

Road Use and Repair Agreement

This Agreement effective the ____ day of _____, 20__ is made and entered into by and between the **Town of West Sparta, Livingston County, New York** (herein "Town") with an office at 8302 Kysorville-Byersville Road, Dansville, NY 14437; and (_____) (**Developer**), a corporation, organized and existing under the laws of, or duly authorized to conduct business in the State of _____, having its principal place of business at _____.

Whereas, the parties hereto desire to provide for the use and repair of Town Roads when subjected to damage or degradation by frequent or repetitive traversing of heavy vehicles employed in transporting heavy construction equipment and hauling heavy construction materials.

Now, Therefore, in consideration of mutual promises and covenants contained herein, the parties agree as follows:

ARTICLE I

DEFINITION OF ROAD STRUCTURAL CLASSES

Section 1.1 Structural Class 1. The road structure has been upgraded to an adequate and high quality base of uniform thickness and material type. The driving surface is either an asphalt concrete pavement or bituminous surface treatment in good to excellent condition. The Granular Base and the Asphalt Pavement/Bituminous Surface Treatment are less than 10 years old and have 20 to 30 years remaining life. The complete road structure is capable of supporting heavy construction equipment (total estimated 18-KIP Equivalent Single Axles Loads) throughout the duration of the anticipated construction project, without needing major structural improvements prior to the project. However, heavy construction traffic loading will expend some of the useful life of the road pavement structure and shorten the life expectancy of the road, even though visible damage at the end of the project may not be severe. Visible damage could include increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness.

Section 1.2 Structural Class 2. The road structure has been upgraded to an adequate and high quality base of uniform thickness and material type. The driving surface is either an asphalt concrete pavement or bituminous surface treatment in fair to good condition. The Granular Base and the Asphalt Pavement/Bituminous Surface Treatment are 10-20 years old, and have 10 to 20 years remaining life. The road is adequate to sustain construction traffic for the project. However, damage to the asphalt pavement/bituminous surface or base will be likely during the project thereby causing a significant decrease in serviceability for the traveling public, rough travel for construction equipment, and potential safety issues and increased difficulties in performing winter maintenance. Visible damage could include increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and overall ride roughness.

Section 1.3 Structural Class 3. The road structure has not been upgraded. The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The asphalt pavement is in fair to good condition with one or more of the following surface distresses present; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths). Ride roughness may range from fair to excellent. The combined layers of the pavement structure continue to provide an acceptable level of service for the traffic using the road. The road is judged to be generally adequate to service the construction traffic and the traveling public throughout the duration of the proposed project. However, by the end of the project damage to the pavement structural system will likely be visible, and will take the form of increased extent of one or more of the following distresses; alligator cracking, edge cracking, longitudinal and transverse cracking, potholes and patches, rutting (especially in the wheel paths), and increased ride roughness.

ARTICLE XII
NOTIFICATION OF ALL ASSOCIATED MUNICIPALITIES

Section 12.1: The Developer(s) shall notify all other County, Town and Village Municipalities that will be impacted by the Developer(s) associated with the Designated Haul Routes according to this Road Use Agreement. The Developer(s) shall enter into a Road Use Agreement where required, with any other Municipality that will be impacted by the construction project.

Term of Agreement: This Agreement shall be for a term commencing on the effective date hereof and ending when the project in respect of which it is entered into is complete, unless sooner terminated or extended as provided in Exhibit A of the Agreement.

In Witness Whereof, the parties hereto have executed this agreement as of the latest date written below.

Town of West Sparta

By: _____
Name:
Title:

Date: _____

By: _____
Name:
Title: Town Supervisor, Town of West Sparta

Date: _____

Approved as to Form:

Town Attorney

Date: _____

Section 1.4 Structural Class 4. The road structure has not been upgraded. The base layer/s is/are of inconsistent structure, poor to marginal quality and less than desired thickness. The asphalt pavement is in poor to fair condition with a rough deteriorated driving surface. The road is not capable of sustaining the magnitude and the duration of loading commensurate with a designated haul route (total estimated 18-KIP Equivalent Single Axles Loads) for an extended and demanding development project. Use of the road without prior reconstruction may result in significant distresses such as severe alligator cracking, potholes, rutting, and very rough ride-ability within the duration of the construction project. The accelerated deterioration would create excessive demand for pavement repairs (i.e. pothole patching, rut filling etc.). The effectiveness of winter snow and ice maintenance would be greatly diminished (i.e. snow plows would not be able to operate efficiently and safely, snow and ice would be left in deep wheel path ruts after plowing etc.). Consequently the safe passage of the traveling public as well as construction equipment would be seriously compromised.

