

## **OPTION TO PURCHASE REAL ESTATE**

**THIS AGREEMENT**, made the 7<sup>th</sup> day of February, 2014, by and between **GRACE KENNEDY**, having an address of 8552 Route 209, Ellenville, New York 12428, **PATRICIA D. KELLY**, having an address of 173 Foordmore Road, Kerhonkson, New York 12446, **ROSALIE SHERRY**, having an address of 8560 Route 209, Ellenville, New York 12428, and **ARTHUR G. KELLY**, having an address of 7 Lewis Lane, Ellenville, New York 12428, as Partners; and **KELLY SAND & GRAVEL, INC.**, a New York Corporation having an address of 8552 Route 209, Ellenville, New York 12428, (collectively referred to as "Seller") and **NEVELE-R, LLC**, a Delaware Limited Liability Company, having an address of 2 Elting Court, P.O. Box 388, Ellenville, New York 12428, and its successors and/or assigns ("Purchaser").

### ***WITNESSETH:***

In consideration of the sum of Thirty Thousand Dollars (\$30,000.00), and other good and valuable consideration, paid by the Purchaser to the Seller, the receipt whereof is hereby acknowledged, the Seller hereby grants, bargains and sells to the Purchaser, the exclusive and irrevocable option to purchase the premises (the "Option") consisting of approximately 145 acres, more or less, (actual acreage to be determined upon survey) located along State Route 209, Town of Wawarsing, Ulster County, New York, which premises are or will be more particularly described in the Contract of Sale for said premises, which Contract of Sale is annexed hereto, made a part hereof and designated as Exhibit A (the "Contract of Sale").

The Option granted herein is subject to the following terms and conditions:

1. This Option and all of the rights and privileges granted herein shall expire at midnight on February 4, 2015 (the "Option Expiration Date").
2. The "Option Price" is Thirty Thousand Dollars (\$30,000.00). No portion of the Option consideration shall be applied to the sales price.
3. This Option may only be exercised in the following manner:
  - a. The Purchaser must indicate its intent to exercise the Option in a written notice (the "Notice") addressed to the Sellers, duly executed and subscribed by an appropriately authorized member or officer of the Purchaser.
  - b. The Notice by the Purchaser must be mailed to the Seller, at the address indicated above or to any duly amended address, by certified or registered mail or delivered by personal delivery at any time on or before midnight of the Option Expiration Date. Any such Notice shall similarly be served upon Seller's attorney.
  - c. If the Purchaser does not send the Notice on or before the Option Expiration Date, referred to in this Paragraph 3, then this Option shall be deemed cancelled, void and of no effect.

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4. The parties hereto agree that the terms and conditions of the sale of the Premises, if this Option is properly exercised by the Purchaser, shall be governed by the Contract of Sale, attached hereto as Exhibit "A," which Contract shall be executed by Seller and Purchaser subject to the terms of this Paragraph 4. The parties agree that the terms and conditions of Exhibit "A" may be modified, contingent upon the consent of all parties hereto and their counsel, to satisfy the following conditions, requirements or criteria:

- a. Matters disclosed as a result of due diligence inspection and investigation of the Premises.
- b. Lender's and Title Insurer's requirements.
- c. Federal, State and local laws, requirements and regulations.
- d. Requirements of Federal and State gaming commissions and authorities.
- e. Representations, warranties and further assurances customary for the type of transaction or made necessary as a result of matters made known or disclosed upon due diligence, inspection and investigation.

Notwithstanding the foregoing, unless the Option is terminated by Purchaser, the purchase price and Option payments shall not be reduced as a result of any one or more of subparagraphs a through e above.

5. In the event the Purchaser exercises this Option in compliance with the terms and conditions contained herein, then and in that event the Contract of Sale shall be duly executed by the parties hereto and delivered to Seller's attorney, together with the down payment provided for in the Contract of Sale within thirty (30) days from the date of giving the Notice to exercise this Option, by the Purchaser.

