

LOCAL LAW NO. # 5 OF 2023

A LOCAL LAW ADOPTING A NEW CHAPTER 169 IN THE CODE OF THE
TOWN OF WHITESTOWN

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF WHITESTOWN, AS
FOLLOWS:

SECTION 1. Purpose

The Town Board for the Town of Whitestown adopted an amended Code of the Town of Whitestown (Local Law No. 2 of 1999). The amendments to the Code encompassed in this local law, which are collectively referred to as the "Town of Whitestown Solar Energy Law," are adopted to advance and protect the public health, safety and welfare of the Town of Whitestown by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives and intent:

1. To take advantage of a safe, abundant, renewable and non-polluting energy resource;
2. To decrease the cost of electricity for the owners of residential and commercial properties, including single-family houses;
3. To invest in a locally generated source of energy to increase employment and business development in the Town of Whitestown to the extent reasonably practical by furthering the installation of Solar Energy Systems;
4. To provide tax revenues and other benefits to the Town and its residents to mitigate impacts from the solar project;
5. To mitigate the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources. The use of small-scale, on-farm sources alternative to energy generation is beneficial to local farmers allowing them the ability to cut utility costs and/or supplement their income;
6. To protect adjoining/surrounding property owners by mitigating the potential impacts from large scale solar installations;
7. To aid in the energy independence of the community as well as the country;
8. To support US industry and employment; and
9. To foster land use in accordance with the Town's Comprehensive Plan.

SECTION 2. Chapter 169 Town of Whitestown Solar Energy Law

The Town Board for the Town of Whitestown hereby adopts a new Chapter 169 entitled "The Town of Whitestown Solar Energy Law," which shall read as follows:

169-1. Authority

This Solar Energy Local Law is adopted pursuant to Sections 261-263 of the Town Law and Section 20 of the Municipal Home Rule Law of the State of New York, which authorize the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town Law of New York State, to make provision for, so far as conditions may permit, the accommodation of Solar Energy Systems and equipment and access to sunlight necessary therefore.

169-2. Definitions

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM: A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials or shading over windows, which produce electricity for onsite consumption.

FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.

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

GROUND-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure that generates electricity for onsite or offsite consumption.

NATIVE PERENNIAL VEGETATION: Native wildflowers, forbs and grasses that serve as habitat, forage and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

POLLINATOR: Bees, birds, bats and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

PRIME FARMLAND: Land, designated as “Prime Farmland” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops, and is also available for these land uses.

ROOF-MOUNTED SOLAR ENERGY SYSTEM: A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

SOLAR ENERGY EQUIPMENT: Electrical material, hardware, inverters, conduit, storage devices or other electrical and photovoltaic equipment associated with the production of electricity.

SOLAR ENERGY SYSTEM(S): The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. A Solar Energy System is classified as a Tier 1, Tier 2 or Tier 3 Solar Energy System as follows.

A. Tier 1 Solar Energy Systems include the following:

a. Roof-Mounted Solar Energy Systems

b. Building-Integrated Solar Energy Systems

B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with system capacity up to twenty-five (25) kW AC and that generate no more than [110] % of the electricity consumed on the site over the previous [12] months.

OR

Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with a total surface area of all solar panels on the lot of up to [4,000] square feet and that generate up to [110] % of the electricity consumed on the site over the previous [12] months.

C. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

SOLAR PANEL: A photovoltaic device capable of collecting and converting solar energy into electricity.

STORAGE BATTERY: A device that stores energy and makes it available in an electrical form.

169-3. Applicability

A. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed or modified in the Town after the effective date of this Local Law, excluding general maintenance and repair.

B. Solar Energy Systems permitted, constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

C. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than five (5) % of the original area of the Solar Energy System (exclusive of moving any fencing), shall be subject to this Local Law.

D. All Solar Energy Systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Building

Code”), the NYS Energy Conservation Code (“Energy Code”) and the Town of Whitestown Code.

