

## Proposed Local Law \_\_ of 2020

### LOCAL LAW NO. X FOR 2021

#### Solar Energy Facilities

#### BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF BERNE, NEW YORK AS FOLLOWS:

The Code of the Town of Berne shall be amended by deleting Local Law No. 6 of 2019 referred to as “Industrial Scale Solar Energy Facilities Law ” in its entirety and replacing it as follows:

#### §xxx-1 Title.

This local law shall be known as the “Solar Energy Facilities” local Law of the Town of Berne, New York.

#### §xxx-2 Authority.

This Solar Energy Facilities local law is adopted under Article IX of the New York State Constitution, New York Municipal Home Rule Law § 10, New York Statute of Local Governments § 10, and New York Town Law §§ 261-263, which authorize adoption of land use regulations that advance and protect the health, safety and welfare of the community, and to make provision for, so far as conditions may permit, the accommodation of solar energy systems.

#### §xxx-3 Purpose.

The purpose of this Solar Energy Facilities local law is to plan for well-sited solar energy generating systems and equipment, and to protect and promote the health, safety, and welfare of the community in accordance with the following objectives:

- A. Allowing Town of Berne residents, landowners, farms, and government to take advantage of solar energy resources in a way that is consistent with the nature and character of the Town in accordance with the Town of Berne Comprehensive Plan.
- B. To further state and local renewable energy goals and combat climate change.
- C. To protect the property values of those properties neighboring and within the viewshed of certain solar energy facilities.
- D. To take advantage of a safe, abundant, renewable and non-polluting energy source.

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### §xxx-4 Findings.

The Town Board of the Town of Berne hereby finds and declares that:

- A. Regulation of the siting and installation of solar facilities is necessary for protecting the health, safety, and welfare of neighboring property owners and the general public.
- B. Solar energy is considered a renewable energy resource which may have significant impacts to be considered, including glint and glare, erosion, loss of land suitable for growing crops and trees for forestry, aesthetic impacts, and property values.

### §xxx-5 Definitions

**APPLICANT** – The individual/individuals or entity/entities that apply for any state or local government permit or permission for the installation of an Industrial Scale Solar Energy Facility.

**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.

**dB(A)** – The A-weighted sound pressure level in decibels. A measure of overall sound pressure level designed to reflect the response of the human ear, which does not respond equally to all frequencies. It is used to describe sound in a manner representative of the human ear's response. As used in this document, "dB(A)" means "L(A)eq" unless specified otherwise.

**dB(C)** – The C-weighted sound pressure level in decibels; similar in concept to the A-weighted sound level dB(A) but C-weighting emphasizes sound frequencies between 20 and 200 Hz and does not de-emphasize the frequencies below 200 Hz as A-weighting does. As used in this article, "dB(C)" means "LEQ" unless specified otherwise.

**DECIBEL (dB)** – A dimensionless unit describing the amplitude of sound and denoting the ratio between two quantities that are proportional to power, energy, or intensity. One of these quantities is equal to 20 times the logarithm to the base 10 of the ratio of the measured pressure to the reference pressure, which is 20 micropascals.

**DECOMMISSIONING** – The process of making a solar facility completely inoperable, the removal and proper disposal of all components, and the remediation of the land upon which it was sited.

**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

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state-wide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies.

**GLARE** – The effect produced by light reflecting off a solar panel with an intensity sufficient to cause annoyance, discomfort, or loss in visual performance and visibility, sustained over a period of time.

**GLINT** – A momentary reflection of light from a solar panel with an intensity sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

**GROUND-MOUNTED SOLAR ENERGY SYSTEM** – 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 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.

**PROJECT SITE** – The physical area needed for a Solar Energy System that includes any setbacks, buffers, fencing, roads, screening, support facilities, interconnection and Solar Energy equipment.

**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** – The access of a solar energy system to direct sunlight.

**SOLAR ENERGY EQUIPMENT** – Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production, storage or transmission of electricity produced from solar energy.

**SOLAR ENERGY SYSTEM** – 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. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment.

