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Via Email: jefferydingman@townofschuyler.org
and First Class Mail

Town of Schuyler Zoning Board of Appeals
Schuyler Town Office
2090 State Route 5
Utica, New York 13502

Re: Request for Extension of Special Use Permit and Site Plan approvals for Watkins Solar Project pursuant to Section 13.03 (C) and Section 15.05 (B) of the Town of Schuyler Zoning Law

Dear Board Members:

This firm represents SunEast Watkins Solar LLC ("SunEast"). SunEast hereby requests an extension of the Special Use Permit and Site Plan approvals for the SunEast Watkins Solar Project ("Project") pursuant to Section 13.03 (C) and Section 15.05 (B) of the Town of Schuyler Zoning Ordinance. The Zoning Law provides if a building permit has not been obtained and actual physical construction of a substantial nature has not commenced within one (1) year of approval, an extension may be requested.

As you know the Zoning Board of Appeals granted conditional site plan and Special Use Permit approval for the Project on November 10, 2020.¹ The approval is subject to specified conditions including SunEast's provision of "evidence that it has entered into an interconnection agreement for this Site with the applicable public utility". The Zoning Enforcement Officer's

¹ The Town of Schuyler Solar Ordinance delegates authority to the Town of Schuyler ZBA review site plans and special use permits for solar energy facilities. *See* Town of Schuyler Solar Law, p. 9. The Solar Law does not expressly provide that site plan and special use permits for solar projects expire or that a building permit must be obtained, or construction commenced within a specified amount of time. In addition, SunEast's approval is expressly conditioned on SunEast finalizing the interconnection agreement with the utility. Therefore, SunEast maintains any time period to obtain a building permit or commence construction cannot being to run until this "prerequisite" is satisfied. Regardless, SunEast is applying for an extension of the site plan and special use permit approval pursuant to Section 13.03 (C) and Section 15.05 (B) of the Town of Schuyler Zoning Ordinance in the event such extension is deemed necessary to prevent the approvals from lapsing or expiring before SunEast has the ability to obtain a building permit or to commence construction.

authority to issue a building permit to SunEast was also conditioned on its compliance with this prerequisite.

Although SunEast has been diligently pursuing a final interconnection agreement for this Site with National Grid, the process has encountered unprecedented delays due to COVID-related work disruptions and a backlog of projects and interconnection designs that are undergoing review by the utility company. Despite these delays, the interconnect design has progressed to a point where we anticipate a final interconnection agreement will be forthcoming in the next 4 months. Once the interconnection agreement is finalized, SunEast can complete the detailed design and prepare construction plans that will be submitted to the Town with the building permit application. The one (1) year extension will provide the time necessary for SunEast to finalize this process and prepare for and commence construction.

The requirements for issuing extensions are minimal. As such, these actions are little more than ministerial acts and should not be treated as a new application for which public notice and a hearing are necessary. (*420 Tenants Corp v EBM Long Beach, LLC* 41 AD3d 641, 643 [2nd Dept, 2007] *citing* *Matter of New York Life Ins. Co v Galvin* 35 NY2d 52, 60 [1974]). Because the circumstances have not changed, this extension request does not permit the Zoning Board of Appeals to reconsider the previous approvals or consider a different course of action. (*See, e.g., Matter of Charles A. Field Delivery Service, Inc.*, 66 NY2d 516, 516-517 [1985])(“A decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious”).

Accordingly, SunEast respectfully requests that pursuant to the Zoning Ordinance, the Zoning Board of Appeals agree to extend the Special Use Permit and Site Plan approval for one year, to November 10, 2022.

Very truly yours,



Allyson M. Phillips

cc: Phillip Green, Town of Schuyler Code Enforcement and Zoning Officer (via email: pgreen@cityoflittlefalls.net)

Kevin Murphy, Esq., Special Counsel to the Zoning Board of Appeals (via email: kmurphy@wladislawfirm.com)