

# Local Law Filing

New York State Department of State  
Division of Corporations, State Records and Uniform Commercial Code  
One Commerce Plaza, 99 Washington Avenue  
Albany, NY 12231-0001  
www.dos.ny.gov

(Use this form to file a local law with the Secretary of State.)

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

County  City  Town  Village  
(Select one.)

of Tuscarora

FILED  
STATE RECORDS  
NOV 9 2015

DEPARTMENT OF STATE

Local Law No. 1 of the year 2015

A local law The Town of Tuscarora Highway  
(Insert Title) Preservation and Restoration Law

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

County  City  Town  Village  
(Select one.)

of Tuscarora as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 20 15 of the (County)(City)(~~Town~~)(Village) of Tuscarora was duly passed by the Tuscarora Town Board on April 13 20 15, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

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

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted (Elective Chief Executive Officer\*) on \_\_\_\_\_ 20   , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. (Elective Chief Executive Officer\*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

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

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

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

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

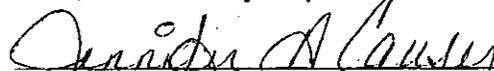
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority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

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

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

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

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

  
Clerk of the county legislative body, City, Town or Village Clerk or  
officer designated by local legislative body

Date: 10/30/15

(Seal)

## Modifications as 4/1/2015

### Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
162 WASHINGTON AVENUE, ALBANY, NY 12231

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Town of Tuscarora

Proposed Local Law 1 of the year 2015

A Law providing that the Town of Tuscarora regulate high frequency, high impact traffic and construction activities in order to prevent and alleviate potential adverse effects on the condition of Town highways and streets in the Town of Tuscarora by certain vehicular traffic, as well as other negative impacts upon the residents and property owners in the Town.

Be it enacted by the Town of Tuscarora as follows:

#### **Section 1. Legislative Findings and Intent**

The purpose of this Local Law is to maintain the safety and general welfare of the public by regulating commercial vehicular activities and construction activities that have the potential to adversely affect Town highway conditions. Well maintained highways are important to the safety of travelers in and the economic well being of the Town of Tuscarora. Commercial endeavors are also economically beneficial. This Local Law is not intended to regulate such commercial vehicular activities. The intent is to protect Town highways from damage and provide for restoration of any such damage. The Town Board of the Town of Tuscarora hereby enacts the following Highway Preservation and Restoration 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 Town of Tuscarora Highway Preservation and Restoration Law."

#### **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 TOWN OF TUSCARORA HIGHWAY PRESERVATION AND RESTORATION LAW."

##### **§1. PERMIT REQUIRED.**

- A. From and after the effective date hereof any developer using any Town highway of the Town of Tuscarora for any project resulting in high frequency and/or high impact traffic and construction activities shall first obtain a permit from the Town of Tuscarora. Such permit shall be subject to approval of the Town Board and shall be executed by the Town Supervisor at the direction of the Town Board subsequent to approval thereby with such conditions as are determined by the Town Board, in consultation with and approval of the Town Superintendent of Highways.

- B. The commencement of high frequency and/or high impact traffic and construction activities by the developer, the developer's employees, agents, sub-contractors or anyone on behalf of the developer on any Town highway prior to issuance of a permit by the Town with respect thereto and as required hereby, shall be a violation of this Local Law, as shall be the violation of any of the conditions of such permit.

## §2. DEFINITIONS.

- A. **Designated Road** - Those Town highways which have been approved by the Town Board for use by Developer, and Developer parties, as set out in Appendix A.
- B. **Developer** - Any person, corporation, organization, LLC, LLP or other entity undertaking a project, whether in the Town of Tuscarora or elsewhere, which will result in high frequency, high Impact traffic and/or construction activities.
- C. **High Frequency, High Impact Traffic** - Traffic to and from a project that generates more than ten truck trips per day for more than four consecutive days, involving trucks that exceed 20 tons gross weight upon any Town highway, exempting there from agricultural vehicles, municipal vehicles and emergency response vehicles such as fire fighting apparatus.
- D. **Project** - Any endeavor upon a site, whether located within the Town or elsewhere, which will result in high frequency, high impact traffic, and/or construction activities on a Town Highway.
- E. **Town** - the Town of Tuscarora.
- F. **Town Board** - The Town Board of the Town of Tuscarora.
- G. **Town Highway** - Any road, street or other public right-of-way under the control or ownership of the Town of Tuscarora for which the Town has responsibility for repair, maintenance and upkeep, except such highways for which the Town has responsibility for snow and ice control solely by virtue of contract with the State of New York or the County of Steuben.
- H. **Town Superintendent of Highways** - The duly serving Superintendent of the Town of Tuscarora.

## §3. CONDITIONS OF PERMIT.

Any permit issued pursuant hereto shall contain the following conditions unless specifically exempted by the Town Board in writing. No condition shall be exempted without the specific reason(s) therefore being placed on the record.