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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:
  - 1. Roof-Mounted Solar Energy Systems
  - 2. Building-Integrated Solar Energy Systems
- B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems with a system capacity up to [25] kW AC, and that generate no more than [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. Also known as a solar module.

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

### **§xxx-6 Applicability**

- A. The requirements of this Local Law shall apply to all Tier 3 Solar Energy Systems permitted, installed, or modified in the town of Berne after the effective date of this Local Law, excluding general maintenance and repair.
- B. Tier 3 Solar Energy Systems 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 Tier 3 Solar Energy System that increase the Solar Energy System area by more than 5 % of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.
- D. All Tier 3 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 Code.

### **§xxx-7 Permitting Requirements for Tier 1 and Tier 2 Solar Energy Systems**

All Tier 1 and Tier 2 Solar Energy Systems shall be permitted and conform to Berne Town Code Chapter 157.

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### **§xxx-8 General Requirements**

- A. A Building permit shall be required for installation of all Tier 3 Solar Energy Systems.
- B. Tier 3 Solar Energy Systems are subject to special use permit review and approval by the Zoning Board of Appeals who shall act as lead agency under the State Environmental Quality Review Act and its implementing regulations and site plan approval by the Planning Board. The ZBA may refer the application to any other advisory board as deemed necessary.

### **§xxx-9 Solar Use in Certain Zoning Districts**

Tier 3 Solar Energy Systems are permitted only in the following zoning districts:

RAF, MDR, NC

### **§xxx-10 Permitting Requirements for Tier 1 and Tier 2 Solar Energy Systems**

All Tier 1 and Tier 2 Solar Energy Systems shall be permitted and conform to Berne Town Code Chapter 157.

### **§xxx-11 Permitting Requirements for Tier 3 Solar Energy Systems**

In addition to all other federal, state and local requirements, Tier 3 Solar Energy Systems are permitted through the issuance of a special use permit by the Zoning Board of Appeals and shall be permitted in accordance with the attached Tier 3 Solar Use Schedule, subject to site plan approval by the Planning Board, and the following requirements:

- A. Agricultural Resources. For projects located on agricultural lands:
  - 1. Any Tier 3 Solar Energy System shall not exceed 30 acres of area.
  - 2. 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.
  - 3. 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.
- B. Location. Tier 3 Solar Energy Systems shall not be located in the following areas:

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1. Areas including, historic sites, airports, conservation easements, trails, parks and wetlands as identified by the New York State Department of Environmental Conservation or the United States Army Corps of Engineers.
  2. Slopes greater than fifteen 15%, unless the applicant can demonstrate through engineering studies and to the satisfaction of the Town Engineer that the proposed development will cause no adverse environmental impact that will not be satisfactorily mitigated.
- C. Lot coverage. Lot coverage of the Tier 3 Solar Energy System, as defined below, shall not exceed the maximum lot coverage requirement of the underlying zoning district. The following components of a Tier 3 Solar Energy System shall be included in the calculations for lot coverage requirements.
1. The total number of square feet of solar arrays.
  2. Foundation systems.
  3. All mechanical equipment of the Tier 3 Solar Energy System, including but not limited to switchboard, transformers, and buildings housing mechanical equipment.
- D. Setbacks.
1. Tier 3 Solar Energy Systems shall be set back no less 50 feet on all sides from any adjoining parcel not included in the solar energy system.
  2. Tier 3 Solar Energy Systems shall be set back no less than 100 feet from wetlands, streams, ponds, lakes and water wells.
- E. Height. Tier 3 Solar Energy Systems shall not exceed a height of 15 feet from the highest natural grade below each solar panel.
- F. Grading. Tier 3 Solar Energy Systems shall follow the topography of the land upon which it is installed. Topography shall not be altered by any substantial amount by grading or bringing in fill.
- G. Sound. The equivalent level (LEQ) generated by any part of a Tier 3 Solar Energy System shall not exceed 25 dB(A) or 43 dB(C) when measured at the nearest lot line. If the A-weighted background sound pressure level, without the Tier 3 Solar Energy System, is within five dB of 25 dB or exceeds 25 dB, then the A-weighted criterion to be applied to the system shall be the A-weighted background level plus five dB.
- H. Lighting. Any outdoor lighting shall be shielded and downcast to minimize the effect on any person, property, structure, road, vehicle, business, leisure activity, agriculture, parkland, sensitive resource, commercial or transportation activity, night sky, or any other entity or activity identified by the Planning Board. Motion-activated or staff-activated security lighting on or around the project site or accessory structure entrance

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shall not project off the project site and shall only be activated when the fenced perimeter has been entered.

