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Division of Corporations, State Records and Uniform Commercial Code

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
City
Town of Tyre
Village

Local Law No. ____ of the year **2022**

A Local Law Repealing Solar Energy Local Law #4 of 2018 and Amending the Zoning Law of the Town of Tyre

(Insert Title)

Be it enacted by the **Town Board** (Name of Legislative Body)

County
City
Town of **Tyre** as follows:
Village

Section 1. Local Law #4 of 2018 of the Town of Tyre, Town of Tyre Solar Energy Law is hereby repealed in its entirety.

Section 2. The Zoning Law of the Town of Tyre, Article 1 Section 100-6 Definitions, is hereby amended by adding the following definitions, in alphabetical order:

BUSINESS

An organization or enterprising entity engaged in commercial, limited industrial, or professional activities.

COMMERCIAL BUSINESS

An organization or enterprising entity involving or relating to the buying and selling of goods.

DECOMMISSIONING

The removal and disposal of all Solar Panels, Solar Energy Equipment, Structures, equipment and accessories, including subsurface foundations and all other material, concrete, wiring, cabling, or debris, installed in connection with a large-scale solar energy system and the restoration of the parcel of land to the original state prior to construction on which the large-scale solar energy system is built to either of the following, at the landowner's sole option: (i) the condition of such lands were in prior to the development, construction and operation of a large-scale solar energy system, including but not limited to restoration, regrading and reseeding; or (ii) the condition designed by the landowner(s) and the Town. Details of the approved Decommissioning activities and costs are described in the Decommissioning Plan and Decommissioning Agreement as provide for in Article VIII, Supplementary Regulations for Specified Uses, Section 100-77.1, solar energy systems.

DECOMMISSIONING AGREEMENT

A written Agreement between an Applicant, landowner and Town that sets forth the obligations of the Applicant and/or landowner to properly decommission the large-scale solar energy system when such system has been determined by the Town Zoning Enforcement Officer to be discontinued, abandoned, or inoperable.

FARMLAND PRIME / PRIME SOILS

Soils designated as "Prime Farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service Soil Survey Geographic Database that have the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops and is also available for these uses. It has the soil quality, growing season, and moisture supply needed to produce economically sustained high yields of crops when treated and managed according to acceptable farming methods, including water management. In general, Prime Soils have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium contents, and few or no rocks. They are permeable to water and air. Prime Soils are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

FARMLAND OF STATEWIDE IMPORTANCE

Soils designated by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) in the Soil Survey Geographic Database on Web Soil Survey, that are of statewide importance to produce food, feed, fiber, forage and oilseed crops as determined by the appropriate state agency or agencies.

SOLAR PANEL TILT

The vertical angle of a solar panel(s), where zero degrees minimum tilt means the tilt of the solar panel is lying flat, and ninety degrees maximum tilt means that the solar panel is vertical.

TOWN ENGINEER

A licensed engineer designated by the Tyre Town Board to provide professional engineering services for the Town.

Section 3. The definitions of “Glare” and “Large-Scale Solar Energy System” contained in Section 100-6 Definitions of the Zoning Law of the Town of Tyre are hereby repealed and new definitions of “Glare” and “Large-Scale Solar Energy System” are hereby adopted and inserted in their places to read as follows:

GLARE

Excessive reflections of light or excessive brightness in a field of view that is sufficiently greater than the brightness to which the eyes are adapted, that may cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

LARGE-SCALE SOLAR ENERGY SYSTEM

A solar energy system with a rated capacity exceeding 25 kW.

Section 4. The Zoning Law of the Town of Tyre Article VI, Zoning District Regulations are hereby amended as follows:

§ 100-34 Agricultural District, subsection C Special permit uses, add a new sub-section 20) solar energy systems.

§ 100-35 High Density Residential, subsection C Special permit uses, add a new sub-section 8) solar energy systems.

§ 100-36. Commercial District West, subsection C. Special permit uses, modify sub-section 1) solar energy systems.

§ 100-37. Commercial District East, subsection C. Special permit uses, add a new sub-section 14) solar energy systems.

§ 100-38. Industrial District, subsection C. Special permit uses, add a new sub-section 5) solar energy systems.

§ 100-39. Mixed-Use District, subsection C. Special permit uses, add a new sub-section 9) solar energy systems.

Section 5. Article VIII (Supplementary Regulations for Specified Uses) of the Zoning Law of the Town of Tyre is hereby amended with the insertion of a new Section 100-77.1 to read as follows:

§ 100-77.1 Solar Energy Systems.

A. Intent. It is the intent of these regulations to:

- (1) Meet the goals and objectives of the Town of Tyre Comprehensive Plan (“Plan”) that supports continued agricultural operations and encourages protection of viable agricultural land resources; and
- (2) Recognize New York State’s renewable energy goals established by the 2015 New York State Energy Plan as implemented through the Reforming the Energy Vision Institute; and
- (3) Recognize New York State Climate Leadership and Community Protection Act (hereinafter referred to as CLCPA) which went into effect January 1, 2020.

B. Applicability.

- (1) This section applies to building-mounted, building-integrated, and ground-mounted solar energy systems installed and constructed after the effective date of this section of the Code.
- (2) This section also applies to any upgrade, modification or structural change that alters the physical size, electric generation capacity, location, or placement of an existing solar energy system.
- (3) Nonconforming solar energy systems. Nonconforming solar energy systems existing on the effective date of this section may be altered or expanded, provided such alteration or expansion does not increase the extent or degree of nonconformity.

C. Solar Energy Systems Permitted by Right.

- (1) By-right solar energy systems. To encourage use of solar energy systems in the Town of Tyre, building-integrated and building-mounted solar energy systems shall be permitted by right as an accessory structure in any zoning district, provided the system is generating electricity only for the land use located on the same lot as the system.
- (2) Standards for by-right solar energy systems.

Any by-right solar energy system shall meet the following standards:

- (a) Accessory use. All building-mounted or building-integrated by-right solar energy systems shall be considered an accessory use and will require a building permit from Seneca County.
 - (b) By-right solar energy systems. Only solar energy systems, as defined herein, shall be considered as by-right systems. Such by-right systems shall be limited to a capacity of 25kW.
 - (c) By-right facilities shall comply with all applicable New York State building codes.
 - (d) In no event shall lot coverage for a by-right solar energy system exceed 50% of the lot area.
 - (e) All by-right solar energy system panels shall have anti-reflective coating(s).
- (3) By-right building-mounted solar energy systems.
- (a) For a building-mounted solar energy system installed on a sloped roof, the following design requirements shall be met:
 - [1] All solar panels shall have anti-reflective coating(s).
 - [2] All roof-mounted solar energy systems shall comply with the zoning district's height limitations.
- (4) By-right building-integrated solar energy systems.
- (a) For a by-right building-integrated solar energy system:
 - [1] Solar panels may be integrated into various parts of the building, including facade; rooftops; roof shingles and skylight glazing.
 - [2] Solar panels may be integrated into building components such as awnings.
- (5) By-right building-mounted and building-integrated solar energy systems. Notwithstanding the area, lot and bulk requirements of the Town of Tyre Zoning Law, building-mounted and building-integrated solar energy systems may be installed on nonconforming buildings as follows:

- (a) On the roof of a nonconforming building that exceeds the maximum height restriction, provided the building-mounted system does not extend above the peak or highest point of the roof to which it is mounted.
- (b) On a building that does not meet the minimum setback or yard requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.
- (c) On a building that exceeds the maximum lot coverage requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.