6. Inspection.

a. Seller hereby grants to Purchaser, its agents, servants, employees and consultants, a limited privilege to enter in and upon the Premises throughout the term that this Option Agreement is in force and effect for the purpose of inspecting the Premises which inspections shall include, but not limited to, conducting surveys, physical inspections, tests, engineering and construction evaluation and reports, architectural study and planning and environmental study, testing, borings and such other tests and evaluations as are reasonably required for the full and complete evaluation of the Premises and the complete presentation of applications for various governmental approvals. Purchaser shall provide Seller, at Purchaser's sole cost and expense, copies of all aforementioned surveys, physical inspections, tests, engineering and construction evaluation and reports, architectural study and planning and environmental study, testing, borings and such other tests and evaluations within thirty (30) days of Purchaser's receipt of same. In connection with the exercise of the limited privilege granted to Purchaser herein, Purchaser agrees, on behalf of itself, its agents, servants, employees and consultants, that their entry upon the Premises shall be at their sole risk and further agrees to indemnify, defend and hold harmless from any lawsuit, all cost, loss, damage to any person or property caused by Purchaser or its agents, servants or employees in the use of said limited privilege, together with any and all attorneys' fees and expenses incurred by Seller on account thereof; this indemnity relating to this limited privilege shall survive the

Option Expiration Date or termination of this Option Agreement. This indemnity does not extend to any lawsuit, cost, loss, or damage to any person or property caused by Seller's recklessness or gross negligence. Seller shall provide to Purchaser, the agents, servants and employees, surveys, architectural drawings, engineering reports, environmental reports, leases and any and all information in Seller's possession or control relating to the physical and legal condition of the real estate and improvements thereon and the business and operations upon said real estate and improvements. In the event the Purchaser fails to close title on the Premises, the ownership of all work product, performed by Purchaser or its agents, employees, servants and consultants including but not limited to, survey and all engineering studies shall be with the Purchaser. All studies, surveys, inspections, tests, engineering and construction evaluations and reports as well as all other work performed within this paragraph shall remain with the Purchaser.

b. After such access, Purchaser agrees to return the Premises in substantially the same condition as existed prior to said access, which agreement shall survive the expiration date or any termination of this Option.

c. In addition, the Purchaser agrees to obtain a waiver of lien from any party who enters upon the Premises to perform work of any kind thereon. Furthermore, the Purchaser agrees to furnish the Seller, in advance, with the names and addresses of all parties who have been retained by the Purchaser to perform work on the Premises, together with the waiver of lien form.

d. Prior to entering upon the Premises for the purpose of conducting its inspections and engineering evaluations, Purchaser shall supply Seller with evidence of Purchaser's liability insurance in an amount not less than \$1,000,000 and Seller shall be named as additional insured in that policy.

#### 7. Tenancies.

a. Purchaser has been informed and acknowledges that the subject Premises are subject to the tenancies of others and will accept the Premises subject to tenancies for the period up to and including sixty (60) days after closing.

b. Existing tenants, all oral month to month, as follows:

- i. Danielle Kennedy, 8569 Route 209, Ellenville, NY, \$600.00/month;
- ii. Melissa Harrigan, 8567 Route 209, Ellenville, NY, \$900.00/month; and
- iii. W&W Enterprises, 8561 Route 209, Ellenville, NY, \$500.00/month (barn).

#### 8. Representations of Seller.

a. Seller has the legal capacity, power and authority to execute, deliver and perform this Agreement.

b. The execution, delivery and performance of this Agreement and the transactions contemplated hereby

- i. are within the authority of Seller,

ii. have been duly authorized by all necessary proceedings on the part of Seller,

iii. do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which Seller is subject or any judgment, order, writ, injunction, license or permit applicable to Seller,

iv. do not conflict with any provision of Seller's organizational documents, or any agreement or other instrument binding upon, Seller, and

v. do not require the approval or consent of, or filing with, any Governmental Authority other than those already obtained, if any.

c. This Agreement has been duly executed and delivered by Seller and, constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

d. Seller owns fee record title to the Premises, subject to no rights of others.

e. The representations contained in this Section 8 shall survive the Closing.