169-4. General Requirements

A. A Building permit shall be required for installation of all Solar Energy Systems. Tier 1 and 2 Solar Energy Systems shall utilize the Unified Solar Permit.

B. The Planning Board or Zoning Board of Appeals are to condition approval of proposed developments on sites adjacent to Solar Energy Systems so as to protect their access to sufficient sunlight to remain economically feasible over time.

C. Issuance of permits and approvals by the Planning/Zoning Board shall include review pursuant to the State Environmental Quality Review Act (“SEQRA”).

D. The NYS Unified Solar Permit shall be completed and submitted to the Town Codes Department before any zoning or building permit may be issued.

169-5. Permitting Requirements for Tier 1 Solar Energy Systems

All Tier 1 Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review, subject to the following conditions for each type of Solar Energy Systems:

A. Roof-Mounted Solar Energy Systems

- 1) Roof Mounted systems, to the extent feasible, shall be subject to the following design requirements:
 - a. Height. Solar Energy Systems shall not exceed maximum height restrictions within any zoning district and are provided the same height exemptions granted to building-mounted mechanical devices and equipment.
 - b. Setback. Roof-mounted and building mounted Solar Energy Systems are subject to the setback requirements of the underlying zoning district and may not be installed on structures which are non-conforming to setback requirements.
 - c. Roof-mounted panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum

- distance of 18 inches between the roof and highest edge of the system.
- d. Access and Pathways. Ground access, roof access, pathways and spacing requirements for solar photovoltaic systems shall be provided in accordance with the Building Code.
 - e. Size of Solar Photovoltaic Array. Each photovoltaic array shall not exceed 150 feet in any direction.
 - f. Where required by the Building Code to allow for smoke ventilation operations, panels and modules shall not be located less than 18 inches from a roof ridge or peak.
 - g. Single Ridge Roofs and Hip Roofs. Panels, modules or arrays installed on single ridge roofs and hip roofs shall be located and shall provide access and pathways in a manner consistent with the Building Code.
 - h. Ice Guards or Restraints. Any roof upon which a Solar Energy System is mounted or integrated must incorporate snow and ice guards or restraints sufficient to mitigate the risk of injury from falling snow or ice to persons or vehicles moving around or under the roof.
 - i. Glare. All Solar Panels shall have anti-reflective coating(s), and proof of such must be provided with the building permit application.
 - j. Aesthetics. Building mounted systems shall be designed to be consistent with the building architecture in style, placement and color.
 - k. Fire Safety. All Roof mounted systems shall be designed and installed in accordance with the Building Code as defined in these regulations.
 - l. Notification to the Fire Service. Notification in writing to the Fire Company having operational authority at the location where the system will be installed shall be made no later than 10 days following installation.
 - m. Notification to the Fire Company shall include a site map showing the location of the solar energy electrical panel, as well as the proper operation of the disconnect switch(s) in the event of a fire or other emergency situation where the homeowner, tenant or other personnel is not available or familiar with the safe shutdown operation of the unit so as to have the ability to cut power from the solar panels.

n. In addition, a written statement showing the method of shutdown shall be posted inside the main electrical panel of the unit that can be readily accessible for and to firefighting personnel.

B. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

- 1) Height. Solar Energy Systems shall not exceed maximum height restrictions within any zoning district and are provided the same height exemptions granted to building-mounted mechanical devices and equipment.
- 2) Setback. Roof-mounted and building mounted Solar Energy Systems are subject to the setback requirements of the underlying zoning district and may not be installed on structures which are non-conforming to setback requirements.
- 3) Aesthetics and Safety Design. Solar energy equipment shall incorporate the following design requirements:
- 4) Roof-mounted panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.
- 5) Access and Pathways. Ground access, roof access, pathways and spacing requirements for solar photovoltaic systems shall be provided in accordance with the Building Code.
- 6) Size of Solar Photovoltaic Array. Each photovoltaic array shall not exceed 150 feet in any direction.
- 7) Where required by the Building Code to allow for smoke ventilation operations, panels and modules shall not be located less than 18 inches from a roof ridge or peak.
- 8) Single Ridge Roofs and Hip Roofs. Panels, modules or arrays installed on single ridge roofs and hip roofs shall be located and shall provide access and pathways in a manner consistent with the Building Code.
- 9) Ice Guards or Restraints. Any roof upon which a Solar Energy System is mounted or integrated must incorporate snow and ice guards or restraints sufficient to mitigate the risk of injury from falling snow or ice to persons or vehicles moving around or under the roof.
- 10) Glare. All Solar Panels shall have anti-reflective coating(s), and proof of such must be provided with the building permit application.

