

**TOWN OF AVON
LOCAL LAW NO. 1 OF THE YEAR 2024**

**A Local Law Entitled “Amending Article XV of Chapter 130 of the Code of the
Town of Avon.”**

Be it enacted by the Town Board of the Town of Avon as follows:

Article XV of Chapter 130 of the Code of the Town of Avon shall be amended and replaced in its entirety and the new Article XV shall read as follows:

§130-78. Authority and Legislative Intent.

The Town Board of the Town of Avon states the following as its findings and legislative intent:

- A. This Local Law is adopted pursuant to New York State Town Law §§261, 263 and 264, which authorize the Town of Avon to adopt zoning provisions that advance and protect the health, safety, and welfare of the community.
- B. The Town Board of the Town of Avon recognizes that solar energy is a clean, readily available and renewable energy source and the Town of Avon intends to accommodate the use of solar energy systems.
- C. However, the Town Board finds it is necessary to properly site and regulate solar energy systems within the boundaries of the Town of Avon to protect residential uses, Prime Farmland, Farmland of Statewide Importance, business areas and other land uses, to preserve the natural resources, overall beauty, nature and character of the Town of Avon, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Avon. The Town Board has chosen to implement the above goals by intentionally limiting the size of Type 2 Solar Energy Systems (hereafter defined) as provided for herein.
- D. The previously adopted Article XV has become insufficient to adequately address the many new aspects of Solar Energy System (as hereinafter defined) development that have arisen since its original adoption. Accordingly, the Town Board finds that the adoption of these updated and enhanced regulations is necessary to properly direct the location, size and construction of these Solar Energy Systems.

§130-79. Definitions.

The following definitions shall apply to this Article:

Abandoned/Abandonment – Solar Energy Systems are deemed abandoned:

- a. When they become Inoperable; and/or
- b. If construction and/or permitting do not commence or proceed in accordance with the timelines afforded within these regulations.

Agrivoltaic Dual Use – A Solar Energy System existing on a Lot alongside agricultural uses, so the Lot is used both for energy generation and farming concurrently.

Applicant - The person or entity submitting an application and seeking an approval under this Article; the owner or permit holder of a Solar Energy System or a proposed Solar Energy System project; the operator of Solar Energy System or a proposed Solar Energy System project; any person acting on behalf of an Applicant, Solar Energy System or proposed Solar Energy System. Whenever the term “applicant” or “permit holder” or “owner” or “operator” are used in this Article, said term shall include any person acting as an applicant, permit holder, owner or operator of such Solar Energy System.

Battery Energy Storage System (also see Article XVI §130-90 et seq.) - A rechargeable energy storage system consisting of one or more devices, including batteries, battery chargers, controls, power conditioning systems and associated electrical equipment, assembled together, capable of storing energy in order to provide electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A Battery Energy Storage System is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

- A. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
- B. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600 kWh or are comprised of more than one storage battery technology in a room or enclosed area.

Building-Integrated Solar Energy System - A combination of photovoltaic building components integrated into any building envelope system such as vertical facades, including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

Building-Mounted Solar Energy System - Any Solar Energy System that is affixed to the side(s) or rear of a Building or other Structure, either directly or by means of support structures or other mounting devices, intended to produce energy for onsite consumption or credit for onsite consumption for a Building, Single-Family Dwelling, Multi-Family Dwelling, Two-Family Dwelling, Business or Farm, but not including those mounted to the roof or top surface of a Building.

Building-Mounted Solar Energy System - Commercial - Any Solar Energy System that is affixed to the side(s) or rear of a Building or other Structure either directly or by means of support structures or other mounting devices, intended to produce energy for offsite sale to and consumption by one or more customers.

Business – An organization or enterprising entity engaged in commercial, limited industrial, or professional activities that provide employment opportunities and increases the Town of Avon tax base.

Decommission/Decommissioning - The removal and disposal of all Solar Panels, Solar Energy Equipment, Structures, equipment and accessories, including but not limited to subsurface foundations and all other material, concrete, wiring, cabling, debris, contaminated soil, chemical residue or chemical compounds that were installed in connection with a Solar Energy System or are the result of such installation and the restoration of the parcel of land or Lot to its original state prior to construction of the Solar Energy System to either of the following, at the landowner's (either the Initial Landowner or it's heirs, successors or assigns) option: (i) the condition such land or Lot was in prior to the development, construction and operation of the Solar Energy System, including but not limited to restoration, regrading, reseeding and replanting, or (ii) the condition designed by landowner (either the Initial Landowner or it's heirs, successors or assigns), with consultation and input from the Avon Town Board, which is ultimately approved by the Town Board by resolution and which may not require removal of certain landscaping, drainage, roadway or fencing improvements that were constructed or installed at the time of construction of the Solar Energy System. Any approval of the Town Board of such modified Decommissioning is at the Town Board's sole discretion. Should landowner elect to Decommission pursuant to (ii) above, prior to final approval by the Town Board, landowner shall execute a release and waiver/indemnification agreement benefitting the Town and releasing the Town from any and all potential liability associated with the design and implementation of the modified Decommissioning. Details of the expected Decommissioning activities and costs are to be described in the Decommissioning Plan and Decommissioning Agreement as may be required pursuant to this Article.

Decommissioning Agreement - A written agreement between Applicant, Initial Landowner and Town that sets forth the obligations of the Applicant (and its successor permit holder, owner or operator) and/or the Initial Landowner (and its successors and assigns) to properly decommission the Solar Energy System if the use of such system is discontinued, abandoned or becomes Inoperable.

Dwelling – See definitions for Dwelling, Dwelling - One-Family, Dwelling – Multifamily, Dwelling -Two Family and Dwelling Unit in §130-5.

Energy Storage – The process of accumulating energy in particular equipment or systems so that it can be used or distributed at a later time as needed.

Farmland of Statewide Importance – Land designated as “Farmland of Statewide Importance” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage and oilseed crops as determined by the appropriate state agency or agencies. Generally, this land includes areas of soils that nearly meet the requirements for Prime Farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some areas may produce as high a yield as Prime Farmland if conditions are favorable. Farmland of statewide importance may include tracts of land that have been designated for agriculture by State law.

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

Ground-Mounted Solar Energy System - Any Solar Energy System that is affixed to the ground, either directly or by support Structures or other mounting devices, where such Structure and mounting exists solely to support the Solar Energy System.

Initial Land Owner – The record fee title owner to the real property upon which a Solar Energy Systems is to be constructed, at the time such Solar Energy System is initially approved.

Inoperable – Not producing any electricity and cannot be made to work, or operating such that it produces 10% or less than the original nameplate capacity (at the time of original construction) of the Solar Energy System, for a period of 90 days.

Kilowatt (KW) – A unit of power equal to one thousand watts.

Leaseholder – Any person or entity, other than the owner, that has obtained any right(s) to the Solar Energy System and/or the land or Lot on which it is situated.

Mature Forest – Any stand of trees where the largest trees are 80+ years old and have an average trunk diameter of more than 8 inches when measured two (2) feet above their base.

Megawatt (MW) – A unit of power equal to one million watts.

Pollinator – Bees, birds, bats and 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 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 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 Farmlands 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 content, and few or no rocks. They are permeable to water and air. Prime Farmlands 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.

Roof-Mounted Solar Energy System - A Solar Energy System mounted on the roof of any legally permitted Building or Structure and wholly contained within the limits of the roof surface, intended to produce energy for onsite consumption or credit for onsite consumption for a building, One-Family Dwelling, Multi-Family Dwelling, Two-Family Dwelling, Business or Farm.

Roof-Mounted Solar Energy System - Commercial - A Solar Energy System mounted on the roof of any legally permitted Building or Structure and wholly contained within the limits of the roof surface, intended to produce energy for offsite sale to and consumption by one or more customers.

Safety Data Sheets – Written or printed materials concerning a hazardous chemical that is prepared in accordance with paragraph g. of 29 CFR 1910.1200 and Appendix D thereof.

Site Plan – The application materials, procedures and processes required by this Article XV and §130-45 E. of the Zoning Ordinance of the Town of Avon.

Solar Panel - A photovoltaic device capable of collecting and converting solar energy into electrical energy.

Solar Energy Equipment - Electrical energy devices, material, hardware, inverters, or other electrical equipment, wiring and conduit, not to include any type of Battery Energy Storage System, that are used with Solar Panels to produce and distribute electricity.

Solar Energy System - An electrical energy generating system composed of a combination of both Solar Panels and Solar Energy Equipment.

Special Use Permit – The procedures and processes required by this Article XV, §130-45 B. and §130-35 of the Zoning Ordinance of the Town of Avon.

Tilt – The vertical angle, where 0° minimum tilt means the panel is laying flat, and 90° maximum tilt means that it is vertical.

Town – The Town of Avon, Livingston County, New York.

Tree Survey – A written survey and report, prepared by a qualified, licensed professional, of all trees on any Lot, parcel or property proposed to be used for the siting of a Type 2 Solar Energy System, which identifies and locates each tree greater than six (6) inches in diameter at breast height (dbh), including the number of each species, the average diameter at breast height (dbh) for each species, a map of concentrations of trees on the project site and identification of which trees are proposed to be removed.

Type 1 Solar Energy System – A Ground-Mounted Solar Energy System intended to produce energy for onsite consumption or credit for onsite consumption for a Building, One-Family Dwelling, Multi-Family Dwelling, Two-Family Dwelling, Business or Farm. Said system shall be considered an Accessory Use (as defined in §130-5) and an accessory Structure, designed and intended to generate electricity solely for use on the premises, potentially for multiple tenants, through a distribution system that is not available to the public. Such Type 1 Solar Energy Systems may consist of Solar Energy Systems located on multiple sites or Lots within the jurisdictional limits of the Town of Avon, owned by the same person, entity, Farm or Business, but in no instance shall the aggregate yield on the combined systems equal more than 110% of the electricity consumed by such person, entity, Farm or Business within the previous 12 months, nor shall the aggregate coverage of the combined Solar Panels and Solar Energy Equipment across all parcels exceed twenty-five (25) acres. Type 1 Solar Energy Systems can be developed, operated and maintained by the owner of the property on which they are located, by a third-party lease agreement or through a power purchase agreement.

Type 2 Solar Energy System – A Ground-Mounted Solar Energy System intended to produce energy for offsite sale to and consumption by one or more customers.

§130-80. Zoning districts where allowed. Subject to the provisions of this Article, Solar Energy Systems shall be allowed as follows:

- A. Building Integrated Solar Energy Systems are allowed in all zoning districts upon issuance of a building permit based on special application materials supplied by the Town Building and Code Department.
- B. Building-Mounted Solar Energy Systems are allowed in all zoning districts upon issuance of a building permit based on special application materials supplied by the Town Building and Code Department.
- C. Rooftop-Mounted Solar Energy Systems are permitted in all zoning districts, subject to the following:
 - (1) The placement, construction and major modification of Roof-Mounted Solar Energy Systems shall only be permitted upon issuance of a building

permit (pursuant to §130-45 C.) based on special application materials supplied by the Town Building and Code Department.

- (2) Height Exemptions. Roof-Mounted Solar Energy Systems shall not benefit from height exemptions as set forth in §130-32.
- (3) Roof-Mounted Solar Energy System Design standards. Roof-Mounted Solar Energy System installations shall comply with the following design criteria:
 - (a) Solar Panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof's surface and highest edge of the Solar Energy System at any point. Solar panels not facing the front yard can be mounted at any angle relative to the roof's surface, but shall not exceed a maximum height of 18 inches from the surface of the roof to the highest edge of the Solar Energy System at any point.
 - (b) No part of a Roof-Mounted Solar Energy System shall extend above, beyond, or below the edge of the roof it is mounted to. Additionally, the Code Enforcement Officer may require, at his/her sole discretion, a minimum three (3) foot wide center walkway for safe access purposes.
 - (c) If feasible, Solar Energy Equipment shall be installed inside walls and attic spaces to reduce their visual impact.
 - (d) If feasible, Solar Panels affixed to a flat roof shall be placed below the line of sight from a public right-of-way.
- (4) Roof-Mounted Solar Energy Systems shall be exempt from Site Plan review under the Zoning Ordinance of the Town of Avon, but shall not be constructed without a building permit first being issued pursuant to §130-45 C. and this Article.
- (5) Prior to issuance of a building permit for a Roof-Mounted Solar Energy System, the Building and Code Department or Code Enforcement Officer, at their discretion, may require Applicant to provide a structural analysis signed by a Professional Engineer licensed in the State of New York, that demonstrates that the roof infrastructure of the Building intended to house the Roof-Mounted Solar Energy System is adequate in construction and/or condition to safely do so.

D. Commercial Building-Mounted Solar Energy Systems are allowed in the following zoning districts: Agricultural District (A), General Business District (B-1), Hamlet Commercial District (HCD), Light Industrial District (L-I), Combined General Business – Light Industrial District (B1-LI) and Restricted Business District. Commercial Building-Mounted Solar Energy Systems are subject to the requirements set forth in this Article, including Site Plan approval pursuant to §130-45 E., and are allowed only after the issuance of a Special Use Permit pursuant to §130-35. Applications for the installation of a Commercial Building-Mounted Solar Energy System shall be reviewed by the Code Enforcement Officer and referred, with comments, to the Town of Avon Planning Board (for Site Plan) and the Town of Avon Zoning Board of Appeals (for Special Use Permit) for their review and action, which can include approval, approval on conditions, or denial.

(1) Special Use Permit Application Requirements. For a Special Use Permit application, the Applicant shall submit to the Zoning Board of Appeals the Site Plan application provided to the Planning Board, any information required by §130-35 and the following documents and information:

- (a) If the location of the proposed project is to be leased (either building facade or surface and/or real property), proof of legal consent between all parties, specifying the use(s) of the leased area(s) for the duration of the project, including any signed lease agreement, easements and other agreements between the parties. Any lease agreement between the Applicant and an Initial Landowner shall conform to or be amended such that it conforms with the requirements for Applicant and Initial Landowner as set forth in the Decommissioning Agreement referenced in §130-80 D. (1) (i) i. below and the Property Operation and Maintenance Plan referenced in §130-80 D. (1) (e) below.
- (b) Plans and drawings for the Commercial Building-Mounted Solar Energy System, signed by a Professional Engineer, showing the proposed layout of the Solar Energy System, along with providing a description of all components, any non-building mounted improvements or infrastructure, any proposed clearing and grading of the lot(s) on which the structure housing a Commercial Building-Mounted Solar Energy System is situate, any anticipated or possible storm water runoff or erosion disturbances resulting from the placement of the Commercial Building-Mounted Solar Energy System, and utility lines (both above and below ground) on the site and adjacent to the site. The applicant shall also provide a structural analysis signed by a Professional Engineer, demonstrating that the structural adequacy of the building upon which a Commercial

Building-Mounted Solar Energy System is to be placed to support such system in a safe fashion.

- (c) Submitted plans and drawings shall show all property Lot lines and the location and dimensions of all existing Buildings or Structures and uses on any parcel within 500 feet of the outer perimeter of the Commercial Building-Mounted Solar Energy System.
- (d) Equipment specification sheets shall be provided for all Solar Panels, significant components(including Solar Panel backsheets), mounting systems, inverters or other Solar Energy Equipment that are to be installed, and shall also be included for enhancements or treatments to the same, including but not limited to coatings or treatments for anti-reflective or cleaners used for anti-fouling purposes. If the Solar Panels or Solar Energy Equipment actually installed is different from the equipment specification sheets provided at the time of application, Applicant (or its successors or assigns) shall provide the Building and Code Department with equipment specification sheets for the installed Solar Panels or Solar Energy Equipment prior to issuance of any Certificate of Compliance. The Building and Code Department may, in its sole discretion, engage the services of the Town's consulting engineer to review the new equipment specifications for the Solar Panels and/or Solar Energy Equipment actually installed, if different from the original proposed Solar Panels or Solar Energy Equipment. Any substantive differences between the originally proposed Solar Panels and/or Solar Energy Equipment and that which was installed may give rise to additional review and approval by the Planning Board and/or Zoning Board of Appeals upon recommendation of the Town's consulting engineer.
- (e) A Property Operation and Maintenance Plan which describes all ongoing or periodic maintenance of the Solar Energy System and upkeep of the property that houses such Commercial Building-Mounted Solar Energy System. Prior to obtaining a building permit and as a condition to issuance of any Special Use Permit, the Applicant and Initial Landowner must enter into a Property Operation and Maintenance Agreement with the Town that sets forth the obligations of the Applicant and/or the Initial Landowner to properly maintain the Solar Energy System and which shall include the following:
 - i. At completion of construction of the Solar Energy System, an inspection and written report by a New York State licensed Professional Engineer, indicating that the Solar

Energy System has been fully and properly constructed according to the approved plans and specifications submitted to and approved by the Planning Board and Zoning Board of Appeals. Such report shall include as-built drawings of all improvements that constitute the Solar Energy System. This report shall act as a baseline to assist with future inspections.