- I. Parking. Equipment and vehicles not used in direct support, renovations, addition, or repair of the Tier 3 Solar Energy System shall not be stored or parked on the site.
- J. Access. A locked gate at the intersection of the access way and a public road shall be required to prevent unauthorized vehicle entry. Such gate shall be located entirely upon the lot and not on a public right-of-way. Adequate emergency access shall be provided, for relevant law enforcement and first responder agencies.
- K. Fencing. Tier 3 Solar Energy Systems shall be surrounded by fencing sufficient to protect the public and prevent unauthorized access, and high enough to be visible in deep snow cover. Fencing shall have warning signs with the owner's or operator's name and emergency contact information, which shall be placed on any project site access point and on the perimeter fencing as deemed appropriate. All gates shall be self-locking. Fencing shall provide wildlife corridors as appropriate for the project.
- L. Screening and visibility. All Tier 3 Solar Energy Systems shall be required to:
  - 1. Shield views from adjacent properties and properties within the system's viewshed using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
  - 2. Submit a landscape and screening plan which shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen the system. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening.
  - 3. Submit the following assessments:
    - a. A comprehensive computer modeled glint and glare assessment which shall determine the impact of the proposed project on all roadways and properties which could be affected by glint and/or glare from the project. The study shall be conducted by an independent third party approved by the Town of Berne Zoning Board prior to the study being conducted. The assessment shall consider all times of the day and every day of the year. The assessment shall include projected impacts on all viewers including property owners, including both developed and undeveloped properties, motorists, aviation personnel, hiking trail travelers, farm equipment operators, and domestic livestock.
    - b. A comprehensive computer modeled viewshed assessment which shall assess the visual impact of the proposed project on all property and roadways within the town from which the project is visible or is potentially visible, with the following requirements:
      - 1) The assessment shall include photographs of the proposed site from all said viewshed points.

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- 2) If photographs are taken during months in which deciduous leaves are intact, the study shall include computer modeled mock-ups of viewsheds during the winter months.
- 3) Viewshed mock-ups shall include comparative views of project with and without mitigation in place.
- 4) If plantings of trees and/or shrubs are included in the mitigation plans, viewshed mock-ups must reflect their height at the time of planting, as well as at 5- and 10-years expected growth post planting.

c. The applicant shall pay for all assessments required in this section.

### M. Project site maintenance.

1. The project site shall be maintained in a safe, neat and orderly condition. Grass and other vegetation shall be mowed and trimmed to prevent the appearance of overgrowth. Alternately, livestock such as sheep may be used to keep grass and underbrush in check.
2. Current industry standards utilize herbicides to control plant growth under and around industrial scale solar facilities. Given the acreage requiring plant growth control, the quantity of herbicides that must be applied on a yearly basis, and the relatively shallow soil and bedrock underlayment types in the Town of Berne, any such leaching or runoff would likely end up in aquifers which supply residents' drinking water. As such, the use of chemical plant control and the use of any glyphosate-containing herbicides is prohibited.
3. During construction as needed, upon completion of the installation of the project, at any time during the life of the project and as part of the decommissioning plan, all disturbed or bare soil shall be seeded with non-invasive, native perennial vegetation.
4. The use of genetically modified seed or plants is prohibited.
5. Proof of seed and plant varieties to be used and meeting N-3 above shall be provided to the Building Code Administration Office before each seeding or planting takes place.
6. Penalties for non-compliance. The use of genetically modified seed or plants shall require the removal of said seeding or plants and shall result in the revocation of the special use permit and/or a fine as determined by the Town Board.
7. Snow shall be removed from all access ways both to and within the project site to facilitate emergency access.
8. All landscape and screening elements shall be maintained, including removal and replacement of any trees, shrubs or other screening plantings that fail to survive on



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a yearly basis. Landscape and screening shall be maintained throughout the life of the facility until such time as decommissioning is completed.