11)Aesthetics. Building mounted systems shall be designed to be consistent with the building architecture in style, placement and color.

169-6. Permitting Requirements for Tier 2 Solar Energy Systems

All Tier 2 Solar Energy Systems shall be permitted in all zoning districts as accessory structures and shall be exempt from site plan review under the local zoning code or other land use regulations, subject to the following conditions:

A. Glare. All Solar Panels shall have anti-reflective coating(s), and proof of such must be provided with the building permit application.

B. Setbacks. Ground-Mounted Solar Energy Systems shall be setback a minimum of 30 feet from any side or rear property line. Solar Energy Equipment shall only be installed in the side or rear yards (preference is in the rear yards and it must be shown that installation in the rear yard cannot be accomplished). In all cases, the solar panels shall be located a minimum of 60 feet from any dwelling unit on an adjoining non- participating property.

C. Height. Ground-Mounted Solar Energy Systems shall be less than 12 feet in Residential Districts. Height shall be less than 15 feet for all remaining districts.

D. Screening and Visibility. Ground-Mounted Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable (as determined through the site plan review process). Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties.

E. Ground-Mounted Solar Energy Systems to be used strictly for Agricultural purposes in accordance with NYS Agriculture and Markets Law may have some of the requirements of this article waived by the Planning Board.

F. All Solar Energy Systems shall adhere to all applicable federal, state, county and Town of Whitestown laws, regulations and building, plumbing, electrical and fire codes.

G. Any solar energy system shall be accessible for all emergency service vehicles and personnel.

H. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.

I. The design, construction, operation and maintenance of any Solar Energy System shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads and public parks in excess of that which already exists.

J. Lot Size. Tier 2 Solar Energy Systems shall comply with the existing lot size requirement specified for accessory structures within the underlying zoning district.

169-7. Permitting Requirements for Tier 3 Solar Energy Systems

All Tier 3 Solar Energy Systems are permitted within the R-100, R-200, L-M, M-1 and E-L-M zoning districts, and are subject to site plan application requirements set forth in this section including site plan review by the Town's Planning Board.

A. Applications for the installation of Tier 3 Solar Energy System shall be reviewed by the Planning Board:

- 1) Reviewed by the Code Enforcement/Zoning Enforcement Officer or Reviewing Board for completeness. Applicants shall be advised within ten [10] business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
- 2) Subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town shall have a notice printed in a newspaper of general circulation at least five [5] days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within 300 feet of the property at least ten [10] days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.
- 3) Referred to the County Planning Department pursuant to General Municipal Law § 239-m if required.

B. Underground Requirements. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

C. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.

D. Signage.

- 1) No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information and 24-hour emergency contact information. Said information shall be depicted within an area no more than eight [8] square feet.
- 2) As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

E. Glare. All Solar Panels shall have anti-reflective coating(s).

F. Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

G. Tree-cutting. Removal of existing trees larger than six [6] inches in diameter should be minimized to the extent possible. Site plans presented to the Planning Board shall specify areas of removal of trees.

H. Decommissioning or Abandonment.

- 1) Solar Energy Systems that have been abandoned and/or not producing electricity for a period of one [1] year shall be removed at the Owner's and/or Operator's expense, which at the Owner's option may come from any security made with the Town as required by subsection "3) Security" below and set forth in Section 169-8(c) herein, if the operator has not completed removal of the Solar Energy System within three [3] months of the decommissioning date.