Section 1.5 Structural Class 5 - (GRAVEL ROADS). The road structure has been upgraded to an adequate and high quality base of uniform thickness and material type. The driving surface is gravel and in good to excellent condition. The granular base is less than 5 years old and has 5 – 10 years of life remaining. The complete road structure is capable of supporting heavy construction equipment (total estimated 18-KIP Equivalent Single Axles Loads) throughout the duration of the anticipated construction project, without needing major structural improvements prior to the project. However, heavy construction traffic loading will expend some of the useful life of the road structure and shorten the life expectancy of the road, even though visible damage at the end of the project may not be severe. Visible damage could include increased extent of one or more of the following distresses; potholes, raveling, rutting (especially in the wheel paths), and overall ride roughness.

Section 1.6 Structural Class 6 – (GRAVEL ROADS). The road structure has not been upgraded. The gravel base is of inconsistent structure, poor to marginal quality and less than desired thickness. The gravel surface is in poor to fair condition with a rough deteriorated driving surface. The road is not capable of sustaining the magnitude and the duration of loading commensurate with a designated haul route (total estimated 18-KIP Equivalent Single Axles Loads) for an extended and demanding development project. Use of the road without prior reconstruction may result in significant distresses such as severe potholes, excessive raveling, severe rutting, and very rough ride-ability within the duration of the construction project. The accelerated deterioration would create excessive demand for repairs. The effectiveness of winter snow and ice maintenance would be greatly diminished (i.e. snow plows would not be able to operate efficiently and safely). Consequently the safe passage of the traveling public as well as construction equipment would be seriously compromised.

ARTICLE II DESIGNATION OF HAUL ROUTES

The Developer(s) shall submit routes to the Town (hereto referred to as Designated Haul Routes) for hauling equipment and materials to and from the project. These routes will be further designated by the Town as Structural Class 1, 2, 3, 4, 5 or 6 (as defined in ARTICLE I) with certain requirements stipulated for their use as set forth in sections 2.1, 2.2, and ARTICLE III below.

Section 2.1 Class 1, 2, 3 and 5 Roads. These roads can be used by the Developer(s) of the project without any repairs or improvements to the pavement structure prior to construction. However, geometric improvements (turning radii etc) and bridge or culvert improvements will still be required as needed.

Section 2.2 Class 4 and 6 Roads. The Town may require, for the safety of the traveling public, that the Developer(s) reconstruct the road before the construction process begins. This determination shall be at the sole discretion of the Town. If the Town does not require reconstruction prior to construction, the Developer(s)' use the road will be at their own risk. The Town shall monitor the use of the road during the construction project. If the road becomes dangerous to the traveling public the Town shall close the road to all

construction traffic. In the case of closure the Developer(s) shall be required to complete reconstruction of the road base and asphalt concrete pavement to include shoulders and necessary improvements of ditches, culverts and other drainage related facilities before construction traffic is allowed to continue. The Town shall determine the full cross section design and material specifications for this reconstruction. The Developer(s) shall hire a qualified contractor of its choice, to be approved by the Town, to construct the pavement system (base and asphalt pavement layers) according to the full specifications provided by the municipality. The Developer(s) shall pay for all associated costs in accordance with the percentages of costs explained in Article VI below for the costs of the labor, materials, and equipment needed, as well as the costs for design and construction inspection services. The Developer(s) shall provide a full and detailed record of all costs encumbered for the repairs.

Section 2.3 – Time Requirement for Designation of Haul Routes. The Haul Routes shall be designated within thirty (30) days of the execution of the Road Use Agreement. The Pre-Construction Survey shall be started immediately thereafter and completed no later than three months prior to the commencement of the project.

ARTICLE III USE OF DESIGNATED HAUL ROUTES

Section 3.1 Use of Designated Roads. In connection with the development, construction, operation and maintenance of the Project, the Town and the Developer agree that the Developer, its contractors and subcontractors and each of their respective agents, employees, representatives, and permitted assigns (collectively, the “Developer (s)”) shall use the roads and highways located in the Town identified on Appendix B hereto (the “Designated Haul Routes”). These Designated Routes shall be used by all tandem axle or tri-axle trucks, equipment and assembled cranes both to and from the work site. Any other vehicles (cars, pickups and single axle dump trucks) associated with the Developer(s) Project are not limited to the Designated Haul Routes and thus may use any other alternate Town Roads. The Town Highway Superintendent (“Superintendent”) reserves the right to exclude certain Town roads from the Designated Haul Routes if the loads hauled by the Developer significantly change that road’s traffic loading. Appendix B identifies the Designated Haul Routes that will be used for: (1) transportation and delivery of equipment and components and other materials and equipment to be used in connection with the Project ;(2) movement of any assembled cranes; and (3) transportation and delivery of local sources of materials, including concrete and gravel.