9. Solar panel washing additives shall be non-toxic and bio-degradable.
- N. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials, soil compaction and erosion.
- O. Electrical transmission lines and cables. Electrical transmission lines and cables shall be buried underground, and the erection of new utility poles minimized to the greatest extent possible.
- P. Guy wires. Guy wires shall not be used to support any component of any Tier 3 Solar Energy System.
- Q. Signage. No signage or graphic content shall be displayed on the Tier 3 Solar Energy System except the owner's name, equipment specification information, safety information, and 24-hour emergency contact information, and any other information required by law. Said information shall be depicted within an area no more than 8 square feet and be located on or next to the main gate of the facility.
- R. Emergency Shutoff Information. 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.
- S. Glare.
  1. All Solar Panels shall have anti-reflective coating(s).
  2. Any glare produced shall not impair or make unsafe the use of adjacent or nearby properties and their structures, vehicles on or off the road, air traffic, or uses by other possible impacted entities as determined by the Planning Board.
- T. Tree-cutting. Removal of existing trees larger than 6 inches in diameter shall be minimized to the greatest extent possible.
- U. Reimbursement for review of Application for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 Public Service Law. The applicant shall reimburse the Town for any fee or expense incurred in hiring subject matter experts and attorneys to review whether a Tier 3 Solar Energy System proposed for siting pursuant to Article 10 of the New York Public Service Law complies with this law's substantive provisions.

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- V. Solar access. The approval of a special use permit for an Tier 3 Solar Energy System is not intended to confer on the permittee any additional property rights as against any adjoining or nearby property owners, such as easements of necessity, etc.
- W. Decommissioning plan and cost estimate in accordance with §§ 16, 17 and Appendix A.

### §xxx-12 Fees.

Tier 3 Solar Energy System special use permits. The review of building and electrical plans for Tier 3 Solar Energy Systems requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall include:

- A. Administrative / Application fee: \$500. This fee shall only apply to the initial application. Fees may be associated with the periodic renewal or extensions, if any, of an approved application.
- B. Consultant fees: All third party fees, costs and expenses the Town incurs by professional consultant(s) hired to review the plans and inspect the work pursuant to an escrow agreement.
- C. The agreement required under this section must be executed and funded before any application is deemed complete. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of professional services and consultant evaluation and consultation in connection with the review of any Application. An initial escrow deposit of \$1,500.00 (the “Initial Escrow Deposit”) shall be filed with the Application. If at any time during the process the escrow account has a balance of less than \$500.00, the Applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$1500.00. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be refunded to the Applicant.
- D. Decommissioning deposit or financial security. The amount of the security sufficient to ensure the good faith performance of the terms and conditions of the decommissioning plan as determined by the Town Board in accordance with §§ 16 and 17 herein pursuant to a Decommissioning Escrow Agreement. All approvals shall be conditioned on payment of the required Decommissioning deposit or financial security.

### §xxx-13 Payment in Lieu of Taxes (PILOT); Tax Exemption Opt-Out.

The Town may exercise its right to opt out of the tax exemption provisions of Real Property Tax Law § 487, pursuant to the authority granted by Subdivision 8 of that law. No construction, road work, tree clearing or preparatory work of any kind may commence until the Town Board

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has either negotiated a PILOT agreement with the owner of the Tier 3 Solar Energy System or exercised its right to opt out of tax exemption provisions.

### §xxx-14 Site Plan Application.

Site plan approval shall be required for all Tier 3 Solar Energy Systems. Any site plan application shall include the following information:

- A. Property lines and physical features, including roads, for the project site.
- B. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- C. 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.
- D. 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.
- D. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Tier 3 Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- E. 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.
- F. Zoning district designation for the parcel(s) of land comprising the project site.
- G. Property Operation and Maintenance Plan. Such plan shall describe
  1. Continuing photovoltaic maintenance.
  2. Property upkeep, such as mowing, trimming, and snow removal.
  3. Frequency of solar panel washing, source of water and additives used.
  4. Maintenance of screening and landscaping. This portion shall include a plan to ensure continued growth of trees, shrubs, etc. used for screening purposes and a replacement plan for any that fail to thrive.
- H. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable.