9. **Governing Law and Venue.** This Agreement shall be governed, construed and interpreted by, through and under the laws of the State of New York. The parties further agree that the venue for any and all disputes related to this Agreement shall be Ulster County, New York. The rights and obligations set forth in this Agreement shall survive closing of title. Any breach of the rights or obligations set forth hereinafter may be enforced by Seller or Purchaser, as the case may be, or their respective successors or assigns.

10. **Attorneys' Fees.** In the event of any litigation between the parties hereto to enforce any of the provisions of this Agreement or any right of either party hereto, the unsuccessful party to such litigation agrees to pay to the successful party all costs and expenses, including reasonable attorneys' fees and disbursements, incurred herein by the successful party in and as part of the judgment rendered in such litigation. The provisions of this Section 10 shall survive the closing of title.

11. **Service of Notice.**

a. If to Seller:

Grace Kennedy, Patricia D. Kelly, Rosalie Sherry and  
Arthur G. Kelly, as Partners, and Kelly Sand & Gravel, Inc.  
c/o Grace Kennedy  
8552 Route 209  
Ellenville, New York 12428

With a copy to Seller's attorney:

Peter L. Berger, Esq.  
Collier and Berger, PLLC

2/4/14

130 South Main Street  
P.O. Box 509  
Ellenville, New York 12428

- b. If to Purchaser:  
Nevele-R, LLC  
2 Elting Court  
P.O. Box 388  
Ellenville, New York 12428

With a copy to Purchaser's counsel:  
Abigail M. Osgood, Esq.  
2 Elting Court  
P.O. Box 388  
Ellenville, New York 12428

12. Entire Agreement; Modification. This Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior discussions between the parties. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the party to be charged.

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IN WITNESS WHEREOF, the parties hereto have hereunto signed this Option agreement the day and year first above written.

Grace Kennedy  
Grace Kennedy, Seller

Patricia D. Kelly  
Patricia D. Kelly, Seller

\* Rosalie Sherry  
Rosalie Sherry, Seller

Arthur Kelly by Grace Kennedy, his agent  
Arthur G. Kelly, Seller

KELLY SAND & GRAVEL, INC., Seller

By Grace Kennedy  
Grace Kennedy, President

~~NEVELE R, LLC, Purchaser~~

By Michael Treanor, Jr.  
Michael Treanor, Jr., CEO

## *SCHEDULE A*

All those pieces or parcels of land, situate, lying and being on the east side of New York State Route 209, in the Town of Wawarsing, County of Ulster, State of New York, being more particularly described as follows:

Property owned by Kelly Sand & Gravel, Inc.

Portion of SBL 90.4-2-13, approximately 75 acres

SBL 90.4-2-15, approximately 35 acres

Property owned by Grace Kennedy, Patricia D. Kelly, Rosalie Sherry, and Arthur G. Kelly, Partners

SBL 90.4-2-17.2, approximately 27 acres

SBL 90.2-3-13, approximately 8.4 acres

## ***EXHIBIT A***

### ***CONTRACT OF SALE***

**CONTRACT OF SALE** made as of \_\_\_\_\_, 2015, between **GRACE KENNEDY**, having an address of 8552 Route 209, Ellenville, New York 12428, **PATRICIA D. KELLY**, having an address of 173 Foordmore Road, Kerhonkson, New York 12446, **ROSALIE SHERRY**, having an address of 8560 Route 209, Ellenville, New York 12428, and **ARTHUR G. KELLY**, having an address of 7 Lewis Lane, Ellenville, New York 12428, as Partners; and **KELLY SAND & GRAVEL, INC.**, a New York Corporation having an address of 8552 Route 209, Ellenville, New York 12428, (collectively referred to as "Seller") and **NEVELE-R, LLC**, a Delaware Limited Liability Company, having an address of 2 Elting Court, P.O. Box 388, Ellenville, New York 12428, and its successors and/or assigns ("Purchaser").