Section 3.2 Modifications to Designated Haul Routes. The Parties acknowledge and agree that certain modifications and improvements to the Designated Haul Routes and related appurtenant structures are necessary to accommodate the use of Designated Haul Routes by the Developer(s) contemplated hereby, including the widening of certain roads and modifications and improvements necessary to accommodate the heavy equipment and materials to be transported on the Designated Haul Routes. The modifications and improvements that shall be made by the Developer are described in detail on Appendix B hereto. The Town and the Developer agree that such improvements and modifications shall be made in accordance with the specifications set forth on Appendix B. Notwithstanding anything herein to the contrary, upon the reasonable request of the Developer the Town is authorized from time to time to grant consent to deviations from the specifications set forth on Appendix B. Appendix B shall be submitted to the Town by the Developer(s) prior to commencement of construction.

Section 3.3 Limitations of Road Use. The acknowledgement of use by Developer set forth in Section 3.1 shall be contained in special use permits issued by the Town simultaneously herewith and which are subject to the following conditions:

- (a) **Restrictions.** All other Town roads not selected as Designated Haul Routes (reference Article II) are strictly forbidden for use by the Developer throughout the duration of the Project. In the event that

the Developer would like to amend and add any road to the list of Designated Haul Routes during the project the Town shall be informed, and if approved by the Town, Appendix B shall be amended to reflect the change. All Articles of this agreement shall then be immediately applicable and satisfied prior to the added road being used.

(b) **‘One Time Use’ of a road that is not a Designated Haul Route** - In the event the Developer determines it is necessary for the Project to use a Town road not identified on Appendix B as a Designated Haul Road, then the Developer shall notify the appropriate Town Designee, describing in detail such use and the reasons therefore. If the use is to be ‘one time’ the Superintendent shall determine whether to allow the road use without the road being added to Appendix B as a Designated Haul Route. If the Developer(s) determines that the road may be used multiple times, the procedure as described in section 3.3 (a) of this Article shall be used.

(c) **Extreme Weather Conditions** - Once construction begins on the Project the Superintendent shall be entitled, at any time, to notify the Developer(s) that use of a/the Designated Haul Road/s may result in excessive damage to a/the Designated Haul Road/s due to weather conditions that may pose a serious safety risk to the traveling public. The Developer(s) shall work with such Town Designee to develop a plan to mitigate or prevent the safety liabilities of such weather conditions. If the Parties are able to develop a plan to mitigate or prevent such safety liabilities, then the Developer(s) may continue to use such roads provided such mitigation is implemented.

ARTICLE IV

PRE-USE SURVEY OF ROADS & BRIDGES

Section 4.1 Construction Traffic Estimation. The Developer(s) shall engage and pay for the services of a NYS licensed Civil Engineering firm appearing on the current approved NYSDOT Region-4 LDSA lists, to estimate all of the construction traffic that will use each Designated Haul Route. The type, weight, number of axles, and load on each axle, of each construction vehicle shall be defined and the number of trips for each shall be estimated by the Developer(s) or NYS Licensed Civil Engineering firm. This shall be done for overweight vehicles hauling any components as well as all non-overweight loads carrying aggregate, concrete and any other building supplies and materials over the designated haul roads from any and all suppliers, vendors, contractors etc. involved in the project. Then, the sum total estimated construction traffic shall be converted to a total number of Equivalent 18-Kip Single Axle Loads (ESALs), according to the AASHTO Pavement Design Guide, over the duration of the project. This shall be done for each Designated Haul Route that the Developer(s) will use for the project. A complete written report of this analysis for each road will be provided to the Town at least three months in advance of the commencement of work.

Section 4.2 As soon as practicable after the execution of this Agreement, but in any event no later than three months prior to the commencement of the Developer’s project, the Developer(s) shall select a third party NYS licensed Civil Engineering firm appearing on the current approved NYSDOT Region-4 LDSA lists, to conduct the surveys and assessments set forth in section 4.4 below. Roads and highways within the boundaries of the Town anticipated to be used as Designated Haul Routes plus any roads anticipated to serve on a one time basis or roads which could be added as Designated Haul Routes will be assessed as described below. A representative from the Engineering Firm shall meet with the Town Designee and the Livingston County Bridge Engineer prior to data collection to review how the data will be collected and reported. The Town shall agree and approve the data collection process and the report formats. The Pre-use survey shall be commenced after the signing of the Road Use Agreement and completed at least three months prior to the commencement of the project. Roads will be posted to heavy traffic if the survey is not completed on time.

