

GRANT OF EASEMENT AND RIGHT OF WAY FOR  
MULTI-USE RECREATIONAL TRAIL

THIS EASEMENT made the 17 day of June, 2014 by and between NEVELE-R, LLC, a DELAWARE limited liability company having its principal office at Government Center, 2 Elting Court, Ellenville, New York, 12428 (hereinafter referred to as "Nevele"), and the TOWN OF WAWARSING, having an office at 108 Canal Street, Ellenville, New York, 12428 (hereinafter referred to as the "Town"), to establish a multi-use recreational trail (hereinafter "Trail") for public use across private property.

WITNESSETH:

WHEREAS, Nevele is the owner of certain properties located in the Town of Wawarsing (Tax Map No. 91.1-1-6.100 and 91.1-1-13), being in the County of Ulster and State of New York, generally consisting of the former railroad bed running from the southern boundary line of the Honor's Haven Resort property and that of Nevele to the Mamakating town line, more particularly described in Exhibit A attached hereto and made a part hereof (said property being hereinafter referred to as the "Property"); and

WHEREAS, the Town has requested that Nevele grant to it an easement and right of way (the "Easement and Right of Way" or "Easement") to create and maintain a Trail over a portion of the Property as more particularly set forth herein; and

WHEREAS, Nevele desires to grant such Easement and Right of Way to the Town subject to and in accordance with the terms and provisions contained herein; and

WHEREAS, the Town has represented that the Property contained within this Easement is not property within NYSDOT PIN 8759.49, a federally aided project, but should same be within said NYSDOT project then this dedication shall be deemed a dedication pursuant to the local planning process of the Town for land use concessions that are consistent with applicable State and Federal project and environmental regulations.

NOW THEREFORE, the parties hereby covenant and agree as follows:

1. Nevele does hereby grant to the Town a permanent non-exclusive easement for the construction, reconstruction and maintenance of a multi-use recreational trail for the

primary route of the Trail within the Town of Wawarsing, County of Ulster, State of New York (the "Rail Trail Primary Easement") as more fully described in the metes and bounds description that is attached hereto as Exhibit A and made a part hereof and more fully depicted on the map (the "Permanent Easement Map- Primary Rail Trail") that is attached hereto as Exhibit B and made a part hereof.

2. Nevele hereby further grants and conveys to the Town a permanent non-exclusive easement for the construction, reconstruction and maintenance of a multi-use recreational trail for the alternative route of the Trail within the Town of Wawarsing, County of Ulster, State of New York (the "Rail Trail Alternative Easement") as more fully depicted on the "Permanent Easement Map- Rail Trail Alternative" that is attached hereto as Exhibit B and made a part hereof. The Rail Trail Primary Easement and Rail Trail Alternative Easement generally encompass a twenty (20) foot easement and Trail of at least twelve (12) feet in width.

3. The Trail is further defined as being composed of two separate sections for the purpose of this Easement Agreement: first, the northern section of the Trail (the "Northern Portion") that lies on that portion of the Property which traverses the site of the Nevele Resort, Casino & Spa and second, that undeveloped portion of the Property south of the Northern Portion (the "Southern Portion"), each as more particularly described in Exhibit B.

4. The Town shall, at its sole cost and expense, have the obligation to create, mark and maintain the Southern Portion of the Trail in a safe condition and accepts the use of the Trail in "as is" condition, subject to the right, but not the obligation of Nevele to maintain and/or improve the Trail in such condition and state of repair as Nevele in its sole discretion deems necessary and appropriate. Nevele shall construct and maintain, at its sole cost and expense all parts of the Northern Portion of the Rail Trail Primary Easement and the Rail Trail Alternative Easement. The Northern Portion of the Rail Trail Primary Easement and the Rail Trail Alternative Easement shall be constructed to "Rail Trail Standards." For purposes of this provision "Rail Trail Standards" means a relatively level trail at least twelve (12) feet in width, free from debris and vegetative growth, containing a natural surface with adequate drainage.

5. The Trail described herein shall not be used for any purpose other than for walking, hiking, jogging, cross-country skiing, bicycle riding, horseback riding only

where permitted in specifically designated areas, and other forms of non-motorized and non-vehicular travel, and without limiting the extent of said prohibition, shall not be used for motor vehicles, motorized bikes, all terrain vehicles, ski mobiles, motorcycles or any other form of motorized movement, except as otherwise provided in Paragraph 6 hereof. Horseback riding is generally prohibited on the Northern Portion. However, Nevele shall work with the Town to design the Alternative Easement route in such a way as to accommodate horseback riding. Additionally, no camping or fires of any type shall be allowed anywhere or at any time on the Property.