- ii. Biennial preventative maintenance site inspections that will include a representative from the permit holder, owner or operator of the Solar Energy System and Code Enforcement Officer (or his/her designated representative). Additional site inspections may be required by the Code Enforcement Officer after major storms or other weather-related events. Any deficiencies noted during such inspections shall be corrected by permit holder, owner or operator within thirty (30) days and a subsequent inspection to confirm correction of such deficiencies shall be made within ten (10) days thereafter.
- iii. Reports of annual safety inspections (including electrical inspections every 3 years) of the Solar Energy System, as well as quarterly reports of inspection of the security systems relating to such Solar Energy Systems.
- iv. A process to ensure proper removal and disposal of all Solar Panels and/or Solar Energy Equipment that becomes inoperable or is no longer being utilized, with the same being disposed of outside the jurisdictional limits of the Town of Avon, unless there is a properly certified and/or licensed recycling facility within the Town that recycles Solar Panels and Solar Energy Equipment. All non-functioning or non-utilized Solar Panels and/or Solar Energy Equipment shall be removed in accordance with this provision, within five (5) business days of becoming non-functioning or not being utilized. During the pendency of removal, all such Solar Panels and/or Solar Energy Equipment shall be secured and stored in such a fashion that prevents exposure to the elements and prevents possible leaching or contamination to any soils as a result of damage to or degradation of such Solar Panels and/or Solar Energy Equipment.
- v. An obligation that Applicant (or the successor permit holder, owner or operator of the Solar Energy System),

prior to installation, provide updated Equipment specification sheets and Safety Data Sheets for all Solar Panels, significant components, mounting systems, inverters and other Solar Energy Equipment that Applicant (or the successor permit holder, owner or operator of the Solar Energy System) desires to change, modify, replace or update from those that were originally approved and installed. Safety Data Sheets shall show the chemical composition, material composition and exposure limits of such proposed changes, modifications, replacements or updates to the Solar Panels and/or Solar Energy Equipment. The Building and Code Department may, in its sole discretion, engage the services of the Town's consulting engineer to review the new proposed equipment specification sheets and/or Safety Data Sheets for the Solar Panels and/or Solar Energy Equipment, if different from the original proposed Solar Panels or Solar Energy Equipment. Any substantive differences that are not like/kind replacements between the originally proposed Solar Panels and/or Solar Energy Equipment and that which Applicant (or the successor owner of the Solar Energy System) desires to install, may give rise to additional review and need for approval by the Planning board and/or Zoning Board of Appeals upon recommendation of the Town's consulting engineer.

- (f) Clearing, grading, storm water and erosion control plan. If deemed desirable by the Code Enforcement Officer, Planning Board, Zoning Board of Appeals or the Town's professional engineer or consultant, Applicant shall submit an engineered Storm Water and Erosion Control Plan to the Town of Avon Engineer for its review and approval which shall demonstrate that post development runoff, storm drainage and erosion will not be negatively impacted by placement of the Commercial Building-Mounted Solar Energy System on the site.
- (g) Parking and Truck Traffic. Applicant shall provide a designated parking area on the site of the Solar Energy System for employees of Applicant (or the successor permit holder, owner or operator of the Solar Energy System) to park when providing monitoring or maintenance of the Solar Energy System. All such areas shall be located as far from existing residential uses as practical. Additionally, the plans and drawings for a Commercial Building-Mounted Solar Energy System shall show adequate staging areas during the construction process to ensure that roadways are not

impacted by delivery of materials. The plans and drawings shall also show all areas where stock-piling of materials and equipment will take place during construction. All such areas shall be located as far from existing residential uses as practical. Applicant shall provide data on anticipated truck trips per day, including during peak material delivery periods, which shall also be provided to the Livingston County Highway Department and the New York State Department of Transportation.

- (h) Glare Analysis. Applicant shall provide a Glare Analysis from an appropriate professional consultant, using the Sandia National Laboratories Solar Glare Analysis Tool (SGHAT) model, that demonstrates that the Solar Energy System is designed and located in such a fashion so as to prevent reflective Glare toward any inhabited Buildings or Dwelling Units on adjacent properties, or within 1,000 feet of the Solar Energy System fence-line, roads or from impacting aircraft flight path as provided in Federal Aviation Guidance. The analysis shall include data between the hours of sunset and sunrise for each month of the year. If the Glare Analysis is to take into account Solar Panels that are to be coated with any type of anti-reflective or anti-glare coating, the analysis shall include information containing the product manufacturer, product name, method and frequency of application and chemical specification sheets for the coating anticipated to be used.
- (i) Decommissioning Plan. To ensure the proper removal of a Commercial Building-Mounted Solar Energy System after such improvements become Inoperable or have been Abandoned, a Decommissioning Plan shall be submitted as part of the application. The Decommissioning Plan shall contain a written and visual record of the original site condition (prior to installation of any Solar Energy Equipment) to facilitate complete remediation upon Decommissioning. The Decommissioning Plan must specify that after the Commercial Building-Mounted Solar Energy System is Inoperable or has been Abandoned, it shall be removed by the Applicant or any subsequent permit holder, owner or operator of the improvements and/or the Initial Landlord or subsequent owner of the property upon which the Commercial Building-Mounted Solar Energy System is placed. The Decommissioning Plan shall demonstrate how the removal of all infrastructure of the Commercial Building-Mounted Solar Energy System shall be conducted to return the parcel to its original state prior to construction. The Decommissioning Plan shall also include an expected timeline for execution and a cost estimate detailing the projected cost of executing the Decommissioning Plan, which is to

be prepared by a Professional Engineer or reputable contractor. Cost estimations shall take into account inflation and shall be based on the operating life expectancy of the Solar Energy System. Prior to obtaining a building permit and as a condition to issuance of any Special Use Permit, the Applicant and Initial Landowner must enter into a Decommissioning Agreement with the Town that complies with §130-82 of this Article and sets forth the following:

- i. The obligations of the Applicant (or any successor permit holder, owner or operator) and/or the Initial Landowner (or successor land owner) to properly decommission the Solar Energy System if the use of such system is discontinued, Abandoned or becomes Inoperable pursuant to §130-82 of this Article.
- ii. Said Decommissioning Agreement shall require the Applicant to provide an irrevocable financial security bond (or other form of surety such as, but not limited to, letters of credit, etc. that are acceptable to the Town of Avon at its discretion) for the removal of the Commercial Building-Mounted Solar Energy System, with Avon as the designated assignee/beneficiary, in an amount approved by the Planning Board which is equal to 150% of the estimated removal cost. The bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation as shown in the latest Consumer Price Index, or any other anticipated increase in costs of removal.
- iii. Each year after a Commercial Building-Mounted Solar Energy System has been constructed, and no later than sixty (60) days prior to the anniversary date of the issuance of the building permit for such Solar Energy System, the then permit holder, owner or operator of the Solar Energy System shall provide the Town of Avon with written proof that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above.
- iv. Notwithstanding the above, commencing on the date that the Solar Energy System becomes operational and until Decommissioning is completed, during calendar years that end either in “0” or “5” [for example “2025” or “2030”] (hereafter “Re-Set Dates”), Applicant or the then permit holder, owner or operator of such Solar Energy System shall

be required to submit, within sixty (60) days of the anniversary date of the Solar Energy System becoming operational, a new Decommissioning cost estimate, prepared by a Professional Engineer, showing the then estimated cost to fully Decommission the Solar Energy System as required by this Article. These periodic Re-Set Dates are intended to create a new baseline of expected cost for Decommissioning. The surety for the year immediately after the Re-Set Date shall be equal to 150% of the estimated removal cost as shown in the updated Decommissioning cost estimate. The bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal until the next Re-Set Date, at which time the process will commence anew. Should the then permit holder, owner or operator of the Solar Energy System not comply with the above obligation in a timely fashion, the Town shall apply a \$2,000.00 civil penalty to be paid by such owner. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional civil penalty in the amount of \$2,000.00. Continued failure to provide the required new Decommissioning cost estimate and updated bond as outlined above may result in revocation of the Special Use Permit by the Zoning Board of Appeals.

- v. The Decommissioning Agreement shall provide that Initial Landowner (or the successor landowner) shall be responsible for all obligations pursuant to the Decommissioning Agreement in the event Applicant (or the successor permit holder, owner or operator of the Solar Energy System) does not complete all obligations as required by the Decommissioning Agreement.
- vi. The Decommissioning Agreement shall be recorded at the office of the Livingston County Clerk, at the expense of Applicant, and shall be indexed as deed restrictions against the property upon which the Solar Energy System is constructed, with the Town as a benefitted party, so as to put all future owners of the subject real property on notice of the obligations contained in the Decommissioning Agreement.

- (j) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Avon Planning Board, Town of Avon Zoning Board of Appeals, Town Attorney or Code Enforcement Officer.
- (2) Special Use Permit and Site Plan Approval Standards.
- (a) Height. Commercial Building-Mounted Solar Energy Systems shall not be constructed in such a way that any portion of such system is higher than the highest point of the wall upon which it is attached.
 - (b) Distance from Building. Commercial Building-Mounted Solar Energy Systems shall not be constructed in such a way that any portion of the Solar Panels or Solar Energy Equipment projects more than 18 inches from the surface of the wall upon which they are attached.
 - (c) Fencing and Screening. All Solar Energy Equipment shall be securely enclosed or placed about the property so as to prevent unauthorized access. Warning signs with the permit holder's, owner's or operator's contact information shall be conspicuously placed and maintained to aid in preventing injury by unauthorized access. The Zoning Board of Appeals may require certain types of fencing to be used to provide adequate security and screening to mitigate potential visual impacts.
 - (d) If feasible, all Solar Energy Equipment shall be installed inside walls and/or attic spaces to reduce their visual impact.
 - (e) Glare. All Solar Panels shall have anti-reflective coatings(s) and shall not cause Glare. The permit holder, owner or operator of the Solar Energy System shall be required, not less than thirty (30) days prior to application or re-application, to provide the Town Code Enforcement Officer with the product manufacturer, product name, method and frequency of application and chemical specification sheets for any external surface coating products used during the lifetime of the Solar Energy System.
 - (f) Number of Commercial Building-Mounted Solar Energy Systems allowed per Lot. More than one Commercial Building-Mounted Solar Energy System may be permitted and allowed per Lot or parcel, regardless of Lot size.
 - (g) Any Commercial Building-Mounted Solar Energy System shall be accessible for all emergency service vehicles and personnel to the

satisfaction of the Livingston County Office of Emergency Management Services and local fire chief.

- (h) After completion of a Commercial Building-Mounted Solar Energy System, the Applicant shall provide a post- construction certificate from a Professional Engineer, registered in New York State, stating that the Solar Energy System complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans and in full compliance with this Article.
- (i) Compliance with regulatory agencies. The Applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county and local agencies having jurisdiction and approval powers related to the completion of a Commercial Building-Mounted Solar Energy System.
- (j) Any application under this Section shall meet the Site Plan requirements in §130-45 E. that, in the judgment of the Avon Town Planning Board, are applicable to the Solar Energy System being proposed.
- (k) The Planning Board shall be required to hold a public hearing relating to Site Plan for any Commercial Building-Mounted Solar Energy System.
- (l) Prior to determination or issuance of any Site Plan approval, Special Use Permit approval or other permit, all Commercial Building-Mounted Solar Energy System applications shall be subject to review pursuant to the New York State Environmental Quality Review Act (16 NYCRR 617). The Avon Planning Board and the Avon Zoning Board of Appeals shall conduct a coordinated review.
- (m) Time limit on completion. After receiving Site Plan approval and Special Use Permit approval of a Commercial Building-Mounted Solar Energy System, an Applicant shall obtain a Building Permit within twelve (12) months of such approvals or the approvals shall automatically terminate and be deemed null and void and be of no force an effect at law. The above time period may be extended by each of the approving Boards, at their sole discretion, upon a showing of good cause by Applicant. Additionally, the Applicant shall complete construction of an approved (Site Plan and Special Use Permit) Commercial Building-Mounted Solar Energy System within twenty-four (24) months of obtaining such approvals or the approvals shall automatically terminate and be deemed null and

void and be of no force an effect at law. The above time period may be extended by each of the approving Boards, at their sole discretion, upon a showing of good cause by Applicant. Should Applicant not complete construction within the above timeframe (and an extension not have been granted), such non-completion may be deemed Abandonment of the project and will thereafter require Decommissioning to the extent applicable.

- (n) General complaint process. During construction, the Code Enforcement Officer can issue a stop work order at any time for any violations of a Special Use Permit approval or condition, Site Plan approval or condition or building permit. Failure to abide by an issued stop work order may result revocation of Site Plan approval or Special Use Permit approval. After construction is complete, the permit holder, owner or operator of a Commercial Building-Mounted Solar Energy System shall establish a contact person, including name and telephone number for receipt of any complaint concerning any permit, approval conditions, maintenance, or operational requirements.

- (o) Inspections. Upon reasonable notice, the Town of Avon Code Enforcement Officer, or his or her designee, may enter a Lot on which a Commercial Building-Mounted Solar Energy System has been approved for the purpose of determining compliance with any requirements or conditions of this Article or any approval given or permit issued pursuant to this Article. Twenty-four (24) hours' notice by telephone to the permit holder, owner or operator or designated contact person shall be deemed reasonable notice. After construction is completed and the Solar energy System is operational, upon reasonable cause, at the discretion of the Town of Avon Code Enforcement Officer, or his or her designee, said Code Enforcement Officer (or his or her designee) may, upon reasonable notice, enter a Lot on which a Commercial Building-Mounted Solar Energy System Solar Energy System has been approved for the purpose of determining compliance with any requirements or conditions of this Article or any approval given or permit issued pursuant to this Article. Furthermore, a Commercial Building-Mounted Solar Energy System shall be inspected by a New York State licensed Professional Engineer approved by the Town of Avon, at any time, upon a determination by the Town' s Code Enforcement Officer, that damage to such system may have occurred, and a copy of the written inspection report shall be submitted to the Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder, owner or operator and shall be reimbursed to the Town of

Avon within thirty 30 days after delivery to the permit holder of an invoice substantiating such charges. Any failure to pay such reimbursable charges may result in revocation of any Special Use Permit granted. The Town of Avon reserves the right to levy all such un-reimbursed expenses onto the real property tax bill associated with the real property upon which the Commercial Building-Mounted Solar Energy System is located. Should the then permit holder, owner or operator of the Solar Energy System fail to reasonably cooperate with the above inspection obligations, the Town shall apply a \$2,000.00 civil penalty to be paid by such permit holder, owner or operator. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional civil penalty in the amount of \$2,000.00.

- (p) Construction hours. During initial construction or any major replacement of the Solar Panels or Solar Energy Equipment after initial construction, all construction activities shall be limited to Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. No construction activities shall take place on Sunday or any Federal holiday.
- (q) Until Decommissioning has been fully completed pursuant to this Article, each year, by January 20th, the permit holder, owner or operator of the Solar Energy System (or its agent) shall provide the Town Building and Zoning Department and Town Assessor with a notarized statement disclosing and certifying the actual produced amount of solar energy for the preceding year and a calculation showing such production as a percentage of the original nameplate capacity of the Solar Energy System. Such information is intended to allow Town officials to confirm whether the Solar Energy System is operating as originally designed or is “Inoperable” as defined in this Article, and/or whether such systems is exceeding its nameplate capacity.

E. Commercial Roof-Mounted Solar Energy Systems are allowed in the following zoning districts: Agricultural District (A), General Business District (B-1), Hamlet Commercial District (HCD), Light Industrial District (L-I), Combined General Business – Light Industrial District (B1-LI) and Restricted Business District. Commercial Roof-Mounted Solar Energy Systems are subject to the requirements set forth in this Article, including Site Plan approval pursuant to §130-45 E., and are allowed only after the issuance of a Special Use Permit

pursuant to §130-35. Applications for the installation of a Commercial Roof-Mounted Solar Energy System shall be reviewed by the Code Enforcement Officer and referred, with comments, to the Town of Avon Planning Board (for Site Plan) and the Town of Avon Zoning Board of Appeals (for Special Use Permit) for their review and action, which can include approval, approval on conditions, or denial.