D. Solar Energy Systems exempt from Town Review and Approval.

The following Solar Energy Systems are exempt from review under the regulations contained in Article VIII, §100-77.1 of the Tyre Zoning Law:

- (1) Permit applications for a major electric generating facility, as defined by the State of New York, pursuant to Chapter 388 of the Laws of 2011 enacted Article 10 of the New York State Public Service Law. Article 10 of the New York State Public Service Law provides for the siting review of new and repowered or modified major electric generating facilities in New York State by the State Board on Electric Generation Siting and the Environment. Under the provisions of Chapter 388 a “major electric generating facility” is defined as facilities capable of generating annually 25 megawatts or more. Additionally, new large-scale solar energy system projects, generating between 20 -25 MW and existing projects in the initial phases of the Article 10 review process may opt-in to the State-level siting process administered by the Office of Renewable Energy Siting (ORES).
- (2) Permit applications for major renewable energy facilities as defined in Subpart 900-1.2 (a–f) of Chapter XVIII, Title 19 of NYCRR Part 900, Office of Renewable Energy Siting, requires applications for permits for the siting, design, construction, operation, compliance, enforcement, and modification of such facilities pursuant to Section 94-c of the New York State Executive Law.

E. Standards for facilities requiring a special use permit. Unless permitted by right, pursuant to Section 100.77.1 C, above, or, unless exempt pursuant to Section 100.77.1 D, above, all solar energy systems require a special use permit subject to the standards and criteria contained in this section.

F. Solar Energy Systems requiring both a Special Use Permit and Site Plan Approval.

- (1) Unless permitted by right, pursuant to Section 100.77.1 C, above, or, unless exempt pursuant to Section 100.77.1 D, above, no solar energy system shall be constructed

or installed without first obtaining a special use permit and site plan approval from the Planning Board, pursuant to this law and the Town of Tyre Site Plan Review Regulations, respectively. In addition, all solar energy systems requiring a special use permit and site plan shall also require a building permit.

- (2) Classifications. Solar energy systems requiring a special use permit may be classified as either principal or an accessory use as set forth below.
 - (a) Principal use. A solar energy system constructed on a lot or parcel of land and providing electricity to an off-site utility or user or users through an agreement or other arrangement shall be considered a principal use. All solar energy systems that are classified as a principal use shall adhere to the area, yard and building requirements of the zoning district in which the system is located, unless modified anywhere within the Zoning Law of the Town of Tyre below.
 - (b) Accessory use/accessory structure. A solar energy system shall be considered an accessory use/accessory structure when generating electricity for the sole consumption of a principal use or building(s) located on the same lot or parcel of land as the system.
- (3) Criteria for accepting a special use permit application. No special use permit application shall be deemed to be complete by the Planning Board until the following conditions are met:
 - (a) Submission of a detailed site-specific Operation and Maintenance Plan, in a form and manner accepted by the Planning Board, that identifies all party(ies) responsible for the operation and maintenance of the proposed solar energy system(s) on the subject lot(s)/ parcel(s).
 - (b) Identification of the party responsible for decommissioning of a solar energy system accompanied by a written acknowledgement by the landowner(s) of his/her/their responsibilities.
 - (c) Written acknowledgement by a public utility to enter into an agreement with the applicant to purchase the electricity to be generated by the proposed solar energy system on the subject lot(s)/parcel(s).
 - (d) A description of any agreement(s) regarding decommissioning between the responsible party(ies), the Tyre Town Board and the landowner(s) which includes the duration of the lease for a solar system to enable the Planning Board to assess the likely lifecycle of the solar system and plan for possible decommissioning at such time. Disclosure to the public of any agreement regarding decommissioning between the responsible party(ies), the Tyre Town Board and the landowner(s) may redact specific financial terms.

- (e) A detailed soils classification map of the entire lot(s)/parcel(s) of land has been prepared in accordance with the requirements of the provisions of the New York State Department of Agriculture and Markets Law for determining Agricultural Use Value Exemptions shall be provided for any application involving land being actively farmed within the New York State Agricultural District SENE006.
 - (f) Where a proposed solar energy system involves a lot/parcel identified in subsection E. above, a soil sampling program conducted by an accredited laboratory shall be provided which establishes relevant benchmark soil conditions over representative sections of the lot/parcel on which the solar system will be sited, and then provides for periodic sampling comparisons to monitor conditions of the soils beneath and around the solar arrays used.
 - (g) A schedule prepared by a licensed engineer is to be included, reviewed, and accepted by the Planning Board identifying all items to be removed during decommissioning of a solar energy system site which identifies the time frame over which decommissioning will occur, including a date for completion of site restoration work.
 - (h) Cost estimates for both site development and decommissioning of the site are to be prepared by a licensed engineer, and then reviewed and accepted by an engineer representing the Town of Tyre. These estimates are to include the full cost of constructing the solar site and decommissioning and removal of the solar energy system from the site.
- (4) All special use permits issued for Solar Energy Systems are subject to the following regulations:
- (a) The special use permit granted shall be valid only for the anticipated life of the solar energy system as documented in the application to the Planning Board.
 - (b) The special use permit may be amended or extended in time upon application and subsequent approval by the Planning Board setting forth the reasons for such amendment of time or amendment to the conditions of approval; and a determination by the Planning Board whether any other amendments to the Special Use Permit, the Final Site Plan, the Decommissioning Plan and the surety on file need to be made as part of the amendment approvals.
 - (c) The special use permit shall be valid only for the approved period provided further that the applicant continues compliance with the conditions of special use approval.
 - (d) The special use permit shall be valid only for as long as the applicant complies with the conditions of final site plan approval.

- (e) The special use permit shall expire immediately in the event the accepted form of surety expires.
- (5) Criteria for accepting and approving an application for site plan approval for a solar energy system. No application for site plan approval for a Solar Energy System shall be deemed to be complete by the Planning Board until the following conditions are met:
- (a) Setbacks in all districts. solar energy systems are subject to the minimum yard and setback requirements for the applicable zoning district (e.g., AG, HDR, C-1, C-2, I, and MU Districts) in which the system is located; and said natural vegetation (e.g., landscaping) buffer shall be provided within this area in a manner to be effectively and exclusively used as a visual barrier between the solar system site and adjacent residential property(ies). No part of a solar energy system shall extend into the required yards and/or setbacks due to a tracking system or short-term or seasonal adjustment in the location, position or orientation of solar energy related equipment or parts. The setbacks established herein are intended to provide space for planting a visual buffer of natural vegetation to be created between the solar energy site's security fence surrounding such a solar energy system and adjacent property lines where residential dwellings either exist or are permitted to exist. Plantings within this area are to be, at the time of installation, at a height to provide as much as practicable, a visual screening of the solar energy system from adjacent residential properties. The species type, location, and planned height of such natural vegetation (landscaping) shall be subject to further approval by the Planning Board as part of the required Site Plan Approval application. Such heights may be further subject to changing topography on the solar energy system site from that of adjacent properties. Solar Energy Systems shall be set back an additional 120 feet from the minimum yard setback along all property lines that abut a lot or parcel of land located in the zoning district(s) permitting residential dwellings. This additional set back dimension shall also apply to the front yard portion of the lot or parcel of land located on the opposite side of the street which is also located in a zoning district allowing residential dwellings.
 - (b) Solar energy systems that are to be developed upon soils classified as Class 1 through 4, as documented upon the Soil Group Worksheets prepared by the Seneca County Soil and Water Conservation District and used by the Town of Tyre Assessor in calculation of the agricultural use exemption values, a part of the New York State Department of Agriculture and Markets Agricultural District Law, once it can be determined, by the Planning Board, that there is no feasible alternative location on the lot/parcel at issue to place the proposed solar energy system. Where there is no feasible alternative location on the lot/parcel at issue then the solar energy system applicant shall provide an Agricultural Conservation Easement (ACE) on another lot/parcel of land, in the town of Tyre containing Class 1 through

4 Soils, and said acreage is to be in the total amount of acreage equal to the acreage of Class 1 through 4 Soils that are proposed to be used as part of a proposed solar energy system. Said ACE shall be placed only upon land having Class 1- 4 Soils and fronting along a public highway and shall not be in some remote interior portion of a lot/parcel. Said ACE shall remain in effect for the same period associated with the time limit specified in the Special Use Permit that is granted for a proposed solar energy system. Said ACE may be terminated once the subject solar energy system has been decommissioned to the satisfaction of the Town of Tyre, or upon a determination by the Town Board that said solar energy system is no longer operating under the terms of the original submission.

