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NEW YORK STATE DEPARTMENT OF STATE

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Village of Penn Yan

Local Law 3 of the year 2010

A local law providing that the Village of Penn Yan to regulate commercial activities as to avoid potential adverse effects on the condition of roads and streets in the Village.

Be it enacted by the Village of Penn Yan as follows:

Section 1. Legislative Intent

The purpose of this law is to maintain the safety and general welfare of the public residents by regulating commercial activities that have the potential to adversely affect road conditions and public right-of-ways. Well maintained roads are important to the economic well being of the Village of Penn Yan. Commercial endeavors such as mining and natural gas drilling are also economically beneficial. This law is not intended to regulate such business; the intent is to protect the public right-of-ways from damage. The Board of Trustee of the Village of Penn Yan hereby enacts the following Road Preservation Local Law pursuant to the provisions of the Municipal Home Rule Law.

Section 2. Short Title.

This local law shall hereafter be known as: "The Village of Penn Yan Local Law To Regulate Commercial Activities as to Avoid Potential Adverse Affects on Road Conditions and Public Right of Ways in the Village of Penn Yan."

Section 3. Legislative Authority

This local law is adopted pursuant to the provisions of the Municipal Home Rule Law of the State of New York.

Section 4.Provisions.

The following is added to Chapter 174. "Streets and Sidewalks", of the Code of the Village of Penn Yan.

Article IV
Preservation of Street Conditions.

§174-20 Definitions.

A. Structural Class:

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/or 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 drilling 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.

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/or 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.

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 drilling. 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.

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 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 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.

5. **Structural Class 5** – 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 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 project. Use of the road without prior reconstruction may result in significant distresses such as potholes, rutting, and very rough ride-ability within the duration of the project. The accelerated deterioration would create excessive demand for 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.

B. High Frequency, High Impact Traffic: Traffic to and from a single project site that generates more than ten truck trips per day for more than four consecutive days, involving trucks that exceed 20 tons (truck and load combined) that could impact Town/Village right-of-ways.

C. Bond (Surety/Performance) in an amount determined by the Board of Trustees of the Village of Penn Yan.

D. Road Preservation Local Law Worksheet (**Appendix A**): Worksheet is to be completed by project sponsor, summarizing the project, project location, start and completion dates, expected max gross weight used for the project, designated haul routes (**Appendix B**), and any other items that the Highway Superintendent deems necessary.

E. Designated Haul Routes (**Appendix B**): Roads used for; (1) transportation and delivery of drilling equipment and components and other materials and equipment to be used in connection with the Project; (2) truck transportation leaving the Project site following delivery of equipment and materials; (3) movement of the drilling rigs and (4) transportation and delivery of local sources of materials, including concrete and gravel.

§174-21: GENERAL PROVISIONS

DESIGNATION OF HAUL ROUTES

A. The Developer shall submit requested routes (hereto referred to as Designated Haul Routes) for hauling equipment and materials to and from the project to the Municipality for approval. These routes will be further designated, by the Municipality as Structural Class 1, 2, 3,

4, or 5 (as defined in 174-22) with certain requirements stipulated for their use as set forth in Sections sub-paragraph B and C hereof and Section 174-22 below. **A list and map of the Designated Haul Routes are identified in Appendix A.** The Haul Routes shall be designated **prior** to the commencement of construction activities and prior to the final signing and execution of the Road Use Agreement. The Pre-Construction Survey will begin after the signing of the Road Use Agreement.

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

C Class 4 and 5 Roads – The Developer may proceed to use the road at their own risk. However, the Municipality shall monitor the use of the road during the construction project. If the road becomes dangerous to the traveling public, the Municipality shall close the road to all construction traffic. In the case of closure the Developer 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 Municipality shall determine the full cross section design and material specifications for this reconstruction. The Developer shall hire a qualified contractor of its choice to construct the pavement system (base and asphalt pavement layers for Class 4, if applicable) according to the full specifications provided by the municipality.

§174-22: USE OF DESIGNATED HAUL ROADS AND PRE-CONSTRUCTION ROAD SURVEY

A Construction Traffic Estimation- The Developer shall engage and pay for the services of a NYS licensed Civil Engineering firm approved by the Municipality, 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. This shall be done for overweight vehicles hauling in drilling equipment 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 (ESAL's), 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 will use for the project. The Road Use Agreement will be executed only after this data is submitted and the Haul Routes are designated. **All Designated Haul Routes will be posted and paid for as detailed in Appendix B.**

B - As soon as practicable after the execution of the Road Use Agreement, but in any event prior to the commencement of construction the Developer shall select a third party NYS licensed Civil Engineering firm, approved by the Municipality to conduct the surveys and assessments explained in sub-section D below. Roads and highways within the boundaries of the Municipality 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 Municipal Highway Superintendent or their designee prior to data collection to review how the data will be collected and reported. The Municipality shall agree and approve the data collection process and the report formats. **The Pre-Construction survey shall be done before the final execution of the Road Use Agreement.**

C. Structural Class Designation- The Municipality shall retain exclusive rights to designate the Road Structural Class for the Designated Haul Routes. The Developer agrees to abide by this decision. The Municipality shall make this decision based on the road surface condition, structural condition, and the traffic using the road. Pre-construction road survey requirements are enumerated in sub-section D below.

