

TOWN OF LANSING

AND

YELLOW BARN SOLAR, LLC

ROAD USE AGREEMENT
FOR THE
YELLOW BARN SOLAR PROJECT

EFFECTIVE AS OF _____

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS	2
Section 1.1 Definitions.....	2
Section 1.2 Interpretation.....	2
ARTICLE II REPRESENTATIONS AND WARRANTIES	2
Section 2.1 Town Representations and Warranties.	2
Section 2.2 Company Representations and Warranties.	3
ARTICLE III TERM.....	4
Section 3.1 Effective Date.	4
Section 3.2 Term.	4
ARTICLE IV ROAD USE, REINFORCEMENT AND REPAIR	4
Section 4.1 Access and Improvement	4
Section 4.2 Municipal Franchise in Roads, Road Permits, and Curb Cuts	5
Section 4.3 Pre-Construction Inspection Report.....	5
Section 4.4 Design and Safety	6
Section 4.5 Temporary Repair Activities During Construction.....	6
Section 4.6 Repair Activities	6
Section 4.7 Use by Oversized Vehicles	8
Section 4.8 Operating, Maintaining and Decommissioning the Project	8
Section 4.9 Road Construction Contractors	8
Section 4.10 Indemnity and Insurance	9
Section 4.11 Additional Road Use Requirements.....	10
ARTICLE V COMPLIANCE WITH LAW	10
Section 5.1 Compliance with Law.	10
ARTICLE VI DISPUTE RESOLUTION	11
Section 6.1 Dispute Resolution.....	11
ARTICLE VII TERMINATION	11
Section 7.1 Termination.....	11
ARTICLE VIII DEFAULT AND REMEDIES	12
Section 8.1 Notice of Default.....	12
Section 8.2 Company Right to Cure.	12
Section 8.3 Town Right to Cure.....	12
Section 8.4 Financing Party Right to Cure.	12
Section 8.5 Exercise of Remedies.....	13
Section 8.6 [RESERVED].	14

Section 8.7	Estoppel Certificates.	14
Section 8.8	Force Majeure.	14
ARTICLE IX ASSIGNMENT		14
Section 9.1	Assignment.....	14
ARTICLE X NOTICES		15
Section 10.1	Notices.	15
ARTICLE XI LIABILITY COVERAGE AND INDEMNIFICATION		16
Section 11.1	Insurance.	16
Section 11.2	Indemnification of Town.	17
Section 11.3	Indemnification of the Company.	17
Section 11.4	Cooperation in Defense Against Litigation.	17
Section 11.5	Indirect Damages Waiver.....	18
ARTICLE XII MISCELLANEOUS		18
Section 12.1	No Waiver.	18
Section 12.2	Applicable Law and Venue.....	18
Section 12.3	No Recourse; Special Obligation.	18
Section 12.4	Entire Agreement.	18
Section 12.5	Amendment.....	19
Section 12.6	Severability.	19
Section 12.7	Binding Effect.	19
Section 12.8	Headings.....	19
Section 12.9	Counterparts.	19
Section 12.10	Further Assurances.....	19

ROAD USE AGREEMENT

This **ROAD USE AGREEMENT**, effective as of the ___ day of _____, 202__ (the “Agreement”), by and between the **Town of Lansing**, a municipal corporation existing under the laws of the State of New York (the “Town”), and **Yellow Barn Solar, LLC**, a limited liability company duly organized and validly existing under the laws of the State of Delaware (the “Company”, and together with the Town, the “Parties”),

WHEREAS, the Company has obtained a Siting Permit (the “Permit”) pursuant to Article VIII of the Public Service Law and its implementing regulations (the “Article VIII Process”) with the New York State Office of Renewable Energy Siting and Electric Transmission (“ORES”) to construct the Project (as defined below). The Permit authorizes the Company to construct a solar-powered electric generating project (the “Project”) on land located in the Town of Lansing and the Town of Groton (the “Land”), including a buried and overhead collection line system to carry electricity to the point of interconnection, an interconnection substation facility, and a system of gravel access roads, security fencing and gates, parking, landscaping and related improvements to the Land (collectively, the “Improvements”), and certain equipment, including photovoltaic panels (“Panels”) producing direct current (“DC”) electricity with a total rated alternating current (“AC”) output capacity of up to 160 megawatts (“MWac”) to be mounted on panel racks (“Panel Racks”), inverters to convert DC electricity to AC electricity, and personal property, fixtures, machinery and equipment (collectively, the “Equipment”, and together with the Land and the Improvements, the “Project Facility”); and

WHEREAS, the nature of heavy vehicular traffic during construction, operation and maintenance, and decommissioning of the Project Facility will exceed normal and anticipated use of the public roadways within the Town; and

WHEREAS, Company will repair, or agrees to compensate the Town, so that it may repair, any damage that may occur to roadways throughout the duration of the construction, operation and maintenance, and decommissioning of the Project Facility, which shall be considered to be from the time Company receives a Notice to Proceed for Civil Construction from ORES, including any Notice to Proceed with Site Preparation and any phased Notice to Proceed (the “Notice to Proceed”) through the completion of decommissioning and restoration of the Project; and

WHEREAS, the Parties believe that their mutual interests will be served by the execution of this Agreement which specifies their respective rights, interests, and obligations relative to the use of roads during construction of the Project Facility; and

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions.

For all purposes of this Agreement, defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified herein except as otherwise expressly provided for herein or as the context hereof otherwise requires.

Section 1.2 Interpretation.

In this Agreement, unless the context otherwise requires:

- a. The terms “hereby,” “hereof,” “herein,” “hereunder,” and any similar terms as used in this Agreement refer to this Agreement, the term “heretofore” shall mean before, and the term “hereafter” shall mean after the date this Agreement is effective; and
- b. Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and
- c. Any certificates, letters, or opinions required to be given pursuant to this Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Town Representations and Warranties.