(c) The following standards are to be implemented by the Planning Board as part of site plan approval for any solar energy system:

- (1) Where solar energy systems are to be located on Class 1 through 4 Soils, then the following shall apply to the construction, follow-up monitoring of a solar energy system during its' useful life and restoration of these portions of the site in accordance with the latest *Guidelines for Agricultural Mitigation for Solar Energy Projects* promulgated by the New York State Department of Agriculture and Markets; and
- (2) Requirement for an environmental monitor (EM). Depending upon the total acreage of the solar energy system, any system occupying ten (10) or more acres in total shall have an environmental monitor (EM) retained by the solar energy system operator(s) and whose professional qualifications are accepted by the Planning Board to oversee the construction, follow-up monitoring of the solar energy system, decommissioning of the system and restoration of the agricultural field(s) to their original state, to the extent practical. The EM is to be on site whenever construction, decommissioning or restoration work is occurring on the Class 1 through 4 Soils; and his/her work is to be coordinated with staff at the Seneca County Soil and Water Conservation District, the New York State Department of Agriculture and Markets, the designated Engineer representing the Town of Tyre, the Town Zoning Code Enforcement Officer and the Tyre Town Board. Said work is to be based upon a schedule for inspections during each of the above referenced phases to assure the soils are being protected to the greatest extent possible.
- (3) Solar energy system(s) located upon more than one (1) lot. In the event a solar energy system is to be located upon more than one lot/parcel then the total acreage involved as part of such system is to be based upon the overall acreage of the system and not its individual pieces of land.
- (4) Requirement for an EM on more than one (1) lot. Where a solar energy system is located upon more than one lot/parcel then each lot/parcel may have its' own

EM. Where there is more than one EM associated with a solar energy system, then it shall be the responsibility of the system's operator to coordinate the duties and responsibilities of each EM with the State, County and Town Officials referenced in this Law.

- (5) Security fence. Each solar energy system site is to be completely enclosed by security fence having a minimum number of gates and a height not to exceed eight (8) feet above existing ground elevation. Said security fence shall also display the project's contact information sign and safety warning signs to be spaced around the perimeter of the site. Any security fence enclosure shall not unnecessarily interfere with or impede watering systems associated with rotational grazing systems of an established agricultural operation. In addition, such security enclosure shall not create an excessive and unnecessary reduction in the amount of acreage remaining for farmland operations. All fencing is required to be wildlife permeable to reduce the loss of habit for wildlife. Design details for the proposed fence are to be shown on the site plan drawings; and photographs showing the perimeter of the installed fence are to be filed with the Town. Public information sign and warning signs shall be provided on a security fence as further regulated in this Law. The site plan drawings shall identify the locations, size and number(s) of such signage. Fences intended to enclose a solar energy system may not contain barbed wire.
- (6) Visual simulation site photos. Every application for a proposed solar energy system on the site shall include photo simulations of the proposed solar energy system with the site plan drawings for all instances where the proposal abuts or is opposite the road of any residential property. Any proposed electric interconnect cables and transmission lines shall be included in any and all visual simulation site photos.
- (7) Visual simulation landscaping photos. Every application for a proposed solar energy system shall include a visual simulation of the proposed landscaping plantings, both at the time of installation and as expected to appear in year five of the system's operation. The landscaping area is to be shown surrounding the outside of the security fence for the proposed solar energy system are to be included with the preliminary site plan drawings and shall be presented to the public early in the site plan application process. A detailed landscaping design and planting schedule are to be provided as part of any site plan application.
- (8) Structures for overhead collection lines. Structures for overhead collection lines for a solar energy system are to be located upon the non-active agricultural portions of the site and along field edges wherever possible.
- (9) Access roads. There is hereby established three (3) classes of access roads to be used for any solar energy system project. They include the following: (a) "Solar

System Site Access Road which is the main point of access to the site extending from the pavement edge of the adjacent public highway. The solar energy system site access road is to be designed to the Town's Road Specification and to have a minimum width of twenty-four (24) feet and shall be paved for one hundred (100) feet from the edge of the travel lane of the adjacent public street. (b) "Solar Energy System's Panel(s) Access Road(s) which is the access roads within the site that proved access to the solar panels for maintenance purposes. These are "hard surface" access roads are to be located along the edge of agricultural fields. (c) "Solar System Subsurface Stabilized Maintenance Access Roads" which involve the space between the solar panels and the perimeter of the solar energy site's security fence. These areas are mainly for emergency access purposes. To the extent practical, the "Solar Energy System's Panel(s) Access Roads and the "Solar System Subsurface Stabilized Maintenance Access Roads" are to be in areas next to hedgerows and on the nonagricultural portions of the solar energy system site.

- (10) Access gates. There shall be a minimum of two (2) access gates sized to accommodate maintenance equipment and/or emergency response equipment of local public safety agencies. Depending upon the length of each side of each of the sides of the security fence the Seneca County Code Enforcement Officer shall have the authority to require more than two (2) access gates to be provided for vehicles to and from the solar energy system's panel(s) where it is deemed to be in the interests of promoting public safety of first responders. Two (2) emergency personnel exit gates are to be provided along the security fence perimeter every 500 feet of the site to facilitate emergency egress from the enclosed area by system operators and first responders involve with extinguishing a solar panel fire or brush fire within the interior portion of a solar energy system site. Depending upon the length of each side of the security fence the Seneca County Code Enforcement Officer shall have the authority to require more than two (2) emergency access gates to be provided around the perimeter of the site where it is deemed to be in the interests of promoting public safety of first responders. In all instances, all gates shall be designed and constructed to design standards allowing unimpeded egress from the interior of the site. There shall be a KnoxBox installed for gate access by first responders on at least one of the access gates.
- (11) Access road widths. The width of the solar energy system's panels access road is to be no wider than twenty (20) feet, to minimize the loss of agricultural lands and comply with the design standards of the State of New York Fire Access Code. The width of the solar system access road shall have a minimum width of twenty-four (24) feet and shall be paved and comply with the Design and Construction Standards for Land Development for the Town of Tyre.