**WHEREAS** the Seller and Purchaser entered into the Option to Purchase Real Estate dated February 7, 2014 (the "Option Agreement") relating to the Premises (hereinafter defined); and

**WHEREAS** Purchaser has duly exercised its option to purchase said Premises by notice to Seller dated \_\_\_\_\_, 2015;

#### **THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. Premises. Seller shall sell and convey and Purchaser shall purchase the property, together with all buildings and improvements thereon (collectively the "Premises"), more fully described on a separate page marked "Schedule A", annexed hereto and made a part of hereof being described on the Tax Map for the Town of Wawarsing and consisting of approximately 145 acres, together with access rights owned by Seller for ingress from and egress to State Route 209. Purchaser will provide a survey certifying actual acreage and legal description of the premises to be used in the deed. Such survey shall be certified to the seller.

The sale shall include all of Seller's ownership and rights, if any, to land lying in the bed of any street or highway, opened or proposed, adjoining the Premises to the center line thereof, including any right of Seller to any unpaid award by reason of any taking by condemnation and or for any damage to the Premises by reason of change of grade or any street or highway. Seller shall deliver at no additional cost to Purchaser, at closing (as hereinafter defined), or thereafter, on demand, any documents that Purchaser may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.

2. Purchase Price.

The purchase price for the Premises is Two Million Four Hundred Thousand Dollars (\$2,400,000.00), payable as follows:

a. Two Hundred Forty Thousand Dollars (\$240,000.00) (the "Down Payment") to be paid upon the execution of this Contract by wire transfer or check subject to collection, payable to Escrowee (hereinafter defined) receipt of which is hereby acknowledged to be held in escrow pursuant to Paragraph 13 of this Contract. The nonpayment of any said check shall give Seller the right to declare this Contract null and void and may pursue all remedies against Purchaser on said check or as otherwise permitted by law.

b. The balance of Two Million One Hundred Sixty Thousand Dollars (\$2,160,000.00) shall be paid at the Closing by wire transfer, certified or bank check.

3. Acceptable Funds. All money payable under this Contract, unless otherwise specified shall be paid by wire transfer, or official check issued by any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York, payable to the order of Seller, or as Seller may otherwise direct upon not less than three (3) business days notice to Purchaser.

4. Permitted Exceptions. Provided they do not render title unmarketable or prevent, interfere with or adversely affect the use of the Premises or prevent, interfere with or adversely affect the Premises as heretofore approved by necessary governmental authorities, the Premises are sold and shall be conveyed subject to:

a. Zoning and subdivision laws and regulations, and landmark, historic or wetlands designation, provided that they are not violated by the existing or proposed use and buildings and improvements erected or to be erected on the property or their use;

b. Real estate taxes that are a lien, but are not yet due and payable.

5. Subdivision Approval. Under this Contract Purchaser agrees to purchase the portion of Section 90.4, Block 2, Lot 13 being all of that lot located east of New York State Route 209. Upon execution of this Contract, Purchaser agrees to make prompt application, at its sole cost and expense, to the Town of Wawarsing Planning Board for subdivision approval and pursue same in a diligent manner. Seller shall fully cooperate with Purchaser to obtain such approval.

6. Governmental Violations and Orders. Seller shall furnish Purchaser with any authorizations necessary to make the searches that could disclose violations of law or municipal ordinances, orders or requirements noted or issued as of the date hereof by any governmental department having authority as to lands, housing, buildings, fire, health, environmental and labor conditions affecting the Premises. Seller shall comply with all notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued as of the date hereof by any governmental department.

7. Sellers' Representations.

a. Sellers represent and warrant to Purchaser that:

i. The Premises abut or have a right of access to a public road, in particular, State Route 209 and are located in Ulster County, New York;

ii. Seller is the sole fee simple owners of the Premises and have the full, right, power, and authority to sell, convey and transfer the same in accordance with the terms of this Contract;

iii. Seller is not a "foreign person", as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("IRC") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");

iv. The Premises are not affected by any exemptions or abatements of taxes; and

v. To the best of Seller's knowledge, information and belief, the Premises have not been used for the storage of toxic or hazardous waste or materials. Seller has not received notice of any claim of environmental violations.

vi. No part of the Premises has been taken in condemnation or other like proceeding, nor is any proceeding pending, threatened or known to be contemplated for the partial or total condemnation or taking of the Premises.

vii. Seller shall make such representations, warranties and provide further assurance as may be reasonably required pursuant to the matters and conditions set forth in Paragraph 4 of the Option Agreement to which this Contract of Sale is attached.

b. Seller covenants and warrants that all of the representations and warranties set forth in this Contract shall be true and correct at Closing and as required shall not survive the Closing.