The Town hereby represents and warrants that, as of the date of this Agreement:

- a. it is a validly existing political subdivision of the State of New York (“State”);
- b. it has the power and authority to execute, deliver, and carry out all applicable terms and provisions of this Agreement;
- c. all necessary action has been taken to authorize its execution, delivery, and performance of this Agreement, and this Agreement constitutes its legal, valid, and binding obligation enforceable against it in accordance with its terms (a copy of the Town’s resolution approving this Agreement and authorizing its execution is attached hereto as Exhibit A);
- d. its signatory hereto is duly authorized and empowered to execute and enter into this Agreement;

- e. none of the execution or delivery of this Agreement, the performance of the obligations in connection with the transaction contemplated hereby, or the fulfillment of the terms and conditions hereof by the Town will conflict with or violate or result in a breach of any applicable law; and
- f. there is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against it, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

Section 2.2 Company Representations and Warranties.

The Company hereby represents and warrants that, as of the date of this Agreement:

- a. it is duly organized, validly existing, and in good standing under the laws of the state in which it is formed as set forth in the first paragraph of this Agreement and has requisite authority to own its property and assets and conduct its business as presently conducted or proposed to be conducted under this Agreement;
- b. it has the power and authority to execute, deliver, and carry out all applicable terms and provisions of this Agreement;
- c. all necessary action has been taken to authorize its execution, delivery, and performance of this Agreement, and this Agreement constitutes its legal, valid, and binding obligation enforceable against it in accordance with its terms;
- d. no governmental approval by or with any government authority is required for the valid execution, delivery, and performance under this Agreement by the Company, except such as are required for the construction, operation and maintenance, and decommissioning of the Project Facility, and the Company has no reason to believe that any such government approval will not be made or obtained as required for the Company's performance hereunder;
- e. none of the execution or delivery of this Agreement, the performance of the obligations in connection with the transaction contemplated hereby, or the fulfillment of the terms and conditions hereof by the Company will (i) conflict with or violate any provision of its articles of organization and operating agreement; (ii) conflict with, violate, or result in a breach of any applicable law; or (iii) conflict with, violate, or result in a breach of or constitute a default under or result in the imposition or creation of any mortgage, pledge, lien, security interest, or other encumbrance under this Agreement or under any term or condition of any mortgage, indenture, or any other agreement or instrument to which it is a party or by which it or any of its properties or assets are bound;
- f. there is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against it, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement; and
- g. the conduct of its business is in compliance with all applicable governmental approvals with which a failure to comply, in any case or in the aggregate, would result in a material adverse

effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

ARTICLE III

TERM

Section 3.1 Effective Date.

This Agreement will become effective (the “Effective Date”) as of the date first written above.

Section 3.2 Term.

The term of this Agreement shall commence on the Effective Date and expire upon the earlier of (a) issuance of a Certificate of Restoration by the Town following decommissioning of the Project or (b) termination of this Agreement pursuant to Section 7.1 hereof (the “Term”).

ARTICLE IV

ROAD USE, REINFORCEMENT AND REPAIR

Section 4.1 Access and Improvement

The Town hereby grants the Company and the Company’s contractors and subcontractors, and their respective employees, agents, permitted assigns, and contractors, a non-exclusive license to enter upon the Roads and Road Structures identified on Exhibit D during the term of this Agreement for the purposes of (a) making investigations and inspections thereon, including, without limitation, investigations related to the load-bearing and structural characteristics of the Roads and the Road Structures, (b) reinforcing, modifying, improving, and/or expanding the Roads and the Road Structures as the Company deems necessary to support construction, operation, maintenance and decommissioning of the Project, including construction of improved turning radii for oversized vehicles within Road rights-of-way and access road improvements within Road rights-of-way, (c) transporting personnel, equipment, and materials to and over the Roads to support construction, operation, maintenance and decommissioning of the Project, and (d) repairing the Roads and the Road Structures to a condition at least as good or better as existed within thirty (30) days of receipt of the Notice to Proceed for the Project, prior to any on-site activity, as established in the Pre-Construction Inspection Report on the timeline set forth herein (“**Repair Activities**”). Exhibit D may be modified by the Company from time to time with the approval of the Town Highway Superintendent (the “**Town Highway Superintendent**”), which approval shall not be unreasonably withheld or delayed. No use or rights herein granted with respect to this Agreement shall create or vest in the Company any easement or any other ownership rights of any nature whatsoever in the Roads or Road Structures, nor does this Agreement grant rights to use any right-of-way or property owned by a private party. Prior to reinforcing, modifying, improving, and/or expanding the Roads and the Road Structures, the Company shall request approval from the Town Highway Superintendent at least fifteen (15) calendar days prior

to commencement of any such activity, such approval not to be unreasonably withheld. If the Town Highway Superintendent does not approve the request within seven days, the request shall be deemed approved.

Section 4.2 Municipal Franchise in Roads, Road Permits, and Curb Cuts

It is anticipated that power collection and transmission lines associated with the Project will need to be located above, below or within Roads and that access roads constructed in connection with the Project will intersect Roads. To the extent permitted by law, the Town hereby grants to the Company (a) all municipal franchises and/or road permits necessary to locate and operate Project facilities above, below or within Roads, and (b) all curb cuts necessary to connect Project access roads to Roads. To the extent any additional permits associated with Roads and not included in the sections (a) and (b) above are required, the Town agrees to provide the permits at no additional cost to the Company provided that the Improvements requiring such permits conform with all applicable substantive provisions of the Town's laws and regulations. A schedule of all Project facilities anticipated to require such municipal franchises, road permits, and curb cuts is attached hereto at Exhibit "C". Exhibit "C" may be modified by the Company from time to time with the approval of the Town Highway Superintendent, which approval shall not be unreasonably withheld or delayed. The Town Highway Superintendent shall respond to a modification request within fifteen (15) business days or the modification request will be deemed approved. If the Company indicates in its submission that a Repair or modification is urgent, the Town Highway Superintendent shall make a good faith effort to approve, approve with comments or exceptions, or disapprove such designs within seven (7) calendar days. Nothing in this Section shall grant rights to use any right-of-way or property owned by a private party.