- (12) Prohibition on cut and fill. There shall be no cut and fill of a solar energy system site for creating on-site access roads which has a reasonable expectation to create on-site drainage problems. Any on-site access road, which is proposed to cross agricultural fields is instead to be located along ridge tops and follow existing field contours to the greatest extent possible. The location of all on-site access roads are to be shown on the site plan drawings.
- (13) Site drainage. All existing site drainage is to be maintained to the greatest extent practical. Any drainage structure(s) and/or erosion control measure(s) to be installed, such as diversions, ditches, and field drainage tile lines, shall take all appropriate measures to maintain natural drainage flows and the effectiveness of such structures. Any existing drainage structure that is disturbed or damaged during site construction shall be repaired and the drainage structure shall be returned to the original condition, unless such structures are to be eliminated based upon the site plan for the solar energy system. Under no circumstances, shall any changes to grades, drainage, or erosion control measures adversely affect any adjoining property.
- (14) Access road profile. The profile of a solar energy system access road that is to be constructed through agricultural fields is to be level with the adjacent field surface wherever possible. The design for this site improvement is to be shown on the site plan drawings. No access road shall be permitted that alters existing drainage patterns on the site.
- (15) Maintaining natural drainage patterns. Culverts and water bars shall be installed in a manner that maintains natural drainage patterns within the solar energy system area. The design for these site components shall be shown on the site plan drawings.
- (16) Topsoil stripping and storage. All topsoil areas stripped for vehicle and equipment traffic, on-site parking and equipment laydown and storage areas shall remain on the site during the useful life of the solar energy system. The designated area(s) on the site to be used for topsoil stockpiling shall be shown on the site plan drawings. All topsoil stockpiles shall be stabilized and seeded in accordance with any and all applicable recommendations and requirements provided by the Seneca County Soils and Water Conservation District.
- (17) Site excavation storage. All excavated materials (e.g., rock and/or subsoil) from on-site work areas (e.g. on-site parking area(s), electric cable trenches and site lay down areas, etc.) shall be stockpiled on-site and separate from other excavated materials (e.g., top soil). The design for these site components shall be shown on the site plan drawings. All such stockpiles shall be stabilized and seeded in accordance with any and all applicable recommendations and

requirements provided by the Seneca County Soils and Water Conservation District.

- (18) Maximum temporary workspace area width. A maximum width of fifty (50) feet for any temporary workspace shall be provided along any open-cut electric cable trench for property topsoil segregation. All topsoil shall be stockpiled immediately adjacent to the workspace area where stripped and shall be used for restoration on that portion of the solar energy system site as soon as practical after the installation of the electric cable.
- (19) Electric interconnect cables and transmission lines. Electric interconnect cables and transmission lines shall be buried in agricultural fields wherever practical. All such buried lines shall be shown on the site plan drawings and the As-Built record drawings for said solar energy system.
- (20) Electric interconnect cables and transmission lines. Electric interconnect cables and transmission lines that must be installed above ground shall be located outside agricultural field boundaries. When above ground cables and transmission lines must cross agricultural fields, then taller support structures shall be used providing longer spanning distances and all such structures shall be located on the edges of the agricultural fields, to the greatest extent practical. Details for any and all such structures shall be shown on the site plan drawings.
- (21) Buried electric cables and transmission lines. All buried electric cables and transmission lines buried in cropland, hay land and improved pasture shall have a minimum depth of 48 inches of cover. At no time shall the depth of cover be less than twenty-four (24) inches below the existing soil surface. The location(s) of all buried electric cables and transmission lines shall be shown on the site plan and as-built drawings.
- (22) Intercept drain lines. The Seneca County Soils and Water Conservation District shall be consulted concerning the type of intercept drain lines whenever buried electric cable alters the natural stratification of soil horizons and natural soil drainage patterns. Their report, findings, and recommended design details shall be incorporated into the site plan and all associated documents and drawings.
- (23) Pasturelands. Where a proposed solar energy system design affects existing and continued pasture areas, it is necessary to construct temporary or permanent fences around work areas to prevent livestock access and are to be based upon landowner written agreements. Said agreements are to be referenced on the site plan drawings and copies thereof filed with the Town's project file.

- (24) Excess concrete. Excess concrete used in the construction of the solar energy system site shall not be buried or left on the surface in active agricultural areas of the project. Concrete trucks shall be washed, in documented washout areas, outside of active agricultural areas. A washout site shall be shown on the site plan drawings, along with notes that identify the reclamation of these areas.
- (25) Materials disposal. All permits necessary for disposal of materials brought onto a solar energy system site, under local, state and/or federal laws and regulations, must be obtained by the contractor, with the cooperation of the landowner. Copies of all such permits shall be noted on the site plan drawings and filed with the Town of Tyre.
- (d) The following restoration requirements for all agricultural areas that are part of a solar energy system which are temporarily disturbed by construction or decommissioning shall:
- (1) Be de-compacted to a depth of eighteen (18) inches with a deep ripper or heavy-duty chisel plow. Soil compaction results shall be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, remove all rocks that are four (4) inches or greater in size from the surface of the subsoil prior to replacement of topsoil. Replace the topsoil to original depth and re-establish original contours where possible. Remove all rocks sized four (4) inches and larger from the surface of the topsoil. Subsoil decompaction and topsoil replacement shall be avoided between October first of each year and May first of the following year.
 - (2) Regrade all access roads to allow for farm equipment crossing and farm animals and to restore original surface drainage patterns, or other drainage pattern incorporated into the approved site design by the Planning Board.
 - (3) Seed all restored agricultural areas with the native/pollinator seed mix specified by Seneca County Soils and Water Conservation District, to maintain consistency with the surrounding areas.
 - (4) All damaged subsurface or surface drainage structures shall be repaired to pre-construction conditions, unless said structures are to be removed as part of the site plan approval by the Planning Board. All surface or subsurface drainage problems resulting from construction of the solar energy project shall be corrected with the appropriate mitigation as determined by the Natural Resources Conversation Service, the Seneca County Soils and Water Conservation District and the landowner.

- (5) Postpone any restoration practices until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration is not to be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil shall not be regraded, and subsoil shall not be de-compacted until plasticity, as determined by the Atterberg Limits Test, is adequately reduced. No project restoration activities shall occur in agricultural fields between the months of October and the following May unless favorable soil moisture conditions exist.
 - (6) Following site restoration, remove all construction debris from the site.
 - (7) Following site restoration, the project sponsor shall provide a monitoring and remediation period of no less than three years, from said agreed-to date, to enable the revegetation of cover for the disturbed ground to make sure erosion is controlled. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, revegetation, drainage and repair of severed subsurface drain lines, fences, etc.
 - (8) Mitigate any topsoil deficiency and trench settling with imported topsoil that is consistent with the quality of topsoil on the affected site. All excess rocks and stones larger than four (4) inches in diameter shall be removed from the site.
 - (9) All aboveground solar array structures shall be removed and all areas previously used for agricultural production shall be restored and accepted by the landowner, the Seneca County Soils and Water Conservation District, Natural Resources Conservation Service, and the New York State Department of Agriculture and Markets.
 - (10) All concrete piers, footers, or other supports shall be removed to a depth of 48 inches below the soil surface. Underground electric lines not specifically denoted in the Site Plan to remain after decommissioning as approved by the Planning Board shall be removed. Access roads in agricultural areas not specifically denoted in the Site Plan to remain after decommissioning as approved by the Planning Board shall be removed, unless otherwise specified by the landowner.
- (e) Utility connections. Utility lines and connections from a solar energy system shall be installed underground, unless otherwise determined by the Planning Board for reasons that may include poor soil conditions, topography of the site, and requirements of the utility provider. Electric inverters and transformers for utility interconnections may be above-ground if required by the utility provider.
 - (f) Height. solar energy systems may not exceed twelve (12) feet in height, excepting weather monitoring equipment, which may extend to a height of fifteen (15) feet or such height as the Planning Board finds appropriate and not objectionable to any

adjacent landowner, and excepting utility poles and lines needed to transport solar energy to the utility grid and connection facilities of the local utility.