6. Motorized vehicles shall be prohibited except in cases of Trail clearing and maintenance work or emergency vehicle access.

7. The Trail will be open for permitted uses herein and available from dawn to dusk. Nevele maintains the right to adopt, impose and enforce reasonable rules and regulations concerning the use of and the times of the use of the Northern Portion of the Trail that are mutually agreed upon with the Town. It is understood that such agreement shall not be unreasonably withheld by either party.

8. Nevele shall work with the Town to agree upon the form, design, content and location of any signs or Trail identification markers that the Town proposes to install on the Trail at the Town's expense.

9. Appropriate temporary announcement and directional signage shall be erected by Nevele and/or the Town. Nevele and/or the Town may undertake improvements in order to further appropriate use of the Trail; to prevent access to dangerous or unsafe conditions on it; or to prevent users of the Trail from entering other lands of the Nevele Resort, Casino & Spa. Such improvements shall not detract from the scenic and open space character of the Trail and the design and aesthetics of any proposed sign or structure by the Town or Nevele shall be mutually agreed upon, it being understood that such agreement shall not be unreasonably withheld by either party.

10. Nevele reserves the right to require relocation of the Trail or any part of the Trail to a different portion of the Property at its own expense including the Rail Trail Primary Easement or the Rail Trail Alternative Easement outlined in Exhibit B. The relocated Trail will continue to provide an unobstructed and continuous path.

11. Nevele may require, after having given notice and consultation with the Town, the general public to use the Rail Trail Alternative Easement (a) at any time the

Rail Trail Primary Easement is unavailable due to Nevele's construction activities or (b) in the event Nevele conducts Special Events open to the public on the Property, which Special Events shall not exceed a total of fifteen (15) days in any calendar year. At all other times, the Rail Trail Primary Easement shall be used. Nevele may use gates, signage or any combination of the two in order to direct the public to use the Rail Trail Alternative Easement.

12. Any and all work undertaken by the Town or Nevele within the Easement shall be in compliance with all applicable governmental laws, rules and regulations of the federal and state governments and the Town of Wawarsing.

13. The Town hereby agrees to indemnify, defend and hold harmless Nevele and its officers, directors, employees, agents, contractors and invitees from and against any and all losses, judgments, claims, actions, and expenses (including reasonable attorneys fees and disbursements) relating to any personal injuries, deaths or damage to property resulting directly or indirectly from the creation, use or maintenance of the Trail by the Town or any of its guests or other invitees, agents, contractors or any other person who uses the Trail.

14. Nevele hereby agrees to indemnify, defend and hold harmless the Town and its officers, directors, employees, agents, contractors and invitees from and against any and all losses, judgments, claims, actions, and expenses (including reasonable attorneys fees and disbursements) relating to any personal injuries, deaths or damage to property resulting directly or indirectly from the creation, use or maintenance of the Rail Trail Alternative Easement by the Nevele or any of its guests or other invitees, agents, contractors or any other person who uses the Trail.

15. This Agreement shall be recorded in the Ulster County Clerk's Office and the cost of such recording and any applicable transfer tax shall be the responsibility of the Town.

16. The invalidation of any provision of this Easement Agreement by court order, judgment, statute or otherwise, shall not affect any other provisions, which shall remain in full force and effect.

17. The easement granted herein is personal to the Town. The Town shall have no right to transfer or assign its rights under this Easement Agreement.

18. It is understood between the parties that §9-103 of the General Obligations Law of the State of New York provides that as owner, Nevele owes no duty to keep the Property or Trail safe for the recreational uses permitted under this Easement Agreement and that the granting of this easement does not:

- a. extend any assurance that the Trail or the Property is safe for such recreational uses,
- b. constitute any person using the Trail or the Property an invitee to whom a duty of care is owed, or
- c. result in the Nevele assuming responsibility for or incurring liability for any injury to person or property caused by any act of persons to whom permission is granted to use the Trail or the Property.

19. This Easement Agreement shall be governed by the laws of the State of New York. The failure of either party to enforce its rights hereunder at any time or in any way shall not result in or be construed as a waiver of any such rights.

20. The terms, covenants and agreements set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives and permissible assigns.

21. This Easement and Right of Way is expressly contingent on the satisfaction of the following conditions precedent: (a) the award of a Class 3 Gaming License from the New York State Gaming Commission to Nevele and (b) the fulfillment of all obligations set forth in the Decision/Order of Hon. Mary M. Work dated February 3, 2012, Index No. 09-2279, RJI No. 55-01923.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Grant of Easement and Right of Way as of the day and year first above written.