Section 4.3 Pre-Construction Inspection Report

The Company shall, at its sole cost and expense, retain an independent New York licensed professional civil engineer (the "**Company Civil Engineer**") to prepare the Pre-Construction Inspection Report and to inspect the Roads and Road Structures, including documentation of present conditions, performance of visual inspections, core testing, or other standard road evaluation practices, within thirty (30) days of receipt of the Notice to Proceed for the Project to determine whether the Roads, taking into account road surface, base, sub-base, cross-section, and shoulder, and Road Structures are in a condition sufficient to support the construction activities (the "**Pre-Construction Inspection Report**"). The Company Civil Engineer shall take videos for the Pre-Construction Inspection Report to document the condition of all Roads and Road Structures that may be impacted by traffic relating to construction of the Project. The results of the Pre-Construction Inspection Report and a copy of the video(s) documenting the condition of the Roads and Road Structures shall be set forth in a written report certified to the Town by the Company Civil Engineer, and such report shall be subject to the approval of the Town Highway Superintendent. The Town Highway Superintendent shall approve, approve with comments or exceptions, or disapprove the Pre-Construction Inspection Report within fourteen (14) days following receipt of same from the Company.

Section 4.4 Design and Safety

The Company will prepare designs of planned Repair Activities or modifications for Roads and Road Structures and will meet with the Town Highway Superintendent within thirty (30) days of the receipt of Notice to Proceed to review the designs and proposed use of the Roads and Road Structures. The Town agrees that the Town Highway Superintendent will be responsible for approving such designs, and except as otherwise provided herein, the Town shall have safety responsibility for improved, modified, reinforced, or repaired Roads and Road Structures following such approval. The Town Highway Superintendent shall approve, approve with comments or exceptions, or disapprove such designs within fifteen (15) calendar days following receipt of same from the Company. If the Company indicates in its submission that a Repair or modification is urgent, the Town Highway Superintendent shall make a good faith effort to approve, approve with comments or exceptions, or disapprove such designs within seven (7) calendar days.

Section 4.5 Temporary Repair Activities During Construction

During construction, the Company, at its sole expense, shall perform all temporary repairs to Roads and Road Structures (including but not limited to: filling potholes, removing washboarding in dirt roads by grading, or other similar repair work). To address damage to Roads and Road Structures caused by construction vehicles performing work on the Project that in reasonable the opinion of the Town Highway Superintendent (with reference to the condition of the Roads and Road Structures documented in the Pre-Construction Inspection Report), creates a safety concern, notice shall be provided by telephone to the Company followed by email from the Town Highway Superintendent. The Town Highway Superintendent may choose to erect temporary warning signs to address the concern. In the event of an immediate safety concern, repairs shall be performed within twenty-four (24) hours unless an agreement has been reached between the Company and the Town Highway Superintendent as to necessary course of action and timing of same. The Town Highway Superintendent shall meet with the Company on a weekly basis as needed either in person, telephonically or virtually to discuss any issues relating to Roads and Road Structures and any requested temporary repairs. As soon as practicable after a temporary repair is made, the Company will perform additional Repair Activities according to the standards set forth in § 4.12(g), if necessary.

Section 4.6 Repair Activities

a. Repair Standard. Following construction of the Project (but in no event later than six (6) months following installation of all Solar Facilities and completion of all site restoration activities), the Company shall repair the damage to the Roads and Road Structures caused by construction of the Project to a state that existed prior to Commencement of Construction as demonstrated in the Pre-Construction Inspection Report. Such period shall be automatically extended provided that Company or its designee has started such repairs within such period and is diligently pursuing, and continues to diligently pursue, such repairs to completion.

b. Post-Construction Inspections. To determine what repairs are necessary, the Company shall, following the date upon which the Company provides Town notice of completion of all construction activity (the “**Completion of Construction Notice**”), conduct a post-construction

inspection of the Roads, taking into account the pre-existing road surface, base, sub-base and shoulder, and Road Structures, to identify any damage done to them. The results of the post-construction inspection shall be set forth in a written report certified to the Town by the Company Civil Engineer and detailing items of damage (the “**Post-Construction Inspection Report**”), and such report shall be subject to approval of the Town Highway Superintendent. The Town Highway Superintendent shall approve, approve with comments or exceptions, or disapprove the Post-Construction Inspection Report within fourteen (14) calendar days following receipt of same from the Company or the Post-Construction Inspection Report shall be deemed approved. There shall be a rebuttable presumption that any damage to the Roads or Road Structures was caused by Project construction. If the Post-Construction Inspection Report identifies damage to the Roads and Road Structures, measured against the condition established in the Pre-Construction Inspection Report and the inspection of the Town Highway Superintendent, such report shall include plans and designs of the activities the Company deems are appropriate to repair such damage, i.e., the Repair Activities. The Post-Construction Inspection Report shall also include an estimate of the cost to complete the Repair Activities (the “**Repair Estimate**”).