### A. USE OF DESIGNATED ROADS BY DEVELOPER

1. Use of Designated Roads by Developer. In connection with the development, construction, operation and maintenance of the Project, the Town hereby acknowledges and agrees that Developer, its contractors and subcontractors and each of their respective agents, officers, employees, representatives and permitted assigns (collectively, the "Developer Parties") may use the roads and highways located in the Town identified on Appendix A (the "Designated Roads") generally between the hours of 7:00 am and 8:00 pm, seven (7) days a week ("Period of Use"). The Designated Roads may be used by Developer and the Developer Parties in connection with the development, construction, operation and maintenance of the Project, and including the transportation of heavy equipment and materials to and from the Project. The Parties understand that deviations from the Project schedule may cause monetary and other harm to Developer. Accordingly, the Town agrees to use best efforts to accommodate the use of the Designated Roads by Developer and the Developer Parties outside the Period of Use, when requested, during the period of construction. In addition to identifying the Designated Roads that will be used by Developer, Appendix A identifies the routes over the Designated Roads that will be used for:

(i) transportation and delivery of materials and equipment to be used in connection with the Project; and (ii) truck transportation leaving the Project site following delivery of equipment and materials. Developer and the Developer Parties may use any other Town roads (roads not included as Designated Roads) in connection with the development, construction, operation and maintenance of the Project, provided however that any such use of such roads shall not be for purposes set forth in subsections (i) and (ii) above without the prior consent of the Town Superintendent of Highways which consent shall not be withheld unreasonably.

2. **Construction Period Meetings.** Beginning with the commencement of the construction of the Project, Developer and Town Superintendent of Highways, also referred to as Town Designee shall meet on a weekly basis to discuss the expected use of the Designated Roads in the next succeeding week, including the construction schedule and the haul routes to be used. The Town Superintendent of Highways shall have the authority to act on behalf of its respective employer, including the right to allow use of the Designated Roads outside the Period of Use. Within ten (10) days after the issuance of the permit, Developer shall provide the name and contact information for its Designee.
3. **Additional Conditions of Use.** The use by Developer and the Developer Parties set forth in Section 1.1 shall be subject to the following conditions:
  - (a) In the event Developer determines it is necessary for the Project to use any portions of any roads located in the Town other than the Designated Roads, or uses of the Designated Roads other than as described in Section 1.1, the Developer shall seek approval of the Town Superintendent of Highways, describing in detail such use and the reasons thereof. Such Town Superintendent of Highways will take into account weather conditions, conditions of the road and any other significant factors in making his or her determination of whether to grant permission for the use of the Town road under this Section 1.3, which permission shall not be unreasonably withheld.
  - (b) Once construction begins on the Project, the Town Superintendent of Highways shall be entitled, at any time, to notify Developer and the Developer Parties that the use of the Designated Roads may result in excessive damage to the Designated Roads due to weather conditions. Developer and/or the Developer Parties shall work with such Town Superintendent of Highways to develop a plan to mitigate or prevent the effect of such damage. If the Parties are able to develop a plan to mitigate or prevent such damage, then Developer and the Developer Parties may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, Developer and the Developer Parties may propose an alternate route to the Project site for approval by the Town Superintendent of Highways, which approval shall not be unreasonably withheld.
4. **Survey of Designated Roads.** As soon as practicable after the issuance of the permit, but in any event, prior to the commencement of use of Designated Roads, the Town Superintendent of Highways and Developer Designee shall select a third party to survey the Designated Roads to document the condition of such roads prior to their use ("Initial Survey"). If there is a disagreement as to the selection, final approval shall be made by the Town Board of the Town of Tuscarora. The Initial Survey may include photographs or videotape of the Designated Roads, which photographs or video shall be accompanied by a written summary of findings regarding the condition of the Designated Roads. Such Initial Survey and any subsequent surveys or road reports shall be completed to the reasonable satisfaction of the Town Superintendent of Highways. Copies of the Initial Survey shall be provided to the Town Superintendent of Highways and the Developer Designee. The costs of the Initial Survey, including any required copies, will be borne by Developer. Following the Initial Survey, Developer shall request the third party surveyor to conduct an additional survey following completion of construction of the Project to determine the then current condition of the Designated Roads. Additional surveys shall only be conducted in the event the Parties mutually agree and additional costs are borne by Developer.

5. Restoration Phase. Restoration scheduling will be consistent with the seasonal limitations identified by the New York State Department of Agriculture and Markets and will be incorporated into the Project's Agricultural District Notice of Intent (if required), the Stormwater Pollution Prevention Plan (prepared under the Department of Environmental Conservation's general stormwater permit), and any other requirements contained in Developer's SEQRA Findings Statements issued by the Steuben County Industrial Development Agency ("SCIDA").
6. Trash Removal; Unnecessary Materials and Equipment. Throughout the term of this Permit, Developer shall be responsible for keeping, at its cost, the Designated Roads clean and free from rubbish, dirt and debris resulting from Developer's use of the Designated Roads. Materials and equipment of Developer or the Developer Parties, if any, shall be removed from the Designated Roads when they are no longer necessary.
7. Reimbursement of Certain Costs. Developer shall reimburse the Town for all reasonable, documented out-of-pocket costs, including, but not limited to, engineering and legal fees, incurred by them in connection with the application, permit issuance process, permit administration and permit enforcement and all related documentation. Developer shall pay invoices presented by the Town within 30 days of receipt.