- (g) Lot coverage requirements. solar energy systems shall adhere to the maximum lot coverage requirement for principal uses within the zoning district they are located. The lot coverage of a solar energy system shall be calculated based on the definition of “lot coverage” found in the Zoning Law of the Town of Tyre.
 - (h) Signs. solar energy systems classified as a principal use shall adhere to the sign requirements for the zoning district in which they are located. However, a project information sign and public warning signs shall be affixed to the project fence and the warning signs are to be spaced apart at intervals recommended by the Federal Energy Regulatory Commission (FERC) and shall be of the size recommended in said FERC regulations.
- (6) Periodic soil sampling reports. The periodic soil sampling reports required by the Planning Board as a condition of granting a special use permit for a solar energy system shall be:
- (a) In place prior to the start of construction of a solar energy system which establishes relevant benchmark soil conditions over representative sections of the lot(s)/parcel(s) on which the solar system will be sited.
 - (b) Said benchmark soil conditions shall serve as the basis for periodic soil sampling conditions to monitor conditions of the soils beneath and around the solar arrays used.
 - (c) Significant deviations in the periodic sampling reports from benchmarks shall warrant the Planning Board to investigate the changes and re-examine the special use permit approved and its conditions to determine if changed circumstances reflected in the soil sampling results warrant rescinding the special use permit or continuing it on such new terms and timing as the Planning Board determines to be appropriate under the circumstances. The burden shall be on the system operator and landowner to establish that conditions remain safe for the operation of the solar system on the site so that continuation of the special use permit, as conditioned and with such appropriate additional conditions as may be imposed by the Planning Board, remains warranted.
- (7) Alterations to approved solar energy systems.
- (a) Any alteration(s) or repair(s) made to solar energy equipment located within an approved solar energy system site shall comply with the site’s special use permit, final site plan, Decommissioning Plan, and Operation and Maintenance Plan will require a Building Permit issued by the Seneca County Code Enforcement Officer

and a Zoning Permit issued by the Town Zoning Enforcement Officer. All such permit(s) must comply with the applicable New York State Building Codes utilized by Seneca County.

- (b) Any alteration(s) or repair(s) made to solar energy equipment located within an approved solar energy system site that is/are determined not to comply with the site's special use permit, final site plan, Decommissioning Plan, and the site's Operation and Maintenance Plan will require the approval by the Town Planning Board prior to the issuance of a Building Permit by the Seneca County Code Enforcement Officer and a Zoning Permit by the Town Zoning Enforcement Officer.

(8) Annual report.

- (a) The solar energy system owner shall, on a yearly basis from the date of the certificate of compliance issued by the Zoning Enforcement Officer (ZEO), provide the ZEO with a notarized written report that shall show:
 - (1) the state of solar energy system (active, discontinued, abandoned or inoperable); and
 - (2) if the actual energy production is above or below ten percent (10%) of the facility's rated capacity; and
 - (3) site plantings needing replacement and identify the plan for their replacement; and
 - (4) any change of ownership or operator of the system and/or ownership of the lot/parcel upon which the solar energy system is located; and
 - (5) any change in the party(ies) responsible for decommissioning and removal of the solar energy system.
- (b) Third-year report. Every third year, since the start of solar generation, the annual report to the ZEO, as is to be provided for in the Planning Board's Condition of Approval for the Special Use Permit for a solar energy system occurring on lands identified in this Law, shall provide the filing of evidence of financial surety and requisite soil sampling. Failure to submit an adequate report as required herein shall be considered a violation and shall be considered evidence of abandonment. The Zoning Enforcement Officer shall be empowered to engage an engineer to review each third-year report and compare it to the surety amount on file with the Town Clerk's Office to determine what, if any, change needs to be made to the surety. Such change shall reflect any structural change to the solar energy system, and significant increase in the costs of materials associated with the system operations,

hourly rate increases associated with Town personnel monitoring of the site, decommissioning and site restoration. The surety review shall be coordinated with the Town Zoning Enforcement Officer, the Town Planning Board, and acted upon by the Town Board. The system operator shall have thirty (30) days, from the date of Town Board action, to file the revised surety instrument with the Town Clerk's Office. Failure to do so shall constitute a violation of the special use permit conditions of approval and result in the Town Zoning Enforcement Officer initiating the abandonment process described elsewhere in these regulations.

(89) Site development and form of surety for any solar energy system.

- (a) Prior to the Town Zoning Enforcement Officer (ZEO) authorizing the start of construction for any solar energy system a letter of credit shall be submitted to the Town Board for their review and acceptance. The letter of credit shall be based upon the applicant's engineer's estimate of values for the approved site improvements. This estimate is then reviewed and approved by the Town Board and then a letter of credit, in the amount approved, shall be filed with the Town Clerk's Office. Any letter of credit not filed with the Town Clerk's Office within ninety (90) days of the date of the Town Board Resolution approving said amount may be subject to reapproval by those identified above herein.
- (b) Prior to the Town Zoning Enforcement Officer (ZEO) scheduling a pre-construction meeting, a letter of credit shall be filed with the Town Clerk's Office and the final subdivision plat shall be recorded in the Office of the Seneca County Clerk and all signatures shall be affixed to Final Site Plan drawings. An approved letter of credit filed with the Town Clerk's Office, and the approved Decommissioning Plan shall be filed with the Town Clerk's Office and with the Seneca County Clerk's Office.
 - (1) Then the Zoning Enforcement Officer shall schedule a pre-construction meeting with the Planning Board, the Town Engineer, the landowner, the applicant, the applicant's EM, the applicant's engineer, the Seneca County Code Enforcement Officer, a representative of the utility provider, all abutters, and other involved agencies wishing to attend shall attend this pre-construction meeting. The pre-construction meeting shall identify all involved with the site development along with all procedures expected to be followed with the development of the solar energy system site.
 - (2) Finally, the approved minutes of said pre-construction meeting shall be filed with the Town Clerk's Office prior to the Town Zoning Enforcement Officer and the Seneca County Code Enforcement Officer issuing the order to proceed.
 - (3) The Final Pre-construction Meeting Minutes shall serve to further regulate the site's development and on-going operation of the solar energy system.

- (c) The letter of credit shall be automatically renewed, if determined necessary by the Town Supervisor and shall not be allowed to expire until a maintenance bond has been approved by the Town Board and filed with the Town Clerk's Office and the Zoning Enforcement Officer has issued a Certificate of Compliance for the site development. At that point, the letter of credit may be released upon Town Board authorization.
- (d) In the event and during the on-going operation of the solar energy system it is determined necessary, by the Zoning Enforcement Officer, that additional site improvements are necessary, the applicant shall provide the Planning Board and the Town Engineer with a separate engineer's estimate of value for said site improvements. The acceptance process identified in (a) above is to be followed along with the pre-construction process identified in (b) above prior to any authorization to make such additional site improvement.

(910) Decommissioning Plan and form of surety for any solar energy system.

- (a) Decommissioning Plan and Surety for special use permit and site plan Applications. All solar energy systems shall provide as part of any special use permit and/or site plan application, a decommissioning plan that shall be accompanied by a proposed form of surety which shall be based in part upon the conditions of Special Use Permit and Final Site Plan approvals by the Planning Board. The approved surety guarantees among other things the periodic inspection(s) of and reports upon the project site during its' useful life and the restoration of the project site in the manner as provided for elsewhere in this chapter.
- (b) Acceptance of Decommissioning Plan. The applicant's Decommissioning Plan shall be submitted by the Planning Board, after its' initial review, to the Town Engineer for his/her review and recommendation. In addition, the applicant's surety shall also be reviewed by the Town Engineer for his/her recommendation and report to the Planning Board. The Planning Board, as part of Final Site Plan Approval shall recommend to the Town Board, whether to accept the surety instrument. The Town Board, based upon its review shall either accept, modify, or deny the form of surety being offered. No further action shall be taken upon the proposed solar energy system until an acceptable form of surety has been favorably acted upon by the Town Board.
- (c) Filing of surety. The surety, once approved by the Town Board, shall remain on file in the Town Clerk's Office and shall be available to the Town for the entire existence of the solar energy system, including the decommissioning and restoration of the site, after the solar energy system has ceased operating. In the event the anticipated operational life of the solar energy system is amended, then a revised acceptable form of surety shall be reviewed and recommended by the

Planning Board, and finally accepted by the Town Board and filed with the Town Clerk.