c. Party to Perform Repairs. The Company shall have the option to select one of the following options: (i) have the Company or its designee perform the Repair Activities at the Company’s cost, or (ii) have the Company pay the Town a single lump sum payment equal to the Repair Estimate. Whichever option the Company selects, if the Repair Activities are undertaken by or on behalf of the Company pursuant to this Agreement, the obligations of the Company pursuant to Section 4.6 of the Agreement shall be considered discharged, and the Town shall have no separate and independent claim against the Company for Repair Activities.

d. Lump Sum Payment Terms. If the Company elects to make a payment equal to the Repair Estimate, then within 30 days of delivery of notice of such election to the Town, the Company shall pay the Town the Repair Estimate amount. The Town Highway Superintendent can use the funds to perform the Repair Activities at his discretion and schedule. Upon payment of the lump sum to the Town, the Company will have no further obligation or liabilities related to the Repair Activities or conditions of the Roads, regardless of whether the Town elects to use the funds received to perform the Repair Activities.

e. Certificate of Restoration. If the Company elects to perform the Repair Activities, then following performance of the Repair Activities, the Company shall provide the Town with the Company Civil Engineer’s certification (or the certification of the Company’s road contractor) of such repair as called for by the Post-Construction Inspection Report. The Town Highway Superintendent shall review such certification and Repair Activities. If the Town Highway Superintendent is satisfied in his reasonable discretion with such Repair Activities, the Town shall issue to the Company a Certificate of Restoration (“**Town Certificate of Restoration**”) within thirty (30) days following the Town Highway Superintendent’s receipt of the Repair Activities completion notice. Upon issuance by the Town of the Town Certificate of Restoration, the Company’s obligations with respect to repair of Roads and Road Structures shall be deemed to have been satisfied and the Company will have no further obligation or liabilities related to the Repair Activities or conditions of the Roads with respect to conditions set forth in the Post-Construction Inspection Report.

Section 4.7 Use by Oversized Vehicles

The Company agrees that oversized vehicles, dump trucks, concrete trucks, and construction vehicles with a gross vehicle weight over 10,000 lbs. that are related to the Project (“**Heavy Construction Vehicles**”) shall be restricted to traveling on the Roads and Road Structures specified in Exhibit “D”. Such haul routes may be modified or supplemented from time to time, with the approval of the Town Highway Superintendent. Subject to such approval by the Town Highway Superintendent, such approval not to be unreasonably delayed or withheld, the Town waives all posted weight limitations and seasonal limitations on Roads used for Project-related vehicles during construction of the Project, and Company agrees to repair damages to the Roads caused by this use as specified in Section 4.6. In addition, the Company’s transportation activities on the Roads and Road Structures for Solar Facility components shall be conducted so as to minimize the effects on local transportation. The Company shall be liable to the Town for any and all damages to Town roads and road structures not listed in Exhibit D from any unintentional or mistaken use of such roads by oversized vehicles.

Section 4.8 Temporary Repairs During Operating, Maintaining and Decommissioning the Project

During operation and maintenance and decommissioning of the Project, the Company, at its sole expense, shall perform all repairs to Roads and Road Structures (including but not limited to: filling potholes, removing washboarding in dirt roads by grading, or other similar repair work) reasonably determined to result from vehicles performing such activities. To address damage to Roads and Road Structures caused by vehicles performing operation and maintenance on or decommissioning of the Project that in reasonable the opinion of the Town Highway Superintendent (with reference to the condition of the Roads and Road Structures documented in the most recent Biannual Road Inspection Report), creates a safety concern, notice shall be provided by telephone to the Company followed by email from the Town Highway Superintendent. The Town Highway Superintendent may choose to erect temporary warning signs to address the concern. In the event of an immediate safety concern, repairs shall be performed within twenty-four (24) hours unless an agreement has been reached between the Company and the Town Highway Superintendent as to necessary course of action and timing of same. The Town Highway Superintendent shall meet with the Company as needed either in person, telephonically or virtually to discuss any issues relating to Roads and Road Structures and any requested temporary repairs.

Section 4.9 Annual Repair Activities

a. Repair Standard. Annually prior to completion of decommissioning of the Project, the Company shall repair the damage to the Roads and Road Structures caused by the operation and maintenance and decommissioning of the Project, and not repaired pursuant to Section 4.8, to the standard for long-term durable repairs customary in the Town or the region. The Company shall not be responsible for repair damage to roads where the Company provides evidence reasonably demonstrating that such damage was not caused by construction, operation, maintenance, and decommissioning of the Project.

b. Biannual Inspections. To determine what repairs are necessary Pursuant to Section 4.9(a), the Company shall meet with the Town Highway Superintendent no less than twice per year, once in the spring and once in the fall, to conduct an inspection of the Roads, taking into account the pre-existing road surface, base, sub-base and shoulder, and Road Structures, to identify any damage done to them by vehicles performing the operation and maintenance and decommissioning of the Project. The results of each inspection shall be set forth in a written report certified to the Town by the Company (each a “**Biannual Road Inspection Report**”), and such report shall be subject to approval of the Town Highway Superintendent. If a Biannual Road Inspection Report identifies damage to the Roads and Road Structures, measured against the condition established in the most recent Biannual Road Inspection Report and the inspection of the Town Highway Superintendent, resulting from vehicles performing the operation and maintenance and decommissioning of the Project, such report shall include plans and designs of the activities the Company deems are appropriate to repair such damage, i.e., the Repair Activities. The Biannual Road Inspection Report shall also include a Repair Estimate for such Repair Activities.

c. Party to Perform Repairs. Within thirty (30) days of the Biannual Road Inspection Report being provided to the Town Highway Superintendent, the Company shall have the option to select one of the following options: (i) have the Company or its designee perform the Repair Activities at the Company’s cost, or (ii) have the Company pay the Town a single lump sum payment equal to the Repair Estimate. Whichever option the Company selects, if the Repair Activities are undertaken by or on behalf of the Company pursuant to this Agreement and to a standard reasonably acceptable to the Town, the obligations of the Company pursuant to Section 4.9 of the Agreement shall be considered discharged, and the Town shall have no separate and independent claim against the Company for Repair Activities.

d. Lump Sum Payment Terms. If the Company elects to make a payment equal to the Repair Estimate, then within 30 days of delivery of notice of such election, the Company shall pay the Town the Repair Estimate amount. The Town Highway Superintendent can use the funds to perform the Repair Activities at his discretion and schedule. Upon payment of the lump sum to the Town, the Company will have no further obligation or liabilities related to such Repair Activities or conditions of the Roads, regardless of whether the Town elects to use the funds received to perform the Repair Activities.

