WHEREAS, CFIDA owns property in the Tupper Lake Business Park in the Town of Tupper Lake; and

WHEREAS, Kentile Excavating, Inc., a business located in Tupper Lake submitted an offer to purchase Lots #1 and #2 in the Tupper Lake Business Park totaling 7.748 acres for the purposes of expanding their excavating business;

THEREFORE BE IT RESOLVED, that the County of Franklin Industrial Development Agency Board of Directors authorizes the sale of Lot #1 (2.748 acres) for $15,000 and Lot #2 (5 acres) for $35,000 to Kentile Excavating, Inc., recognizing that the sale prices meet or exceed fair market value as established by a competent commercial real estate appraiser, and authorizes the CEO to execute the attached purchase contract and undertake all actions required to complete the property transfer.

Dave Yando, Secretary

Date

Duly adopted by the IDA Board September 11, 2019
CONTRACT FOR SALE OF REAL ESTATE

Between:

County of Franklin Industrial Development Agency

And

Kentile Excavating, Inc., Purchaser
CONTRACT FOR REAL ESTATE SALE

1. **PARTIES.**

Sellar: County of Franklin Industrial Development Agency with a principal place of business located at 355 West Main Street, Ste. 428, Malone, New York 12953.


**RECITALS**

A. Seller is the owner of a 2.748 acre parcel of real property, and a 5 acre parcel of real property, both located in the Town of Tupper Lake, Franklin County, New York. Said parcels are more particularly described in Exhibit A of this Contract and are designated as Lots 1 and 2, respectively, in the Tupper Lake Business Park, hereinafter collectively called “the Premises”.

B. Purchaser wishes to use the Premises for its excavation business, including onsite portable screen, stockpiles of topsoil and crushed stone, storage of equipment, and related purposes which are set forth in Section 12(a) of this Contract.

In consideration of the promises of each party to the other party herein contained, Seller hereby agrees to sell to Purchaser and Purchaser hereby agrees to buy from Seller the aforesaid Premises on the terms and conditions set forth herein:

2. **PROPERTY DESCRIPTION**

The Premises located in the Town of Tupper Lake (hereinafter the “Town”), County of Franklin, State of New York, and designated as Lots 1 and 2 in the Tupper Lake Business Park, a description of which is set forth in Exhibit A.

3. **AGREEMENT**

The Seller agrees to sell and the Purchaser agrees to buy under all terms and conditions stated herein.
4. **PURCHASE PRICE**

The purchase price is *Fifty Thousand and no/100 ($50,000.00) Dollars (allocated $15,000.00 for Lot 1 and $35,000.00 for Lot 2).* It shall be payable as follows:

*Five Thousand and no/100 ($5,000.00) Dollars* upon signing this Agreement. Said sum shall be held in escrow by the attorney for the Seller.

At the time of closing: *Forty-Five Thousand and no/100 ($45,000.00) Dollars* paid by the Purchaser to the Seller. Payment shall be made in certified funds.

5. **WARRANTY**

The Seller shall convey marketable title to the Premises to the Purchaser by Warranty Deed with Lien Covenant, in proper form for recording. The deed shall be prepared, duly executed and acknowledged by the Seller, at the Seller’s expense, so as to convey to the Purchaser fee simple in said Premises, free and clear of all liens and encumbrances, except as herein stated.

6. **TITLE INSURANCE**

Purchaser shall purchase title insurance at its own expense. Seller shall pay that portion of the title insurance expense relating to abstracting and tax research.

7. **QUALITY OF TITLE**

At closing, the Seller shall convey to the Purchaser good and marketable title to the Premises in fee simple, free and clear of all liens and encumbrances. Purchaser will accept Premises subject to certain encumbrances providing they do not interfere with the use of the Premises for the purposes set forth in paragraph 12(a) of this Contract or render title unmarketable. If Seller cannot cure any and all title defects, Purchaser may cancel the Contract or elect to accept the title as the Seller can convey it.

8. **DISCHARGE OF LIENS**

Seller must pay and discharge any liens or encumbrances not provided for herein out of the monies paid by the Purchaser on the transfer of this title.

9. **ARBITRATION**

Before filing any notice of demand for arbitration, the parties shall make best efforts to resolve any dispute under this Agreement on an informal basis. Any controversy or claim arising out of or relating to this Agreement or breach thereof shall be settled by
arbitration in accordance with the Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. The award rendered shall be a final and binding judgment and said judgment may be entered in any court having jurisdiction thereof. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association and shall be made within 60 days after the dispute has arisen. Under the terms of this Contract, no suit at law or in equity shall be instituted by either party except to enforce the award of the arbitrator.

The arbitrators, in their award, shall designate which party or parties, if any, are entitled to receive their costs necessarily incurred in the arbitration procedure.

The parties agree that all arbitration arising out of or under this Contract shall be venued in Tupper Lake, New York.

10. **ADJUSTMENTS TO PURCHASE PRICE**

All real estate taxes and utilities shall be prorated as of the date of closing.

11. **NO BROKER**

The parties hereto acknowledge and agree that no real estate broker has brought about this sale.