## **B. REPAIR OF DESIGNATED ROADS**

1. Obligation to Repair Town Roads. In the event that any of the Designated Roads or related appurtenances, including bridges, culverts and other road fixtures, modifications and improvements made pursuant to C.1. and described on Appendix A, or Town roads other than the Designated Roads are damaged as a result of the use by Developer or the Developer Parties, Developer agrees to repair (or cause to be repaired) such damage and to restore such road or related appurtenances, to the condition they were in prior to the use (as near as is reasonably practicable having due regard for normal wear and tear) under this permit, except for repairs to modifications and improvements pursuant to C.1 which shall be repaired in accordance with the specifications set forth on Appendix C. The Parties shall rely upon the Initial Survey conducted pursuant to A.4. for purposes of determining whether the repair has been performed in accordance with the standard set forth in this B.1. Any repair and restoration shall be promptly performed at such times as the Desisgnees determine, having due regard for safety, the presence of emergency conditions and the costs of such repairs. Within five (5) days following completion of such repair, the Town Superintendent of Highways and Developer Designee shall jointly inspect the repair to determine that it has been satisfactorily completed. Within 48 hours after the Dessignee's inspection and determination of satisfactory completion, the Town Superintendent of Highways shall issue a written certification that the restoration obligations required in Sections B.1. and B.2. hereof have been satisfactorily completed as of the stated date of such certificate.
2. Repairs of Designated Roads and Town roads other than Designated Roads at the Request of the Town Superintendent of Highways: Failure to Repair. The Town Superintendent of Highways may request in writing that Developer repair damage shown to be caused by Developer and/or the Developer Parties to the Designated Roads and/or to Town roads other than the Designated Roads and related appurtenances in accordance with Section B.1. hereof Prior to commencement of such repair, the Town Superintendent of Highways and Developer Designee shall meet to review the damage in relation to the Initial Surveyor most recent subsequent survey, as applicable. Developer shall repair ( or cause to be repaired) such damage and restore the road to the standard set forth in Section B.I, unless Developer or the Developer Parties demonstrate to the reasonable satisfaction of the Town Superintendent of Highways that the damage was not caused by Developer or the Developer Parties. Any repair and restoration shall be promptly performed having due regard for safety, the presence of emergency conditions and the cost of such repairs.

In the event that Developer fails to repair such roads and appurtenances within the agreed period, then, unless the Parties mutually agree otherwise, the Town may cause to have such repairs completed and shall invoice Developer for the costs incurred by such Town in connection with the repair. Developer shall pay such invoiced amounts within thirty (30) days following receipt of the invoice provided however, if Developer disputes the invoice for said repairs, the Town Superintendent of Highways and Developer Designee shall together make a determination, as applicable, of which repairs were reasonably necessary to protect public health, safety and welfare, and which costs of such repairs are reasonably attributable to damage caused to the Town roads by Developer, or the Developer Parties, and Developer will pay such costs as so determined by the Town Superintendent of Highways.

3. Term of Obligation to Repair. Notwithstanding anything herein to the contrary, the obligation of Developer and the Developer Parties to repair roads in accordance with B.1. and B.2. shall terminate on the later to occur of the following: (i) the date that is sixty (60) days following the completion repairs pursuant to B.1 and B.2 hereof; and (ii) the date on which the warranty coverage described in sub-section D. expires. Developer will endeavor in good faith to notify the Town in writing sixty (60) days prior to the date on which completion of the project is anticipated to occur.

### **C. IMPROVEMENT AND MODIFICATIONS TO DESIGNATED ROADS**

1. Improvements and Modifications to Designated Roads. Certain modifications and improvements to the Designated Roads and related appurtenant structures are necessary to accommodate the use of the Designated Roads by Developer and the Developer Parties, including the widening of certain roads and modifications and improvements necessary to accommodate the heavy equipment and materials to be transported on the Designated Roads. The modifications and improvements that shall be made by Developer are described in detail on Appendix B hereto. The Town consents that such improvements and modifications shall be made in accordance with the specifications set forth on Appendix C. Upon the reasonable request of Developer, the Town Superintendent of Highways is authorized from time to time to grant consent to deviations from the specifications set forth on Appendix C, if it is determined to be in the best interest of the Town.

Within five (5) days following completion of any modifications or improvements, the Town Superintendent of Highways and Developer Designee shall jointly inspect the work to determine that it has been satisfactorily completed. Within 48 hours after the inspection and determination of satisfactory completion, the Town Superintendent of Highways shall issue a written certification that the modification or improvement has been satisfactorily completed in accordance with specifications set forth on Appendix C attached hereto as of the stated date of such certificate.

2. List of Materials and Construction Techniques. If practicable, ten (10) days prior to the commencement of any modification or improvement pursuant to this sub-section C, Developer shall deliver to the Town Superintendent of Highways a list of all materials to be used and construction techniques to be employed in connection therewith, to the extent such modifications, improvements, materials and techniques are not already described on Appendix C. subject to the approval of the Town Superintendent of Highways.
3. Subsequent Modifications or Improvements. If modifications or improvements are necessary to the Designated Roads and related appurtenant structures that were not completed at the time the permit 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.
4. Compliance with Law. Developer agrees that all modifications and improvements shall comply with all applicable laws, subject to the obligations of the Town set forth in C.5.