- (1) Special Use Permit Application Requirements. For a Special Use Permit application, the Applicant shall submit to the Zoning Board of Appeals the Site Plan application provided to the Planning Board, any information required by §130-35 and the following documents and information:
 - (a) If the location of the proposed project is to be leased (either building facade or roof surface and/or real property), proof of legal consent between all parties, specifying the use(s) of the leased area(s) for the duration of the project, including any signed lease agreement, easements and other agreements between the parties. Any lease agreement between the Applicant and an Initial Landowner shall conform to or be amended such that it conforms with the requirements for Applicant and Initial Landowner as set forth in the Decommissioning Agreement referenced in § E. (1) (i) i. below and the Property Operation and Maintenance Plan referenced in §130-80 E. (1) (e) below.
 - (b) Plans and drawings for the Commercial Roof-Mounted Solar Energy System, signed by a Professional Engineer, showing the proposed layout of the Solar Energy System, along with providing a description of all components, any non-building mounted improvements or infrastructure, any proposed clearing and grading of the lot(s) on which the structure housing a Commercial Roof-Mounted Solar Energy System is situate, any anticipated or possible storm water runoff or erosion disturbances resulting from the placement of the Commercial Roof-Mounted Solar Energy System, and utility lines (both above and below ground) on the site and adjacent to the site. The applicant shall also provide a structural analysis signed by a Professional Engineer, demonstrating that the structural adequacy of the building and roof upon which a Commercial Roof-Mounted Solar Energy System is to be placed to support such system in a safe fashion.
 - (c) Submitted plans and drawings shall show all property Lot lines and the location and dimensions of all existing Buildings or Structures and uses on any parcel within 500 feet of the outer perimeter of the Commercial Roof-Mounted Solar Energy System.

- (d) Equipment specification sheets shall be provided for all Solar Panels, significant components (including Solar Panel backsheets), mounting systems, inverters or other Solar Energy Equipment that are to be installed, and shall also be included for enhancements or treatments to the same, including but not limited to coatings or treatments for anti-reflective or cleaners used for anti-fouling purposes. If the Solar Panels or Solar Energy Equipment actually installed is different from the equipment specification sheets provided at the time of application, Applicant (or its successors or assigns) shall provide the Building and Code Department with equipment specification sheets for the installed Solar Panels or Solar Energy Equipment prior to issuance of any Certificate of Compliance. The Building and Code Department may, in its sole discretion, engage the services of the Town's consulting engineer to review the new equipment specifications for the Solar Panels and/or Solar Energy Equipment actually installed, if different from the original proposed Solar Panels or Solar Energy Equipment. Any substantive differences between the originally proposed Solar Panels and/or Solar Energy Equipment and that which was installed may give rise to additional review and approval by the Planning Board and/or Zoning Board of Appeals upon recommendation of the Town's consulting engineer.
- (e) A Property Operation and Maintenance Plan which describes all ongoing or periodic maintenance of the Solar Energy System and upkeep of the property that houses such Commercial Roof-Mounted Solar Energy System. Prior to obtaining a building permit and as a condition to issuance of any Special Use Permit, the Applicant and Initial Landowner must enter into a Property Operation and Maintenance Agreement with the Town that sets forth the obligations of the Applicant and/or the Initial Landowner to properly maintain the Solar Energy System and which shall include the following:
- i. At completion of construction of the Solar Energy System, an inspection and written report by a New York State licensed Professional Engineer, indicating that the Solar Energy System has been fully and properly constructed according to the approved plans and specifications submitted to and approved by the Planning Board and Zoning Board of Appeals. Such report shall include as-built drawings of all improvements that constitute the Solar Energy System. This report shall act as a baseline to assist with future inspections.

- ii. Biennial preventative maintenance site inspections that will include a representative from the permit holder, owner or operator of the Solar Energy System and Code Enforcement Officer (or his/her designated representative). Additional site inspections may be required by the Code Enforcement Officer after major storms or other weather-related events. Any deficiencies noted during such inspections shall be corrected by permit holder, owner or operator within thirty (30) days and a subsequent inspection to confirm correction of such deficiencies shall be made within ten (10) days thereafter.
- iii. Reports of annual safety inspections (including electrical inspections every three (3) years) of the Solar Energy System, as well as quarterly reports of inspection of the security systems relating to such Solar Energy Systems.
- iv. A process to ensure proper removal and disposal of all Solar Panels and/or Solar Energy Equipment that becomes inoperable or is no longer being utilized, with the same being disposed of outside the jurisdictional limits of the Town of Avon, unless there is a properly certified and/or licensed recycling facility within the Town that recycles Solar Panels and Solar Energy Equipment. All non-functioning or non-utilized Solar Panels and/or Solar Energy Equipment shall be removed in accordance with this provision, within five (5) business days of becoming non-functioning or not being utilized. During the pendency of removal, all such Solar Panels and/or Solar Energy Equipment shall be secured and stored in such a fashion that prevents exposure to the elements and prevents possible leaching or contamination to any soils as a result of damage to or degradation of such Solar Panels and/or Solar Energy Equipment.
- v. An obligation that Applicant (or the successor permit holder, owner or operator of the Solar Energy System), prior to installation, provide updated Equipment specification sheets and Safety Data Sheets for all Solar Panels, significant components, mounting systems, inverters and other Solar Energy Equipment that Applicant (or the successor permit holder, owner or operator of the Solar Energy System) desires to change, modify, replace or update from those that were originally approved and installed. Safety Data Sheets shall show the chemical

composition, material composition and exposure limits of such proposed changes, modifications, replacements or updates to the Solar Panels and/or Solar Energy Equipment. The Building and Code Department may, in its sole discretion, engage the services of the Town's consulting engineer to review the new proposed equipment specification sheets and/or Safety Data Sheets for the Solar Panels and/or Solar Energy Equipment, if different from the original proposed Solar Panels or Solar Energy Equipment. Any substantive differences that are not like/kind replacements between the originally proposed Solar Panels and/or Solar Energy Equipment and that which Applicant (or the successor owner of the Solar Energy System desires to install, may give rise to additional review and need for approval by the Planning board and/or Zoning Board of Appeals upon recommendation of the Town's consulting engineer.

- (f) Clearing, grading, storm water and erosion control plan. If deemed desirable by the Code Enforcement Officer, Planning Board, Zoning Board of Appeals or the Town's professional engineer or consultant, Applicant shall submit an engineered Storm Water and Erosion Control Plan to the Town of Avon Engineer for its review and approval which shall demonstrate that post development runoff, storm drainage and erosion will not be negatively impacted by placement of the Commercial Roof-Mounted Solar Energy System on the site.
- (g) Parking and Truck Traffic. Applicant shall provide a designated parking area on the site of the Solar Energy System for employees of Applicant (or the successor permit holder, owner or operator of the Solar Energy System) to park when providing monitoring or maintenance of the Solar Energy System. All such areas shall be located as far from existing residential uses as practical. Additionally, the plans and drawings for a Commercial Roof-Mounted Solar Energy System shall show adequate staging areas during the construction process to ensure that roadways are not impacted by delivery of materials. The plans and drawings shall also show all areas where stock-piling of materials and equipment will take place during construction. All such areas shall be located as far from existing residential uses as practical. Applicant shall provide data on anticipated truck trips per day, including during peak material delivery periods, which shall also be provided to the Livingston County Highway Department and the New York State Department of Transportation.

- (h) Glare Analysis. Applicant shall provide a Glare Analysis from an appropriate professional consultant, using the Sandia National Laboratories Solar Glare Analysis Tool (SGHAT) model, that demonstrates that the Solar Energy System is designed and located in such a fashion so as to prevent reflective Glare toward any inhabited Buildings or Dwelling Units on adjacent properties or within 1,000 feet of the Solar Energy System fence-line, roads or from impacting aircraft flight path as provided in Federal Aviation Guidance. The analysis shall include data between the hours of sunset and sunrise for each month of the year. If the Glare Analysis is to take into account Solar Panels that are to be coated with any type of anti-reflective or anti-glare coating, the analysis shall include information containing the product manufacturer, product name, method and frequency of application and chemical specification sheets for the coating anticipated to be used.
- (i) Decommissioning Plan. To ensure the proper removal of a Commercial Roof-Mounted Solar Energy System after such improvements become Inoperable or have been Abandoned, a Decommissioning Plan shall be submitted as part of the application. The Decommissioning Plan shall contain a written and visual record of the original site condition (prior to installation of any Solar Energy Equipment) to facilitate complete remediation upon decommissioning. The Decommissioning Plan must specify that after the Commercial Roof-Mounted Solar Energy System is Inoperable or has been Abandoned, it shall be removed by the Applicant or any subsequent permit holder, owner or operator of the improvements, or the Initial Landowner or then owner of the property (on which the Solar Energy System is constructed) at the time Decommissioning is required. The Decommissioning plan shall demonstrate how the removal of all infrastructure of the Commercial Roof-Mounted Solar Energy System and all Solar Energy Equipment shall be conducted to return the structure (s) and parcel housing such system to its original state prior to construction. The plan shall also include an expected timeline for execution and a cost estimate detailing the projected cost of executing the Decommissioning Plan, which is to be prepared by a Professional Engineer or reputable contractor. Cost estimations shall consider inflation and shall be based on the operating life expectancy of the system. Prior to obtaining a building permit and as a condition to issuance of any Special Use Permit, the Applicant and Initial Landowner must enter into a Decommissioning Agreement with the Town that complies with §130-82 of this Article and sets forth the following:

- i. The obligations of the Applicant, successor permit holder, owner or operator and/or the Initial Landowner, or success land owner to properly decommission the Solar Energy System if the use of such system is discontinued, Abandoned or becomes Inoperable pursuant to §130-82 of this Article.
- ii. Said Decommissioning Agreement shall require the Applicant to provide an irrevocable financial security bond (or other form of surety such as, but not limited to, letters of credit, etc. that are acceptable to the Town of Avon at its discretion) for the removal of the Commercial Roof-Mounted Solar Energy System, with Avon as the designated assignee/beneficiary, in an amount approved by the Planning Board which is equal to 150% of the estimated removal cost. The bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal and shall be based on the latest Consumer Price Index.
- iii. Each year after a Commercial Roof-Mounted Solar Energy System has been constructed, and no later than sixty (60) days prior to the anniversary date of the issuance of the building permit for such Solar Energy System, the then permit holder, owner or operator of the Solar Energy System shall provide the Town of Avon with written proof that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above.
- iv. Notwithstanding the above, commencing on the date that the Solar Energy System becomes operational and until Decommissioning is completed, during calendar years that end either in “0” or “5” [for example “2025” or “2030”] (hereafter “Re-Set Dates”), Applicant or the then /permit holder, owner or operator for such Solar Energy System shall be required to submit, within sixty (60) days of the anniversary date of the Solar Energy System becoming operable, a new Decommissioning cost estimate, prepared by a Professional Engineer, showing the then estimated cost to fully Decommission the Solar Energy System as required by this Article. These periodic Re-Set Dates are intended to create a new baseline of expected cost for Decommissioning. The surety for the year immediately after the Re-Set Date shall be equal to 150% of the estimated removal cost as

shown in the updated Decommissioning cost estimate. The bond or surety shall provide for an annual increase in the amount of the surety based on the then current Consumer Price Index, to compensate for the cost of inflation or any other anticipated increase in costs of removal until the next Re-Set Date, at which time the process will commence anew. Should the then permit holder, owner or operator of the Solar Energy System not comply with the above obligation in a timely fashion, the Town shall apply a \$2,000.00 civil penalty to be paid by such owner. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional civil penalty in the amount of \$2,000.00. Continued failure to provide the required new Decommissioning cost estimate and updated bond as outlined above may result in revocation of the Special Use Permit by the Zoning Board of Appeals.

- v. The Decommissioning Agreement shall provide that Initial Landowner (or the successor and/or assigns of Initial Landowner) shall be responsible for all obligations pursuant to the Decommissioning Agreement in the event Applicant (or the successor permit holder, owner or operator of the Solar Energy System) does not complete all obligations as required by the Decommissioning Agreement.
- vi. The Decommissioning Agreement shall be recorded at the office of the Livingston County Clerk, at the expense of Applicant, and shall be indexed as deed restrictions against the property upon which the Solar Energy System is constructed, with the Town as a benefitted party, so as to put all future owners of the subject real property on notice of the obligations contained in the Decommissioning Agreement.

- (j) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Avon Planning Board, Town of Avon Zoning Board of Appeals, Town Attorney or Code Enforcement Officer.

(2) Special Use Permit and Site Plan Approval Standards.

- (a) Height and Angle. Commercial Roof-Mounted Solar Energy Systems shall be constructed such that Solar Panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof's surface and highest edge of the Solar Energy System at any point. Solar panels not facing the front yard can be mounted at any angle relative to the roof's surface, but no portion of the Solar Energy System shall exceed a maximum height of 18 inches from the surface of the roof to the highest edge of the Solar Energy System at any point.
- (b) No part of a Commercial Roof-Mounted Solar Energy System shall extend above, beyond, or below the edge of the roof it is mounted to. Additionally, the Code Enforcement Officer may require, at his/her sole discretion, a minimum three (3) foot wide center walkway for safe access purposes.
- (c) If feasible, Solar Energy Equipment shall be installed inside walls and attic spaces to reduce their visual impact.
- (d) Glare. All Solar Panels shall have anti-reflective coatings(s) and shall not cause Glare. The permit holder, owner or operator of the Solar Energy System shall be required, not less than thirty (30) days prior to application or re-application, to provide the Town Code Enforcement Officer with the product manufacturer, product name, method and frequency of application and chemical specification sheets for any external surface coating products used during the lifetime of the Solar Energy System.
- (e) If feasible, Solar Panels affixed to a flat roof shall be placed below the line of sight from a public right-of-way.
- (f) Fencing and Screening. All Solar Energy Equipment shall be securely enclosed or placed about the property so as to prevent unauthorized access. Warning signs with the permit holder, owner or operator's contact information shall be conspicuously placed and maintained to aid in preventing injury by unauthorized access. The Zoning Board of Appeals may require certain types of fencing to be used to provide adequate security and screening to mitigate potential visual impacts.
- (g) Number of Commercial Roof-Mounted Solar Energy Systems allowed per Lot. More than one Commercial Roof-Mounted Solar Energy System may be permitted and allowed per Lot or parcel, regardless of Lot size.

- (h) Any Commercial Roof-Mounted Solar Energy System shall be accessible for all emergency service vehicles and personnel to the satisfaction of the Livingston County Office of Emergency Management Services and local fire chief.
- (i) After completion of a Commercial Roof-Mounted Solar Energy System, the Applicant shall provide a post- construction certificate from a Professional Engineer, registered in New York State stating that the project complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans and in full compliance with this Article.
- (j) Compliance with regulatory agencies. The Applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county and local agencies having jurisdiction and approval powers related to the completion of a Commercial Roof-Mounted Solar Energy System.
- (k) Any application under this Section shall meet the Site Plan requirements in §130-45 E. that, in the judgment of the Avon Town Planning Board, are applicable to the Solar Energy System being proposed.
- (l) The Planning Board shall be required to hold a public hearing relating to Site Plan for any Commercial Roof-Mounted Solar Energy System.
- (m) Prior to determination or issuance of any Site Plan approval, Special Use Permit approval or building permit, all Commercial Roof-Mounted Solar Energy System applications shall be subject to review pursuant to the New York State Environmental Quality Review Act (16 NYCRR 617). The Avon Planning Board and the Avon Zoning Board of Appeals shall conduct a coordinated review.
- (n) Time limit on completion. After receiving Site Plan approval and Special Use Permit approval of a Commercial Roof-Mounted Solar Energy System, an Applicant shall obtain a Building Permit within twelve (12) months of such approvals or the approvals shall automatically terminate and be deemed null and void and be of no force an effect at law. The above time period may be extended by each of the approving Boards, at their sole discretion, upon a showing of good cause by Applicant. Additionally, the Applicant shall complete construction of an approved (Site Plan and Special Use Permit) Commercial Roof-Mounted Solar Energy System within twenty-four (24) months of obtaining such approvals or the

approvals shall automatically terminate and be deemed null and void and be of no force an effect at law. The above time period may be extended by each of the approving Boards, at their sole discretion, upon a showing of good cause by Applicant. Should Applicant not complete construction within the above timeframe (and an extension not have been granted), such non-completion may be deemed Abandonment of the project and will thereafter require Decommissioning to the extent applicable.