Section 4.10 Road Construction Contractors

The Company may contract with bonded and insured third party contractors to perform work covered by this Agreement in relation to the Repair Activities. Nothing in this Agreement shall make the Company or said third party contractors, agents or employees of the Town. Excavation contractors must be certified from the list on the Udig NY web site.

Section 4.11 Indemnity and Insurance

The Company’s indemnification and insurance obligations set forth in this Agreement shall cover all work performed by the Company and its agents, employees, and contractors pursuant to this Article.

Section 4.12 Additional Road Use Requirements

- a. Haul routes will be established before use (current haul routes are identified on Exhibit “D”). Town Roads will not be used until surveyed in accordance with Section 4.3 hereof.
- b. All Heavy Construction Vehicles must stay on Roads identified on Exhibit “D”. No short cuts on other Roads hauling in or out.
- c. Roads that are widened will need ditching plus culverts approved by the Town Highway Superintendent pursuant to Section 4.1, or ditches cleaned where filled in so as to maintain proper drainage and in accordance with Sections 4.1 and 4.6 hereof.
- d. All shoulders that are damaged shall be promptly fixed in accordance with Sections 4.1 and 4.6 hereof.
- e. Culvert pipe sizing will be performed by a qualified Registered Engineer hired by the Company. For any installation of culverts on Town Roads, the Town Highway Superintendent will be consulted for specifications, scheduling, sizing, placement, and any other concerns they may have affecting the temporary or permanent installation of culvert pipes associated with Town Roads.
- f. Proper signs shall be in place during construction. Proper signs include those notifying road users of areas where construction may affect normal road use by the public.
- g. During construction, all Roads and Road Culverts must be repaired to the extent required by Section 5.5 hereof. Black topped roads shall be repaired with black top in accordance with State standards. Potholes or any problems on dirt and seasonal roads shall be repaired in kind to the extent required by Section 4.5 hereof.
- h. Dirt and debris that is tracked onto Roads from construction vehicles shall be remediated in a timely fashion but no less frequently than at the end of every work day.
- i. Company shall adhere to local procedures related to road closures, as contained in Exhibit E.

ARTICLE V

COMPLIANCE WITH LAW

Section 5.1 Compliance with Law.

The Company agrees that the Project shall be constructed and operated in compliance with all applicable State and federal laws, rules, and regulations, and in compliance with all permits and other authorizations issued by the Town and ORES.

ARTICLE VI
DISPUTE RESOLUTION

Section 6.1 Dispute Resolution.

Except for dispute resolutions outlined specifically in other sections of this Agreement, in the event of a dispute concerning compliance with this Agreement that cannot be resolved by good faith negotiations, the Company and the Town agree that they will engage in alternative dispute resolution in the form of non-binding mediation with a mutually selected mediator. For the avoidance of doubt, nothing in this Section 6.1 shall prevent either Party from pursuing any claim against the other Party pursuant to this Agreement in any appropriate court of law or equity provided that such Party has complied with this Section 6.1 in good faith.

ARTICLE VII
TERMINATION

Section 7.1 Termination.

Except as otherwise provided in this Agreement, the Company may elect, in its sole and absolute discretion and upon payment of any undisputed outstanding amounts due to the Town, to terminate the Agreement, if:

- a. Prior to the Commencement of Construction
 - 1. a final and non-appealable Permit for the Project is not issued by ORES,
or
 - 2. the Company determines that the Project would be uneconomic and provides written notice to the Town that it no longer intends to construct the Project.
- b. Any time the Project ceases operation provided that the Company has received Certificates of Restoration for damages to Roads and Road Structures following decommissioning.

The Company and the Town each reserves its rights to initiate a judicial challenge to any attempt to modify or terminate this Agreement or any relevant permit(s), certificate(s), regulations, or actions relating to the Project, which judicial challenge shall not serve as a waiver of its right to terminate the Agreement. Neither Party shall have any further obligations under this Agreement following termination.

ARTICLE VIII

DEFAULT AND REMEDIES

Section 8.1 Notice of Default.

In any case where any Party has defaulted under this Agreement (“Default”), any non-defaulting Party shall provide written notice to the defaulting Party within thirty (30) days of such Default (“Notice of Default”). Each monetary Notice of Default shall state the amounts, to the extent known, of any payments that are then claimed to be in Default.

Section 8.2 Company Right to Cure.

For any monetary Default, the Company shall have the right to cure any such Default and must cure such Default within ten (10) business days of its receipt of a Notice of Default. For any non-monetary Default, the Company shall have the right to cure any such Default and must cure such Default within thirty (30) days of its receipt of a Notice of Default, unless such Default is not capable of cure within thirty (30) days, in which event the Company may request an extension of the cure period, which extension shall be granted by the non-defaulting Party impacted by the Default so long as the Company has commenced a cure and proceeded diligently to effect such cure. A demonstration that the Company has used commercially reasonable efforts to contact contractors to perform Repair Activities shall evidence commencement of a cure. The non-defaulting Party impacted by the Default may further extend the time to cure in its discretion, acting reasonably.