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- I. Prior to the issuance of the special use permit by the Zoning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer.
- J. Decommissioning plan and cost estimate. An applicant shall provide a detailed decommissioning plan and cost estimate, prepared by a qualified engineer, in accordance with §§ 16, 17 and Appendix A

### **§xxx-15 Application Review Process.**

- A. Six full sized hard copies and one digital of the complete application shall be submitted to the Building Department. Payment of all application fees shall be made at the time of submission.
- B. The Zoning Board of Appeals shall, within 60 days of receipt, determine if all information required hereunder is included in the application. If the application is deemed incomplete, the applicant shall be provided with a written statement listing missing data. Upon submission of a complete application, the Zoning Board shall proceed with its review.
- C. The Zoning Board of Appeals shall hold at least one public hearing on the application. The public hearing may be combined with public hearings on any environmental impact statement. All property owners within 500 feet of the boundary line of the site of the proposed Tier 3 Solar Energy System shall be given notice of a public hearing via certified mail at the expense of the applicant.
- D. Notice of the project shall also be given to the Albany County Planning Board, as required by General Municipal Law § 239-m.
- E. Following receipt of the recommendation of the Albany County Planning Board (if applicable), the holding of the public hearing(s), and completion of the SEQRA process, the Zoning Board of Appeals may approve, approve with conditions, or deny Tier 3 Solar Energy System special use permit application, in accordance with the standards in this article. Any denial shall be in writing, setting forth competent reasons for such denial with references to relevant sections of this article.

### **§xxx-16 Additional Standards.**

All Tier 3 Solar Energy Systems shall:

- A. Conform with all federal and state laws and all applicable rules and regulations promulgated by any federal or state agencies having jurisdiction.
- B. Comply with all other requirements of the Town of Berne Code and applicable guidelines unless expressly superseded by this law.

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- C. Be built, operated, and maintained to acceptable industry standards, including the most recent, applicable standards of the Institute of Electric and Electronic Engineers (“IEEE”) and the American National Standards Institute (“ANSI”).
- D. Emergency services.
  - 1. Project site access shall be maintained, including snow removal at a level acceptable to the local fire department and ambulance provider.
  - 2. Owner/operator shall provide a copy of the project summary, electrical schematic and site plan to the local Fire Chief. All means of shutting down the facility shall be clearly marked.
  - 3. Owner/operator shall cooperate with emergency services in developing an emergency response plan.
  - 4. Owner/operator shall provide and pay for firefighter response and safety training for a potential fire incident at the Tier 3 Solar Energy System

### **§xxx-17 Decommissioning.**

- A. Tier 3 Solar Energy Systems that have been abandoned and/or not producing electricity as defined in § 18 shall be removed at the owner’s and/or operator’s expense.
- B. A Decommissioning Plan and Agreement (see Appendix A) signed by the owner and/or operator of the Tier 3 Solar Energy System shall be submitted by the applicant, addressing the following:
  - 1. Removal and restoration, including:
    - a. removal of all infrastructure and accessory structures and/or equipment such as panels, collectors, support units (including all underground wiring), mounts, equipment shelters and security barriers from the property;
    - b. removal of all above- and below-ground equipment, structures and foundations;
    - c. proper disposal of all solid and hazardous waste from the site in accordance with local and state solid waste disposal regulations;
    - d. restoration of the surface grade and soil after removal of equipment;
    - e. re-vegetation of restored soil areas; and
    - f. remediation of soil and vegetation shall be conducted to return the property to either its original state prior to construction or in a natural condition with any landscaping and grading approved under the decommissioning plan.

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2. The cost and time estimates for the above removal and restoration prepared by a qualified engineer.