- (o) General complaint process. During construction, the Code Enforcement Officer can issue a stop work order at any time for any violations of a Special Use Permit approval or condition, Site Plan approval or condition or building permit. After construction is complete, the permit holder, owner or operator of a Commercial Roof-Mounted Solar Energy System shall establish a contact person, including name and telephone number for receipt of any complaint concerning any permit, approval, maintenance, or operational requirements. Failure to abide by an issued stop work order shall be grounds for revocation of Site Plan approval and Special Use Permit approval.

- (p) Inspections. Upon reasonable notice, the Town of Avon Code Enforcement Officer, or his or her designee, may enter a Lot on which a Commercial Roof-Mounted Solar Energy System has been approved for the purpose of determining compliance with any requirements or conditions of this Article or any approval given or permit issued pursuant to this Article. Twenty-four (24) hours' notice by telephone to the permit holder, owner or operator or designated contact person shall be deemed reasonable notice. After construction is completed and the Commercial Roof-Mounted Solar energy System is operational, upon reasonable cause, at the discretion of the Town of Avon Code Enforcement Officer, or his or her designee, said Code Enforcement Officer (or his or her designee) may, upon reasonable notice, enter a Lot on which a Energy System has been approved for the purpose of determining compliance with any requirements or conditions of this Article or any approval given or permit issued pursuant to this Article. Furthermore, a Commercial Roof-Mounted Solar Energy System shall be inspected by a New York State licensed Professional Engineer approved by the Town of Avon at any time, upon a determination by the Town' s Code Enforcement Officer, that damage to such system may have occurred, and a copy of the written inspection report shall be submitted to the Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder, owner or

operator and shall be reimbursed to the Town of Avon within thirty 30 days after delivery to the permit holder, owner or operator of an invoice substantiating such charges. Any failure to pay such reimbursable charges may result in revocation of any Special Use Permit granted. The Town of Avon reserves the right to levy all such un-reimbursed expenses onto the real property tax bill associated with the real property upon which the Commercial Roof-Mounted Solar Energy System is located. Should the then permit holder, owner or operator of the Solar Energy System fail to reasonably cooperate with the above inspection obligations, the Town shall apply a \$2,000.00 civil penalty to be paid by such permit holder, owner or operator. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional civil penalty in the amount of \$2,000.00.

- (q) Construction hours. During initial construction or any major replacement of the Solar Panels or Solar Energy Equipment after initial construction, all construction activities shall be limited to Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. No construction activities shall take place on Sunday or any Federal holiday.
- (r) Until Decommissioning has been fully completed pursuant to this Article, each year, by January 20th, the permit holder, owner or operator of the Solar Energy System (or its agent) shall provide the Town Building and Zoning Department and Town Assessor with a notarized statement disclosing and certifying the actual produced amount of solar energy for the preceding year and a calculation showing such production as a percentage of the original nameplate capacity of the Solar Energy System. Such information is intended to allow Town officials to confirm whether the Solar Energy System is operating as originally designed or “Inoperable” as defined in this Article, and/or whether such systems is exceeding its nameplate capacity.

F. Type 1 Solar Energy Systems are allowed as accessory uses and/or structures in all zoning districts except Planned Unit Development and Planned Development Districts. Type 1 Solar Energy Systems which are intended to be located in a Planned Unit Development must comply with the requirements of §130-17 and Type 1 Solar Energy Systems which are intended to be located in Planned

Development Districts must comply with the requirements of §130-18, before the same are permitted.

- (1) The placement, construction and major modification of a Type 1 Solar Energy System shall only be permitted upon issuance of building permit (pursuant to §130-45 C.) based on special application materials supplied by the Town Building and Code Department.
- (2) Height. Type 1 Solar Energy Systems shall not exceed a maximum height of fifteen (15) feet as measured from the highest point of any Solar Panel (oriented at maximum tilt) or Solar Energy Equipment to the ground directly beneath it.
- (3) Setbacks. Type 1 Solar Energy Systems setbacks shall be twice the standard setbacks for Accessory Buildings or Structures within the zoning district they are located, but in no event shall any such setback be less than twenty (20) feet.
- (4) Coverage. Type 1 Solar Energy Systems ground coverage shall not exceed the allowable total surface or area coverage for Accessory Buildings or Structures within the zoning district in which it is located and in no event shall the combination of all Accessory Buildings and Structures located on the premises exceed 20% coverage of the entire area of such parcel. For purposes of this provision, coverage shall be calculated based upon the total surface area of the Solar Panels at minimum Tilt.
- (5) Glare. All Solar Panels shall have anti-reflective coatings(s) and shall not cause Glare.
- (6) All Type 1 Solar Energy Systems located in One-Family Residential Districts (R-1), One- and Two-Family Residential Districts (R-2), Multiple-Family Residential Districts (R-3), Limited Residential Districts (LR) and Residential Hamlet Mixed Use Districts (RH-M) shall be installed in the side or rear yard.
- (7) All applications for Type 1 Solar Energy Systems for businesses (including Multi-Family Dwellings) or Farms, to the extent permitted by law, shall be subject to Site Plan review pursuant to §130-45 E. Applications for Type 1 Solar Energy Systems for use on residential parcels may be subject to Site Plan review at the sole discretion of the Code Enforcement Officer.
- (8) Pursuant to 6 NYCRR 617.5, Type 1 Solar Energy Systems to be used on One- and Two-Family Dwelling parcels shall be deemed to be Type 2 Actions for purposes of review under the New York State Environmental

Quality Review Act (16 NYCRR 617). All other Type 1 Solar Energy Systems shall be deemed to be Unlisted Actions pursuant to the New York State Environmental Quality Review Act.

- G. Type 2 Solar Energy Systems are permitted only in Agricultural Districts (A) and are subject to the requirements set forth in this Section, including Site Plan approval pursuant to §130-45 E., and are allowed only after the issuance of a Special Use Permit pursuant to §130-35. Applications for the installation of a Type 2 Solar Energy System shall be reviewed by the Code Enforcement Officer and referred, with comments, to the Town of Avon Planning Board (for Site Plan) and the Town of Avon Zoning Board of Appeals (for Special Use Permit) for their review and action, which can include approval, approval on conditions, or denial.
- (1) Notwithstanding the above, Type 2 Solar Energy Systems shall not be permitted on any portion of a Lot, parcel or property that:
 - (a) Is listed on either the New York State or National Registry of Historic Places.
 - (b) Exhibits evidence of clear-cutting or significant deforestation of more than one (1) acre of Mature Forest within five (5) years of application submission.
 - (c) Requires the removal or disturbance of a contiguous one (1) acre or more of Mature Forest to accommodate the placement and construction of the Solar Energy System or any component thereof. The determination of the amount of Mature Forest proposed to be removed or disturbed shall be assessed: (i) at the time the application is filed and (ii) retroactively to a period of time five (5) years prior to the submission of an application for a Type 2 Solar Energy System.
 - (d) Is within a Special Flood Hazard Area as defined by the NYS Department of Environmental Conservation or a floodplain as established by the Federal Emergency Management Agency.
 - (e) Is within lands that are restricted or burdened by any form of conservation easement.
 - (2) Special Use Permit Application Requirements. For a Special Use Permit application, the Applicant shall submit to the Zoning Board of Appeals the Site Plan application provided to the Planning Board, any information required by §130-35 and the following documents and information:
 - (a) Proof that upon submission of an application for a Type 2 Solar Energy System, Applicant has placed a 4 foot by 8 foot sign at the

proposed entrance to the site upon which a Type 2 Solar Energy System is to be constructed. Such sign shall remain erected until all conditions of approvals have been fully satisfied and a Certificate of Compliance has been issued. The sign shall indicate that an application for a Type 2 Solar Energy System is pending with the Town of Avon Planning Board and Zoning Board of Appeals. The sign shall also include the address and tax map number of the property(s) to be developed, name and contact information of the Applicant as well as a synopsis of the proposed Solar Energy System improvements, including the approximate size of area to be covered by panels and proposed nameplate capacity.

In addition to the sign required above, Applicant shall provide proof of publication with the Livingston County News and the Genesee Valley Penny Saver (Livingston County edition) of a notice of the proposed Type 2 Solar Energy System development which is to run for a period of four (4) consecutive weeks immediately after submission of the application for Site Plan and Special Use Permit approval, such notice stating the same information contained on the sign required above.

- (b) If the property or Lot of the proposed Solar Energy System is to be leased, proof of legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements between the parties. Any lease agreement between the Applicant and an Initial Landowner shall conform to or be amended such that it conforms with the requirements for Applicant and Initial Landowner as set forth in the Decommissioning Agreement referenced in § G. (2) (p) i. below. Applicant shall be required to provide, as part of the application, any Lease Agreement, easements and other agreements between itself and Initial Landowner or any owner of property contiguous to the land upon which the Solar Energy System (or any component thereof, including access ways or utility lines) shall be constructed. If any of the above documents are amended after initial submission, Applicant shall provide the modified document to the Building and Zoning Department as a supplement to its application within ten (10) days of such amendment becoming binding on Applicant.
- (c) Plans and drawings for the Type 2 Solar Energy System signed by a Professional Engineer showing the proposed layout of the Solar Energy System along with providing a description of all Solar Panels, Solar Energy Equipment, components, existing vegetation, any proposed clearing and grading of the Lot(s) involved, any anticipated or possible storm water or erosion disturbances, and

utility lines (both above and below ground) on the site and adjacent to the site.

- (d) Submitted plans and drawings shall show all property lot lines and the location and dimensions of all existing Buildings or Structures and uses on any parcel within 1,000 feet of the outer perimeter fence line of the Type 2 Solar Energy System. In addition to the required plans and drawings noted above, Applicant shall provide aerial photographs of all areas within 1,000 feet of the outer perimeter fence line of the Type 2 Solar Energy System.
- (e) Pre-Development Site Condition Record – Applicant shall provide a written and visual record of the pre-development site condition (which shall include the site condition prior to any logging/timber harvest or clearing of land in anticipation of the development of a Solar Energy System), which must be verified as being complete by the Building and Zoning Department, to facilitate full and proper remediation of the site upon Decommissioning.
 - i. As part of this record, Applicant shall provide an analysis of pre-construction soil samples before any soil disturbance, with such samples collected and analyzed by a third-party vendor/lab certified as an Environmental Laboratory Approval Program (“ELAP”) laboratory, pursuant to the New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (or similar successor document of the Department of Agriculture and Markets) that are in effect as of the date of sampling. Such samples shall be taken from various locations on the property on which the Solar Energy System is to be located and are specifically intended to demonstrate the pre-development condition and properties of the soils to ensure that full and proper remediation of the site occurs upon Decommissioning.
 - ii. Baseline soil samples are to be analyzed for the following constituents: EPA Method 8260B Volatile Organic Compounds (VOCs) EPA Method 8270C Semi-Volatile Organic Compounds (SVOCs), Target Analyte List (TAL) Metals by EPA Methods 6010/6020/7470/7471, ASTM D2974 Percent Organic Material, ASTM D4548 Cation Exchange Capacity, SM 4500 PE Phosphorus/Phosphate, EPA 6010 Potassium/Potash, and SM 4500 N-C, and SM 4500 NO3H Nitrogen (TKN+NO3+NO2). VOCs, SVOCs

and TAL Metals results shall be compared to the limits in 6 NYCRR Part 375. Such baseline soil samples shall also be analyzed for the presence of Pfas chemicals and any other compound or materials listed in the Safety Data Sheets for the Solar Panels and Solar Energy Equipment proposed to be used.

- iii. As part of this record, Applicant shall provide an analysis of pre-construction water samples before any soil disturbance, with such samples collected and analyzed by a third-party vendor/lab certified as an Environmental Laboratory Approval Program (“ELAP”) laboratory, pursuant to the New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (or similar successor document of the Department of Agriculture and Markets) that are in effect as of the date of sampling. Such samples shall be taken from all streams, creeks and water channels within 1,000 feet of the anticipated outside fence of the Solar Energy System and are specifically intended to demonstrate the pre-development condition and properties of such streams, creeks and water channels to ensure that full and proper remediation of the site occurs upon Decommissioning.
- iv. Baseline water samples are to be analyzed for the following constituents: EPA Method 8260B Volatile Organic Compounds (VOCs) EPA Method 8270C Semi-Volatile Organic Compounds (SVOCs), Target Analyte List (TAL) Metals by EPA Methods 6010/6020/7470/7471, ASTM D2974 Percent Organic Material, ASTM D4548 Cation Exchange Capacity, SM 4500 PE Phosphorus/Phosphate, EPA 6010 Potassium/Potash, and SM 4500 N-C, and SM 4500 NO3H Nitrogen (TKN+NO3+NO2). VOCs, SVOCs and TAL Metals results shall be compared to the limits in 6 NYCRR Part 375. Such baseline soil samples shall also be analyzed for the presence of Pfas chemicals and any other compound or materials listed in the Safety Data Sheets for the Solar Panels and Solar Energy Equipment proposed to be used.
- (f) Equipment specification sheets and Safety Data Sheets shall be provided for all Solar Panels, significant components (including Solar Panel backsheets), mounting systems, inverters and other Solar Energy Equipment that are to be installed, and shall also be

included for enhancements or treatments to the same, including but not limited to coatings or treatments for anti-reflective or cleaners used for anti-fouling purposes. Safety Data Sheets shall show the chemical composition, material composition and exposure limits of such Solar Panels and Solar Energy Equipment. If after approval, but prior to construction, Applicant desires to install Solar Panels or Solar Energy Equipment that has different equipment specification sheets and/or different Safety Data Sheets than those provided at the time of application, Applicant (or its successors or assigns) shall provide the Building and Code Department with equipment specification sheets and/or Safety Data Sheets for the revised Solar Panels or Solar Energy Equipment prior to commencement of construction. The Building and Code Department may, in its sole discretion, engage the services of the Town's consulting engineer to review the new equipment specification sheets and/or Safety Data Sheets for the Solar Panels and/or Solar Energy Equipment if different from the original proposed and approved Solar Panels or Solar Energy Equipment. Any substantive differences between the originally proposed and approved Solar Panels and/or Solar Energy Equipment, and that which Applicant desires to install, may give rise to additional review and need for approval by the Planning board and/or Zoning Board of Appeals upon recommendation of the Town's consulting engineer or attorney.

- (g) A Property Operation and Maintenance Plan which describes all ongoing or periodic maintenance of the Type 2 Solar Energy System and property upkeep during the life of the Solar Energy System. Prior to obtaining a building permit and as a condition to issuance of any Special Use Permit, the Applicant and Initial Landowner must enter into a Property Operation and Maintenance Agreement with the Town that sets forth the obligations of the Applicant and successor permit holder, owner or operator and/or the Initial Landowner and successor landowner to properly maintain the Solar Energy System and which shall include the following:
 - i. At completion of construction of the Solar Energy System, an inspection and written report by a New York State licensed Professional Engineer, indicating that the Solar Energy System has been fully constructed according to the approved plans and specifications submitted to and approved by the Planning Board and Zoning Board of Appeals. Such report shall include as-built drawings of all improvements that constitute the Solar Energy System. This report shall act as a baseline to assist with future inspections.