Section 4.3 Structural Class Designation. The Town shall retain exclusive rights to designate the Road Structural Class for the Designated Haul Routes. The Developer(s) agrees to abide by this decision. The Town

shall make this decision based on the road surface condition, work history, structural condition, and the traffic using the road. Pre-construction road survey requirements are enumerated in section 4.4 (a)-(d) below.

Section 4.4 Pre-Use Survey. A full report of the assessments in (a) – (d) below shall be provided to the Town at no cost to the Town at least three months prior to the commencement of construction.

(a) Video Survey of Roads. Videotape the Designated Haul Roads and Non-Project Roads that could be used as explained above. The full costs of the Video Survey will be borne by the Developer(s). Additional surveys shall only be conducted in the event the Parties mutually agree and the additional survey costs are borne by the Developer(s).

(b) Distress Survey. Measure and record the extent and severity of surface distresses for each designated haul road. The survey shall include the severity and extent of alligator cracking, longitudinal cracking, transverse cracking, edge cracking/deterioration, potholes and patches

(c) Rutting and cross slope assessment. Wheel rut depth in both outer and inner wheel paths shall be measured with a straight edge. If the lane is crowned in the middle the rut depth can be measured for each wheel path by laying the straight edge from the centerline of the road to center of the lane and from the center of the lane to edge of the road for the inner wheel path and outer wheel path, respectively. Cross slope shall also be measured, using the full lane width straightedge and a “smart level” in percent mode. Again, if there is a crown in the middle of the lane the cross slope shall be measured independently, and recorded as such, for the inner and outer wheel paths. The rut depth and cross slope measurements will be made at a uniform spacing at 15 locations per mile.

(d) Road Roughness. Measure, record, and report the International Roughness Index (IRI) using a profilometer for each designated haul road. A full report of the Roughness assessment shall be provided to the county at no cost to the county prior to the commencement of construction.

Section 4.5 Inspection of Culverts and Bridges. Within one month after the execution of this agreement the Developer(s) shall select a NYS licensed engineering company appearing on the current approved NYSDOT Region-4 LDSA lists, to inspect the culverts and bridges on the Designated Haul Routes. The inspection shall be completed and provided to the Town at least three months prior to the commencement of the project. Culverts and bridges on any other roads anticipated to be used on a one- time basis or roads which could be added as Designated Haul Routes shall also be included. The third party engineer shall take photographs of the culvert and bridges. The full costs of the inspections will be borne by the Developer(s). Based on the inspections the selected engineering firm shall provide a report discussing the status of all culverts and bridges and shall designate those culverts and bridges that shall require improvements/upgrades prior to their use in the Project. This report shall also present the recommended improvements/upgrades to the structures and shall be submitted to the Town for review. The Town will prepare a final list of improvement/upgrade projects that must be done prior to commencement of the Project. The Town reserves the right to require an evaluation of any bridge that will be crossed by an overweight special hauling vehicle. The evaluation shall be done by the qualified NYS licensed engineering firm. The full cost of the evaluation(s) will be borne by the Developer(s).

ARTICLE V

POST USE ROAD SURVEY

PROJECT COMPLETION DATE

Section 5.1 Post Use Pavement Survey Tasks . The post use survey shall be completed within two months after the project is completed. The Developer(s) shall engage and pay for the services of a NYS licensed engineering firm appearing on the current approved NYSDOT Region-4 LDSA lists, to do the post use survey. The Post Use Pavement Survey tasks listed below shall be completed within a two months of the Project Completion Date.

- (a) **Photo & Video Survey of Roads** – Repeat as described in section 4.4 (a) above.
- (b) **Distress Survey** – Repeat as described in Section 4.4 (b) above.
- (c) **Rut Depth and Cross Slope measurements** – Repeat as described in Section 4.4 (c) above.
- (d) **Road Roughness** – as described in Section 4.4 (d) above.

Section 5.2 Structural Evaluation of Roads. After analysis of the Post Use Pavement Survey, the Town shall determine if a repair selection can be made from the survey data or if a structural evaluation will also be needed in order to select the best repair alternative. If the Town determines a structural evaluation is also needed the Town shall conduct a forensic investigation that could include test pits, pavement cores, and material testing of specimens removed from the test pits. The Developer(s) shall pay for all associated costs.