D. Pre-Construction Survey- A full report of the assessments in (i) – (v) below shall be provided to the Municipality at no cost to the Municipality prior to the commencement of construction.

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

(ii) **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.

(iii) **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.

(iv) **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 Municipality at no cost to the Municipality prior to the commencement of construction.

(v) **Core Sample**- A core or crosscut sample may be required, at the Municipalities discretion, to determine necessary repairs.

E Inspection of Culverts and Bridges- Within one month after the execution of this agreement, and prior to the commencement of construction, the Developer shall select a qualified engineering company, subject to approval by the Municipality, to inspect the culverts and bridges on the Designated Haul Routes. The inspection shall be done within that same month following execution of the agreement. Culverts and bridges on any other roads anticipated to serve 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. Based on the inspections the selected engineering firm shall provide a report discussing the status of culverts and bridges that shall require improvements/upgrades prior to their use Project. This report shall also present the recommended improvements/upgrades to the structures and shall be submitted to the Municipality for review. The Municipality will prepare a final list of improvement/upgrade projects that must be done prior to commencement of the Project. The Municipality 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 a qualified NYS licensed engineering firm.

F. Limitations of Road Use

(i) **Restrictions.** All other Municipal roads not selected as Designated Haul Routes 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 Municipality shall be informed and Appendix A shall be amended. All Articles of this agreement shall then be immediately applicable and satisfied prior to the added road being used.

(ii) **'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 Municipal road not identified on **Appendix B** as a Designated Haul Road, then the Developer shall notify the appropriate Municipal Designee, describing in detail such use and the reasons therefore. If the use is to be 'one time,' the Municipal Designee shall make the determination to allow the road use without the road being added to Appendix B as a Designated Haul Route. If the Developer determines that the road may be used multiple times it shall be added to Appendix B as described in Section 4 of this Article as a Designated Haul Route.

(iii) **Extreme Weather Conditions** - Once construction begins on the Project the Municipal Designee shall be entitled, at any time, to notify the Developer 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 shall work with such Municipal 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 may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, the Developer may propose an alternate route to the Project site for approval by the Municipality (such approval not to be unreasonably withheld).

§174-23: POST USE PAVEMENT SURVEY

A Post Use Pavement Survey Tasks - The Developer shall engage and pay for the services of a NYS licensed Civil Engineering firm, approved by the Municipality, to do the post use survey. The Post Use Pavement Survey tasks listed below shall be completed within a three (3) month window following the project completion date.

- (i) **Photo & Video Survey of Roads** – Repeat as described in section 5.4 (a) above.
- (ii) **Distress Survey** – Repeat as described in Section 5.4 (b) above.
- (iii) **Rut Depth and Cross Slope measurements** – Repeat as described in Section 5.4 (c) above.
- (iv) **Road Roughness** – Repeat as described in Section 5.4 (d) above.
- (v) **Core Sample**- May be required per Municipalities' discretion.

§174-24: DETERMINATION OF FINAL REPAIRS

The Municipality 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 Municipality shall determine the needed repairs. The Municipality shall prepare a report of the needed repairs that includes the treatment for each road segment and the total estimated cost of the repair. The report shall be submitted to the Developer within the first three month period after the project completion date (assuming the Developer submits the Post Use Pavement survey data to the Municipality within).

A - 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 Municipality. 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 Municipality shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services, shall be paid by the Developer to the Municipality. *The Village of Penn Yan retains the right to make the final decision regarding the extent and type of road repairs.*

B Class 2 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 Municipality. 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 Municipality shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services shall be paid by the Developer to the Municipality. *The Village of Penn Yan retains the right to make the final decision regarding the extent and type of road repairs.*

C. Class 3 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 Municipality. 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 Municipality shall determine the repair type (to include shoulders if necessary), and material specifications for the repair. One hundred percent (100%) of the costs of the labor, materials, equipment, design and construction inspection services shall be paid by the Developer to the Municipality. *The Village of Penn Yan retains the right to make the final decision regarding the extent and type of road repairs.*

D. Class 4 and 5 Roads - If the road was not rebuilt by the Developer prior to or during the project then upon completion of the project the road will be repaired by one of the following methods; Full pavement rehabilitation (recycling or replacement of asphalt) or Full depth reconstruction (asphalt pavement and base layer reconstruction).

(a) Asphalt Pavement Repair –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.

(b) Full Depth Repair - If the needed repair includes replacing the asphalt pavement and/or granular base.