- ii. Mowing and trimming of the areas inside the fence under and around the Solar Panels and other Solar Energy Equipment. If pollinators are being used under the Solar Panels, such mowing and trimming requirement may be waived by the Zoning Board of Appeals. Said Plan shall also provide for mowing of the pinched areas outside the fence (between the outside of the fence and the boundaries of the Applicant's leasehold interest) at least two (2) times each year, once by the end of June and once by the end of September.
- iii. Maintenance of visual mitigation, buffering and screening elements, including the replacement as needed of any plantings during the life of the Solar Energy System. The Planning Board and/or Zoning Board of Appeals may, at its discretion require a renewable bond or letter of credit to be provided by Applicant (and successor permit holder, owner or operator), which will be maintained during the life of the Solar Energy System, to ensure that all visual mitigation, buffering and screening elements are maintained.
- iv. Maintenance of any trees planted, as required by §130-80 G. (3) (f), to replace trees which were removed or cut to accommodate the Solar Energy System or any component thereof.
- v. Details of anticipated use of pesticides, herbicides and other chemicals for vegetative abatement and/or maintenance. The Plan shall demonstrate that the use of any pesticide, herbicide or other chemical will be in compliance with all local, state and federal regulations and shall further demonstrate that alternatives to chemical treatments have been prioritized to the extent possible. The use of pesticides, herbicides and other chemicals is discouraged. Rather, Applicant shall endeavor to utilize native plantings that will not require use of pesticides, herbicides and other chemicals to be properly maintained.
- vi. Biennial preventative maintenance site inspections that will include a representative from the permit holder, owner or operator of the Solar Energy System and Code Enforcement Officer (and/or his/her designated representative, which may include the Town's consulting engineer). Any deficiencies noted during such inspections shall be corrected by permit holder, owner or operator

within thirty (30) days and a subsequent inspection to confirm correction of such deficiencies shall be made within ten (10) days thereafter. Additional site inspections may be required by the Code Enforcement Officer after major storms or other weather-related events. Any cost to the Town associated with the above inspections shall be billed to the permit holder, owner or operator of the Solar Energy System at the hourly rate for the employee or consultant providing such services for the benefit of the Town and shall be reimbursed to the Town within thirty (30) days of delivery of an invoice. Failure of the permit holder, owner or operator to timely pay such invoice will result in the cost being attached to the real property tax bill for the Lot that the Solar Energy System is built on.

- vii. Reports of annual safety inspections (including electrical inspections every 3 years) of the Solar Energy System, as well as quarterly reports of inspection of the security systems relating to such Solar Energy Systems. The same shall be provided to the Town of Avon Building and Code Department within ten (10) business days of completion.
- viii. Starting one year after completion of the construction of a Type 2 Solar Energy System, reports of annual Unmanned Ariel Vehicle (UAV)/drone inspections of the Solar Energy System, including thermal imaging. The same shall be provided to the Town of Avon Building and Zoning Department within ten (10) business days of completion.
- ix. A process to ensure proper removal and proper disposal of all Solar Panels and/or Solar Energy Equipment that become Inoperable or are no longer being utilized, with the same being disposed of outside the jurisdictional limits of the Town of Avon, unless there is a properly certified and/or licensed recycling facility within the Town that recycles Solar Panels and Solar Energy Equipment. All proposed recycling, removal, disposal, containment and hauling procedures for Solar Panels and Solar Energy Equipment shall be in compliance with the most current local, state and federal regulations. All waste disposal sites and certified recyclers intended to be used for maintenance upgrades and removals to Solar Panels and Solar Energy Equipment shall be identified. All non-functioning or non-utilized Solar Panels and/or Solar Energy Equipment shall be removed in accordance with this provision, within five

(5) business days of becoming non-functioning or not being utilized. During the pendency of removal, all such Solar Panels and/or Solar Energy Equipment shall be secured and stored in such a fashion that prevents exposure to the elements and prevents possible leaching or contamination to any soils as a result of damage to or degradation of such Solar Panels and/or Solar Energy Equipment.

- x. Provisions relating to ongoing water sample testing (as initially required in baseline testing pursuant to §130-80 G. (2) (e) iii. and iv.) and soil sample testing (as initially required in baseline testing pursuant to §130-80 G. (2) (e) i. and ii.) to take place not less than every three (3) years after completion of construction of the Solar Energy System, the results of which are to be provided to the Town of Avon Building and Code Department within sixty (60) days prior to the anniversary date of the issuance of the building permit for the Solar Energy System. Such water and soil samples are to be analyzed for the following constituents: EPA Method 8260B Volatile Organic Compounds (VOCs) EPA Method 8270C Semi-Volatile Organic Compounds (SVOCs), Target Analyte List (TAL) Metals by EPA Methods 6010/6020/7470/7471, ASTM D2974 Percent Organic Material, ASTM D4548 Cation Exchange Capacity, SM 4500 PE Phosphorus/Phosphate, EPA 6010 Potassium/Potash, and SM 4500 N-C, and SM 4500 NO₃H Nitrogen (TKN+NO₃+NO₂). VOCs, SVOCs and TAL Metals results shall be compared to the limits in 6 NYCRR Part 375. Such soil samples shall also be analyzed for the presence of Pfas chemicals and any other compound or materials listed in the Safety Data Sheets for the Solar Energy Equipment constructed or placed on site. Such test results shall be compared to the pre-construction soil sample analysis referenced in §130-80 G. (3) (e) (Pre-Development Site Conditions Record) above. Should the then permit holder, owner or operator of the Solar Energy System not comply with the above obligation in a timely fashion, the Town shall apply a \$2,000.00 civil penalty to be paid by such permit holder, owner or operator. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional civil penalty in the amount of \$2,000.00. Continued failure

to provide the required water and soil testing as outlined above may result in revocation of the Site Plan approval issued by the Planning Board or the Special Use Permit approval issued by the Zoning Board of Appeals. Any ongoing water or soil samples that demonstrate the presence of contamination above any as shown in the initial baseline samples taken pursuant to §130-80 G. (2) (e), and that can be attributed to the Solar Energy System, shall require permit holder, owner or operator of the Solar Energy System to effectuate immediate clean-up and hazard mitigation to restore the contaminated water and/or soil to its pre-development conditions and to prevent further contamination. Failure of permit holder, owner or operator to remove such sources of contamination and mitigate all areas impacted by such contamination within ninety (90) days of discovery shall result in revocation of the Site Plan approval issued by the Planning Board and the Special Use Permit approval issued by the Zoning Board of Appeals and will trigger Decommissioning as set forth in this Article. The above time-frame for removing such sources of contamination and mitigating all impacted areas may be extended by the Avon Town Board, at its sole discretion, upon a showing of good cause for such extension request. The Town of Avon may additionally pursue any other remedies available under the law.

- xi. An obligation that Applicant (or the successor permit holder, owner or operator of the Solar Energy System), prior to installation, provide updated Equipment specification sheets and Safety Data Sheets for all Solar Panels, significant components, mounting systems, inverters and other Solar Energy Equipment that Applicant (or the successor permit holder, owner or operator of the Solar Energy System) desires to change, modify, replace or update from those that were originally approved and installed. Safety Data Sheets shall show the chemical composition, material composition and exposure limits of such proposed changes, modifications, replacements or updates to the Solar Panels and/or Solar Energy Equipment. The Building and Code Department may, in its sole discretion, engage the services of the Town's consulting engineer to review the new proposed equipment specification sheets and/or Safety Data Sheets for the Solar Panels and/or Solar Energy Equipment to be replaced, if different from the original proposed Solar Panels or Solar

Energy Equipment. Any substantive differences that are not like/kind replacements between the originally proposed Solar Panels and/or Solar Energy Equipment and that which Applicant (or the successor permit holder, owner or operator of the Solar Energy System desires to install, may give rise to additional review and need for approval by the Planning Board and/or Zoning Board of Appeals upon recommendation of the Town's consulting engineer.

- xii. Provisions relating to drainage improvements and/or plans that obligate Applicant and any successor permit holder, owner or operator of the Solar Energy System to maintain all improvements or drainage infrastructure throughout the life of the Solar Energy System, which at the discretion of the Planning Board and Zoning Board of Appeals, may include a bond or letter of credit associated with such maintenance. If at any time post construction, any drainage improvements or drainage infrastructure fails to perform as originally designed and/or intended, and consistent or regular drainage problems occur, Applicant or the then successor permit holder, owner or operator shall be obligated to engineer and implement a revised drainage plan and/or infrastructure or facilities at its own cost. Upon receipt of a written notice of violation, the Applicant or then successor permit holder, owner or operator shall have sixty (60) days from receipt to present a proposed engineered plan to the Building and Code Department that demonstrates additional drainage measures or changes to the existing drainage system that will remediate the violation. Said plan will be reviewed by the Town's consulting engineer, the cost of which shall be reimbursed to the Town by Applicant or the then successor permit holder, owner or operator of the Solar Energy System. Upon approval of the proposed plan by the Town's consulting engineer, the Planning Board and Zoning Board of Appeals, Applicant or the then successor permit holder, owner or operator shall have ninety (90) days to implement the approved plan, which such timeframe may be extended at the sole discretion of the Planning Board and Zoning Board of Appeals. Any changes to the existing drainage system may require approval of the Planning Board and Zoning Board of Appeals for amendment to the Site Plan and Special Use Permit, respectively. Failure to cure any noticed violations with regard to drainage within 180 days after notice of violation is received (absent one or more

extensions being granted) shall be cause for revocation of existing Site Plan and Special Use Permit approvals and will trigger decommissioning as provided for in §130-82.

- xiii. If a Type 2 Solar Energy System is proposed to be developed as an Agrivoltaic Dual Use, Applicant shall provide a plan that shall include the following:
 - a. Identification and contact information of the responsible entity with regard to such Agrivoltaic Dual Use.
 - b. Any special maintenance requirement, including frequency and scope, that may be associated with the Agrivoltaic Dual Use.
 - c. Yearly reporting to the Town as to the productivity success of the agricultural aspect of the Agrivoltaic Dual Use.
 - d. Provisions for an agricultural monitor to ensure that agricultural uses within the project area are active, maintained and productive. The cost of such agricultural monitor shall be borne by the Applicant or successor permit holder, owner or operator.

- xiv. Applicant shall provide an emergency operations plan that includes the following:
 - a. Procedures for safe shutdown, de-energizing and/or isolation of Solar Energy Equipment, Solar Panels and all systems under emergency equipment to reduce the risk of fire, electric shock and personal injuries, and for safe start-up following cessation of emergency conditions.
 - b. Procedures for inspection and testing of associated alarms, interlocks and controls.
 - c. Response considerations similar to a Safety Data Sheet, that will address response safety concerns and extinguishment when a Safety Data Sheet is not required.

- d. Other procedures as determined necessary by the Town to provide for the safety of Town officials, residents, neighboring properties, and emergency responders.
 - e. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures (see also §130-81 E.).
 - f. Procedures for emergency site access, including fire department staging areas, lockbox locations and E-Stop locations.
 - g. Such plan shall also document and verify that the Solar Energy System and its associated controls and safety systems are in compliance with the Uniform Code.
- (h) Wetland Delineation Plan. Applicant shall submit a wetland delineation plan and associated correspondence from the New York State Department of Environmental Conservation (“DEC”) and United States Army Corps of Engineers (“USACOE”)(which shall include a request for an Approved Jurisdictional Determination for any disturbance in a federally recognized wetland that makes the final determination available to the Town of Avon) of wetlands and/or streams that are located on the Lot, parcel or property that is being developed with a Type 2 Solar Energy System. The Applicant shall provide a Stream and Wetland Remediation Plan for any unintended disturbances to regulated water features that occurs during construction. If any permits are required from the DEC or USACOE, final approval of the Site Plan by the Planning Board and final approval of the Special Use Permit by the Zoning Board of Appeals shall be contingent on permit approval from the DEC or USACOE.
- (i) Clearing, grading, storm water and erosion control plan. Applicant shall submit an engineered Storm Water and Erosion Control Plan to the Town’s consulting engineer for its review and approval, which shall demonstrate that post development runoff, storm drainage and erosion will not be negatively impacted by placement of the Type 2 Solar Energy System on the site. As noted in §130-80 G (2) (g) xii above, Applicant and any successor permit holder, owner or operator shall be required to maintain all drainage improvements and shall implement necessary changes or improvements, should the originally approved and installed improvements fail to perform as intended.

- (j) Tree Survey. Applicant shall submit a Tree Survey, prepared by a licensed professional, for the Lot, parcel or property upon which a Type 2 Solar Energy System will be constructed. The Tree Survey will include aerial photos with tree species located on photos. If the proposed Solar Energy System does not impact trees or Mature Forrest due to existing conditions, the Planning Board may, at its sole discretion, waive the Tree Survey requirement.

- (k) Parking and Truck Traffic. Applicant shall provide a designated parking area on the site of the Solar Energy System for employees of Applicant (or the successor permit holder, owner or operator of the Solar Energy System) to park when providing monitoring or maintenance of the Solar Energy System. All such areas shall be located as far from existing residential uses as practical. Additionally, the plans and drawings for a Type 2 Solar Energy System shall show adequate staging areas during the construction process to ensure that roadways are not impacted by delivery of materials. The plans and drawings shall also show all areas in which stock-piling of materials and equipment will take place during construction. All such areas shall be located as far from existing residential uses as practical. Applicant shall provide data on anticipated truck trips per day, including during peak material delivery periods, which shall also be provided to the Livingston County Highway Department and the New York State Department of Transportation. Applicant shall also provide maps showing the intended delivery routes and likely time and duration of deliveries on such routes. Prior to issuance of a building permit, Applicant shall be required to enter into a Road Use Agreement in a form acceptable to the Town Highway Superintendent, County Highway Superintendent and Town Attorney, which will require Applicant to provide an appropriate bond or letter of credit as set forth in §130-81 P.

- (l) Noise Study. Applicant shall provide a noise study of the impacts of construction and operation of the proposed Solar Energy System. Said study shall reference any then existing regulations or suggested industry or development standards put out by the NYS Office of Renewable Energy Siting. Such study shall analyze the projected noise levels for both daytime and nighttime periods generated by the Solar Energy System and all collector substation equipment relative to all surrounding Dwellings.
 - i. Excepting during construction, such noise study shall demonstrate that the operational noise levels of the Solar Energy System and collector substation equipment will not

exceed pre-existing noise levels, for both daytime and nighttime, relative to all surrounding Dwellings, Accessory Structures containing a Dwelling Unit and property lines, including both participating and non-participating properties.

- (m) Landscape Architect Plan for Visual Mitigation. Applicant shall provide a site-specific visual mitigation and buffering plan prepared by a New York State licensed Landscape Architect that is appropriate to the scale of the Solar Energy System and is sensitive to the proximity of impacted property owners.
 - i. Rather than contain a volume of trees intended to block the view of the Solar Energy System as an opaque screen, the plan shall contain a variety of landscaping measures that soften and minimize the visual impact associated with the development. A preferred visual mitigation plan will fit into the context of the existing landscape, mimicking the hedgerows, woodlots and roadside vegetation currently present around the Solar Energy System site. The plan should also focus on enhancements to the area around the Solar Energy System that provide appropriate visual variety to draw the observer's eye away from the geometric regularity of the Solar Energy System to something that is appealing and has year-round effectiveness. The use of berms combined with plantings and fencing may be appropriate as determined by the Planning Board and Zoning Board of Appeals, depending on site conditions. Wildflower "meadowscaping" and use of vines on fencing are encouraged, if appropriate. A visual rendering of the preferred type of Landscape Architect Plan for Visual Mitigation may be adopted from time to time by the Planning Board and Zoning Board of Appeals and shall be deemed a part of these regulations.
 - ii. Such plan will include a list of all intended buffering/landscaping materials to be used and shall be designed to promote sustainability, diversity and visual variety. The plan shall include a mixture of plant species, sizes/heights, deciduous and evergreen trees and/or shrubs and shall be noted in detail on a landscaping plan that shall be approved by the Planning Board and the Zoning Board of Appeals, upon review and recommendation by its own licensed Landscape Architect. The Planning Board and the Zoning Board of Appeals shall provide for enhanced

screening and buffering for Type 2 Solar Energy Systems that are placed adjacent to residential zoning districts, areas containing residential uses or abut a public road.