ARTICLE VI

DETERMINATION OF FINAL ROAD REPAIRS

PAYMENT FOR COST OF REPAIRS

The Town shall examine the post use survey data and compare it to the pre-construction survey data. Based on the data, field inspection, and structural evaluation (if necessary) the Town shall determine the needed repairs within one month following the receipt of the post use survey. The Town shall prepare a report of the needed repairs that includes the treatment for each road segment. The report shall be submitted to the Developer(s). The Developer(s) shall repair the damages in accordance with sections 6.1 through 6.6 of this Article VI.

Section 6.1 - Class 1 Roads. Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) or a microsurfacing shall be done to replace the structural capacity loss of the pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the Town. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½" hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Town shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. The Town retains the right to make the final decision regarding the extent and type of road repairs. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid by the Developer(s). The Developer(s) shall hire a qualified contractor of its choice, to be approved by the Town, to construct the road repair. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law.

Section 6.2 Class II Roads. Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) or a microsurfacing shall be done to replace the structural capacity "loss" of the pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the Town. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½" hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The County shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. The Town retains the right to make the final decision regarding the extent and type of road repairs. One hundred

percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid by the Developer(s). The Developer(s) shall hire a qualified contractor to be approved by the Town, to do the repairs. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law.

Section 6.3 Class III Roads. Upon completion of the project, a thin asphalt concrete overlay (less than 2 inches) or a microsurfacing shall be done to replace the structural capacity loss of the pavement and to reseal cracks, restore road smoothness and correct ride-ability deficiencies that may have been induced. The thickness, materials, and method of construction for this overlay or microsurfacing shall be specified by the Town. If asphalt pavement damage is significant a thick asphalt concrete overlay (greater than 2 inches) or a Cold-in-Place recycle with 1 ½" hot mix top may be required. However, if the post construction survey indicates significant deep structural damage to the pavement and base has occurred, the repair could include full pavement rehabilitation (recycling or replacement of asphalt) or full depth reconstruction (asphalt pavement and base layer reconstruction). Structural Damage to the base will be assessed by the increase in depth and width of wheel ruts and the extent of alligator cracking, potholes and patches. The Town shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. The Town retains the right to make the final decision regarding the extent and type of road repairs.

(a) Asphalt Pavement Repair – If the needed repair is limited to the asphalt pavement only, such as micro surfacing, thick or thin asphalt overlay or a Cold-in-Place recycle with a hot mix over lay the Developer(s) shall pay for One hundred percent (100%) of the costs of the labor, materials, and equipment needed, as well as the costs for design and construction inspection services.

(b) Full Depth Repair - If the needed repair includes replacing the asphalt pavement and the granular base the Developer(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services.

The Developer(s) shall hire a qualified contractor to be approved by the Town, to construct the road repair. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law.

Section 6.4 Class IV Roads. If the road was not rebuilt by the Developer(s) prior to or during the Construction project then upon completion of the project the road will be repaired by one of the following methods:

1. Full pavement rehabilitation (recycling or replacement of asphalt) or
2. Full Depth Reconstruction (asphalt pavement and base layer reconstruction).

The Town retains the right to make the final decision regarding the extent and type of road repairs.

(a) Asphalt Pavement Repair – If the needed repair is limited to a major rehabilitation of the asphalt pavement only, such as a thick asphalt overlay or a Cold-in-Place recycle with a hot mix over lay the Developer(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services.

(b) Full Depth Repair - If the needed repair includes replacing the asphalt pavement and the granular base the Developer(s) shall pay one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services.

The Developer(s) shall hire a qualified contractor, to be approved by the Town, to construct the road repair. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law.

Section 6.5 Class V Roads. Upon completion of the project, it may be necessary to re-grade, reshape and re-compact the driving surface of the Haul Routes. However if it is determined that a significant portion of the gravel material has been lost then the Developer(s) shall be required to add gravel material before the final re-grading, reshaping, and re-compacting of the Haul Road. The Town shall determine the repair type, and the material specifications for the repair. The Town retains the right to make the final decision regarding the extent and type of repairs. The Developer(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, and equipment needed, as well as the costs for any design and construction inspection services. The Developer(s) shall hire a qualified contractor, to be approved by the Town, to construct the road repairs. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law.

Section 6.6 Class VI Roads. If the road was not rebuilt by the Developer(s) prior to or during the Construction project then upon completion of the project the road will be repaired by one of the following methods.

