he or she executed the same in his or her proper capacity and authority to bind themselves, their Limited Liability Company or Town as the case may be, and that by his or her signature on the instrument, the individual, or the LLC or Town upon behalf of which the individual acted, executed the instrument.

Notary Public

[In the event the Decommissioning Plan is not signed by all parties in a single signing ceremony before a Notary Public, the Acknowledgements page must be adjusted to the signing circumstances.]