5. Permits. Developer shall obtain all government permits and approvals that are necessary to permit Developer 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 the conditions hereof. The Town shall not be responsible for obtaining any such permits or approvals. In light of this permit, Highway Work Permits from the Town shall not be required for such improvements as long as the parties comply with the terms of this Permit.

#### **D. WARRANTIES BY DEVELOPER**

1. Workmanship and Material Warranties.

- (a) Developer's engineering responsibility 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, subject to the provisions of C.2. (including the specifications contained in Appendix C). Developer shall require that its construction contractors and subcontractors follow the same standards of engineering and construction practice. Developer warrants that it shall perform and complete all repairs, modifications and improvements hereunder in a good and workmanlike manner.
  - (b) Developer warrants that all repairs, modifications and improvements hereunder shall be free from defects in material and workmanship. Developer shall remedy any defects in the repairs, modifications and improvements performed hereunder, workmanship, materials and equipment, including repairs, modifications and improvements, workmanship, materials and equipment provided by subcontractors, in accordance with D.2. hereof which appear during the "Applicable Warranty Period". A "defect" means any and all design, engineering, or construction which (1) does not conform to the terms of this Permit~ (2) fails to comply with the standards set forth in D.1 (a) hereof (3) is not of specified quality~ (4) is of improper or inferior workmanship~ or (5) is not suitable for use under applicable climate and range of operating conditions. If the Town Superintendent of Highways has already certified that modifications and/or repairs have been satisfactorily completed, as required under B.1 and C.1 hereof, the Town shall have the burden to demonstrate to an independent engineer, to be agreed upon by the parties, that a defect exists and that it could not have been detected at the time the Town made its certification under B.1 or C.1. As used herein, "Applicable Warranty Period" shall mean a term of twelve months commencing project completion date.
  - (c) A bond, letter of credit, or cash escrow will be required for each designated haul road in an amount to be determined subsequent to the designation of haul routes but prior to issuance of the permit. The bonded amounts shall be in accordance with the determination of the Superintendent of Highways. The final release of all bonds letters of credit/cash escrow will be determined once all damage has been repaired to the satisfaction of the Town Highway Superintendent.
2. Remedies. During the Applicable Warranty Period, the Town shall notify Developer in writing within fifteen (15) days of discovery by the Town that it believes there are defects providing that any delay by the Town beyond such fifteen (15) days in notifying Developer shall relieve Developer from liability only to the extent of any additional expense which may arise as a direct result of such delay. Only after it has been determined by an independent engineer that an undetectable defect has occurred, at no additional cost to the Town, 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 Permit. 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. Developer shall not be obligated to remedy any materials, equipment, repairs, modifications or improvements which becomes defective as a result of improper operation or maintenance by the Town or which results from normal wear and tear or use by parties other than Developer or the Developer Parties.

3. In the event that Developer and or the Developer Parties do not proceed in a timely manner to take such action as is necessary to cause the repairs, modifications and improvements to comply with the warranties specified in this permit, the Town of Tuscarora reserves the right to take any action it deems reasonable to cause the repairs, modifications or improvements to be completed. By the acceptance of this permit Developer and/or the Developer Parties shall reimburse the Town for all reasonable costs associated with this action, including reasonable attorney's fees.
4. Liens. Developer warrants that all repairs, modifications, improvements and materials furnished in connection herewith by Developer and the Developer Parties pursuant to this permit and the conditions hereof shall be free and clear of all liens.

#### **E. USE OF DESIGNATED ROADS AFTER COMPLETION OF CONSTRUCTION**

During the operation of the Project, if Developer determines it is necessary to undertake any repairs or maintenance on any project component would require the use of roads as contemplated under A.1(i) and (ii) hereof, Developer shall notify the Town Superintendent of Highways prior to its use of any of the Designated Roads for the transportation of equipment. The Town Superintendent of Highways will determine if a survey is required to survey the condition of any of the Designated Roads for purposes of being able to assess the condition of such roads before and after such use. Any such future use shall comply with the terms and conditions of this permit.

#### **F. INDEMNIFICATION; LIMITATION OF LIABILITY**

1. Indemnification by Developer. By acceptance of this permit Developer, hereby releases and agrees to indemnify and hold harmless the Town and their respective officers, agents and employees and their respective heirs, executors, administrators, successors and assigns (hereinafter collectively "Town Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Town Releasees arising out of or relating to the performance by Developer and the Developer Parties of their respective obligations under this permit except to the extent caused by the gross negligence, illegal or willful misconduct, or omission or failure to act of or by the Town or its officers, agents, employees or subcontractors. More particularly, but without in any way limiting the foregoing, Developer hereby releases the Town Releasees and agrees to indemnify and hold harmless the Town Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modification, repair or improvement of any Designated Road or any Town road by Developer, the Developer Parties and their respective employees, agents representatives, contractors or subcontractors except to the extent caused by the gross negligence, illegal or willful misconduct, or omission or failure to act of or by the Town or its officers, agents, employees or subcontractors. In the event a claim, action, demand, suit or proceeding ("claim") is instituted against the Town by any third party pursuant to which the Town is entitled to be indemnified hereunder, the Town shall notify Developer in writing within ten (10) days of being made aware of such claim and contemporaneously provide Developer with a copy of the written documents presented by such third party. Failure of the Town to notify Developer of such claim in a timely manner shall void any indemnification owed by Developer to the Town.
2. Indemnification by the Town. The Town hereby releases and agrees to indemnify and hold harmless Developer and its members, officers, directors, contractors, subcontractors, employees and agents, and their respective employees, heirs, executors, administrators, successors and assigns (hereinafter collectively "Developer Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against Developer Releasees arising out of or relating to the issuance, administration and/or enforcement of this permit except to the extent caused by the gross negligence, illegal or willful misconduct, or omission or failure to act of or by Developer, Developer Parties, or their officers, agents, employees or subcontractors. More particularly, but without in any way limiting the foregoing, the Town hereby releases the Developer Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable

attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any Designated Road or any Town road by the Town, their respective employees, agents, representatives or contractors or their respective employees, agents or representatives except to the extent caused by the gross negligence, illegal or willful misconduct, or omission or failure to act of or by Developer, Developer Parties, or their officers, agents, employees or subcontractors. This shall not be construed as to limit Developer and the Developer Parties' responsibility to comply with their obligations of the Warranties contained herein. In the event a claim, action, demand, suit or proceeding is instituted against Developer by any third party pursuant to which Developer is entitled to be indemnified hereunder, Developer shall immediately notify the Town in writing within ten (10) days of being made aware of such claim and contemporaneously provide the Town with a copy of the written documents presented by such third party. Failure of Developer to notify the Town of such claim in a timely manner shall void any indemnification owed by the Town to Developer.

3. **Limitation of Liability.** The Town and Developer waive all claims against each other (and against each other's parent company and affiliates and their respective members, shareholders, officers, directors, agents and employees) for any consequential, incidental, indirect, special, exemplary or punitive damages (including loss of actual or anticipated profits, revenues or product loss by reason of shutdown or non-operation; increased expense of operation, borrowing or financing; loss of use or productivity; or increased cost of capital); and, regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity (including the indemnity set forth above), contribution, strict liability or other legal theory.

#### **G. INSURANCE**

**Required Insurance.** Developer shall, at all times throughout the term of this Permit, maintain in full force and effect worker's compensation insurance in an amount required by applicable law and general liability insurance, naming the Town of Tuscarora as additional insured, in the amount of Three Million Dollars (\$3,000,000.00) in the aggregate. Developer may utilize any combination of primary and/or excess insurance to satisfy this requirement. Developer may elect to self-insure, in accordance with all legal requirements prescribed by state and federal law, any or all of the insurance requirements contained in this permit.

#### **H. TERM; DEFAULT AND REMEDIES**

1. **Term of Permit.** This Permit shall become effective as of the date specified therein and shall remain in effect until terminated in accordance with the conditions thereof.
2. **Events of Default.** The occurrence of anyone or more of the following events shall constitute an "Event of Default" hereunder:
  - (a) Subject to Developer's right to dispute invoices as set forth above, failure by Developer to make any payment or reimbursement due under the terms of the Permit when due and payable, and such failure continues for thirty (30) days after receipt by developer of written notice of such failure from the Town.
  - (b) Any representation or warranty made by Developer pursuant to the permit or in any report, certificate, financial statement, or other instrument furnished at any time under or in connection with this permit shall prove to have been false, misleading, or incorrect in any material respect as of the date made.
  - (c) Failure by Developer to comply with any condition or obligation contained in the permit, and such failure continues for thirty (30) days (or such longer period as the Town may specify if such failure is not susceptible of cure within such thirty (30) day period) after receipt by Developer of written notice of such failure from the Town.

(d) Developer's;

- i. Application for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property;
- ii. admission in writing of its inability to pay its debts as such debts become due;
- iii. making a general assignment for the benefit of its creditors;
- iv. commencing a voluntary case under the United States Federal Bankruptcy Code (as now or hereafter in effect);
- v. filing a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts;
- vi. Failure to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the United States Federal Bankruptcy Code.

(e) The institution of a case or proceeding against Developer in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up or composition or readjustment of debts of Developer; or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of Developer or of all or any substantial part of its assets, unless such proceeding or case is dismissed within sixty (60) days thereafter.

(f) the Town's failure to comply with any condition contained in the permit, and such failure continues for a thirty (30) day period after written notice thereof by Developer, provided, that such thirty (30) day period may be extended by the Town if the Town sends a written notice to Developer stating the defined longer period of time that is reasonably necessary to effect a cure so long as (a) such default could reasonably be expected to be subject to cure after the already expired thirty (30) day period, and (b) the Town is diligently and continuously proceeding to cure, or cause the cure of, such default and so certifies in any such Town notice to Developer; and provided further that any such extended cure period shall not exceed ninety (90) days after notice thereof from Developer to the Town.

3. Remedies Upon Default. Whenever an Event of Default described in Section H.2. shall have occurred, the Town or Developer, as applicable, shall have the right to take any or all of the following actions:

(a) For a Developer Event of Default, declare Developer in default and to seek immediate payment of any amount due hereunder from any surety guaranteeing Developer's full and faithful performance hereunder, such payment to be immediately due and payable together with interest thereon at the rate of nine percent (9%) per annum from the date of default through the date of payment, without any further notice of demand of any kind or any presentment of protest.

