

**ELLENVILLE WATER DISTRICT  
OUTSIDE WATER DISTRICT USER AGREEMENT**

*AGREEMENT* made this 10<sup>th</sup> day of June, 2014, by and between VILLAGE OF ELLENVILLE, acting on behalf of the Ellenville Water District, having its principal place of business located at 2 Elting Court, Ellenville, New York 12428 (hereinafter referred to as the "District"), and NEVELE-R, LLC, a Delaware Limited Liability Company, with offices located at 2 Elting Court, P.O. Box 388, Ellenville, New York 12428 (hereinafter referred to as the "User").

**WITNESSETH:**

**WHEREAS**, User is the owner of the premises (hereinafter referred to as the "Premises") located at the former Nevele Hotel and Country Club, Arrow Head Road, Town of Wawarsing, Ulster County, New York (Tax Map Section 91.1, Block 1, Lot 6.11); and

**WHEREAS**, User has requested permission to access and use District facilities pursuant to NYS Village Law 11-1120; and

**WHEREAS**, the parties hereto wish to set forth their understanding, and the terms and conditions of the use of the District facilities.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. User shall be permitted to connect the Premises to and utilize the District facilities and connect into the District water main in the Village of Ellenville, New York, which shall be accomplished under the direction of the District's Water Superintendent.

2. User shall be responsible for all costs and expenses associated with connection to the District water main and maintenance and repair thereof. User shall be responsible for obtaining any and all easements necessary, if any, in order to provide access from the Premises and the aforesaid water main. User shall be responsible for obtaining all approvals, permits and licenses, if any, necessary in order to initiate and complete the work contemplated herein.

User's responsibilities for the initial connection as well as maintenance and repair shall begin from the District water main.

3. In the event that the User fails to make necessary maintenance work and/or repairs, the District, in its own discretion, may perform such maintenance work or repairs; and the User agrees to reimburse the District for its actual costs, including, but not limited, to labor and materials.

4. User shall comply in all respects with any rules and regulations governing such use and as may hereafter be amended and comply with all Federal and State statutes, County or local laws, ordinances, resolutions and regulations promulgated to regulate such connection and use thereunder and fees therefore.

5. In consideration of the District providing water to the User as contemplated by this Agreement, the User shall pay to the District the in-district charges for such use and in addition thereto to an "outside user" surcharge as determined from time to time by resolution of the Village Board. The District and the User shall recognize that the "outside user" surcharge shall cover water use as well as a fee to cover capital cost reduction.

6. User agrees to make payment in full for all fees and assessments billed by the District within thirty (30) days of the issuance of a billing statement from the District. Late payments will accrue charges at one and one-half (1.5%) per cent per month period.

7. In addition to the rights provided to the District hereunder, and in addition to the rights provided by law, it is further agreed that if User fails to make timely payments of all sums due and owing to the District, the District shall have the right to file a lien against the Premises in the office of the Ulster County Clerk.

8. The District may terminate this Agreement and discontinue the use of District facilities if User fails to make timely payments of all amounts due and owing upon ten (10) days written notice.

9. Any notice to either party must be in writing signed by the party giving notice and shall be served either personally or by certified mail addressed as follows:

a. If to District: Village Manager  
Village of Ellenville  
2 Elting Court  
Ellenville, New York 12428

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

10. User shall, at all times, indemnify, defend and hold the District harmless against all actions, proceedings, claims and demands (including reasonable attorney's fees) by reason of the connection of the Premises to the District.

11. In the event that the Village of Ellenville determines that the capacity of the District facilities cannot serve the outside District user, it may terminate this Agreement and terminate service to the User upon ninety (90) days written notice, except that in the event of an emergency water shortage, service may be temporarily shut off without notice.

12. In the event services are either temporarily shut off or terminated, User hereby releases the Village of Ellenville and the District from any and all claims or damages.

13. In the event legal action is brought to collect any amount owing under this Agreement, or to enforce the terms and provision hereof, User shall pay all reasonable attorney's fees, disbursements and court costs incurred by the Village of Ellenville or District together with interest thereon at the rate of one and one-half (1.5%) per cent per month.

14. User shall procure and maintain protective liability insurance issued to and covering the liability of the User and its contractors with respect to all installation and construction work performed under this Agreement. Policies of bodily injury liability and property liability insurance shall be provided in the minimum amount of One Million Dollars (\$1,000,000.00) per person and shall name the District and the Village of Ellenville as additional insured for the period of construction and installation.

15. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties with respect to such subject matter. Neither this nor any term or provision hereof may be changed or waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of this change, waiver, discharge or termination is sought.

16. This Agreement shall be binding upon the parties hereto, their respect heirs, executors, administrators, successors and/or assigns.

17. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York, and exclusive jurisdiction over any legal action brought by either party hereto shall be brought in Supreme Court, Ulster County, New York.

***IN WITNESS WHEREOF***, the parties hereto have executed this Agreement on the day and year first above written.

VILLAGE OF ELLENVILLE

By  \_\_\_\_\_  
Joseph P. Stoeckeler, Jr., Manager

NEVELE-R, LLC  
By  \_\_\_\_\_  
Michael Treanor, Jr., CEO

STATE OF NEW YORK :  
: ss.:  
COUNTY OF ULSTER :

On the 10<sup>th</sup> day of June, 2014, before me, the undersigned, personally appeared JOSEPH P. STOECKELER, JR., 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Abigail M. Osgood  
Notary Public

Notary Public, State of New York  
County of Ulster  
Abigail M. Osgood  
Registration #02OS6298902 Ulster County  
My Commission Expires 3-17-2018

STATE OF NEW YORK :  
: ss.:  
COUNTY OF ULSTER :

On the 10<sup>th</sup> day of June, 2014, before me, the undersigned, personally appeared MICHAEL TREANOR, JR., 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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