- iii. Such plan shall also reference anticipated maintenance requirements as set forth in the Property Operation and Maintenance Plan required by section §13080 G. (2) (g) ii. – v. above.
- (n) Viewshed/Line of Site Analysis of Landscape Plan for Visual Mitigation. Applicant shall provide a viewshed/line-of-site analysis, prepared by a New York State licensed Landscape Architect with scaled color visual renderings overlaid on actual photographs to demonstrate the adequacy of proposed buffering, screening and mitigation at the completion of construction of the Solar Energy System, and similar visual renderings of the projected maturation of the buffering/screening during all four (4) seasons at five (5) years and ten (10) years after completion of the Solar Energy System. The Planning and/or Zoning Board of Appeals may require the above viewshed/line-of-site analysis and scaled color visual renderings from multiple angles or perspectives as it/they deem appropriate.
- (o) Glare Analysis. Applicant shall provide a Glare Analysis from an appropriate professional consultant, using the Sandia National Laboratories Solar Glare Analysis Tool (SGHAT) model, that demonstrates that the Solar Energy System is designed and located in such a fashion so as to prevent reflective Glare toward any inhabited Buildings or Dwelling Units on adjacent properties or within 1,000 feet of the Solar Energy System fence-line, roads or from impacting aircraft flight path as provided in Federal Aviation Guidance. The analysis shall include data between the hours of sunset and sunrise for each month of the year. If the Glare Analysis is to take into account Solar Panels that are to be coated with any type of anti-reflective or anti-glare coating, the analysis shall include information containing the product manufacturer, product name, method and frequency of application and chemical specification sheets for the coating anticipated to be used.
- (p) Decommissioning Plan. To ensure the proper removal of Type 2 Solar Energy Systems after such improvements become Inoperable or have been Abandoned, a Decommissioning Plan shall be submitted as part of the application. The Decommissioning Plan must specify that after the Type 2 Solar Energy System is Inoperable or has been Abandoned, it shall be removed by the

Applicant or any subsequent permit holder, owner or operator of the improvements and/or the subsequent permit holder, owner or operator of the property upon which the Type 2 Solar Energy System is placed. The plan shall demonstrate how the removal and disposal of all Solar Panels, Solar Energy Equipment, Structures, equipment and accessories, including but not limited to subsurface foundations and all other material, concrete, wiring, cabling, debris, contaminated soil, chemical residue or chemical compounds that were installed in connection with a Solar Energy System or are the result of such installation will be conducted and the restoration of the parcel of land or Lot to its original state prior to construction of the Solar Energy System to either of the following, at the landowner's (either the Initial Landowner or it's heirs, successors or assigns) option: (i) the condition such land or Lot was in prior to the development, construction and operation of the Solar Energy System, including but not limited to restoration, regrading, reseeding and replanting, or (ii) the condition designed by landowner (either the Initial Landowner or it's heirs, successors or assigns), with consultation and input from the Avon Town Board, which is ultimately approved by the Town Board by resolution and which may not require removal of certain landscaping, drainage, roadway or fencing improvements that were constructed or installed at the time of construction of the Solar Energy System. Any approval of the Town Board of such modified Decommissioning is at the Town Board's sole discretion. The plan should further state that should landowner elect to Decommission pursuant to (ii) above, prior to final approval by the Town Board, landowner shall execute a release and waiver/indemnification agreement benefitting the Town and releasing the Town from any and all potential liability associated with the design and implementation of the modified Decommissioning. The plan shall also include an expected timeline for execution and a cost estimate detailing the projected cost of executing the Decommissioning Plan, which is to be prepared by a Professional Engineer or reputable contractor. Cost estimations shall take into account inflation and shall be based on the operating life expectancy of the system. Prior to obtaining a building permit and as a condition to issuance of any Special Use Permit, the Applicant and Initial Landowner must enter into a Decommissioning Agreement with the Town that complies with §130-82 of this Article and sets forth the following:

- i. The obligations of the Applicant and the successor permit holder, owner or operator or the Initial Landowner and its successor in title to properly decommission the Solar Energy System if the use of such system is discontinued, Abandoned

or becomes Inoperable pursuant to section 130-82 of this Article.

- ii. Said Decommissioning Agreement shall require the Applicant to provide an irrevocable financial security bond (or other form of surety such as, but not limited to, letters of credit, etc. that are acceptable to the Town of Avon at its discretion) for the removal of the Type 2 Solar Energy System, with Avon as the designated assignee/beneficiary, in an amount approved by the Planning Board which is equal to 150% of the estimated removal cost. The bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal and shall be based on the then current Consumer Price Index.
- iii. Each year after a Type 2 Solar Energy System has been constructed, and no later than sixty (60) days prior to the anniversary date of the issuance of the building permit for such Solar Energy System, the then owner/permit holder for the system shall provide the Town of Avon with written proof that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above. Should the then owner of the Solar Energy System not comply with the above obligation in a timely fashion, the Town shall apply a \$2,000.00 civil penalty to be paid by such permit holder, owner or operator. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional civil penalty in the amount of \$2,000.00. Continued failure to provide written proof that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above may result in revocation of the Site Plan approval issued by the Planning Board and the Special Use Permit approval issued by the Zoning Board of Appeals.
- iv. Notwithstanding the above, commencing on the date that the Solar Energy System becomes operational and until

Decommissioning is completed, during calendar years that end either in “0” or “5” [for example “2025” or “2030”] (hereafter “Re-Set Dates”), Applicant or the then permit holder, owner or operator for such Solar Energy System shall be required to submit, within sixty (60) days of the anniversary date of the Solar Energy System becoming operable, a new Decommissioning cost estimate, prepared by a Professional Engineer, showing the then estimated cost to fully Decommission the Solar Energy System as required by this Article. These periodic Re-Set Dates are intended to create a new baseline of expected cost for Decommissioning. The surety for the year immediately after the Re-Set Date shall be equal to 150% of the estimated removal cost as shown in the updated Decommissioning cost estimate. The bond or surety shall provide for an annual increase in the amount of the surety based on the Consumer Price Index to compensate for the cost of inflation or any other anticipated increase in costs of removal until the next Re-Set Date, at which time the process will commence anew. Should the then permit holder, owner or operator of the Solar Energy System not comply with the above obligation in a timely fashion, the Town shall apply a \$2,000.00 civil penalty to be paid by such permit holder, owner or operator. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional civil penalty in the amount of \$2,000.00. Continued failure to provide the required new Decommissioning cost estimate and updated bond as outlined above may result in revocation of the Site Plan approval issued by the Planning Board or the Special Use Permit approval issued by the Zoning Board of Appeals.

- v. The Decommissioning Agreement shall provide that Initial Landowner (and the successor and/or assigns of Initial Landowner) shall be responsible for all obligations pursuant to the Decommissioning Agreement, in the event Applicant (or the successor permit holder, owner or operator of the Solar Energy System) does not complete all obligations as required by the Decommissioning Agreement.
- vi. The Decommissioning Agreement shall be recorded at the office of the Livingston County Clerk, at the expense of Applicant and shall be indexed as deed restrictions against

the property upon which the Solar Energy System is constructed, with the Town as a benefitted party, so as to put all future owners of the subject real property on notice of the obligations contained in the Decommissioning Agreement.

- (q) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Avon Planning Board, Town of Avon Zoning Board of Appeals, Town Attorney or Code Enforcement Officer.
- (r) At its sole discretion, the Town of Avon Planning Board and/or the Town of Avon Zoning Board of Appeals may refer an application for a Type 2 Solar Energy System to one or more private consultants for review to assist such Board in properly fulfilling its duties. Such consultants may include a professional engineer, attorney, professional landscape architect, planning consultant or other specialist.
 - i. All expenses incurred by the Town (through either Board) for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same.
 - ii. At its discretion and at any time during the application process, either Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Upon request of Applicant, the Board requiring the deposit shall provide a general estimate of anticipated consulting services to be provided and estimated costs for the same. However, any such estimate of services or costs related to such services shall not in any way restrict the level of reimbursement ultimately required to be made by Applicant.
 - iii. It is the specific intention of this section that all expenses relating to professional consulting services rendered to the Town or any of its Boards, relating to an application for development of a Solar Energy System, be borne by the Applicant and not the taxpayers of the Town.
 - iv. Any such deposit shall be held in a non-interest-bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such

consultants.

- v. Prior to the Town making any payment or withdrawal from such account, the Town shall provide Applicant with notice of such intended payment and documentation supporting such payment. Applicant shall have the right, within five (5) business days from receipt of such notice, to protest any account withdrawal or payment to a consultant which it contends is not reasonably necessary or is not reasonable in amount. Such protest shall be in writing and shall detail the basis of Applicant's objection. The Town Board shall thereafter have thirty (30) days to provide its determination with regard to Applicant's objection, which shall be provided to Applicant in writing, which such determination shall be final and binding.
 - vi. Should such deposit be depleted prior to final approval, either Board, or the Building and Code Department may require that additional monies be deposited with the Town before further review of the application will continue.
 - vii. A reviewing Board may suspend indefinitely, the review of any application, as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants. Any such suspension shall supersede any Town of New York State law, rule or regulation relating to the timing of issuance of decisions for such applications.
- (s) If a Type 2 Solar Energy System is proposed to be developed on land that is or could be in agricultural production, Applicant shall demonstrate how the proposed development complies with the then current guidelines as may be established by the New York State Department of Agriculture and Markets relating to Construction Mitigation for Agricultural Lands.
 - (t) The Applicant shall be required to facilitate one or more site visits as deemed necessary or desirable by the Planning Board and/or Zoning Board of Appeals.
- (3) Special Use Permit and Site Plan Approval Standards.
- (a) Height. Type 2 Solar Energy Systems shall not exceed a maximum height of fifteen (15) feet as measured from the highest point of any

Solar Panel (oriented at maximum tilt) or Solar Energy Equipment, to the ground directly beneath it.

- (b) **Setbacks.** Type 2 Solar Energy Systems shall be sited to create a front setback of no less than 200 feet (measured from the fence-line of the Solar Energy System) from the right-of-way line of any public or private roadways and setbacks of 100 feet (measured from the fence-line of the Solar Energy System) from all side and rear property lines. In addition, no Type 2 Solar Energy System shall be located closer than 400 feet (measured from the fence-line of the Solar Energy System) from any Dwelling or Accessory Building containing a Dwelling Unit that is located on another parcel. The above stated side and rear property setback restrictions and those setbacks relating to a Dwelling or Accessory Building containing a Dwelling Unit, may be waived on any contiguous parcel (to that parcel upon which the Solar Energy System is being developed) owned by a participating landowner that owns the parcel upon which the subject Solar Energy System is being constructed. The above waiver shall not apply to any contiguous parcels that are not owned by the same landowner that owns the land upon which the Solar Energy System is placed.
- (c) **Wiring.** All wiring and wiring conduits between Solar Panels and between Solar Panels and any inverters or other Solar Energy Equipment shall be buried below the surface of the ground.
- (d) **Lot/Parcel Size.** Type 2 Solar Energy Systems shall be located on parcels with a minimum lot size of 25 acres.
- (e) **Lot/Parcel Coverage.** Type 2 Solar Energy Systems shall not exceed 25 acres of coverage on Lots that are 40 acres or more in size. On Lots that are less than 40 acres in size, Type 2 Solar Energy Systems coverage shall not exceed 60% of the total parcel size. It is the intent of this restriction to protect the valuable resource and benefits of Prime Farmland and Farmland of Statewide Importance and it is the express intention of the Town of Avon that no variance or hardship request be granted to permit increased coverage by Type 2 Solar Energy Systems on Prime Farmland and/or Farmland of Statewide Importance by any board or commission or other agency having legal authority to consider and grant such a variance or hardship request. The coverage area shall be determined by the area covered by the perimeter of the Solar Energy System at minimum tilt and shall not include required fencing or access roads.

- (f) **Tree Removal.** In addition to the prohibition of removing more than one (1) acre of Mature Forest contained in §130-80 G. (1) (c) above, if an Applicant proposes to remove or cut any tree being greater than six (6) inches in diameter at breast height (dbh) during construction of the Solar Energy System, Applicant shall plant trees of a minimum four (4) inches in diameter at breast height, at a ratio of 2:1 – two (2) trees for each tree removed or cut. The requirement to plant trees on a 2:1 ratio shall be a condition of Site Plan approval. The exact species of the replacement trees and location of planting shall be determined by the Planning Board. If a tree with a diameter of six (6) inches or less is removed in connection with the project, a tree of similar size and species must be replaced on-site. Smaller trees of similar species may replace the removed tree at a ratio of two-to-one. In addition, any tree proposed to be removed or cut in connection with the Solar Energy System shall be shown on the Tree Survey, and the location of each replacement tree shall also be shown on the Applicant’s Site Plan, together with a table showing the size and species of the proposed replacement trees.
- i. Applicant shall include a tree replanting mitigation plan for the replacement of any trees, including the species, quantity and locations of the trees to be replaced in the site pursuant to this section. The replanting mitigation plan shall specify the minimum height of the replacement trees to be installed. Twelve (12) months after all plantings in the replanting mitigation plan have been installed, Applicant shall provide the Planning Board with a written report regarding the survival of the trees, with all trees in need of replacement noted. Trees that have died shall be replaced within ninety (90) days (weather permitting) of the Building and Zoning Department’s written demand specifying the trees that must be replaced by the Applicant or then owner of the Solar Energy System. All expense associated with the replacement of trees shall be borne by the Applicant or then permit holder, owner or operator of the Solar Energy System. Should the then permit holder, owner or operator owner of the Solar Energy System not comply with the above obligation in a timely fashion, the Town shall apply a \$2,000.00 civil penalty to be paid by such owner. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional

civil penalty in the amount of \$2,000.00. Continued failure to maintain replanted trees as required above may result in revocation of the Special Use Permit by the Zoning Board of Appeals.

- ii. As a condition of any approval of Site Plan or Special Use Permit for a Type 2 Solar Energy System, Applicant shall provide the Town with a five (5) year bond, or at the discretion of the Planning Board and Zoning Board of Appeals, a letter of credit in an amount to be established by the Planning Board and Zoning Board of Appeals. The bond or letter of credit is required to ensure compliance with the requirements of this section and to ensure survival of all replacement trees.
 - iii. Trees used for screening and landscape buffering purposes may count towards on-site tree replacement requirements under this section.
- (g) Wetlands. The siting of any Type 2 Solar Energy System, shall, to the greatest extent practicable, avoid disturbance to wetlands (New York State and Federal, including buffer zones), streams, creeks and significant drainage ditches.
- i. Applicants shall provide justification for any proposed disturbance that cannot be avoided and shall be required to provide appropriate mitigation measures as determined by the Planning Board and/or Zoning Board of Appeals.
 - ii. For any disturbance in a federally recognized wetland, Applicant shall provide an Approved Jurisdictional Determination from the USACOE that makes the final determination available to the Town of Avon.
 - iii. In no event shall more than 10% of the total developed area of any Type 2 Solar Energy Systems impact or disturb wetlands, streams, creeks or significant drainage ditches.
 - iv. If any permits are required from the DEC or USACOE, final approval of the Site Plan by the Planning Board and final approval of the Special Use Permit by the Zoning Board of Appeals shall be contingent on permit approval from the DEC or USACOE.
- (h) Glare. All Solar Panels shall have anti-reflective coatings(s) and shall not cause Glare. The permit holder, owner or operator of the

Solar Energy System shall be required, not less than thirty (30) days prior to application or re-application, to provide the Town Code Enforcement Officer with the product manufacturer, product name, method and frequency of application and chemical specification sheets for any external surface coating products used during the lifetime of the Solar Energy System.

- (i) Fencing and Screening. All Type 2 Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed and maintained on the entrance and perimeter of the fencing. Fence design and installation shall be animal friendly and allow for small animal migration. The Zoning Board of Appeals may require certain types of fencing to be used to provide adequate security and screening to mitigate potential visual impacts. The fencing and the Solar Energy System may be required to be further screened by landscaping to avoid adverse aesthetic impacts. All buffering/landscaping and visual mitigation materials shall be designed to promote sustainability, diversity and visual variety, which shall include a mixture of plant species, sizes/heights, deciduous and evergreen trees and/or shrubs and shall be noted in detail on a landscaping plan that shall be approved by the Planning Board and/or the Zoning Board of Appeals. The Planning Board and/or the Zoning Board of Appeals shall provide for enhanced screening and buffering for Type 2 Solar Energy Systems that are placed adjacent to residential zoning districts, areas containing residential parcels or abut a public road. Refer to §130 – 80 G. (2) (m) above.
- (j) Number of Type 2 Solar Energy Systems allowed per Lot. Only one Type 2 Solar Energy System shall be allowed per Lot or parcel, regardless of Lot size.
- (k) Recent Subdivision of Lot/Parcel. In order to prevent circumvention of the size and coverage restrictions set forth above, when considering such restrictions, the Planning Board and Zoning Board of Appeals shall consider the Lot or parcel to be the largest configuration of the physical area where the Type 2 Solar Energy System is being proposed that has existed as a separate Lot or parcel (with its own Tax Identifier Map Parcel Number) in the official tax records of the Town of Avon within the ten (10) years immediately preceding the application seeking approval for such Type 2 Solar Energy System. This provision is specifically intended to prevent an owner of land from subdividing such land into smaller parcels that would permit siting of multiple Type 2

Solar Energy Systems on what would have otherwise been a Lot or parcel that was restricted to one Type 2 Solar Energy System that would not exceed 25 acres of coverage.