Section 8.3 Town Right to Cure.

The Town shall have the right to cure any Default by it and must cure all such Defaults within thirty (30) days of its receipt of the notice unless such Default is not capable of cure within thirty (30) days, in which event the Town may request an extension of the cure period, which extension shall be granted by the non-defaulting Party impacted by the Default so long as the Town has commenced a cure and proceeded diligently to effect such cure. The non-defaulting Party impacted by the Default may further extend the time to cure in its discretion, acting reasonably. In addition, the Town may, upon delivery of written notice to the Company, cure any non-monetary Default by the Company that the Town reasonably deems to create a risk to person or property within the Town or any neighboring town, and the Company shall promptly reimburse the Town for the reasonable costs of curing such Default incurred by the Town after delivery of an invoice for such costs by the Town to the Company.

Section 8.4 Financing Party Right to Cure.

The Town agrees, notwithstanding any other provision herein, whenever any Default hereof shall have occurred and be continuing with respect to this Agreement, the Financing Party (as defined below) shall have the same right as the Company to cure any such Default as set forth below.

a. Financing. For the purposes of this Agreement, the terms “Mortgage” or “Mortgages” shall include any mortgage, leasehold mortgage, purchase money mortgage or other security instrument or instruments secured by the Project Facility and used in the jurisdiction in which the Project Facility is located, such as, without limitation, mortgages, deeds of trust, financing statements, assignments of leases, rents and/or profits, security agreements and other documentation which a lender or tax equity investor may require, and the term “Financing Party” shall mean any entity or group of entities (and their agents and representatives, if applicable) who has made or will make a loan to or otherwise provides financing (including tax equity financing) to Company (or any affiliate thereof) with respect to the Project. With respect to any such Mortgage, so long as such Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Financing Party to the Town, the following provisions shall apply.

b. Service of Notices on Financing Party. The Party claiming Default shall simultaneously serve a copy of any Notice of Default upon the Financing Party, but no failure to deliver such Notice of Default upon the Financing Party shall prejudice or restrict the Town’s rights under this Agreement. This Section 8.4 shall only apply to any Financing Party that the Company has identified in writing to the Town in the manner provided in this Agreement for the giving of notice.

c. In the event of any Default by the Company under this Agreement, the Financing Party shall have the same cure rights as the Company set forth herein.

d. If, before the expiration of Financing Party’s cure period as provided above, Financing Party shall have notified the Party claiming Default in writing of its agreement to pay or cause to be paid to such Party, within thirty (30) days after the expiration of Financing Party’s cure period, in the case of a monetary Default, all payments in this Agreement provided for and then in default, then the Party claiming Default shall not exercise any of its rights and remedies under this Agreement until expiration of such time.

e. As between the Company and the Town, the Company shall be responsible for giving the Financing Party notice of any mediation, arbitration or other proceeding or dispute by or between the Parties hereto, and the Financing Party shall have the right to intervene therein and be made a party to any such mediation, arbitration or other proceeding.

f. Nothing in this Section shall toll the running of interest or late fees while either the Company or the Financing Party is attempting to cure a monetary Default.

Section 8.5 Exercise of Remedies.

Upon the occurrence of an uncured Default as specified under this Agreement, the affected non-Defaulting Party may, at its sole discretion, elect to seek: (a) specific performance by the Defaulting Party of any obligation the Defaulting Party has failed to discharge, or (b) payment by the Defaulting Party of any amounts for which Default is claimed. Remedies under this Agreement may only be pursued by Parties having provided a Notice of Default and any such remedy shall only apply to the Party providing such Notice of Default. This Agreement shall continue and remain in full force and effect as to all Parties not involved in the claimed Default.

Section 8.6 [RESERVED].

Section 8.7 Estoppel Certificates.

The Town, within ten (10) business days after a request in writing by the Company, shall furnish a written statement, duly acknowledged, that this Agreement is in full force and effect and that there are no Defaults hereunder by the Company, or if there are any Defaults, such statement shall specify the Defaults the Town claims to exist.

Section 8.8 Force Majeure.

a. As used in this Agreement, “*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, pandemics, 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 to the extent caused by an event that otherwise is a Force Majeure Event under this Section 8.8, sabotage, terrorism, war, riots or public disorders, strikes or other labor disputes, and 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.

b. Notwithstanding anything to the contrary in this Article, no Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that: (1) the non-performing Party provides the other Party written notice within a reasonable period of time of the commencement of the Force Majeure Event, which notice shall include details describing the particulars of the occurrence of the Force Majeure Event; (2) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event; (3) the Party whose performance is delayed or prevented proceeds with commercially reasonable efforts to overcome the events or circumstances preventing or delaying performance; and (4) when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party provides the other Parties written notice to that effect.

ARTICLE IX

ASSIGNMENT

Section 9.1 Assignment.

The Company may, without the consent of the Town: (a) assign this Agreement in connection with any sale or transfer of the Project, so long as any required New York Public Service Commission approval is received for such sale or transfer, to any (i) purchaser or successor in and to the Project, (ii) affiliate or subsidiary of the Company that is controlled by, controlling or under common control with the Company, or (iii) persons or entities providing financing for the Project (including any tax equity investor) (“*Lender*”), and such purchaser, affiliate, and Lender are collectively defined as a “*Successor*”), provided such Successor assumes and agrees to be bound

by this Agreement by executing and submitting to the Town a notice of assignment and assumption of this Agreement, a form of which is attached hereto as Exhibit B, and (b) pledge, encumber, hypothecate, mortgage, grant a security interest in and collaterally assign this Agreement to any to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation whether or not such obligation is related to any indebtedness (a “Lender's Lien”). A Lender shall have the absolute right to: (a) assign its Lender’s Lien; (b) take possession of and operate the Project or any portion thereof in accordance with this Agreement and perform any obligations to be performed by Company or a Successor hereunder; or (c) exercise any rights of Company hereunder. The Town shall cooperate with the Company, its affiliates, any Successor from time to time, by entering into a consent and assignment or other agreements with such Successor and the Company in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by such Successor. In the event this Agreement is assigned to a Successor, the Company shall have no further obligations hereunder, except for any obligations outstanding on the date of the transfer. Nothing herein shall limit in any way the right of the owners of the Company to sell or otherwise transfer (including by merger or consolidation with any other entity) all or a portion of their ownership interests in the Company.