- (d) Planning Board review and recommendation to Town Board. The Planning Board shall review the applicant's proposed decommissioning plan and proposed form of surety finding that it guarantees for period inspections of (both annually and every third year) and reports upon the project during its' useful life. In addition, the Planning Board shall determine that the accepted form of surety is to be used for the reclamation of a site upon its abandonment and decommissioning as provided for elsewhere in this chapter. The Planning Board, based upon its' review of the proposed decommissioning plan and proposed form of surety shall provide the Town Board with a report and recommendation of its' findings and make recommendations on whether to accept said documents as submitted. The Planning Board, in making such determinations shall have the right to employ technical and legal assistance, at the applicant's expense.
- (e) Surety. The solar energy system owner and/or landowner shall keep on file with the Town Clerk's Office, an approved surety that is to remain in effect throughout the life of the system and shall be in the form of an irrevocable acceptable form of surety or other form of surety acceptable to the Planning Board and approved by the Town Board. The irrevocable acceptable form of surety or other form of surety shall include an auto-extension provision to be issued by at least an A-rated institution solely for the benefit of the Town. The Town shall be entitled to draw upon the acceptable form of surety if the solar energy system owner and/or landowner fails to commence or complete decommissioning activities within the time periods specified therein. No other parties, including the system owner or operator or landowner(s), shall have the ability to demand payment under the surety. Upon completion of decommissioning or restoration of the site, the system owner or operator or landowner may petition the Town Board to reduce or terminate the acceptable form of surety. In the event ownership of the system is transferred to another party, the new owner (transferee) shall file evidence of an acceptable financial surety with the Town Board at the time of transfer, and every three (3) years thereafter, as provided for herein.
- (f) Surety purpose. The purpose of the surety is to provide for full cost of decommissioning and removal of the solar energy system in the event the system is not removed by the system owner and/or landowner.
- (g) Surety failure. In the event the surety fails for any reason, it shall be promptly replaced, within thirty (30) days of the lapse of the surety or else such failure may be found to constitute evidence of abandonment and noncompliance with special use permit conditions, warranting the commencement of enforcement procedures for abandonment of the solar energy system.

- (h) Town Board review and acceptance of decommissioning plan and form of surety. The Town Board, upon its' receipt of the above referenced Planning Board report and recommendation, shall consider said action(s) prior to taking formal action to adopt a decommissioning plan and accept a form of surety for the proposed solar energy system. Once accepted, the decommissioning plan and surety shall be filed with the Town Clerk's Office within thirty (30) days of the date of the Town Board Resolution.
- (i) Surety reduction. Once a site has been restored and accepted by the Planning Board, then the surety amount could be reduced to an amount sufficient to deal with any issues that might arise during the follow-up three (3) year period of site monitoring to include, but not limited to, reseeding, mulching, tackifier, etc.
- (j) Decommissioning and removal by Town. If the solar energy system owner and/or landowner fails to decommission and remove an abandoned system in accordance with the requirements of this chapter, the Town may enter upon the property to start the decommissioning process identified in the filed Decommissioning Plan; and to oversee the removal of the system within six (6) months of the date of decommissioning by the Town. Prior to entering upon the site, the Town shall request the identified utility provider to inspect the system and, if necessary, de-energize the system. The costs associated with this action shall be bored by the landowner. Failure to reimburse the Town for expenses incurred shall result in the cost being added to the property owner's Real Property Tax Bill for the coming year.

| ~~(1011)~~ Abandonment.

- (a) Applicability and purpose. This section governing abandonment shall apply to all large-scale solar energy systems that have received special use permit and site plan approval from the Planning Board after the effective date of these regulations. It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of Tyre by requiring abandoned large-scale solar energy systems to be removed pursuant to a decommissioning plan that has been approved by the Town Board. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy, closed, or been acquired which creates an environment for systems to be abandoned, thereby creating a negative visual impact upon the Town and, in certain instances, the loss of productive farmland soils necessary to sustain continued agricultural operations.
- (b) Abandonment. A large-scale solar energy system shall be deemed abandoned if the system 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 (1) year. A large-scale solar energy system shall also be deemed abandoned if any of the conditions of

approval for the special use permit, or final site plan approval are determined to be not complied with by the Planning Board. Other determination(s) of abandonment by the Planning Board, shall include, but are not limited to, termination or abandonment of utility interconnection agreement(s); failing to make periodic reports as required; or failing to maintain required surety. Finally, a large-scale solar energy system also shall be deemed abandoned if, following the pre-construction meeting date, initial construction of the system has commenced and is not completed within twelve (12) calendar months of issuance of the notice to proceed, or the first building permit for the project is issued.

- (c) Determination of abandonment. The Zoning Enforcement Officer shall determine a large-scale solar energy system to be abandoned and shall notify the Town Board, the system owner(s), landowner(s) and permittee by certified mail upon a finding that:
- (1) the facility under construction has failed to complete construction and installation of the system within twelve (12) calendar months from the date of the notice to proceed; or
 - (2) in the case of a fully constructed facility that is operating at a rate of less than ten percent (10%) of its rated capacity; or,
 - (3) in the case of failure to restore operation of the facility to no less than eighty percent (80%) of rated capacity within one hundred eighty (180) days within an established date of abandonment of the system; or,
 - (4) the system operator has failed to provide written annual reports as required elsewhere in this section of the Town Code.

The system owner, landowner(s) and permittee shall have thirty (30) calendar days from the date of the signed receipt of the certified mail sent to any one of the identified parties to provide a written response to the Zoning Enforcement Officer. Failure to respond within said thirty (30) calendar days shall be deemed to be the established date of abandonment of the system.

- (d) Extension of time. The time at which a large-scale solar energy system shall be deemed abandoned may be extended by the Planning Board for one additional period of one (1) year, provided the system owner presents to the Board a viable plan outlining the steps and schedule for placing the system in service or back in service within the time of the extension. An application for an extension of time shall be made to the Planning Board by the large-scale solar energy system operator prior to abandonment as defined herein. Extenuating circumstances as to why the large-scale solar energy system has not been operating or why construction has not been completed may be considered by the Planning Board in determining whether

to grant an extension. The Planning Board shall schedule a public hearing upon such request to receive public testimony concerning matters relating to the project's delay in construction, or operation.

- (e) Expiration of special use permit and site plan approvals. Upon the determination by the Planning Board that a large-scale solar energy system has been abandoned, both the special use permit and site plan approval granted by the Board shall be formally recalled and made null and void, except for the provisions of the approved decommissioning plan and surety guarantee on file.
- (f) Notification to Town Board along with request to commence decommissioning of the site. The Planning Board, upon revoking the special use permit and final site plan approvals shall notify the Town Board of such action. The Town Board upon receipt of this notification may adopt a resolution to cause the removal and restoration of the site at the system owner's and/or landowner(s) expense as provided for in the Decommissioning Plan.

| ~~(11)~~ (12) Decommissioning.