### §xxx-18 Security.

- A. Decommissioning fund. The permittee, or successors, shall continuously maintain a deposit or security with the Town Clerk in an amount sufficient to pay for the costs and expenses of removal and restoration related to decommissioning the Tier 3 Solar Energy System.
- B. The security may be in the form of cash, letter of credit, bond or another instrument acceptable to the Town's attorney and the Town Board and shall remain in full force and effect until all solar energy system equipment, structures and materials have been properly removed and site restoration is complete.
- C. The security amount shall be determined by the Town Board in consultation with an engineer designated by the Town. The amount of the security shall be sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal, including and all fees, costs and expenses incurred by the Town to administer and enforce the decommissioning process. The amount of the bond or security shall be 120 % of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 3 % annually for the life of the Solar Energy System.
- D. Such amount shall be re-evaluated every five (5) years thereafter and, if necessary, adjusted to reflect prevailing costs and expenses.
- E. If the amount of the security does not fully cover such fees, costs and expenses or if the Town cannot recover adequate proceeds of the security, then the owner and operator of the solar energy system and the property owner shall be jointly and severally, and corporately and personally, liable for the costs not recovered. In addition, the Town may assess such costs against the property, which assessment shall constitute a lien on the property, and which amount may be collected in the same manner as real property taxes.
- F. All decommissioning, removal and remediation fund requirements shall be fully funded before a building permit is issued.
- G. In the event of default upon performance of any conditions in the Decommissioning Agreement or Decommissioning Plan, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town of Berne, 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.
- H. In the event of default or abandonment of the Tier 3 Solar Energy System, the system shall be decommissioned as set forth in Section xxx-16 and Appendix A herein.

### §xxx-19 Permit Time Frame and Abandonment.

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- A. The Special Use Permit and Site Plan approval for a Tier 3 Solar Energy System shall be valid for a period of 24 months, provided that a building permit is issued for construction. In the event construction is not completed in accordance with the final site plan within 24 months after approval, the applicant may, upon approval of the Planning Board, extend the time to complete construction for an additional 180 days. If the owner and/or operator fails to perform substantial construction after 30 months, the approvals shall expire, the facility shall be considered abandoned, and decommissioning of any construction that has been completed shall commence. Upon completion of construction and start of electrical generation within the allowable time period, the Special Use Permit and Site Plan approval shall become permanent, subject to permit amendments required as a result of project modifications.
- B. Upon cessation of electricity generation of a Tier 3 Solar Energy System on a continuous basis for 6 months, the owner and/or operator will notify the Town and implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.
- C. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town Board may, at its discretion, utilize the bond and/or security for the removal of the Tier 3 Solar Energy System and restoration of the site in accordance with the decommissioning plan.

### **§xxx-20. Enforcement; Penalties for Offenses; Remedies for Violations.**

- A. Staff. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this article.
- B. Any person owning, controlling or managing any building, structure or land who shall construct or operate an Tier 3 Solar Energy System in violation of this article or in noncompliance with the terms and conditions of any permit issued pursuant to this article, or any order of the Code Enforcement Officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than six months. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$350 for each violation, and each week said violation continues shall be deemed a separate violation.
- C. In case of any violation or threatened violation of any of the provisions of this article, including the terms and conditions imposed by any permit issued pursuant to this article, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration,

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reconstruction, moving and/or use, and to restrain, correct or abate such violation to prevent the illegal act.

- D. 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 Laws of the State of New York, or in the zoning or land use regulations of The Town of Berne.

### **§xxx-21. 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.

### **§xxx-22. Supersession**

All local laws, ordinances, or parts of local laws and ordinances of the Town of Berne that are in conflict with the provisions of this Local Law are hereby suspended to the extent necessary to give this Local Law full force and effect.

### **§xxx-23. Effective Date**

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



## DECOMMISSIONING AGREEMENT

This **DECOMMISSIONING AGREEMENT** (this “Agreement”), dated as of **Date** (the “Effective Date”), is made by and among the **TOWN OF BERNE**, a municipal corporation duly established in Albany County with a principal place of business located at 1656 Helderberg Trail, Berne, NY 12023 (referred to as the “Town”), **Business Name**, a **Business Type** formed under the laws of the State of **Business State** with principal offices at **Business Location** (referred to as the “Operator”) and **Landowner Name**, an individual (referred to as the “Landowner”). The Town, the Operator and the Landowner may each be referred to herein as a “Party” and collectively, as the “Parties”.