1. Partial Base repair (placing of 4" – 6" of crushed type 4 gravel)
2. Full Depth Repair of Gravel Road.

The Town retains the right to make final decision regarding the extent and type of road repairs.

(a) Partial Base repair - If the needed repair is limited to a placement of 4" – 6" of gravel material the Developer(s) shall pay for one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services.

(b) Full Depth Repair - If the needed repair includes replacing the granular base and any areas that may need undercutting with geo-textile materials the Developer(s) shall pay one hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services.

The Developer(s) shall hire a qualified contractor, to be approved by the Town, to construct the road repair. The Developer shall be responsible for complying with all required purchasing and labor requirements of New York State General Municipal Law and New York State Labor Law.

Section 6.7 One -Time Use Roads. In accordance with Article III section 3.2 (b) roads may be used on a one time basis if requested in writing. The Developer(s) will repair any damage caused by the project to the One-time use roads, and return such roads to the condition such roads were in prior to such damage (as near as is reasonably practicable having due regard for normal wear and tear). Prior to commencement of such repair, the Town and Developer(s) shall meet to review the damage in relation to the Initial Survey or most recent subsequent survey, as applicable. The Developer(s) shall repair (or cause to be repaired) such damage and restore the road to the standard agreed upon, unless the Developer(s) can demonstrate to the reasonable satisfaction of the Town Designees that the damage was not caused by the Developer(s). Any repair and restoration shall be promptly performed at such times as the Developer(s) and the Town determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. In the event that the Developer(s) fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, the Town may make such repairs and shall invoice the Developer(s) for the costs incurred by the Town in connection with the repair. The Developer(s) shall pay such invoiced amounts within ten (10) days following receipt of the invoice.

Section 6.8 Culverts and Bridges – Improvements/Upgrades to bridges and culverts may be required prior to commencement of the project. Damage as a result of the Construction Project to a culvert or bridge structure must be repaired following the project, or sooner if deemed necessary by the Town. All

modifications or repairs to culverts or bridges shall be designed in accordance with accepted AASHTO and NYSDOT standards by a Professional Engineer licensed to practice in New York State and employed by a Civil Engineering firm appearing on the approved NYSDOT Region-4 LDSA lists. All damage by the contractor shall be mitigated, either through repair or replacement, by the contractor at his expense to the satisfaction of Livingston County.

Section 6.9 Payment for road repair and inspections done by Town forces - All material, labor, inspection and equipment costs for any repair shall be paid by the Developer(s).

a) To the extent that any repairs arising out of the operations under this Agreement are handled "in house" by the Town, the labor costs will be the burdened rate of pay actually paid to the persons who perform the work, the reference to "burden" referring specifically to benefits associated with Town employment. The documentation for those costs will come directly from the Town's payroll services office. For any Town equipment used for such repair work, the Town has a program, generally based on the current NYSDOT Equipment Rental Rates, to determine the "equipment rates" associated with each piece of Town equipment, which rates will be the basis for calculating the amount Developer(s) will be required to pay in respect of Town Equipment used to accomplish any repairs. Those rates are calculated upon placing such equipment in service and published for internal use by the Highway Department. The latest list of said rates is attached hereto and by this reference incorporated herein. It is understood and acknowledged that the equipment rate list is updated when new equipment is placed in service, when equipment is removed, or when NYSDOT revises its current equipment Rental Rates, and revised lists will be made available to the Developer(s) upon request. Any materials used in these repairs purchased through the Town "procurement process", will be based upon the particular contract consideration and ultimately upon the actual cost to the Town. The Town will pass those contract and ultimately actual costs along to the Developer(s) without any "add-ons."

b) The Developer(s) shall pay for any contracted inspection services performed by the Town, as well as any cost incurred by the Town to hire an Administrator to facilitate the implementation and monitor the adherence to the Road Use Agreement(s).

**ARTICLE VII
OTHER CONDITIONS**

Section 7.1 Protection of Traveling Public and Pedestrian Safety Plan. The Developer(s) shall prepare and submit a Protection of Traveling Public and Pedestrian Safety Plan to the Town prior to performing any work as part of this Agreement. The Safety Plan shall identify the Developer's designated Safety Officer with 24-hour contact information and address how the Developer(s) will ensure the safety of the traveling public and pedestrians along all designated haul routes. Special consideration in the Plan shall be given to high volume routes including seasonally high volume routes near visitor attractions, bicycle and pedestrian routes, routes through Villages and Hamlets, and routes near schools, churches, and public or private camps. The Developer(s) shall identify means to monitor and control the speeds of their construction vehicles at all times and the scheduling of their routes to avoid peak hour traffic in the morning and afternoon on the way to and from home, work and school.