2) A decommissioning plan (See Appendix) prepared by a licensed engineer and signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:

- a. The cost of removing the Solar Energy System.
- b. The time required to decommission and remove the Solar Energy System and any ancillary structures.
- c. The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.

3) Security.

- a. The deposit, execution or filing with the Town Clerk of cash, bond or other form of security reasonably acceptable to the Town Attorney and/or Engineer, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restoration of the site subsequent to removal. The amount of the bond or security shall be one- hundred-twenty-five [125] % of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of two [2] % annually for the life of the Solar Energy System. The decommissioning amount shall be reduced by one- half the amount of the estimated salvage value of the Solar Energy System.
- b. In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
- c. In the event of default or abandonment of the Solar Energy System, the Solar Energy System shall be decommissioned as set forth in this Chapter 169 and the decommissioning plan provided by the owner / operator.
- d. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan..

I. Site Plan Application. For any Solar Energy System, site plan approval shall be required from the Planning Board. In addition to the requirements of Section 200.24 of this Code, any site plan application shall include the following information:

- 1) Property lines and physical features, including roads, for the project site.
- 2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting and screening vegetation or structures.
- 3) A one or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- 4) A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- 5) Name, address and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer, owner and / or operator shall be submitted prior to the issuance of building permit.
- 6) Name, address, phone number and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
- 7) Zoning district designation for the parcel(s) of land comprising the project site.
- 8) Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
- 9) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental

Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

- 10) Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the site plan application, engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.

J. Special Standards. All Tier 3 Solar Energy Systems must meet the following standards:

1) Lot Size.

- a. The property on which the Tier 3 Solar Energy System is placed shall be at least five [5] acres in size and otherwise meet the lot size requirements of the underlying zoning district.

2) Setbacks.

- a. Tier 3 Solar Energy Systems shall be set back 250 feet from the center of the roadway where public water and sewer exist at the roadway. Otherwise, Tier 3 Solar Energy Systems shall be set back 150 feet from the center of the roadway where public water and sewer do not exist at the roadway. In either case, these Solar Energy Systems shall be set back 75 feet from the rear and side property lines.

3) Height.

- a. Tier 3 Solar Energy Systems shall comply with the building height limitations for principal structures of the underlying zoning district.

4) Lot Coverage.

- a. The following components of a Tier 3 Solar Energy System shall be considered included in the calculations for lot coverage requirements:

- I. Foundation systems, typically consisting of driven piles or monopoles or helical screws with or without small concrete collars.
- II. All mechanical equipment of the Solar Energy System, including any pad mounted structure for batteries, switchboards, transformers or storage cells, but not including the land area under the Solar Panels.
- III. Paved access roads servicing the Solar Energy System.

b. Lot coverage of the Solar Energy System, as defined above, shall not exceed the maximum lot coverage requirement of the underlying zoning district.

5) Design Standard.

a. The design, layout and slope of the solar panel arrays shall, to the fullest extent possible, comply with the recommendations of the Maryland Department of the Environment – Stormwater Design Guidance – Solar Panel Installations attached hereto and incorporated herein.

6) Reserved

7) Fencing Requirements.

a. All mechanical equipment, including any structure for storage batteries, shall be enclosed by a 7-foot-high fence, as required by NEC, with a self-locking gate to prevent unauthorized access. The Planning Board may designate whether the fence, for aesthetic purposes, must be a “no-sight” fence.

8) Screening and Visibility.

a. Solar Energy Systems smaller than five [5] acres shall have views minimized from adjacent properties to the extent

reasonably required by the Planning Board using architectural features, earth berms, landscaping, solid or semi-solid barriers or other screening methods that will harmonize with the character of the property and surrounding area.

b. Solar Energy Systems larger than five [5] acres shall be required to:

I. Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.

II. Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible.

i. The screening & landscaping plan shall specify the locations, elevations, height, plant species and/or materials that will comprise the structures, landscaping and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system.

9) Agricultural Resources. For projects located in a New York State Agricultural District :

Any Tier 3 Solar Energy System located on a parcel(s) in the New York State Agriculture District area (that consist of Prime Farmland or Farmland of Statewide Importance) shall not exceed fifty [50] % coverage on the parcel(s).