(b) Take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce the performance or observance of any obligations, permits, or covenants of Developer, or the Town, as applicable, pursuant to this permit.

4. Remedies Cumulative. The rights and remedies of the Town under this Permit shall be cumulative and shall not exclude any other rights or remedies the Town may have at law or in equity with respect to any Event of Default, including the revocation of Developer's rights under the permit.

5. Developer Contest. If at any time Developer shall disagree with the Town, Developer may commence an Article 78 or other proceeding to determine whether such Town Superintendent of Highways has acted appropriately. If it is determined that the Town Superintendent of Highways acted appropriately, Developer shall reimburse the Town for all costs associated with such proceeding, including reasonable attorney's fees. If it is determined that the Town Superintendent of Highways did not act appropriately the Town shall reimburse Developer for all costs associated with such proceeding, including reasonable attorney's fees.
6. Attorney's Fees. In the event that the Town has to take any actions with respect to the permit otherwise obtain compliance with its terms, Developer agrees to reimburse the Town for all costs so incurred, including reasonable attorney's fees.
7. Financing Party Cure Rights. If a Developer Event of Default occurs and is continuing, prior to exercising its remedies in H.3 hereof, the Town shall give written notice ("Notice") thereof to Developer identifying the default and the date of the Developer Event of Default ("Default Date"), with a copy of such notice to not greater than five (5) lenders or investors identified, in writing, by Developer (collectively, the "Financing Parties"), provided, however, that the obligation of the Town to provide notice to Financing Parties shall be limited to the information (including addresses and contact information) concerning such Financing Parties that is provided to the Town in writing by Developer. Developer may amend the names and addresses of any Financing Party from time to time. Any Financing Party shall have (a) with respect to any such Developer Event of Default which is capable of being cured by the payment of money, thirty (30) days after the later of (i) receipt of such notice and (ii) the date of such Developer Event of Default, and (b) with respect to any such Developer Event of Default which is not capable of being cured by the payment of money (a "Non-Monetary Event of Default), ninety (90) days after the later of (i) receipt of such notice and (ii) the date of such Non-Monetary Event of Default (or such longer period of time as may be reasonably necessary under the circumstances to cure such Non-Monetary Event of Default or to cause it to be cured, provided that such Non-Monetary Event of Default is curable and such Financing Party is diligently pursuing such cure~ provided, that the total cure period for a Non-Monetary Event of Default shall not exceed one hundred twenty (120) days except if it is necessary for such Financing Party to gain possession or to foreclose upon any of the collateral granted to it in order to cure such Non-Monetary Event of Default, in which case the total cure period for such Non-Monetary Event of Default shall extend for a period of one hundred twenty (120) days from the date on which such Financing Party shall have gained possession or foreclosed upon such collateral. If such Financing Party fails to cure, or cause to be cured, any such Developer Event of Default within the appropriate cure period set forth above, the Town shall be free to pursue any and all such rights and remedies with respect to such default as set forth in this Permit. Any notice giving to or by a Financing Party under this section shall be given in accordance with the methods provided in Section K.3. for notice to the Parties.

## **I. PROVISION OF SECURITY FOR PERFORMANCE**

1. Form of Security. Prior to commencement of construction of the project, a financial instrument or reserve account (bond, letter of credit, insurance policy or corporate guaranty) in form and content satisfactory to the Town shall be set up to guarantee (1) the full and faithful performance of the repairs, modifications and improvements by Developer and the Developer Parties hereunder and (2) the payment of all liens of all persons performing labor and providing services, materials, equipment, supplies, machinery, and other items in connection with the performance of such repairs, modifications and improvements by Developer and the Developer Parties hereunder. Prior to construction, Developer shall provide evidence to the Town that such financial instrument or reserve account is in place. The amount of the financial instrument or reserve account set aside hereunder is not intended to limit in any way the obligation of Developer to perform its obligations, all in accordance with the conditions of this permit.

2. Release of Security. Upon the completion and performance of all the conditions hereof, the Town shall issue to Developer a certification in writing that the performance is accepted. At such time the security provided pursuant to 1.1 hereof shall be returned to Developer or released.