- (l) **Vegetation and Habitat.** Type 2 Solar Energy System Applicants shall develop and provide a written vegetation management plan (which shall be approved by the Planning Board and/or the Zoning Board of Appeals) to implement and maintain native, non-invasive plants and vegetation under and around the Solar Panels, such plantings to provide foraging habitat beneficial to game birds, songbirds and Pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, owners/developers shall use native, non-invasive plant species and seed mixes. See to §130 – 80 G. (2) (m) above.
- (m) **Agrivoltaic Dual Use.** A Type 2 Solar Energy System may exist contemporaneously to agricultural uses, so the Lot is used for energy generation and farming on a concurrent basis. Agrivoltaic Dual Use allows for the co-usage of lands under and around installed Solar Energy Panels and Solar Energy Equipment for grazing or growing of crops that can be grown and harvested without damaging or interfering with the Solar Energy System. While allowing design flexibility to support varying agricultural activities without unnecessary costs, a Solar Energy System designed for such dual use should result in less than 50% shading of the land underlying the Solar Energy System.
- (n) Any Type 2 Solar Energy System shall be accessible for all emergency service vehicles and personnel to the satisfaction of the Livingston County Office of Emergency Management Services Director and local fire department Chief.
- (o) After completion of a Type 2 Solar Energy System, the Applicant shall provide a post-construction certificate from a Professional Engineer registered in New York State, certifying that the Type 2 Solar Energy System complies with this Article, all applicable codes and industry practices, and has been constructed and is operating according to the design plans.
- (p) **Compliance with regulatory agencies.** The Applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county and local agencies having jurisdiction and approval powers related to the completion of a Type 2 Solar Energy System.

- (q) Any application under this Section shall meet the Site Plan requirements in §130-45 E. that, in the judgment of the Avon Town Planning Board, are applicable to the system being proposed.
- (r) The Planning Board shall be required to hold a public hearing relating to Site Plan for any Type 2 Solar Energy System.
- (s) Prior to determination or issuance of any permit, all Type 2 Solar Energy System applications shall be subject to review pursuant to the New York State Environmental Quality Review Act (6 NYCRR 617). All applications (Site Plan and Special Use Permit) for approval of a Type 2 Solar Energy System shall be deemed to be Type I Actions for purposes of compliance with the New York State Environmental Quality Review Act. The Planning Board and/or Zoning Board of Appeals has the authority, pursuant to 6 NYCRR 617.4 (a) (1) and (2), to classify such actions in addition to the list established by such statute. The Planning Board and the Zoning Board of Appeals shall conduct a coordinated review. Such review shall not be completed or closed out, and a final determination of significance made, until after the review of the application has been completed.
- (t) The development and operation of a Type 2 Solar Energy System shall not have a significant adverse impact on fish, wildlife or plant species or their critical habitats, or other significant habitats identified by the Town of Avon or other federal or state regulatory agencies. The Planning Board and the Zoning Board of Appeals may impose conditions on the approval of any Site Plan or Special Use Permit under this Article to enforce the standards referred to in this Article or to discharge its obligations under the State Environmental Quality Review Act.
- (u) Time limit on completion. After receiving Site Plan approval and Special Use Permit approval of a Type 2 Solar Energy System, an Applicant shall obtain a building permit within twelve (12) months of such approvals, or the approvals shall automatically terminate and be deemed null and void. The above time period may be extended by each of the approving Boards, at their sole discretion, upon a showing of good cause by Applicant. Additionally, the Applicant shall complete construction of an approved (Site Plan and Special Use Permit) Type 2 Solar Energy System within twenty (24) months of obtaining such approvals or the approvals shall automatically terminate and be deemed null and void and be of no force an effect at law. The above time period may be extended by each of the approving Boards, at their sole discretion, upon a

showing of good cause by Applicant. Should Applicant not complete construction within the above timeframe (and an extension not have been granted), such non-completion may be deemed Abandonment of the project and will thereafter require Decommissioning to the extent applicable.

- (v) General complaint process. During construction, the Code Enforcement Officer can issue a stop work order at any time for any violations of a Special Use Permit approval or condition, Site Plan approval or condition or building permit or any other failure to comply with any aspect of the requirements of this Article. After construction is complete, the permit holder, owner or operator of a Type 2 Solar Energy System shall establish a contact person, including name and telephone number for receipt of any complaint concerning any permit, approval, maintenance, or operational requirements. Such contact information shall be confirmed or updated by the permit holder, owner or operator with the Town on not less than an annual basis.
- (w) Inspections. During construction and upon reasonable notice, the Town of Avon Code Enforcement Officer, or his or her designee, may enter a Lot on which a Type 2 Solar Energy System has been approved for the purpose of determining compliance with any requirements or conditions of this Article or any approval given or permit issued pursuant to this Article. Twenty-four (24) hours' notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.
 - i. After construction is completed and the Solar energy System is operational, upon reasonable cause at the discretion of the Town of Avon Code Enforcement Officer, or his or her designee, said Code Enforcement Officer (or his or her designee) may upon reasonable notice, enter a Lot on which a Type 2 Solar Energy System has been approved, for the purpose of determining compliance with any requirements or conditions of this Article or any approval given or permit issued pursuant to this Article.
 - ii. A Type 2 Solar Energy System shall be inspected by a New York State licensed Professional Engineer that has been approved by the Town of Avon at any time, upon a reasonable determination by the Town's Code Enforcement Officer, that damage to such system may have occurred or that such system appears to no longer comply with the original conditions of approval. A copy of the written

inspection report shall be submitted to the Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder, owner or operator and shall be reimbursed to the Town of Avon within thirty 30 days after delivery to the permit holder of an invoice substantiating such charges. Any failure to pay such reimbursable charges may result in revocation of any Site Plan approval issued by the Planning Board and Special Use Permit approval issued by the Zoning Board of Appeals. The Town of Avon reserves the right to levy all such un-reimbursed expenses onto the real property tax bill associated with the real property upon which the Solar Energy System is located.

- iii. Should the then permit holder, owner or operator of the Solar Energy System fail to reasonably cooperate with the above inspection obligations, the Town shall apply a \$2,000.00 civil penalty to be paid by such permit holder, owner or operator. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional civil penalty in the amount of \$2,000.00.
- (x) Construction hours. During initial construction or any major replacement of the Solar Panels or Solar Energy Equipment after initial construction, all construction activities shall be limited to Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m., except that no rack installation or other construction process involving, pounding, pile driving or impact creating noise shall occur except between the hours of 8:00 a.m. and 6:00 p.m. No construction activities shall take place on Sunday or any Federal holiday.
- (y) Until Decommissioning has been fully completed pursuant to this Article, each year, by January 20th, the permit holder, owner or operator of the Solar Energy System (or its agent) shall provide the Town Building and Code Department and the Town Assessor with a notarized statement disclosing and certifying the actual produced amount of solar energy for the preceding year and a calculation showing such production as a percentage of the original nameplate capacity of the Solar Energy System. Such information is intended to allow Town officials to confirm that the Solar Energy System is

operating as originally designed or “Inoperable” as defined in this Article, and/or whether such systems is exceeding its nameplate capacity. Should the then permit holder, operator or owner of the Solar Energy System not comply with the above obligation in a timely fashion, the Town shall apply a \$2,000.00 civil penalty to be paid by such permit holder, operator or owner. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional civil penalty in the amount of \$2,000.00. Continued failure to provide the above-required information may result in revocation of the Site Plan approval issued by the Planning Board and the Special Use Permit approval issued by the Zoning Board of Appeals.

§130-81. General regulations. The placement, construction and major modification of all Solar Energy Systems within the boundaries of the Town of Avon shall be permitted only as follows:

- A. Any inconsistent provisions of the Code of the Town of Avon which purport to or may be interpreted to allow Solar Energy Systems in other districts are hereby superseded
- B. All Solar Energy Systems that have received a Site Plan approval (if required) and Special Use Permit approval (if required) and a building permit as of the effective date of this Article shall be “grand fathered” and allowed to continue as they presently exist.
- C. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on existing Solar Energy Systems, subject to the requirements of this Article. New construction other than routine maintenance on pre-existing systems shall comply with the requirements of this Article.
- D. All new Solar Energy Systems and all additions and modifications to any pre-existing Solar Energy System 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, the NYS Energy Conservation Code and all local laws, codes, rules and regulations of the Town of Avon.
- E. For all Commercial Building-Mounted Solar Energy Systems, Commercial Roof-Mounted Solar Energy Systems or Type 2 Solar Energy Systems, Applicant

and/or the successor permit holder, owner or operator shall provide a site-specific written training plan that provides for proper training of the Town Code Enforcement Office, Fire Department , Emergency Responders, Livingston County Emergency Management Services and Police agencies relative to health and safety concerns associated with larger scale, commercial Solar Energy Systems. Such training plan shall be implemented before the Solar Energy System is made commercially operational. All costs and expenses related to such training shall be borne by the Applicant or the successor permit holder, owner or operator of the Solar Energy System.

- F. Any applications (including variance applications) pending for Solar Energy Systems on the effective date of this article shall be subject to the provisions of this Article.
- G. This Article shall take precedence over any inconsistent provisions of the zoning regulations contained within the Code of the Town of Avon.
- H. No Solar Panels or other Solar Energy Equipment used in any Solar Energy System shall utilize or contain any amount of GenX chemicals or polyfluoroalkyl substances (PFAS). Applicant shall provide certified documentation that all Solar Panels and other Solar Energy Equipment do not contain polyfluoroalkyl substances, including PFOA, PFOS and/or GenX chemicals.
- I. No alarm systems with sirens or amplified warning signals shall be used on the site of any Type 2 Solar Energy System.
- J. For all Solar Energy Systems, no signage or graphic content may be displayed on the Solar Energy Equipment except the manufacturer's badge, safety information and equipment specification information.
- K. For Type 2 Solar Energy Systems, a sign not to exceed nine square feet shall be displayed on or near the main access point and shall list the facility name, owner and phone number, disconnect and other emergency shutoff information, 24-hour emergency contact information, and it will be clearly displayed on a light reflective surface and all information shall be updated as necessary on an annual basis.
- L. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
- M. Requirement for an Environmental Monitor. Any Type 2 Solar Energy System occupying ten (10) or more acres in total shall have an environmental monitor retained by the Applicant and/or permit holder, owner or operator of the Solar Energy System to oversee the construction, follow-up monitoring and

Decommissioning. The environmental monitor is to be on site whenever construction, decommissioning or restoration work is occurring on Prime Farmland or Farmland of Statewide Importance. The environmental monitor's work is to be coordinated with County and State officials, as well as the Town Code Enforcement Officer, as determined to be necessary by the Town. Said work is to include a schedule of inspections during each phase of the Solar Energy System (construction, follow-up monitoring and Decommissioning) to assure that Prime Farmland or Farmland of Statewide Importance is being protected to the greatest extent possible.

- N. Payment in Lieu of Tax Agreement. Prior to the issuance of a building permit, the Applicant or project owners and Initial Landowner of the property upon which Commercial Building-Mounted Solar Energy Systems, Commercial Roof-Mounted Solar Energy Systems or Type 2 Solar Energy Systems are to be developed shall be required to enter into a contract with the Town for payments in lieu of taxes pursuant to Real Property Tax Law §487 9.(a). Upon the Applicant or developer providing written notification to the Town of its intent to construct a Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System, the Town Assessor or the Town Attorney on behalf of the taxing jurisdiction shall notify such owner or developer in writing within sixty (60) days of its intent to require a contract for payments in lieu of taxes.
- (1) In no event shall such payment in lieu of tax agreement operate for a period of more than fifteen (15) years, commencing in each instance from the date on which the benefits of such exemption first become available and effective under Real Property Tax Law §487.
 - (2) In no event shall such payment in lieu of tax agreement require annual payments in an amount that would exceed the amount that would otherwise be payable but for the exemption under Real Property Tax Law §487.
 - (3) The payment in lieu of tax agreement shall run to the benefit of the Town of Avon and be executed by the Applicant/developer as well as the Initial Landowner of the real property upon which the Solar Energy System is to be located and such signatures shall be notarized in a format that allows the payment in lieu of tax agreement to be recorded at the Office of the Livingston County Clerk. Such payment in lieu of tax agreement shall, prior to commencement of construction, be recorded at the office of the Livingston County Clerk as a lien and indexed against the property upon which the Solar Energy System is to be constructed. The intent of the above provisions is so that should the Applicant or successor permit holder, owner or operator of the Solar Energy System default with regard to such payment in lieu of tax agreement, that such obligation will become the responsibility

of the then owner of the property upon which the Solar Energy System is sited and that failure to satisfy the terms of such agreement will permit the Town of Avon to enforce such agreement as against the owner of the real property and the real property, which may include, but is not limited to any unpaid obligations being placed as a lien against the real property upon which the Solar Energy System is constructed.

- (4) At their sole discretion, the Avon Town Board, Planning Board or Zoning Board of Appeals may refer an application for a Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System to one or more private consultants to assist such Board in negotiating, drafting and/or reviewing the required payment in lieu of tax agreement. Such consultants may include a professional engineer, attorney, planning consultant or other specialist. All expenses incurred by the Town for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, the Town Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Upon request of Applicant, the Town shall provide a general estimate of anticipated consulting services to be provided and estimated costs for the same. However, any such estimate of services or costs related to such services shall not in any way restrict the level of reimbursement ultimately required to be made by Applicant. It is the specific intention of this section that all expenses relating to professional consulting services rendered relating to the creation, review or negotiation of the payment in lieu of tax agreement, be borne by the Applicant (or successor permit holder, owner or operator) and not the taxpayers of the Town. Any such deposit shall be held in a non-interest-bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Prior to the Town making any payment or withdrawal from such account, the Town shall provide Applicant with notice of such intended payment and documentation supporting such payment. Applicant shall have the right, within five (5) business days from receipt of such notice, to protest any payment to a consultant which it contends is not reasonably necessary or is not reasonable in amount. The Town Board shall thereafter have thirty (30) days to provide its determination with regard to Applicant's objection, which shall be provided to Applicant in writing and which shall be final and binding. Should such deposit be depleted prior to final approval of the required payment in lieu of tax agreement, the Town Board may require that additional monies be deposited with the Town before further processing of

the payment in lieu of tax agreement will continue. The Town Board may suspend indefinitely the negotiation, drafting and/or review of the payment in lieu of tax agreement as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants. Any such suspension shall supersede any Town of New York State law, rule or regulation relating to the timing of issuance of approvals for such payment in lieu of tax agreements.

- (5) No building permit may be issued for any approved Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System until such time as a payment in lieu of tax agreement has been executed by all parties.

O. Community Benefit Agreement. The Applicant (or project owner) and Initial Landowner of the property upon which a Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System is to be developed shall be required to enter into a community benefit agreement with the Town for payment by the Applicant (or project owner) or Initial Landowner to the Town of an agreed upon monetary amount or provision of a specified public improvement or improvements that shall act to offset a portion of the potential negative impacts or additional costs or obligations to the Town that may be associated with a Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System.

- (1) At its sole discretion, the Avon Town Board may refer an application for a Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System to one or more private consultants to assist such Board in negotiating, drafting and/or reviewing the required community benefit agreement. Such consultants may include a professional engineer, landscape architect, attorney, planning consultant or other specialist. All expenses incurred by the Town for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, the Town Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Upon request of Applicant, the Town shall provide a general estimate of anticipated consulting services to be provided and estimated costs for the same. However, any such estimate of services or costs related to such services shall not in any way restrict the level of reimbursement ultimately required to be made by Applicant. It is the specific intention of this section that all expenses relating to professional

consulting services rendered to the Town or any of its Boards, relating to the negotiation, drafting and/or review of a community benefit agreement be borne by the Applicant and not the taxpayers of the Town. Any such deposit shall be held in a non-interest-bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Prior to the Town making any payment or withdrawal from such account, the Town shall provide Applicant with notice of such intended payment and documentation supporting such payment. Applicant shall have the right, within five (5) business days from receipt of such notice, to protest any payment to a consultant which it contends is not reasonably necessary or is not reasonable in amount. The Town Board shall thereafter have thirty (30) days to provide its determination with regard to Applicant's objection, which shall be provided to Applicant in writing and which shall be final and binding. Should such deposit be depleted prior to final approval of the required community benefit agreement, the Town Board may require that additional monies be deposited with the Town before further processing of the community benefit agreement will continue. The Town Board may suspend indefinitely the negotiation and drafting and review of the community benefit agreement as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants.