Section 7.2 List of Materials and Construction Techniques. Ten (10) days prior to the commencement of any modification or improvement pursuant to this Article VII, the Developer(s) shall deliver to the Town a list of all materials to be used and construction techniques to be employed in connection therewith, subject to the approval of the Town (not to be unreasonably withheld).

Section 7.3 Subsequent Modifications or Improvements. If modifications or improvements are necessary to the Designated Haul Routes and related appurtenant structures that were not contemplated when this Agreement was executed, the parties agree to negotiate in good faith and mutually agree to such modification

or improvement, together with the materials to be used, the construction techniques to be employed, and the specifications applicable to such work.

Section 7.4 Compliance with Law. The Developer(s) agrees that all modifications and improvements shall comply with all applicable laws, subject to the obligation of the Town set forth in Article XI.

Section 7.5 Appendix C - Utility Operations. The Parties acknowledge that the Developer(s) may desire to route certain wires, cables, conduits and/or pipelines (and their associated equipment) related to the Project above or below ground at a location adjacent to, under or across certain Designated Roads, as identified in Appendix C. However, it should not be inferred by the Developer(s) that any utility operations would be allowed/ disallowed in every application involving Town of West Sparta right-of-way. The Town must review each proposed utility system after the appropriate project documentation has been submitted. Reasons for rejecting utility systems in whole or in part may be based on, but not limited to: existing utility congestion, highway maintenance distress, projected road reconstruction and structural proximity.

All road crossings in regards to allowing "open cuts" will be at the sole discretion of the Town Highway Superintendent or Designee. The Parties further agree that the Developer(s) shall be responsible for obtaining all private land rights as are necessary to permit the Developer(s) to complete any type of installation approved by the Town and make the modifications and improvements to the Designated Haul Routes contemplated by this Agreement, including obtaining all necessary land rights from private landowners adjacent to the Designated Haul Routes. The Developer(s) shall submit Appendix C to the Town prior to the commencement of construction.

Section 7.6 Permits. The Developer(s) shall obtain all necessary governmental permits and approvals that are necessary to permit the Developer(s) to make the modifications and improvements to the Designated Roads contemplated herein, including obtaining all necessary private land rights that may be required in connection with Section 7.5. The Town shall not be responsible for obtaining any such private land use rights. The Developer(s) shall be responsible for obtaining all required permits and approvals including but not limited to:

1. Town Highway Driveway Permits
2. NYS DEC permits for water crossings, wetlands, storm water phase 2 permits, etc.
3. Army Corps of Engineer permits for water crossings, wetlands, etc.

ARTICLE VIII INTERIM AND EMERGENCY REPAIRS

The Town will perform periodic inspections of the specified haul route(s) designated by the Developer(s). The Town will determine if any repairs are required to maintain the safety of the traveling public. The Town may deem necessary that the designated haul route(s) be restored to like new conditions before the project is complete. The Developer(s) will be expected to perform any emergency repairs to the haul roads, including the pavement, drainage structures, or any other highway related appurtenance that is damaged by the project and which the Town determines must be repaired. The Town will inform the Developer(s) of required emergency repairs and the repair shall be accomplished within a minimum of twelve (12) hours. If more time is required the Developer(s) shall inform the Town of the status of the repair on a daily basis, but at no time shall the road become impassable or become dangerous to the traveling public. Close communication will be required between the Town Highway Superintendent and the manager of the project. All costs of the repair shall be paid for by the Developer(s). Due to the constantly changing condition of gravel roads the condition of Gravel Haul routes will be monitored closely. All gravel haul routes shall be treated for dust control throughout the construction project. At a minimum two times between the months of May and September, the gravel haul routes shall be treated with Calcium Chloride or a suitable liquid asphalt prime coat. At the discretion of the Town, depending on road conditions more dust control treatments may be required. The Town will determine when re-grading and dust control treatments are required for gravel roads and shall direct the Developer(s) when to do them.

ARTICLE IX WARRANTIES BY DEVELOPER

Section 9.1 Workmanship and Material Warranties. The following warranty and workmanship requirements apply to all repairs, modifications, and improvements that the Developer(s) (its contractors or subcontractors) shall make prior to or during the course of the Construction project in order to accomplish the construction process. As used herein, "Applicable Warranty Period" means, with respect to any repair, modification, or improvement by the Developer(s) hereunder, the time period that begins on the date repairs, modifications or improvements to Designated Roads are complete and ending on the date that is twelve (12) months after the repairs, modifications or improvements to Designated Roads are completed.