- (a) Decommissioning process. The decommissioning process for a large-scale solar energy system contains the following general steps provided for in the adopted Decommissioning Plan: determination of abandonment notice issued; deconstruction permit applied for and issued; physical decommissioning (i.e., dismantling and removal of the physical components of the solar facility); restoration of the land; and follow-up monitoring of the site for two (2) years. Each of these phases shall be in accordance with the approved decommissioning plan on file.
- (b) System component(s) removal required. A large-scale solar energy system which has been abandoned shall be decommissioned and the physical site improvements removed, and the site restored to its original state. The large-scale solar energy system owner and/or owner of the land upon which the system is located shall be held responsible to physically remove all components of the system within one (1) year of abandonment. Removal of the large-scale solar energy system shall be in accordance with a decommissioning plan that follows the decommissioning process (the written Plan) that has been approved by the Town Board.
- (c) Town implementation of the decommissioning plan. If after six (6) calendar months of the date of the Town Board's determination of abandonment of the system, the system owner or landowner fails to initiate any action to commence decommissioning of the site and/or remove any portion of the system's components, the Town Board shall give notice to the system owner and landowner that they have failed to address the Town Board's decision and that the Town is

commencing the abandonment process and shall be using funds from the surety to implement the adopted Decommissioning Plan.

- (d) Removal by Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to address abandonment issues and/or decommission and removal of a large-scale solar energy system, and restore the associated land, including legal costs and expenses, shall be reimbursed from the surety posted by the system owner or landowner as provided elsewhere in this section. Any costs incurred by the Town for decommissioning, removal and restoration 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 penalties as are provided by law for the collection and enforcement of real property taxes in the Town. This provision does not restrict the Town from proceeding against the responsible parties to collect monies owed by other means, such as by enforcement of a decommissioning plan or other agreement.

- (e) Decommissioning of a large-scale solar energy system shall consist of:
 - (1) Physical removal of all aboveground and below-ground equipment, structures and foundations, including but not limited to all solar arrays and support structures, buildings, security fence and other site related fence, electric transmission lines and components, roadways, and other physical improvements to the site.
 - (2) Disposal of all solid waste in accordance with local, state, and federal waste disposal regulations. A record of where said solid waste was taken to shall be filed with the Town Clerk's Office within thirty (30) days of removal from the site.
 - (3) Restoration of the ground surface and soils in accordance with the criteria established herein and acceptance documented by the Seneca County Soils and Water Conservation District, the Natural Resources Conservation Service, and the New York State Department of Agriculture and Markets.
 - (4) Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding all invasive species) in accordance with any and all applicable recommendations and requirements provided by the Seneca County Soils and Water Conservation District.

Section 6. Subsection D (Special Use Permits) of Section 100-20 (Powers and Duties of Planning Board) of the Zoning Law of the Town of Tyre, is hereby repealed and a new subsection D is hereby adopted and inserted in its place to read as follows:

D. Special use permits. The Town of Tyre Planning Board, in accordance with provisions of §274-a and 274-b of New York State Town Law and the Zoning Law of the Town of Tyre, shall have the authority to issue special use permits for those uses listed in the Zoning Law of the Town of Tyre, for such property or portion thereof, and for such duration, and with such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use of the land at issue, as the Planning Board determines to be appropriate under the circumstances. Requests for special use permits shall be subject to the following provisions:

- (1) An application for special use permit review and approval shall be made in writing on the appropriate forms and shall be filed with the Town Planning Board, after consulting with the Town Zoning Enforcement Officer. An application for special use permit review and approval shall require and be made in tandem with an application for site plan review and approval for the proposed project. These two applications shall be subject to the same information submission requirements and shall follow one review and approval process as outlined in the Zoning Law of the Town of Tyre. The application for site plan review and approval shall be considered during the public hearing on the special use permit. In the event an application for site plan approval necessitates granting of an area variance by the Town Zoning Board of Appeals (ZBA), no decision may be made upon either the site plan or the special use permit by the Planning Board until the ZBA has acted. The ZBA shall review the variance request and forward their decision and all supporting documentation, including their findings, within specified time by law, not to exceed 62 days to the Planning Board prior to their final decision on the Special Use Permit. Additional fees shall be required of the applicant to process the special use permit application, the site plan review and approval, and any requested area variance from the ZBA. Such fees shall be established by the Town Board and made part of the Town's Fee Schedule.
- (2) In addition to the information submission requirements of the Zoning Law of the Town of Tyre, the Town Planning Board may require an application for special use permit review and approval to be accompanied by a site plan prepared by a licensed professional engineer in accordance with the criteria set forth in the Town's Site Plan Regulations; a transportation impact analysis/traffic safety study; storm water retention and treatment plans; and utility designs, and reviewed by the respective state or county agency, the Town Engineer and Town Planning Board, as may be pertinent to an informed decision.
- (3) Approval by the Town Planning Board of any special use permit shall be contingent on a finding by the Board, based on information submitted and testimony given by

the applicant at the public hearing, testimony received by the public at the public hearing, referral comments and recommendations received from the Seneca County Planning Board, and Town staff comments, that the project or development will, as applicable:

- (a) Be in harmony with the general purpose, goals, objectives, and standards of the Town of Tyre Comprehensive Plan 2014 “Planning for a Rural Community in the 21st Century” and this law.
- (b) Not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety, and general welfare.
- (c) Be constructed, arranged, and operated so as not to dominate the immediate vicinity, or to interfere with or devalue the development and use of neighboring property in accordance with the applicable district regulations.
- (d) Provide adequate and safe site access for vehicles.
- (e) Provide adequate site utility service, including water supply, sewage, refuse disposal, storm water control and signage.
- (f) Be compatible with and enhance, to the greatest extent possible, the existing natural features of the site and surrounding areas.
- (g) Protect prime and unique classified agricultural soils and not conflict with nearby established agricultural operations.
- (h) Avoid harm or destruction to unique natural features found on the site such as drumlins, freshwater wetlands, floodplains, established mature trees and wood lots, etc.
- (i) Protect historic structures located on the site.
- (j) Provide adequate landscaping, screening or buffering between adjacent uses which may be incompatible with the proposed project.
- (k) Provide adequate mitigation measures for identified adverse environmental impacts determined by the Town Planning Board as part of the environmental review of said special use permit application.
- (l) Where requested, a performance bond, irrevocable letter of credit or other suitable financial guaranty has been provided, to assure compliance with the conditions of the Special Use Permit. The Town Board shall be empowered to engage experts to determine and levy the amount of financial guarantee.

- (m) For any matter determined by the Planning Board upon showing of cause, may require: a site plan prepared by a licensed professional engineer in accordance with the criteria set forth in the Town's Site Plan Regulations; a traffic study; storm water retention and treatment plans; and utility designs, as may be pertinent to an informed decision.
- (4) The Town Planning Board shall review the application for special use permit approval based upon the criteria and considerations listed above as well as those listed in Zoning Law of the Town of Tyre. Should the applicant, based on the findings of the Board, fail to meet any one of the criteria or requirements to comply with the Zoning Law of the Town of Tyre, either because of the basis nature and design of the project or the lack of appropriate mitigating measures, then the request for approval of a special use permit shall be denied. Should the applicant, based on the findings of the Board, meet all the criteria or requirements listed, either because of the basic nature and design of the project or the inclusion of appropriate mitigating measures, then the request for special use permit approval shall be granted. The Town Planning Board may approve an application for a special use permit, subject to appropriate conditions and/or the inclusion of mitigating measures that will ensure compliance with the criteria and requirements listed above and in the Zoning Law of the Town of Tyre.

A special use permit granted for a special use activity on property shall lapse upon abandonment of such activity on such lot or after one year of nonuse of the lot for such permitted activity, and warrant revocation of the special use permit upon action by the Planning Board after notice and hearing.