Tier 3 Solar Energy Systems on Prime Farmland or Farmland of Statewide Importance shall be required to seed twenty [20] % of the total surface area of all solar panels on the lot with native perennial vegetation designed to attract pollinators.

a. To the maximum extent practicable, Tier 3 Solar Energy Systems located on Prime Farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets, "Guidelines for Solar Energy Projects – Construction Mitigation for Agriculture Lands" (revision 10/18/2019 or as further revised).

b. Tier 3 Solar Energy System owners shall develop, implement and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes.

K. Ownership Changes. A new owner or operator of the Solar Energy System shall notify the Codes/Zoning enforcement officer of such change in ownership or operator within thirty [30] days of the ownership change in writing. The new owner shall also confirm in writing commitment and assumption of all obligations initially imposed upon the prior owner.

L. Emergency Response Plan. The applicant shall submit an emergency response plan addressing procedures for fire response and emergency medical response at the project site, acceptable to the Fire Department of jurisdiction.

M. Maintenance and Operation Plan.

1) Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and emergency responders.

2) The applicant shall submit a maintenance and operation plan specific to the facility addressing drainage, grounds maintenance, use of

herbicides/pesticides, component maintenance and replacement and snow removal.

3) The maintenance plan shall address all owned and leased land associated with the project including required setbacks, buffers and screening.

4) The maintenance plan shall address how electrical components are maintained in good working condition and evaluated for potential fire-causing failure.

5) The Solar Energy System shall be subject to an annual review by the Town Codes Department to confirm compliance with Site Plan and Permit conditions, review Maintenance and Operation documentation and verify insurance and decommissioning arrangements are in order. Failure to conduct such review or identify lapse in coverage does not absolve the Solar Energy System operator from meeting such conditions as required. Normal review/inspection fees apply.

N. Solar Easements. The property owner shall be responsible for negotiating with other property owners in the vicinity to establish any solar easement required by the Solar Energy System, and for recording any such solar easement(s). The issuance of a site plan approval does not constitute Solar Access rights, and the Town shall not be responsible for ensuring impermissible obstruction to Solar Access as a result of uses or development performed in accordance with Town Code.

O. Paid in Lieu of Taxes (PILOT).

1) An owner and or operator shall enter into either (a) a PILOT with the Town of Whitestown acceptable to the town to offset the loss of property tax revenues and investment in public works associated with the anticipated property development, or (b) a PILOT with the Oneida County IDA.

2) If a PILOT shall be entered into with the Town of Whitestown, it shall include a payment as determined by the Town Board of the Town of Whitestown, and be based on the size of the Solar Energy System in MWac, rounded up.

3) If a PILOT is to be entered into with the Town of Whitestown, this agreement will need to be finalized before the building permit is issued for the Solar Energy System.

4) If a PILOT is to be entered into with the Oneida County IDA, this agreement will need to be finalized with Oneida County before the building permit is issued for the Solar Energy System.

P. Insurance. The owner of the solar facilities shall agree to secure and maintain for the duration of the permit, public liability insurance as follows:

1) Commercial general liability covering personal injuries, death and property damage: \$3,000,000 per occurrence (\$5,000,000 aggregate), which shall specifically include the Town of Whitestown and its officers, councils, employees, attorneys, agents and consultants as additional named insured.

2) Umbrella coverage: \$5,000,000.

3) Insurance Company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in New York State and with at least a Best's rating of "A."

4) Insurance Policy Cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Whitestown with at least thirty (30) days prior written notice in advance of cancellation.

5) Insurance Policy Renewal: Renewal or replacement policies shall be delivered to the Town of Whitestown at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

6) Copies of Insurance Policy: No more than fifteen (15) days after the grant of the permit before construction is initiated, the permit holder shall deliver to the Town of Whitestown a copy of each of the policies or certificates representing the insurance in the required amounts.