WHEREAS, Operator intends to permit, construct, operate and maintain a solar energy facility with battery storage with an estimated size of **Number of** megawatts of alternating-current (AC) nameplate capacity that will generate electrical power (the “Project”), as shown on the Site Plans entitled “Proposed Site Plan for **Business Name**”, prepared by **Business Name or Engineering Firm**, last revised **Revised Date** (hereinafter, the “Site Plans”), copies of which are attached as **Schedule A**, on real property owned by the Landowner and leased to the Operator, and more particularly identified hereto in **Schedule B**, and commonly known as **Property Common Name or Address**, Berne, NY (Tax Map **Identification Number**) in the Town of Berne, Albany County, New York (“the Properties”); and

WHEREAS, on **Date**, based on the Operator's application, and after duly noticed public hearing(s), the Town, by its Zoning Board of Appeals granted a special use permit and the Planning Board approved the site plan (hereinafter “Approval Resolution”) for the Project on condition that, among other things, the applicant submit a final decommissioning plan and decommissioning security and that the applicant provided the Town with access to funds for the Decommissioning (as defined below) of the Project; and

WHEREAS, a copy of said Approval Resolution is attached hereto as **Schedule C**; and

WHEREAS, the Town has enacted Local Law xx-2021, which provides that Decommissioning must occur pursuant to a decommissioning plan, among other requirements (the “Local Law”); and

WHEREAS, the Parties now desire to enter into this Agreement to set forth the “Decommissioning Plan” for the **Site Name** Solar Project, attached hereto as **Schedule D**, as required by the Local Law and to agree upon terms and conditions of the financial surety provided to the Town for the purpose of Decommissioning the Project;

NOW, THEREFORE, in consideration of the promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Prior to the issuance of a building permit for the Project (the “Start Date”), the Operator shall post [cash / a letter of credit / bond], in form and substance reasonably satisfactory to the Town or deposit cash in escrow with the Town (the “Security”) in the amount of \$ **Escrow Amount** for the benefit of the Town and execute a Decommissioning Escrow

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Agreement attached hereto as **Schedule E**. The parties agree that the Security shall be used solely to pay for any Decommissioning costs of the Project. At least 60 days prior to the end of each successive five (5)-year period after the execution of this Agreement, the Operator shall provide the Town with an updated decommissioning plan setting forth an updated estimate for the Decommissioning of the Project, which updated estimate shall be subject to review and approval by the Town, which approval shall not unreasonably be withheld, conditioned or delayed. Within 30 days after the Town's approval of the updated estimate, the Security shall be changed to reflect the updated estimate approved by the Town for such Decommissioning of the Project. Any such updated and approved decommissioning plan shall be deemed the "Decommissioning Plan" hereunder. For avoidance of doubt, the updated estimate will use the estimated decommissioning cost as a template in the updated decommissioning plan, Operator shall have no further payment obligations in connection with Decommissioning during the operation of the Project provided that Operator complies with posting the Security in accordance with this Agreement. Nonetheless, in the event the actual Decommissioning costs incurred by the Town exceed the amount covered by the Security, Operator or its successor in title to the Project shall be responsible for reimbursing the Town for any and all such excess costs, provided that the Town delivers to the Operator a reasonable written record of such costs.

E. "Decommissioning" as used in this Agreement shall mean the removal of all facilities that were installed in connection with the Project and the reasonable restoration of the Properties to either of the following, at the Operator's option ("Decommissioning"): (i) the condition the Properties was in prior to the development, construction and operation of the Project, including restoration, regrading, and reseeded in accordance with Section 16 of the Local Law XX-2021 and Appendix A thereto, or (ii) the condition designed by a subsequent Operator or developer approved by the Town Board or its designated municipal board. Costs of Decommissioning under this Agreement include labor, professional services and any other costs reasonably associated with such Decommissioning.

F. Each of the circumstances described in clauses (a) and (b) below shall be a "Triggering Event" for purposes hereof:

- E. construction of the Project is not completed within twenty four (24) months of receiving a building permit, subject to one 6 month extension approved by the Planning Board;
- F. The land lease, if any, ends
- G. the Project, after commencing commercial operation, ceases to generate electricity for more than six (6) consecutive months; or
- H. Upon the effective date of notice the applicant or subsequent owner provides to the Town.