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

E. One-Time Use Roads - The Developer 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 Municipality and Developer shall meet to review the damage in relation to the Initial Survey or most recent subsequent survey, as applicable. The

Developer shall repair (or cause to be repaired) such damage and restore the road to the standard agreed upon, unless the Developer can demonstrate to the reasonable satisfaction of the Municipal Designees that the damage was not caused by the Developer. Any repair and restoration shall be promptly performed at such times as the Developer and the Municipality determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. In the event that the Developer fails to repair such roads within the agreed period, then, unless the Parties mutually agree otherwise, the Municipality may make such repairs and shall invoice the Developer for the costs incurred by the Municipality in connection with the repair. The Developer shall pay such invoiced amounts within ten (10) days following receipt of the invoice.

F. Culverts and Bridges – Improvements/Upgrades to bridges and culverts may be required prior to commencement of the project. These improvements are discussed in Section 5.5. Damage as a result of the Project to a culvert or bridge structure that was not improved or upgraded must be repaired following the project, or sooner if deemed necessary by the Municipality. All modifications or repairs to culverts or bridges shall be designed by a Professional Engineer licensed to practice in New York State in accordance with accepted AASHTO and NYSDOT standards and approved by the Municipality. All damage by the contractor shall be mitigated, either through repair or replacement, by the contractor at his expense to the satisfaction of Municipality.

G. Emergency and/or Periodical Repair- The Developer will be expected to perform any emergency repairs and or periodical, necessary 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 Municipality determines must be repaired. The Municipality will inform the Developer of required emergency repairs and the repair shall be accomplished within a minimum of three days time. If more time is required the Developer shall inform the Municipality of the status of the repair on a daily basis. Close communication will be required between the Municipal Highway Designee and the Project Manager of the Project. All costs of the repair shall be paid for by the Developer.

H. Insurance Requirements- The Village of Penn Yan requires the following Certificates of Insurance showing the following:

(i) Certificate of Insurance showing that the contractor is carrying General Liability Insurance with limits of \$1,000,000 per occurrence, \$1,000,000 general aggregate, and \$1,000,000 products/completed operation aggregate limits. **The Village of Penn Yan shall be listed as additional named insured on the liability policy.**

(ii) Workers Compensation and Employers Liability Insurance/New York State Disability Benefits Insurance. **The Village of Penn Yan must be listed as Certificate holder. The previously accepted ACORD 25 forms will not be accepted as proof of Worker's Compensation Insurance.** Forms C-105.2, U-20.3, GSI-105.2 or SI-12 are the only forms that will be accepted as proof of Worker's Compensation Insurance. The only exception to this requirement is the unincorporated sole proprietorship or partnership, where there are no employees. In such event Form CE-200 (Certificate of Attestation) must be submitted.

(iii) The Village Clerk at 111 Elm Street, Penn Yan, New York 14527 shall be notified immediately if the insurance coverage is in any way modified or terminated while this agreement is in effect.

§174-25: PERMITS

The Developer shall obtain all necessary governmental permits and approvals that are necessary to permit the Developer to make the modifications and improvements to the Designated Roads contemplated herein. The Developer shall be responsible for obtaining all required permits and approvals as follows:

- A. Municipal/County Highway Work Permits – For any and all work in the Municipal/County right-of-way (including utilities)
- B. Municipal/County Highway Driveway Access Permits
- C. Municipal/County Overweight and Special Hauling Permits
- D. NYS DOT Overweight and Special Hauling Permits for County Roads
- E. NYS DEC permits for water crossings, wetlands, etc.
- F. Army Corps of Engineer permits for water crossings etc.

§174-26: WARRANTIES BY DEVELOPER

A. **Workmanship and Material Warranties**- The following warranty and workmanship requirements apply to all repairs, modifications, and improvements that the Developer (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 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 such completion date.

(i) 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 **NYS Department of Transportation (NYSDOT) standards and specifications**, and Developer’s construction responsibility shall be carried out in accordance with sound construction practices. The Developer shall require from its construction contractors and subcontractors the same standards for engineering and construction practice. The Developer warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.

(ii) The Developer warrants that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. The Developer 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.

B. Remedies- During the Applicable Warranty Period, the Municipality shall notify the Developer in writing of any defects in the repairs, modifications or improvements. At no additional cost to the Municipality, the Developer 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.

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

§174-27: WARRANTIES BY DEVELOPER

A bond or letter of credit (to be determined by municipality) will be required for each designated haul road in an amount to be determined subsequent to the designation of Haul routes but prior to signing of the final agreement. The Bonded amounts shall be in accordance with the following schedule:

- A. Class I Roads - \$150,000 per mile
- B. Class II Roads - \$150,000 per mile
- C. Class III Roads - \$140,000 per mile
- D. Class IV Roads - \$70,000 per mile

The final release of all performance bonds will be determined once all damage has been repaired to the satisfaction of the Municipality.

§174-28: FEES

A non-refundable processing fee of one-thousand dollars (\$1,000) payable to the Village of Penn Yan, must accompany each executed Appendix A.

§174-29: ENFORCEMENT

This local law will be enforced by the Village of Penn Yan by such officer or employee designated for such purpose by the Board of Trustees of the Village of Penn Yan.