(a) Developer's engineering responsibility, including the selection of material and equipment suitable for the repair of, and modifications and improvements to, the Designated Haul Routes and One Time Use Roads shall be carried out in accordance with generally accepted engineering practices, and Developer's construction responsibility shall be carried out in accordance with sound construction practices. The Developer(s) shall require from its construction contractors and subcontractors the same standards for engineering and construction practice. The Developer(s) warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.

(b) The Developer(s) warrants that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. The Developer(s) shall remedy any defects in the repairs, modifications and improvements performed hereunder including repairs, modifications and improvements, workmanship, materials and equipment provided by subcontractors during the "Applicable Warranty Period". A "defect" means any and all design, engineering, construction, manufacturing, installation, materials, equipment, repairs, modifications or improvements which (1) does not conform to the terms of this Agreement (2) is of improper or inferior workmanship, or (3) is not suitable for use under the applicable climatic and range of operating conditions.

Section 9.2 Remedies. During the Applicable Warranty Period, the Town shall notify the Developer(s) in writing of any defects in the repairs, modifications or improvements. At no additional cost to the Town, the Developer(s) shall proceed promptly to take such action relating to its performance hereunder as is necessary to cause the repairs, modifications and improvements to comply with the warranties specified in this Agreement. The Developer shall be available either at the project or by telephone for the performance of warranty repairs on a seven (7) day a week, twenty-four (24) hours per day basis.

Section 9.3 Final Waiver of Liens The Developer(s) warrants that all repairs, modifications, improvements and materials furnished in connection with the performance by Developer(s) Parties under this Agreement shall be free and clear of all liens.

ARTICLE X BONDING

Section 10.1 Bonding

A bond, standby letter of credit, or other form of security acceptable to the Town, will be required in an amount to be determined subsequent to the road classification of Haul routes and prior to the commencement of project construction. The bond posting dates must be for a period starting no later than the commencement of construction date and ending upon the completion of any repairs the Town determines are necessary after review of the Post Use Road Survey as set forth in Article V. The security will be in accordance with the following schedule:

1. Class 1 Roads – \$ 150,000 / mile
2. Class 2 Roads - \$ 185,000 / mile
3. Class 3 Roads - \$ 240,000 / mile
4. Class 4 Roads - \$ 300,000 / mile
5. Class 5 Roads - \$ 95,000 / mile
6. Class 6 Roads - \$ 190,000 / mile

Section 10.2 Multiple Users. In the event that there are multiple users on any Designated Haul Routes;

- a) A list of all developers using the same Designated Haul Routes shall be distributed to each developer by the Town.
- b) All interim and emergency repair costs (ref. Article VIII), as well as all final road repair costs (ref. Article VI), incurred after multiple Road Use Agreements are in place, shall be shared by the Developer(s). Any costs incurred before multiple Road Use Agreements and in place, shall be borne by the original Developer(s).

ARTICLE XI DEFAULT AND REMEDIES

Section 11.1: In the event that the Developer(s) fails substantially to perform each and every obligation and undertaking to be performed by it hereunder, and such default shall not be cured within thirty (30) days after notice from the Town, then the Town shall have the right to terminate this Agreement by giving ten (10) days' notice.

Section 11.2: The Town reserves the right at any time during the life of this Agreement to terminate the Agreement in its absolute discretion on thirty (30) days' notice in the event that,

- (a) The Developer(s) becomes insolvent; or
- (b) Any voluntary or involuntary petition in bankruptcy or for corporate reorganization or for any similar relief is filed by or against the Developer(s) and, in the case of an involuntary petition, such petition is not dismissed within thirty (30) days after such filing; or
- (c) A liquidation proceeding is commenced by or against the Developer(s), and, in the case of an involuntary proceeding, such proceeding is not dismissed within thirty (30) days after commencement thereof; or
- (d) All or substantially all of the business or assets of the Developer(s) are transferred to a third party (other than a parent or ASSOCIATED COMPANY of the Developer) by agreement, order of court, or otherwise, including, without limitation, by a merger or consolidation.

Section 11.3: Upon termination of this Agreement as hereinabove provided or by operation of law or otherwise, all rights and licenses granted and obligations assumed hereunder shall terminate forthwith, except;

1. The obligation to pay amounts accrued or to accrue as of the termination date as provided hereinabove; and
2. The provisions of Article IX hereof for any amounts accrued or to accrue as provided hereinabove; and
3. The provisions undertaken under Article X.