#### J. FORCE MAJEURE EVENT

1. Force Majeure Event Defined. As used in relation hereto to the term, "Force Majeure Event" means: causes or events that are beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Force Majeure Event, including, without limitation, natural disasters; fire; lightning strikes; earthquake; acts of God; unusually or unseasonably severe actions of the elements such as snow, floods, hurricanes or tornadoes; causes or events affecting the performance of third-party suppliers of goods or services or any other similar or different cause not reasonably within the control of the party claiming the Force Majeure Event; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes (caused by other than the Party claiming the Force Majeure Event); partial or entire failure of utilities; actions or failures to act (including expropriation and requisition) of any governmental agency, to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money); and Change in Law. "Change in Law" shall mean any of the following: (a) the suspension, termination, denial or failure of the issuance or renewal of, or the imposition of any different or additional conditions as a precondition to the renewal of, or any unreasonable delay in the obtaining of any permit, license, consent, authorization or approval required by law or essential to the operation and maintenance of the Project, if such event is not appealable, or if appealable, adversely affects the obligations of Developer or the Town during the pendency of the appeal, and is not the fault of the party relying thereon; provided, however, that the contesting in good faith of any such action shall not be construed as the fault of such party; or (b) any change in (including repeal), or adoption or imposition of, any federal, state or local law, ordinance, code, regulation (not adopted or officially proposed pursuant to the applicable administrative procedure act as of the date of issuance of the permit) or court order, or interpretation thereof, which (i) is legally binding with respect to the design, construction, operation or maintenance of the Project, (ii) in the case of permits, licenses, consents, authorizations, approvals and orders, cannot be stayed by Developer or the Town, and (iii) occurs subsequent to the original date of the issuance of this permit.
2. Applicability of Force Majeure Event. No Party will be in breach or liable for any delay or failure in its performance of the conditions hereof to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:
  - (a) the non-performing Party will give the other Parties written notice within forty-eight (48) hours of the commencement of the Force Majeure Event, with details to be supplied within fourteen (14) calendar days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;
  - (b) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;
  - (c) the Party whose performance is delayed or prevented will proceed with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance and will provide a written report to the other Parties during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance will no longer be affected by the Force Majeure Event; and
  - (d) when the performance of the Party claiming the Force Majeure Event is no longer being delayed or prevented, that Party will give other Parties written notice to that effect.



7. No Third Party Beneficiary. This permit shall in no way inure to the benefit of any person or third party so as to constitute any such person or third party as a third-party beneficiary under this permit, or of anyone or more of the conditions hereof.
8. Safety. Developer and the Developer Parties shall perform the work hereunder in a safe manner and shall obey all safety requirements Developer may establish from time to time, and shall comply with all State and Federal Safety Regulations applicable to the work being done. While work is being done on any of the public roads in the Town, Developer shall establish work zones with appropriate signage, warning the traveling public of the existence of the construction zone and providing adequate traffic control as to assure safe passage through said construction zone. Developer also agrees to provide traffic control on the Designated Roads when such roads are blocked during their use by Developer or the Developer Parties. All traffic control plans to be used on Town Roads shall be approved by the Town Superintendent of Highways, such approval not to be unreasonably withheld.
9. Dust Control. Prior to commencing work, Developer shall prepare a plan for dust control during periods of construction or repair of the Designated Collection System Roads, which plan shall be subject to approval by the Town Superintendent of Highways, such approval shall not be unreasonably withheld or delayed. Developer shall implement the plan in coordination and consultation with the Town Superintendent of Highways.
10. Erosion and Sedimentation Control. Prior to commencing work, Developer shall prepare a plan for erosion and sedimentation control along any roads that are designated for repair. The details of said plan will meet all erosion and sedimentation requirements of the Town, State or Federal government. The Erosion and Sedimentation Control Plan will be subject to the approval of the Town Superintendent of Highways, such approval shall not be unreasonably withheld or delayed. Developer shall implement the plan in coordination and consultation with the Town Superintendent of Highways.
11. Excess Material. Developer and the Developer Parties agree that in connection with certain improvements to be made hereunder, there may be certain materials removed that are no longer necessary (the "Excess Materials"). Developer agrees to remove such materials and stockpile them for use by the Town if requested by the Town Superintendent of Highways. The Town Superintendent of Highways agrees to designate the place on Town property on which the Excess Materials will be stored.

#### **§4. PERMIT APPLICATION.**

1. No permit shall be issued hereunder unless an application for same has been made to the Town Board.
2. The application shall be of a form and content as is prescribed by the Town Board by motion duly made and adopted.
3. The Town Board may also require such documentation to be submitted with the application as it deems reasonably necessary for the proper review of the application.
4. The Town Board shall, by motion duly made and adopted, declare when the application is complete in terms of information and documentation required for the review of the application.
5. Within forty-five (45) days of the application being declared complete the Town Board shall hold a public hearing, scheduled by motion duly made and adopted, and upon ten (10) days notice thereof duly posted and published.
6. Within thirty (30) day of the closing of the public hearing the Town Board shall make a decision upon issuance of the permit. The decision shall be by motion or resolution duly made and adopted.

7. In the event that the issuance of the permit is approved the conditions thereof shall be included in the record of such approval and the permit shall be issued upon signature of the Town Supervisor within then (10) days of the approval thereof. The decision to omit any of the conditions set out in sub-sections of §3, A-K hereof shall be specifically set forth on the record together with the reason( s) supporting such omission.
8. The permit shall contain all of the conditions applicable to the Permit, the issuance date of the permit and the date of expiration of the permit. The expiration date may be amended for good cause, upon application for same to the Town Board.
9. The permit shall be executed by a duly designated representative of the applicant and the permit shall recite that the execution thereof by the applicant evidences applicant's acceptance of the conditions of the permit and agreement to comply with said conditions, as well as the provisions of this Local Law.
10. In the event that the permit is denied to the applicant, the specific reason or reasons shall be specified on the record and a written notice provided to the applicant within ten (10) days of the meeting at which the denial is made. Such written notice shall specify the reasons for such denial.
11. Application fee. An application fee shall be set by the Town Board by resolution duly made and adopted. Such fee may be amended from time to time by the Town Board by like resolution. Such application fee shall be paid to the Town upon submission of the application.
12. An applicant who is denied a permit may reapply with an amended application and payment of the requisite application fee.