Section 7. Zoning Law of the Town of Tyre Article II - Administration, Section 100-9 - Enforcement, is hereby deleted.

Section 8. Zoning Law of the Town of Tyre Article II - Administration, Section 100-10 - Duties of the Zoning Enforcement Officer, Subsection B – Special Use Permits. is hereby amended by adding:

Copies will be provided to the Town Clerk.

Section 9. Subsection A (Procedures of a Zoning Permit) of Section 100-12 (Application Process) of the Zoning Law of the Town of Tyre is hereby repealed and a new subsection A is hereby adopted and inserted in its place to read as follows:

A Procedures for a Zoning Permit

All applications for a Zoning Permit shall be made in writing by the applicant on a form provided by or otherwise acceptable by the Zoning Enforcement Officer in the detail specified in §100-13 of this Law and the Zoning Law of the Town of the

Tyre with the exception being for agricultural structures. The applicant shall submit the appropriate fee, with the submitted application.

- 1) Where the proposed use is on a property owned and occupied by the applicant the Zoning Enforcement Officer may, at their discretion, consider the application for compliance and either issue or deny a Zoning Permit. The Zoning Enforcement Officer shall refer an application to the Planning Board for site plan review when required by this law and may, at their sole discretion, refer any other applications to the Planning Board for site plan review.
- 2) Where the Zoning Permit Application is a change of use from one permitted use to another permitted use with no change to the physical environment, the Zoning Enforcement Officer is empowered to consider the application for compliance and either issue or deny a Zoning Permit. The Zoning Enforcement Officer shall refer an application to the Planning Board for site plan review when required by this law and may at their sole discretion refer any other applications to the Planning Board for site plan review.
- 3) When the application is for any other use in any district, excluding certain agricultural uses enumerated herein, a preliminary site plan application shall accompany the zoning permit application. The Planning Board shall be responsible for reviewing the Site Plan for compliance with this Law and directing the Zoning Enforcement Officer to approve, approve with conditions, or deny a permit application.

Section 10. Subsection C (Procedures for Special Use Permit) of Section 100-12 (Application Process) of the Zoning Law of the Town of Tyre is hereby repealed.

Section 11. Subsection A (Application for a Zoning Permit Permit) of Section 100-13 (Application Details) of the Zoning Law of the Town of Tyre is hereby repealed in its entirety and with a new subsection A is hereby adopted and inserted in its place to read as follows:

A. Application for a Zoning Permit

Each application for a Zoning Permit shall be made on forms available from the Zoning Enforcement Officer. At a minimum, the application shall include the following information and plans for both before and after conditions.

- 1) Description of the proposed work.
- 2) Proof of ownership of the premises where the work is to be performed.
- 3) The tax map number and the street address of the premises where the work is performed.
- 4) Where applicable, concept level drawings which:
 - a) Define the scope of the proposed work.
 - b) Are prepared by a NYS registered architect or licensed professional engineer or as determined by the Zoning Enforcement Officer on a case-by-case basis where the structural method or system of

components requires professional design.

- c) Indicate with sufficient clarity and detail the nature and extent of the work proposed.
- 5) Include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines. Conceptual level drawing(s) include appropriate scale, north arrow, measurements to existing lot lines, etc. to be of a competent level-clearly. If Site Plan Review is required, refer to the Town of Tyre Site Plan Review Regulations (Local Law No. 2 of 2015, as amended).
- 6) If applicable, proof of compliance with New York State Workers' Compensation Law.

Section 12. Subsection B (Application for a Special Use Permit) of Section 100-13 (Application Details) of the Zoning Law of the Town of Tyre is hereby repealed in its entirety.

Section 13. Section 100-22 (Planning Board Action on Permit Applications) of the Zoning Law of the Town of Tyre is hereby repealed in its entirety and, in its place, shall be inserted, "Section 100-22 – INTENTIONALLY OMITTED".

Section 14. Subparagraph 1) of subsection C (Special Use Permit) of Section 100-36 (Commercial District West (C-1)) of the Zoning Law of the Town of Tyre is hereby repealed and new subparagraphs 1) through 4) are hereby inserted in its place to read as follows:

- 1) Large-Scale Solar Energy Systems
- 2) School
- 3) Short Term Rental
- 4) Storage Facility

Section 15. The Zoning Law of the Town of Tyre Appendix A: Bulk and Use Tables are hereby amended as follows:

For Zoning District Agricultural (AG), amend the Bulk and Use Table to add an entry as follows:

(AG) – SP Large-Scale Solar Energy Systems 5 Acres (min), 150 Feet

For Zoning District High Density Residential District (HDR), amend the Bulk and Use Table to add an entry as follows:

(HDR) – SP Large-Scale Solar Energy Systems 5 Acres (min), 150 Feet

For Zoning District Commercial District West (C-1), amend the Bulk and Use Table to delete "Bank or Financial Institution" as a Use Class requiring a special use permit.

For Zoning District Commercial District West (C-1), amend the Bulk and Use Table to add an entry as follows:

(C-1) – SP Large-Scale Solar Energy Systems 5 Acres (min), 150 Feet

For Zoning District Commercial District East (C-2), amend the Bulk and Use Table to add an entry as follows:

(C-2) – SP Large-Scale Solar Energy Systems 5 Acres (min), 150 Feet

For Zoning District Commercial Industrial District (I), amend the Bulk and Use Table to add an entry as follows:

(I) – SP Large-Scale Solar Energy Systems 5 Acres (min), 150 Feet

For Zoning District Mixed-Use (MU), amend the Bulk and Use Table to add an entry as follows:

(MU) – SP Large-Scale Solar Energy Systems 5 Acres (min), 150 Feet

Section 16. The Zoning Law of the Town of Tyre Appendix A: Bulk and Use Tables are hereby amended as follows:

Zoning District Agricultural (AG), is hereby amended by adding:

7. d. Large-scale and ground-mounted solar energy systems require an additional 120 feet from minimum yard setback along all property lines.

Zoning District High Density Residential (HDR), is hereby amended by adding:

7. d. Large-scale and ground-mounted solar energy systems require an additional 120 feet from minimum yard setback along all property lines.

Zoning District Commercial District West (C-1), is hereby amended by adding:

7. d. Large-scale and ground-mounted solar energy systems require an additional 120 feet from minimum yard setback along all property lines.

Zoning District Commercial District East (C-2), is hereby amended by adding:

7. d. Large-scale and ground-mounted solar energy systems require an additional 120 feet from minimum yard setback along all property lines.

Zoning District Commercial Industrial (I), is hereby amended by adding:

7. d. Large-scale and ground-mounted solar energy systems require an additional 120 feet from minimum yard setback along all property lines.

Zoning District Mixed-Use (MU), is hereby amended by adding:

7. d. Large-scale and ground-mounted solar energy systems require an additional 120 feet from minimum yard setback along all property lines.

Section 17. The Zoning Law of the Town of Tyre Appendix B – Zoning Map – Insert Zoning Map

Section 18. If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been ordered.

Section 19. This local law shall take effect immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. ____ of 2022 of the **Town of Tyre** was duly passed by the Tyre Town Board on _____, 2022 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer¹.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20__, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____, 20__ in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the on 20__, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____, 20__. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____, 20__, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20__, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____, 20__. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____, 20__, in accordance with the applicable provisions of law.

¹*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or Village, or the supervisor of a Town where such officer is vested with the power to approve or veto local laws or ordinances.*

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the City of _____ of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____, 20__, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the County of _____, State of New York, having been submitted to the electors at the General Election of November ____, 20__, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the Towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Clerk of the Town

(Seal)

Date: _____