ARTICLE X

NOTICES

Section 10.1 Notices.

All notices, demands, requests, consents, or other communications provided for or permitted to be given pursuant to this Agreement shall be in writing and shall be mailed, communicated by electronic mail, or delivered to the Parties at the respective address set forth below:

a. Notices to the Town:

Town of Lansing
Attn: Town Supervisor
Town of Lansing Town Hall
29 Auburn Road
Lansing, New York 14882

With a copy to:

Matthew A. Eldred
Harter Secret & Emery, LLC
1600 Bausch & Lomb Place
Rochester, New York 14504-2711
meldred@hselaw.com

b. Notices to the Company:

Yellow Barn Solar, LLC
c/o Lydian Energy LLC
1255 Union Street NE, 7th Floor
Washington DC 20002
Email: ian.moskal@lydianenergy.com ;
legalnotices@lydianenergy.com

With copies to:

Young/Sommer, LLC
500 Federal Street, 5th Floor
Troy, NY 12180
Attn: Steve Wilson, swilson@youngsommer.com

All such notices, demands, requests, consents, or other communications shall be deemed to have been duly given when transmitted by electronic copy (with read receipt) or personally delivered or, in the case of a mailed notice, upon receipt, in each case addressed as aforesaid. Each of the Parties may from time to time change its address for notices by providing notice of such change to the other Parties given in accordance with this Section.

ARTICLE XI

LIABILITY COVERAGE AND INDEMNIFICATION

Section 11.1 Insurance.

The Company will maintain insurance for claims arising out of injury to persons or property, relative to either sudden and accidental occurrences or non-sudden and accidental occurrences, resulting from the operation of the Project. The Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type, including (a) minimum Commercial General Liability coverage limits of \$5,000,000 per occurrence and in the aggregate, (b) Automobile Liability with coverage limits as required by state law, (c) Workers' Compensation Liability with coverage limits as required by state law, (d) Pollution Liability with coverage limits of \$2,000,000 per occurrence and in the aggregate, such pollution coverage may be provided through the Commercial General Liability policy to the extent commercially available, limits can be achieved with a combination of primary and excess policies and shall be provided by insurance companies licensed to do so in New York, including surplus lines insurers, and shall be rated no lower than "A-" by the most recent Best's Key Rating Guide and shall have a Best's Financial Size Category of not less than VIII. The Company will provide proof of such insurance in the form of a certificate of insurance annually to the Town after issuance of the Notice to Proceed. The Company shall immediately notify the Town if the event of cancellation or termination of any such insurance policy.

Section 11.2 Indemnification of Town.

Except to the extent caused by acts or omissions, negligence, illegal or willful misconduct of the Town or its officers, agents, employees, or subcontractors, the Company agrees that it will indemnify and hold harmless the Town and its officers and employees from and against any and all liability, actions, damages, claims, demands, judgments, losses, costs, expenses and fees, including reasonable attorneys' fees (collectively "**Losses**") and will defend the Town and its officers and employees in any court action, administrative proceeding or appeal in connection with such Losses, whether or not finally adjudicated and including any settlement thereof, provided and to the extent such losses result from or arise out of (a) any negligent act or omission or willful misconduct of the Company, its contractors or employees; (b) material breach of any obligation, covenant or undertaking of the Company herein; (c) any misrepresentation or breach of warranty on the part of the Company pursuant to this Agreement; or (d) breach of applicable law by the Company or its officers, sub-contractors, agents or employees; and further provided such Losses arise out of or occur in connection with the construction and operation of the Project. In the event a claim, action, demand, suit or proceeding is instituted against the Town by any third party, pursuant to which the Town is entitled to be indemnified hereunder, the Town shall promptly notify the Company in writing and contemporaneously provide the Company with a copy of the written documents presented by such third party.

Section 11.3 Indemnification of the Company.

The Town shall indemnify, hold harmless and defend the Company and its owners, affiliates, officers, employees, subcontractors and agents from and against any and all Losses caused by, arising out of or incurred as a result of: (a) the negligent acts or omissions or willful misconduct of the Town, (b) material breach of any obligation, covenant or undertaking of the Town contained herein, or (c) any misrepresentation or breach of warranty on the part of the Town pursuant to this Agreement, except to the extent caused by the negligence, illegal or willful misconduct of the Company or its officers, directors, agents, employees or subcontractors.

Section 11.4 Cooperation in Defense Against Litigation.

Should any third party bring a Federal or State suit or proceeding for which an indemnity is owed by the Company hereunder, including a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules regarding the Project or this Agreement, the Company and the Town shall cooperate in the defense of said action provided, that if in the reasonable opinion of counsel to the Town, (A) there are legal defenses available to the Town that are different from or additional to those available to the Company; (B) there exists a conflict of interest between the Town and the Company that cannot be waived, or (C) such cooperation would require the Town disclosing confidential or privileged information to the Company, the Town shall have the right to select its counsel, provided that counsel has experience in this area of law but the Company shall have the exclusive right to control the defense against such action pursuant to Section 12.3 hereof. The Company agrees to fund reasonable attorney's fees and expert's fees and costs incurred by the Town in defense of any such action unless the action is brought by the Company.