- (2) No building permit may be issued for any approved Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System until such time as a community benefit agreement has been executed by all parties.

- P. Road Use Agreement. Prior to issuance of any building permit for a Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System, and as a condition to any Special Use Permit being issued, the Applicant and its general contractor shall enter into a written Road Use Agreement benefitting the Town and in a format acceptable to the Town at its sole discretion. Such Road Use Agreement will require Applicant and its General Contractor to indemnify and hold the Town harmless from any and all damage to the roadways within the Town that may result from the development of Applicant's Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System. As a part of such Road Use Agreement, Applicant (or its General Contractor) shall provide an irrevocable financial security bond (or letter of credit or other form of surety acceptable to the Town of Avon at its sole discretion), benefitting the Town, that shall ensure the indemnification and hold harmless provisions set forth in the applicable Road Use Agreement.

- (1) Prior to the finalization of the Road Use Agreement, the Applicant and its contractor shall prepare an existing condition report of the roads to be used during construction of the Solar Energy System. Said report will be prepared in cooperation with the Town Highway Superintendent and the Town's Consulting Engineer and shall memorialize the condition and integrity of the access roads pre-construction, to the reasonable satisfaction of the Town Highway Superintendent.
- (2) In the event that any damage is done to any Town road as a result of the development of an Applicant's Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System, said Applicant and/or its General Contractor shall be responsible to perform repairs to such road that are acceptable to the Town Highway Superintendent in his/her reasonable discretion.
- (3) Such repairs shall be completed within sixty (60) days of when written notice of a demand to repair was personally served or sent via certified mail to Applicant or its General Contractor or such longer timeframe as determined by the Town Board at its sole discretion upon a showing of good cause by Applicant. Should Applicant or its General Contractor fail to effectuate such repairs within sixty (60) days, or within a different timeline at the discretion of the Town Board, the Town shall be permitted to execute on the irrevocable financial security bond (or letter of credit or other form of surety) with written notice to Applicant or its General Contractor.
- (4) The provisions of the Road Use Agreement required hereby and the requisite financial security bond (or letter of credit or other form of surety) shall remain in full force and effect for no less than one year after all construction has been completed and the project has been certified as complete by a professional engineer.
- (5) No building permit may be issued for any approved Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System until such time as a Road Use Agreement as required hereby has been executed by all parties.
- (6) Prior to issuance of any building permit for any major repairs to or replacement/upgrade of Solar Energy Equipment after initial construction, and prior to Decommissioning, the then permit holder, owner or operator of the Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System shall enter into an updated Road Use Agreement with the Town that meets the criteria

set forth above and shall provide an irrevocable financial security bond (or letter of credit or other form of surety acceptable to the Town of Avon at its sole discretion), benefitting the Town, that shall ensure the indemnification and hold harmless provisions set forth in the applicable Road Use Agreement. The provisions of the Road Use Agreement required hereby and the requisite financial security bond (or letter of credit or other form of surety) shall remain in full force and effect for no less than one year after all construction has been completed and the project has been certified as complete by a professional engineer.

- Q. Traffic Routes. Construction and delivery vehicles for Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System and Type 2 Solar Energy Systems shall use traffic routes established as part of the applications review process. Applicant may be required to provide additional road signage and or traffic safety signage along such routes as may be determined by the town's Highway Superintendent. Factors in establishing such corridors shall include:
- (1) Minimizing traffic impacts from construction and delivery vehicles.
 - (2) Minimizing Solar Energy System related traffic during times of school bus activity.
 - (3) Minimizing wear and tear on local roads.
 - (4) Minimizing impacts on local businesses.
 - (5) Special Use Permit approval may contain conditions that limit Solar Energy System related traffic to specified routes and include a plan for disseminating traffic route information to the public.
- R. No owner or operator of a Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System, Type 1 Solar Energy System requiring Site plan approval or Type 2 Solar Energy System shall, after initial construction, make any major repairs to or replacements/upgrades of Solar Energy Equipment without first obtaining a building permit from the Town of Avon Building and Code Department, which will require the then permit holder, owner or operator of the Solar Energy System and its contractor, to enter into a Road Use Agreement pursuant to §130-81 N. above.
- S. No Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System, Type 1 Solar Energy System requiring Site plan approval or Type 2 Solar Energy System shall be made operational until such

time that all conditions of approval relating to the Site Plan and Special Use Permit have been satisfied, the System fully complies with this Article and a Certificate of Compliance or Certificate of Occupancy has been issued by the Code Enforcement Officer.

- (1) Applicant shall provide written notification to the Code Enforcement Officer prior to establishing interconnection with the local grid for both testing and final operational establishment.
- (2) After testing of the Solar Energy System by connection to the local grid (upon notice as provided for above), the Solar Energy Systems shall be disconnected from the grid until such time that all conditions of approval relating to the Site Plan and Special Use Permit have been satisfied, the System fully complies with this Article and a Certificate of Compliance or Certificate of Occupancy has been issued by the Code Enforcement Officer. After initial testing, but before final interconnection to the local grid, Applicant or the then permit holder, owner or operator shall provide monthly written evidence that the Solar Energy System is not operational or connected to the local grid.
- (3) Should any such Solar Energy System be made operational prior to the above conditions being fully met and satisfied, it will be deemed a violation and may result in revocation of the Site Plan approval and/or Special Use Permit approval, along with any other remedy available pursuant to the Town of Avon Zoning Ordinance or New York state law.
- (4) Should the Applicant or then permit holder, operator or owner of the Solar Energy System not comply with the above restrictions, the Town shall apply a \$2,000.00 civil penalty to be paid by such Applicant, permit holder, operator or owner. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional civil penalty in the amount of \$2,000.00. Continued failure to comply provide with the above restriction may result in revocation of the Site Plan approval issued by the Planning Board and the Special Use Permit approval issued by the Zoning Board of Appeals.

T. Post Construction Escrow Account. As a condition to issuance of a building permit for Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System and Type 2 Solar Energy Systems, the Town may require an Applicant to provide funds in escrow in an amount that it deems initially sufficient, at its reasonable discretion, to be used for reimbursement of Town oversight expenses after construction, through the time the Solar Energy System has been fully Decommissioned. Such funds may be used for any

administration costs, permit issuance, inspections, engineering, landscape architect, legal or other professional consulting review associated with confirming or ensuring that the Solar Energy System is being operated, maintained and/or Decommissioned according to the terms of this Article.

- (1) Such funds shall be held in a non-interest-bearing escrow account in the name of the Town of Avon.
- (2) Prior to the Town making any payment or withdrawal from such escrow account, the Town shall provide the permit holder, owner or operator of the Solar Energy System with notice of such intended payment and documentation supporting such payment. The permit holder, owner or operator of the Solar Energy System shall have the right, within five (5) business days from receipt of such notice, to protest any payment which it contends is not reasonably necessary or is not reasonable in amount. The Town Board shall thereafter have thirty (30) days to provide its determination with regard to the permit holder's, owner's or operator of the Solar Energy System objection, which shall be provided to the Applicant, permit holder, owner or operator and which shall be final and binding.
- (3) Should such escrowed funds become depleted prior to Decommissioning of the Solar Energy System, the Town Board may require that additional monies be deposited with the Town. Failure of the Applicant, permit holder, owner or operator of the Solar Energy System to replace the depleted escrow funds within thirty (30) days of a written request for the same from the Town shall result in a \$2,000.00 civil penalty to be paid by such permit holder, operator or owner. If such penalty is not paid within thirty (30) days of when it is assessed, such amount shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed. Each continued week of violation of the above obligation will result in an additional civil penalty in the amount of \$2,000.00. Continued failure to provide the above-required escrow account funding may result in revocation of any Site Plan and Special Use Permit approval applying to the Solar Energy System.
- (4) Any expenses of the Town intended to be reimbursed to the Town through the funding of the escrow which are not able to be reimbursed due to permit holder, owner or operator's refusal to fund such escrow shall be placed on the real property tax bill associated with the property on which the Solar Energy System is constructed.
- (5) It is the specific intention of this section that all oversight expenses relating to any administration costs, permit issuance, inspections, engineering, landscape architect, legal or other professional consulting

review associated with confirming or ensuring that the Solar Energy System is being operated, maintained and/or Decommissioned according to the terms of this Article, be borne by the permit holder, owner or operator of the Solar Energy System, or the then land owner of the Lot the Solar Energy Systems is constructed on, and not the taxpayers of the Town.

§130-82. Abandonment and Decommissioning.

- A. If the use of an approved Solar Energy System is discontinued, the permit holder, owner or operator shall provide written notice to the Code Enforcement Officer within thirty (30) days of such discontinuance. In any case, a Solar Energy System is considered Inoperable when it is not producing any electricity and cannot be made to work, or operating such that it produces 10% or less than the original nameplate capacity (at the time of original construction) of the Solar Energy System for a period of 90 days. A Solar Energy System is considered Abandoned when it becomes Inoperable or if construction and/or permitting do not commence or proceed in accordance with the timelines afforded within these regulations, unless such timelines are extended as provided for in §130-80 G. (3) (t).
- B. Determination of Abandonment or Inoperability. A determination of the Abandonment or Inoperability of a Solar Energy System shall be made by the Town Code Enforcement Officer, who shall provide the permit holder, owner or operator and the then owner of the real property upon which the Solar Energy System is located, with written notice by personal service or certified mail. At the earlier of the 91 days from the date of determination of Abandonment or Inoperability without reactivation, or upon completion of dismantling and removal, any approvals and/or permits granted or issued for the Solar Energy System shall automatically expire.
- C. Removal. All Solar Energy Systems, Solar Equipment (and related infrastructure) shall be dismantled and removed immediately from a Lot where use of the approved Solar Energy System is discontinued, the Special Use Permit or Site Plan approval has been revoked by the Town of Avon Zoning Board of Appeals or the Town Planning Board respectively, or if the Solar Energy System has been deemed by the Code Enforcement Officer to be Inoperable or Abandoned (unless the time frame is extended pursuant to the provisions of §130-80 G. (3) (t)) and the Lot shall be restored to its pre-development condition, subject to paragraph 2. of this section below.
 - (1) The responsibility to dismantle and remove and all such costs of removal shall be the sole responsibility of the permit holder, owner or operator and/or then owner of the real property upon which the Solar Energy

System is located.

- (2) The permit holder, owner or operator of the Solar Energy System and the then landowner of the real property upon which the Solar Energy System is located shall be jointly and severally liable to the Town for all costs and expenses associate with Decommissioning should such Decommissioning obligations not be completed as required.
- (3) If the permit holder, owner or operator and/or then owner of the real property upon which the Solar Energy System is located does not dismantle and remove said Solar Energy System as required by the Decommissioning Agreement, the Town Board may complete removal and decommissioning as set forth in the Decommissioning Agreement and levy all related expenses (not covered by any removal bond or other form of surety provided pursuant to such Decommissioning Agreement) associated with the removal onto the real property tax bill associated with the property upon which the Solar Energy System was located, regardless of who the permit holder, owner or operator and then owner of the real property upon which the Solar Energy System is/was.
- (4) Any costs or expenses related to removal (by the Town or completed on behalf of the Town's authority pursuant to this section) that are to be levied onto the real property tax bill for the property on which the Solar Energy System was located, shall not be off-set, reduced or diminished for any recycling or salvage credits or value relating to the removed Solar Panels or Solar Energy Equipment, except and unless the Town has actually received such credits or value prior to the relevy of such costs and then, such reduction shall be limited to the actual dollar value received by the Town.
- (5) Nothing in this Article shall be interpreted to require or obligate the Town to undertake to obtain salvage or recycling credits, value or proceeds with regard to any Solar Panels or Solar Energy Equipment to be removed pursuant to this section.
- (6) Removal of all Commercial Building-Mounted Solar Energy Systems, Commercial Roof-Mounted Solar Energy Systems and Type 2 Solar Energy Systems shall be in accordance with the Decommissioning Agreement required by §130-80 D. (1) (i), §130-80 E. (1) (i) and §130-80 G. (2) (p) respectively.
- (7) Decommissioning of Type 2 Solar Energy Systems shall require 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, that were

installed in connection with the Solar Energy System and the restoration of the parcel of land to the original state prior to construction on which the Solar Energy System is built to either of the following, at the landowner's (either the Initial Landowner or it's heirs, successors or assigns) option: (i) the condition such lands were in prior to the development, construction and operation of the Solar Energy System, including but not limited to restoration, regrading, and reseeding, or (ii) the condition designed by landowner (either the Initial Landowner or it's heirs, successors or assigns), with consultation and input from the Avon Town Board, which is ultimately approved by the Town Board by resolution and which may not require removal of certain landscaping/visual buffering improvements, drainage, roadway or fencing improvements that were constructed or installed at the time of construction of the Solar Energy System.

- (a) Any approval of the Town Board of such modified Decommissioning is at the Town Board's sole discretion.
 - (b) Should the Initial Landowner or successor landowner elect to Decommission pursuant to (ii) above, prior to final approval by the Town Board, said Initial Landowner or successor landowner shall execute a release and waiver/indemnification agreement benefitting the Town and releasing the Town from any and all potential liability associated with the design and implementation of the modified Decommissioning.
 - (c) The ability of the landowner to seek Decommissioning to a design that requires less than complete restoration to the condition such lands were in prior to the development, construction and operation of the Solar Energy System, shall not permit any Solar Energy Equipment, Structures, equipment or accessories, including subsurface foundations and other materials, concrete, wiring, cabling, or debris to remain on site and shall only apply potentially to landscaping/visual buffering improvements, drainage, roadway or fencing improvements, with approval of the Town Board.
- (8) All proposed recycling, removal, disposal, containment and hauling procedures for Solar Panels and Solar Energy Equipment shall be in compliance with the most current local, State and Federal regulations. All waste disposal sites and certified recyclers intended to be used for Decommissioning shall be identified and provided to the Town of Avon Building and Zoning Department.
 - (9) Decommissioning of Commercial Building-Mounted Solar Energy Systems, Commercial Roof-Mounted Solar Energy Systems and Type 2 Solar Energy Systems shall include the removal of all chemicals, fuels,

oils, transformer oils and other potential hazardous chemicals and wastes from the site. These will be disposed of in accordance with local, State and federal laws.

- (10) In advance of Decommissioning of Commercial Building-Mounted Solar Energy Systems, Commercial Roof-Mounted Solar Energy Systems and Type 2 Solar Energy Systems, a temporary storage area or laydown area will be established within the project site and will include an impermeable section to protect soils from contamination or damage from equipment or materials to be removed. In no event shall any disconnected or removed Solar Panel or Solar Energy Equipment be placed, left or stored in the temporary storage/laydown area for more than five (5) business days. The specific intent of the Town is that all materials are removed from the site and from the Town of Avon immediately so as to prevent possible soil or water contamination. During the pendency of removal, all such Solar Panels and/or Solar Energy Equipment shall be secured and stored in such a fashion that prevents exposure to the elements and prevents possible leaching or contamination to any soils as a result of damage to or degradation of such Solar Panels and/or Solar Energy Equipment.

§130-83. Revocation.

If the Applicant or the successor permit holder, owner or operator of any Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System violates any of the conditions of its Special Use Permit, Site Plan approval or violates any other local, state or federal laws, rules or regulations, such violation shall be grounds for revocation of the Special Use Permit and Site Plan Approval. Revocation may occur after the Applicant or then permit holder, owner or operator is notified in writing of the violations and the Town of Avon Zoning Board of Appeals and Planning Board hold a joint hearing on the alleged violations, at which the Applicant or the successor permit holder, owner or operator shall have an opportunity to be heard and present evidence in defense of the allegations of such violations.

§130-84. Interpretation; conflict with other law.

In its interpretation and application, the provisions of this Article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. This Article is not intended to interfere with, abrogate or annul other rules, regulations or laws, provided that whenever the requirements of this Article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards shall govern.

§130-85. Severability.

If any section, subsection, phrase, sentence or other portion of this Article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

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