7) Certificate of Insurance: A certificate of insurance states that it is for informational purposes only and does not confer sufficient rights upon the Town of Whitestown and shall not be deemed to comply with this Law.

8) Indemnification: Any application for a Solar Energy System within the Town of Whitestown shall contain an indemnification provision. The provision shall require the Applicant and Owner and Operator to at all times defend, indemnify, protect, save, hold harmless and exempt the Town of Whitestown and its officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity which might arise out of or are caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of

said Solar Energy System, excepting however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town of Whitestown or its employees or agents. With respect to the penalties, damages or changes referenced herein, reasonable attorneys' fees, consultant' fees and expert witness fees are included in those costs that are recoverable by the Town of Whitestown.

169-8. Safety

A. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.

B. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.

C. If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state or county laws or regulations.

169-9. Permit Time Frame

A. Site plan approval for a Solar Energy System shall be valid for a period of eighteen (18) months, provided that a building permit is issued for construction or construction is commenced within this time period. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within twelve (12) months after approval of the building permit, the applicant or the Planning Board may extend the time to complete construction. If the owner and/or operator fails to perform substantial construction after thirty (30) months from the Planning Board approval, the approvals shall expire.

169-10. Enforcement

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

169-11. Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision or phrase, which shall remain in full force and effect.

APPENDIX: EXAMPLE DECOMMISSIONING PLAN

Date: [Date]

Decommissioning Plan for [Solar Project Name], located at: [Solar Project Address]

Prepared and Submitted by [Solar Developer Name], the owner of [Solar Farm Name]

As required by [Town/Village/City], [Solar Developer Name] presents this decommissioning plan for [Solar Project Name] (the "Facility").

Decommissioning will occur as a result of any of the following conditions:

1. The land lease, if any, ends
2. The system does not produce power for [12] months
3. The system is damaged and will not be repaired or replaced

The owner of the Facility, as provided for in its lease with the landowner, shall restore the property to its condition as it existed before the Facility was installed, pursuant to which may include the following:

1. Removal of all operator-owned equipment, concrete, conduits, structures, fencing and foundations to a depth of 36 inches below the soil surface.
2. Removal of any solid and hazardous waste caused by the Facility in accordance with local, state and federal waste disposal regulations.
3. Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.

All said removal and decommissioning shall occur within [12] months of the Facility ceasing to produce power for sale.

The owner of the Facility, currently [Solar Developer Name], is responsible for this decommissioning.

Facility Owner Signature: _____ Date: _____

SECTION 3. Chapter 200 Code of the Town of Whitestown

The Town Board for the Town of Whitestown hereby amends Chapter 200 entitled "The Town of Whitestown Zoning Ordinance" at section 200-3, so as to add a new definition consistent with the new Chapter 169, which shall read as follows:

PUBLIC UTILITY - Includes offices and secondary use of gas, electricity, water, sewage, telephone, telecommunications and cable television service companies. Excludes Solar Energy Systems. [Added 7-17-2002].

SECTION 4. Chapter 200 Code of the Town of Whitestown

The Town Board for the Town of Whitestown hereby amends Chapter 200 entitled "The Town of Whitestown Zoning Ordinance" at section 200-25, so as to read as follows:

"(8) Walls, fences and hedges. The yard requirements of this chapter shall not prohibit any necessary retaining wall nor any fence, wall or hedge permitted by the Town of Whitestown Code, providing that any such fence, wall or hedge shall, except with respect to a Solar Energy System: [Amended 6-7-2000 by L.L. No. 5-2000]:

(a) Be erected no less than two feet within the property line, and none shall be erected so as to encroach upon a public right-of-way or interfere with vehicular or pedestrian traffic or interfere with visibility on corner lots and/or other structures or vehicles, whether stationary or transitory, on private or public property; and

(b) Be constructed such that the smooth side or finished side faces the outside of the property owner installing the fence, with all fence posts placed on the inside of said fence; and

(c) Be no more than six feet in height."

SECTION 5. EFFECTIVE DATE

This Local Law shall become effective upon filing in the Office of the New York State Secretary of State.