8. Insurable Title. Seller shall give and Purchaser shall accept good and marketable title, free and clear of all liens and encumbrances, and such title as any reputable member of the New York Board of Title Underwriters ("Title Insurer") shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department at standard rates without additional or special premium charges, subject only to the matters provided for in this Contract.

9. Closing, Deed and Title.

a. "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this Contract, including the payment of the purchase price to Seller and the delivery to Purchaser of a Deed with Covenant Against Grantor's Acts in proper statutory form for recording, duly executed and acknowledged, so as to convey to Purchaser fee simple title to the Premises, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Sellers as required by Subdivision 5 of Section 13 of the Lien Law.

b. If a Seller is a corporation, it shall also deliver to Purchaser at the time of Closing:

i. a resolution of its Board of Directors authorizing the sale and delivery of the deed,  
and

ii. a certificate by the Secretary of Assistant Secretary of the corporation with the requirements of Section 909 of the Business Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that Section.

10. Closing Date and Place. Closing shall take place at the office of Seller's attorneys, Collier and Berger, PLLC, 130 South Main Street, Ellenville, New York 12428, on or about the later of (i) sixty (60) days after execution of this Contract by both parties, or (ii) thirty (30) days after final subdivision approval referred to in Paragraph 5 is granted.

11. Conditions to Closing. This Contract and Purchaser's obligation to purchase the Premises are also subject and conditioned upon the fulfillment of the following conditions precedent:

a. The accuracy, as of the date of Closing, of the representations and warranties of Sellers made in this Contract.

b. The Premises being all of the same premises consisting of approximately 145 acres more or less located along New York State Route 209 in the Town of Wawarsing, Ulster County, New York which consists of all of the property on the east side of Route 209 in the Town of Wawarsing owned all or in part by Seller.

c. The delivery by Seller to Purchaser of a certification stating that no Seller is a foreign person, which certification shall be in the form then required by FIRPTA. If Seller fails to deliver the aforesaid certification or if Purchaser is not entitled under FIRPTA to rely on such certification, Purchaser shall deduct and withhold from the purchase price a sum equal to ten (10%) per cent thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

d. The delivery by the parties of any other documents or affidavits required by the Title Insurer or as a condition of issuing title insurance as required herein and recording the deed.

12. Deed Transfer and Recording Taxes. At Closing, certified or official bank checks payable to the order of the appropriate State, City or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the deed or mortgage, if any, shall be delivered by the party required by law or by this Contract to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and such party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties hereon shall survive closing. It shall be the Seller's obligation to pay for all transfer taxes. It shall be the Purchaser's obligation to pay for the recording of the deed.

13. Escrow.

a. Purchaser has delivered to Collier and Berger, PLLC, having an address at 130 South Main Street, P.O. Box 509, Ellenville, New York 12428 ("Escrowee") the Down Payment.

b. Escrowee, subject to collection of any check, shall hold the Down Payment in accordance with this Contract, or a joint instruction signed by Seller and Purchaser, or separate instructions of like tenor signed by them, or a final judgment of a court of competent jurisdiction. If Escrowee shall receive an instruction from either party, Escrowee may act in accordance with such instruction unless other party shall notify Escrowee not to act in accordance with such instruction within ten days after delivery of such instruction by Escrowee to said other party. Escrowee at any time may deposit the Down Payment with a court of competent jurisdiction, and upon notice to Seller and Purchaser of such deposit Escrowee shall have no further responsibility or liability hereunder. Escrowee may resign all duties hereunder and be discharged of all obligations hereunder at any time by giving notice to Seller and Purchaser, whereupon they shall designate a successor Escrowee to whom the Down Payment shall be delivered. Escrowee hereby is authorized and directed to deliver the Down Payment to Seller if, as and when title closes in accordance with this Contract.