NEVELE-R, LLC

  
By: \_\_\_\_\_

Name: Michael R. Treanor

Title: CEO

THE TOWN OF WAWARSING

  
By: \_\_\_\_\_

Name: Leonard M. Distel

Title: Supervisor, Town of Wawarsing

STATE OF NEW YORK            )  
  ) ss  
COUNTY OF ULSTER         )

On the 17th day of June, in the year 2014 before me, the undersigned, a Notary Public in and for said state, personally appeared Leonard M. Distel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

Abigail M. Osgood  
\_\_\_\_\_  
Notary Public

Notary Public, State of New York  
County of Ulster  
Abigail M. Osgood  
Registration #02066298902 Ulster County  
My Commission Expires 3-17-2018

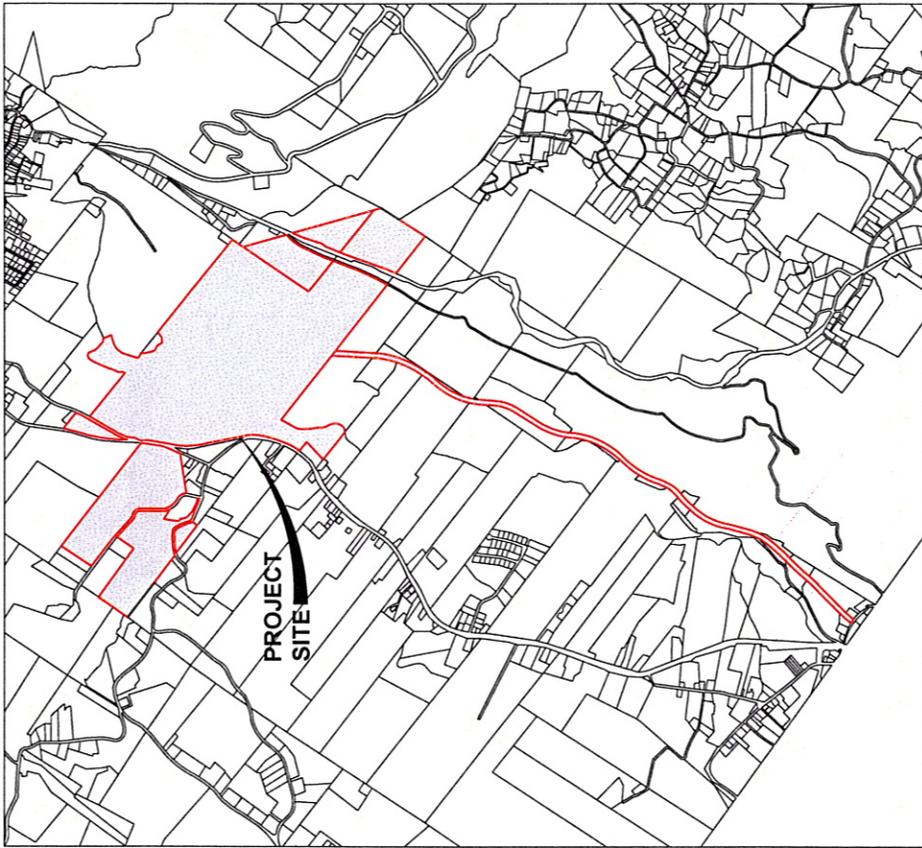
STATE OF NEW YORK            )  
  ) ss  
COUNTY OF ULSTER         )

On the 17<sup>th</sup> day of June, in the year 2014, before me, the undersigned, a Notary Public in and for said state, personally appeared Michael R. Treanor, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

Abigail M. Osgood  
\_\_\_\_\_  
Notary Public

Notary Public, State of New York  
County of Ulster  
Abigail M. Osgood  
Registration #02066298902 Ulster County  
My Commission Expires 3-17-2018

EXHIBIT A



**PROJECT  
SITE**

Drawn:	CLB
Date:	6/17/14
Scale:	1" = 2500'
Project:	31225.02
Figure:	FIG3

**NEVELE RESORT CASINO & SPA**  
**OVERALL NEVELE PROPERTY**

TOWN OF WAWARISING, ULSTER COUNTY, NEW YORK

**NEVELE**  
RESORT CASINO SPA

**CHAZEN ENGINEERING, LAND SURVEYING & LANDSCAPE ARCHITECTURE CO., D.P.C.**  
 Dutchess County Office:  
 21 Fox Street  
 Poughkeepsie, New York 12601  
 Phone: (845) 424-3880

**City/Town Office:**  
 547 River Street  
 Troy, New York 12180  
 Phone: (518) 273-0055

**North County Office:**  
 375 Bay Road  
 Queensbury, New York 12804  
 Phone: (518) 912-5513

THE ABOVE INFORMATION IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT AND IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE FIRM.