In the event the Operator fails to initiate Decommissioning of the Project within ninety (90) days of a Triggering Event (the "Decommissioning Deadline"), or Operator fails to provide a reasonable explanation for the delay in the construction or cessation of operation of the Project by the Decommissioning Deadline, then, the Town may issue a notice to Operator (the "Town Decommissioning Notice") and Operator shall have thirty (30) days to respond to the Town Decommissioning Notice with a reasonable explanation for the delay in the construction

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or the cessation of operation of the Project. In the event that (A) the Operator does not respond to the Town Decommissioning Notice in accordance with the forgoing sentence, or (B) Decommissioning is not completed, within six (6) months after a Triggering Event, then the Town shall have the right, but not the obligation, to commence Decommissioning of the Project through use of the Security.

H. The parties hereto acknowledge that the Decommissioning is intended to occur outside the winter months. Upon removal of the infrastructure and proper disposal of the components of the Project from the Properties, and restoration of the Properties to its pre-project state, or to the condition designed by a subsequent Operator or developer as approved by the Town. Upon completion of Decommissioning, the Operator shall have no further obligation to the Town provided that the costs of the Decommissioning has been paid for in full by the Security or otherwise by or on behalf of the Operator.

I. In the event that the Town elects to complete Decommissioning under Section 3, Operator (or its successors or assigns) agrees to give the Town the right of reasonable access to the Properties to Decommission the Project. In the event the leases between Landowner and Operator are terminated or Landowner otherwise has control over the Properties at the time of the Decommissioning, Landowner (or its successors or assigns) agrees to give the Town the right of reasonable access to the Properties in order to perform Decommissioning in accordance with this Agreement.

J. This Agreement may not be amended or modified except by written instrument signed and delivered by the Parties. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. In accordance with the provisions of section 109 of the New York General Municipal Law, Operator is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of any right, title or interest in this Agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town, which consent shall not be unreasonably withheld, conditioned or delayed.

K. Operator, or the operations and maintenance provider of the Operator, shall provide the Town with proof that it either carries sufficient workers' compensation insurance coverage for any employees in New York involved in the Decommissioning as required under applicable law or that it is exempt from such requirement.

L. The Parties agree to execute and deliver any additional documents or take any further action as reasonably requested by another Party to effectuate the purpose of this Agreement.

M. The Parties agree that this Agreement shall be construed and enforced in accordance with and governed by the laws of New York, without regard to its conflict of laws principles. The Parties hereby consent to exclusive venue and jurisdiction in the state and federal courts located in the State of New York. **EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH REGARD TO ANY DISPUTE RELATED HERETO.** If one or more of the provisions hereof are deemed by a court of competent jurisdiction to be unenforceable, in

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whole or in part, the scope of such provisions shall be reduced to the extent necessary to make them enforceable or, if such reduction is not possible for any reason, such provisions shall be severed from this Agreement entirely, without effect upon the balance hereof.

N. This Agreement may be executed through separate signature pages or in any number of counterparts, and each of such counterparts shall, for all purposes, constitute one agreement binding on all Parties.

O. Any and all notices required to be sent by a Party to another Party hereunder shall be addressed as follows by certified mail or mail courier service:

To the Town:

Town of Berne  
Attn: Supervisor  
1656 Helderberg Trail,  
Berne, NY 12023

**To Operator:**

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**To Landowner:**

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**[Signature Page Follows]**

**IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first written above.**

**TOWN:**

TOWN OF BERNE

By: \_\_\_\_\_

Name:

Title: Town Supervisor

**OPERATOR:**

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

**LANDOWNER:**

By: \_\_\_\_\_

Name:

Title:

Proposed

**Schedule A,  
Site Plans**

Proposed

**Schedule B,  
Land Lease**

Proposed

**Schedule C,  
Approval Resolutions**

Proposed



**Schedule D,  
Decommissioning Plan**

Proposed

**Schedule E**  
**Decommissioning Escrow Agreement**

Proposed