c. Seller and Purchaser acknowledge that Escrowee is merely a stakeholder, and that Escrowee shall not be liable for any act or omission unless taken or suffered in bad faith, in willful disregard of this Contract or involving gross negligence. Escrowee shall not be required to invest the Down Payment in an interest bearing account or other income producing investment.

d. All instructions or notices given pursuant to this paragraph shall be in writing and delivered in accordance with Paragraph 21 below. For purposes of this paragraph, such instructions and

notices shall be deemed delivered on the date of delivery, if by hand, or on the date of mailing, if mailed, except that no instruction or notice to Escrowee shall be deemed effective until actual receipt thereof by Escrowee.

14. Apportionments and Other Adjustments; Water Meter and Installment Assessments.

a. Upon the Closing, real property taxes and all other taxes, assessments, water charges, sewer rents, rents and imposed against or based upon the land shall be apportioned as of midnight of the day before the date of closing.

b. If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis from the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.

c. If at the date of Closing the Premises are affected by an assessment which is or may become payable in annual installments, and the first installment is then a lien, or has been paid, then for the purposes of this Contract all the unpaid installments shall be considered due and shall be paid by Sellers at or prior to Closing.

d. Any errors or omissions in computing apportionments or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

15. Allowance for Unpaid Taxes, etc. Seller has the option to credit Purchaser as an adjustment to the purchase price with the amount of any unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties thereon to a date not less than five business days after Closing, provided that official bills therefore computed to said date are produced at Closing.

16. Use of Purchase Price to Remove Encumbrances. If at Closing there are other liens or encumbrances that Seller is obligated to pay or discharge, Seller may use any portion or the entire balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form sufficient to satisfy such liens or encumbrances, together with the cost of recording or filing said instruments. As an alternative, Seller may deposit sufficient monies with the Title Insurer employed by Purchaser acceptable to and required by it to assure their discharge, but only if the Title Insurer will insure Purchaser's title clear of the matters or insure against their enforcement out of the premises and will insure Purchaser's Institutional Lender clear of such matters. Upon notice (by telephone or otherwise), given not less than 3 business days before Closing, Purchaser shall provide separate certified or official bank checks as requested to assist in clearing up these matters.

17. Title Examination; Seller's Inability to Convey; Limitations of Liability. Seller shall convey such title which will be insurable by Purchaser's Title Insurer. In the event Seller cannot convey such insurable title, then (i) Purchaser may cancel and Sellers shall refund all monies paid hereunder, including monies paid on the Option Agreement; or (ii) Purchaser may elect to take such title as Sellers can convey. If this Contract is cancelled other than on account of Seller's inability to deliver to the Purchaser fee simple title to the Premises, free and clear of all liens and encumbrances, then this Contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise.

18. Affidavit as to Judgments, Bankruptcies, etc. If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller.

19. Liquidated Damages. If Purchaser defaults under this Contract, Seller as its sole remedy shall be entitled to declare this Contract null and void and to receive from Escrowee and to retain all sums paid by Purchaser hereunder as liquidated damages, whereupon this Contract shall terminate and neither party shall have any further claim against the other. If Seller defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to under law or in equity, including but not limited to specific performance.

20. Purchaser's Lien. All money paid on account of this Contract, and the reasonable expenses of examination of title to the Premises and of any survey and survey inspection charges, are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this Contract.

21. Notices. Any notice or other communication ("Notice") shall be in writing and either (a) sent by either of the parties hereto or by their respective attorneys who are hereby authorized to do so on their behalf, by registered or certified mail, postage prepaid, or (b) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this Contract for the party, to whom the Notice is to be given, or to such other address as such party shall hereafter designate by Notice given to the other party pursuant to this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that each notice delivered in person or by overnight courier shall be deemed given when delivered.