#### **§5. ENFORCEMENT.**

- A. This local law shall be enforced by the Town of Tuscarora by such officer or employee designated for such purpose by the Town Board.
- B. A violation of the provision hereof shall be punishable upon conviction by a fine not to exceed \$250.00 and/or incarceration for a period not to exceed fifteen (15) days.
- C. Each day that a violation hereof continues shall be a separate offense, punishable separately as hereinbefore provided.
- D. This Local Law may also be enforced by civil proceedings in a Court of competent jurisdiction seeking injunctive relief, monetary damages and/or other form of relief available pursuant to law.

## **APPENDIX A**

### **ROAD IMPROVEMENTS AND UPGRADES**

Subsequent to the issuance of a Permit and prior to beginning any of the road improvements, modifications or upgrades to the Designated Roads, Developer shall submit a list of the proposed road projects to the Town, including location, referenced to the stationing provided by the Initial Survey, a complete description of the work to be done, and a list of the materials to be used. All materials used for construction on all Town roads shall meet the appropriate NYSDOT Standard Specifications. All work to be done on the Town roads shall be approved by the Town Superintendent of Highways, such approval not to be unreasonably withheld.

The relocation of existing or placement of new utility poles within the highway right-of-way shall be as determined by the Town Superintendent of Highway, but generally shall be placed on the back slope of the road side ditch line, so as not to interfere with snow plowing operations and normal maintenance procedures.

## APPENDIX B

### SPECIFICATIONS FOR IMPROVEMENTS AND MODIFICATIONS

The majority of the Designated Road modifications and improvements will be accomplished using conventional earth excavating equipment employing traditional cut and fill procedures. Rock excavation techniques may be warranted in certain locations to achieve the required grades. All materials used in the modifications and improvements of the Town roads shall meet the applicable NYSDOT specifications. Road widening within the Town road limits shall be accomplished as follows:

All improvements, modifications and repairs made within the limits of the roadway shall be at a minimum depth of twelve inches (12").

After the removal of soft, wet or otherwise unsuitable materials from within the roadway or shoulder areas, the exposed sub grade of the area shall be proof rolled with approved construction equipment such as a loaded 10 wheel tandem dump truck or compactor. This measure will help increase the density of the existing ground and help locate any isolated soft spots, which would be too unstable to accommodate compacted fill.

Unstable areas shall be excavated, scarified, aerated and or re-compacted prior to fill placement, or removed and replaced with approved compacted fill. Alternatively, the use of an approved geogrid may be incorporated to stabilize or bridge soft areas on an as needed basis.

New fill will not be placed on surfaces that are muddy or frozen, or have not been approved by testing and or proof rolling.

All sloping areas upon which fill is to be placed shall be benched or "notched" so that a smooth interface between existing ground and new fill will not be present.

For permanent improvements or modifications, outside the roadway surface, controlled fill slopes shall be constructed at 3H: 1 V slopes or flatter. All fill slopes will have final grades sloped such that surface water from precipitation is directed away from the face of the slopes. In addition, erosion matting may be used to help establish and maintain vegetative growth on the face of the slopes.

All fill areas shall be sufficiently sloped and properly sealed with a smooth drum roller at the end of each workday to help prevent softening from surface water infiltration.

Materials to be used for improving Designated Roads will primarily be obtained from local sources and consist of both coarse and fine aggregate. Shale shall not be used as a fill material inside the roadway limits. The typical fill section will utilize coarse aggregate such as a 4" crusher run in the deeper portion of a fill and be capped with finer aggregate meeting the requirements of a NYSDOT approved sub base material. The use of geogrids will be utilized as needed, to stabilize and or bridge soft, wet or otherwise unsuitable soil conditions and must be approved by the Town Highway Superintendent if being placed within the roadway limits, such approval will not be unreasonably withheld. If the improvements extend beyond the Town's right-of-way, it is Developer's responsibility to obtain the appropriate landowner's consent.

The following is a typical cross-section for the construction of the road improvements and modifications to the town roads.

(Heavy wall steel pipe may be used in lieu of corrugated where needed with approval by Town Highway Supt.)

All driveway and access road entrances shall maintain the roadway slope for a distance of six feet (6') or to the back slope of the roadside ditch, whichever is the greater distance from the centerline of the road.

**Section 5. Supersession**

This Local Law shall supersede the applicable sections of Article 16 of the Town Law, General Municipal Law and Highway Law or any other New York State Law to the extent inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other statute determined to be in conflict with the provisions hereof as pertains to alternate members of the Planning Board and/or the Zoning Board of Appeals.

**Section 6. Severability.**

In the event that a court determines that any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance is invalid or unconstitutional, the court's order or judgment shall not affect, impair or invalidate the remainder of this Local Law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this Local Law or in its application to the person individual, firm or corporation or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

**Section 7. Effective Date**

This Local Law shall become effective upon filing with the Secretary of State of the State of New York subsequent to having been duly adopted by the Board of Trustees of the Town of Tuscarora.