Section 11.5 Indirect Damages Waiver.

Except with respect to a Party's obligations to indemnify another Party with respect to Losses pursuant to claims by third parties pursuant to this Article XI, in no event shall either Party be liable to the other under or in connection with this Agreement, irrespective of whether alleged to be by way of indemnity, as a result of breach of contract, tort, (including negligence), strict liability, or any other legal theory, for any incidental, special, indirect, exemplary or consequential damages of any nature whatsoever, or loss of profits or revenues, loss of use, loss of opportunity, loss of goodwill, cost of substitute facilities or services (except as otherwise set forth herein), cost of capital or financing, regardless of whether any of the foregoing are found to be direct or indirect, nor for any special, indirect, punitive, exemplary or incidental damages of any kind arising out of or related to this Agreement.

ARTICLE XII MISCELLANEOUS

Section 12.1 No Waiver.

The failure of any Party to insist on the strict performance of any term or provision hereof will not be deemed a waiver of the right to insist on strict performance of any other term or provision, nor will it be deemed a waiver of any subsequent Default. Unless specifically stated, the selection of any specific remedy hereunder shall not be deemed an election of remedies limiting any Party's right to seek any other remedy otherwise allowed by this Agreement.

Section 12.2 Applicable Law and Venue.

This Agreement will be governed by the laws of the State of New York. Venue for any dispute arising under this Agreement and not settled by mediation shall be solely in the New York State Supreme Court for Tompkins County.

Section 12.3 No Recourse; Special Obligation.

All obligations of the Parties contained in this Agreement shall be deemed to be the corporate obligations of the respective Parties and not obligations of any member, officer, director, official, agent, servant, employee, or affiliate of the Parties. No recourse upon any obligation contained in this Agreement, or otherwise based on or in respect of this Agreement, shall be had against any past, present, or future member, officer, director, official, agent, servant, employee, or affiliate of the Parties.

Section 12.4 Entire Agreement.

Unless supplemented or otherwise amended in writing by the Town and the Company in accordance with the laws of the State, this Agreement constitutes the Parties' entire agreement with respect to the subject set forth herein, and no other agreements, written or unwritten, express or implied, will be deemed effective.

Section 12.5 Amendment.

No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in a writing that specifically references this Agreement and that is duly executed by the Parties.

Section 12.6 Severability.

If any clause, provision, section or article of this Agreement, or a portion thereof, is held invalid, inoperative or unenforceable by any court or regulatory authority of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by applicable law. Notwithstanding the foregoing, if any clause, provision, section or article of this Agreement, or a portion thereof, is held invalid, inoperative or unenforceable by any court or regulatory authority of competent jurisdiction, the Parties shall:

- a. Promptly meet and negotiate in good faith a substitute for such clause, provision, section or article, which will to the greatest extent legally permissible, effect the original intent of the Parties therein.
- b. Negotiate in good faith such changes in, substitutions for, or additions to the remaining provisions of this Agreement as may be necessary to effect the original intent of the Parties in the clause, provision, section or article declared invalid.

Section 12.7 Binding Effect.

This Agreement shall inure to the benefit of and shall be binding upon each of the Parties and, as permitted by this Agreement, their respective successors and permitted assigns.

Section 12.8 Headings.

The headings of sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or to affect the construction hereof.

Section 12.9 Counterparts.

This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

Section 12.10 Further Assurances.

From time to time and at any time after the effective date of this Agreement, each of the Parties, at its own expense, shall execute, acknowledge and deliver any further instruments, documents or other assurances reasonably requested by any other Party, and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by another Party to evidence or carry out the intent of or to implement this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year above written.

Town of Lansing

By: _____
Name: _____
Title: Supervisor

Yellow Barn Solar, LLC

By: _____
Name: _____
Title: _____

List of Exhibits

Exhibit A	Town Approving Resolution
Exhibit B	Form of Notice of Assignment and Assumption of Road Use Agreement
Exhibit C	Schedule of Project Facilities
Exhibit D	Haul Routes
Exhibit E	Local Procedures Related to Road Closures

Exhibit A

Town Approving Resolution

Exhibit B

Form Notice of Assignment and Assumption of Road Use Agreement

NOTICE OF ASSIGNMENT

Town of Lansing
29 Auburn Rd Lansing, NY 14882
Attn: Supervisor

Re: Yellow Barn Solar, LLC – Assignment and Assumption of Road Use Agreement.

[____], a limited liability company duly organized and existing under the laws of the State of [____], and having an office at [____] hereby provides notice to the above-named municipality that, as of [____], it purchased or otherwise acquired all or substantially all of the assets of Yellow Barn Solar, LLC. [____] hereby assumes all obligations under the Road Use Agreement by and between Yellow Barn Solar, LLC and the Town of Lansing dated as of [____] and agrees to be bound by its provisions and waives all claims regarding its validity.

[____], a [____] limited liability company

By: _____

Name: _____

Title: _____

Exhibit C

Schedule of Project Facilities

Exhibit D

Haul Routes

Exhibit E

Local Procedures Related to Road Closures

In the event of a road closure, the Company shall:

1. Call the applicable highway superintendent 24 hours ahead of the closure and notify superintendent of the closure.
2. Call Tompkins County Dispatch 24 hours ahead of the closure and provide name of Company and title of representative calling. Provide the name of road, what section of road will be closed, and the duration of the road closure.
3. Provide a signed detour to the traveling public so anyone is able to navigate around the road closure.
4. Call the relevant school district bus garage (for the district the road is in) 24 hours ahead of the closure and provide bus garage with the same information regarding the road closure as was shared with Tompkins County Dispatch.