22. Broker. Purchaser represents and warrants that it has not dealt with any broker in connection with this sale. Seller and Purchaser each agree to indemnify and hold the other harmless from and against all liabilities, claims, damages or expenses, including attorneys' fees, pertaining to any other broker with whom Seller and Purchaser have dealt. This provision shall survive the Closing or, if the Closing does not occur, the termination of this Contract.

23. Condition of Premises.

a. Purchaser has inspected the Premises and any personal property included in this sale and is fully familiar with their physical condition and state of repair. Purchaser agrees to take the same "as is" and in their present condition, subject to reasonable use, wear, tear and deterioration between now and the Closing Date. Seller shall not be liable for any latent or patent defects in the Premises. Purchaser shall have the right to inspect the Premises at a reasonable time prior to the Closing.

b. Purchaser acknowledges that neither Seller nor any representative or agent of Seller have made any representation or warranty (expressed or implied) as to the physical condition, state of repair, expenses or operation of the Premises or any matter or thing affecting or relating to the Premises or this Contract, except as specifically set forth herein. Seller shall not be liable or bound in any manner by any oral or written statement, representation, warranty, agreement or information relating to the Premises or this Contract furnished by any real estate broker, agent or other person, unless specifically set forth herein.

24. Acreage. Seller sets forth approximate acreage of 145 acres. If Purchaser's survey determines that there is more or less acreage, the purchase price shall not be increased or decreased upon same.

25. Miscellaneous.

a. All prior understandings, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this Contract.

b. Neither this Contract nor any provision thereof may be waived, changed or cancelled except in writing. This Contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this Contract.

c. Any singular word or term herein shall also be read as in the plural and the neuter shall include the masculine and feminine gender, whenever the sense of this Contract may require it.

d. The captions in this Contract are for convenience of reference only and in no way define, limit or describe the scope of this Contract and shall not be considered in the interpretation of this Contract or any provision hereof.

e. This Contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.

f. Seller and Purchaser shall comply with IRC reporting requirements, if applicable. This subparagraph shall survive Closing.

g. Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this Contract. This subparagraph shall survive Closing.

h. The rights and benefits under this Contract may be assigned by either party to any person, firm, corporation or private or governmental entity as they desire; provided however that the liabilities and obligations of the parties hereto may not be assigned or transferred without the written consent of all parties hereto.

i. If Purchaser obtains a survey and survey description of the subject premises, Seller shall incorporate same into the deed of conveyance if the survey is certified to the Seller.

26. Counterparts. This Option may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

**IN WITNESS WHEREOF**, this Contract has been duly executed by the parties hereto.

\_\_\_\_\_  
Grace Kennedy, Seller

\_\_\_\_\_  
Patricia D. Kelly, Seller

\_\_\_\_\_  
Rosalie Sherry, Seller

\_\_\_\_\_  
Arthur G. Kelly, Seller

KELLY SAND & GRAVEL, INC., Seller

By \_\_\_\_\_  
Grace Kennedy, President

NEVELE-R, LLC, Purchaser

By \_\_\_\_\_  
Michael Treanor, Jr., CEO

Collier and Berger, PLLC hereby executes this Contract solely for purposes of agreeing to serve as Escrowee in accordance with the provisions of this Contract.

COLLIER AND BERGER, PLLC

By \_\_\_\_\_  
Peter L. Berger, Esq.

## ***SCHEDULE A***

All those pieces or parcels of land, situate, lying and being on the east side of New York State Route 209, in the Town of Wawarsing, County of Ulster, State of New York, being more particularly described as follows:

Property owned by Kelly Sand & Gravel, Inc.

Portion of SBL 90.4-2-13, approximately 75 acres

SBL 90.4-2-15, approximately 35 acres

Property owned by Grace Kennedy, Patricia D. Kelly, Rosalie Sherry, and Arthur G. Kelly, Partners

SBL 90.4-2-17.2, approximately 27 acres

SBL 90.2-3-13, approximately 8.4 acres