12. **CONDITIONS OF SALE**

This Agreement is contingent upon the following conditions:

(a) Permits and Approvals. The parties acknowledge and agree that the Purchaser intends to use the premises being purchased under this Contract for the purpose of its excavation business, including onsite portable screen, stockpiles of topsoil and crushed stone, and storage of equipment. The permits and approvals which are the conditions of this agreement are set forth as follows:

i. **New York State Permits**: The Purchaser and its representatives will use their best commercial efforts to obtain the permits from New York State and its agencies including the following: DEC air related, DEC water related and Town of Tupper Lake permits described in (iii) below, so that Purchaser may use the Premises for the purposes set forth in paragraph 12(a).

ii. **Town of Tupper Lake Zoning Variances and Special Use Permits**: The Purchaser and its representatives will use their best commercial efforts to obtain the necessary zoning variances and special use permits to operate a its
facility from the Town and its agencies, so that the Premises can be used by the Purchaser for the purposes set forth in paragraph 12(a).

iii. Adirondack Park Agency (APA): The Purchaser and its representatives will use their best commercial efforts to obtain the necessary permits from the APA so that it can operate its facility as set forth in paragraph 12(a) of this Agreement.

iv. Storage Tanks: The Purchaser and its representatives will use their best commercial efforts to obtain any necessary approvals to install two 1,000 self contained above ground fuel tanks.

(b) Purchaser shall be fully responsible for all costs associated with obtaining the necessary permits and approval as required in this paragraph, provided however, that the Seller shall cooperate with Purchaser and any governmental entity and use its best efforts to assist in obtaining the permits.

(c) In the event that any or all of the above conditions are not met to the reasonable satisfaction of the Purchaser, or in the judgment of the Purchaser that the process of obtaining the necessary conditions is becoming too expensive or time consuming then this Agreement shall become null and void at the option of the Purchaser and neither party shall have any obligation to the other except that Seller shall return the initial payment of $5,000.00 to the Purchaser.

13. COMPLIANCE WITH FEDERAL AND STATE AND LOCAL LAWS AND REGULATIONS

Purchaser shall comply with all federal, state, and local laws applicable to its intended use of the Premises. Purchaser is responsible for securing all environmental permits from applicable federal and state regulatory agencies that may be required for its use and operation.

14. REVERTER

The Purchaser is responsible for initiating the project within twelve (12) months of closing and/or initiating operation within thirty six (36) months of closing. If Purchaser fails to adhere to this timetable, Purchaser shall forfeit title to the Premises, with the Premises reverting back to the Seller.

If Purchaser ceases operations beyond the first thirty six (36) months, for a period of twelve (12) consecutive months, the Seller will have a Right of First Refusal to the Premises and the purchase price shall be the amount offered by a bona fide purchaser who has demonstrated its present intent to purchase the Premises by a purchase offer, and
is ready, willing, and able to consummate the purchase transaction. The Seller shall exercise its Right of First Refusal within fifteen (15) days after receipt of written notice from the Purchaser, which must include a copy of the bona fide offer that has been made by a prospective purchaser. Failure to exercise the Right of First Refusal within that fifteen (15) day period shall permit Purchaser to consummate the transaction with the prospective buyer.

If the Purchaser ceases operations on the premises for twelve (12) months and vacates the Premises, the Seller shall have the option to offer, within thirty (30) days of the expiration of the twelve (12) month period of vacancy, a purchase price for the Premises that reflects the market value of the Premises at the time that the Premises was vacated, pursuant to an appraisal, even in the absence of any offer having been made from a third party for the purchase of the Premises. In the event that an offer is made by a third party following the Purchaser’s vacating the Premises, the Seller shall have to exercise its Rights to First Refusal and meet or exceed the offer made by the third party.

15. **PARK COMMON AREA MAINTENANCE**

The parties acknowledge that Upstone Materials, Inc. previously purchased Lot 3 in the Tupper Lake Business Park, and that there is a common driveway that services Lot 3 and Lots 1 and 2 being purchased hereunder. At the time of closing hereunder, Purchaser and Upstone Materials, Inc. will enter into an agreement with the Franklin County Industrial Development Agency that defines the common driveway and allocates between and among them, the responsibility for maintenance.

16. **INDEMNIFICATION**

While the Purchaser, or its contractors, agents or employees, are on the Premises, and the Premises is still owned by the Seller, Purchaser shall indemnify, defend and hold harmless Seller, from any and all damages or claims arising out of the negligent acts of Purchaser’s employees, officers, or agents, or any non-negligent strict liability torts of Purchaser, its employees, officers, or agents related to Purchaser’s activities on the Premises.

17. **ASSIGNMENT**

Neither party shall assign this Agreement or any interest in this Contract unless both parties mutually agree in writing.

18. **SUCCESSION**
This Agreement shall not only be binding upon the parties hereto but their respective heirs, successors, distributes and assigns.

19. **TRANSFER OF TITLE**

Transfer of title is to be completed within thirty (30) days after Seller receives notice from Purchaser that the process of obtaining the necessary permits and approvals has been completed and Purchaser is satisfied that the conditions of paragraph 12 herein have been met. The Closing shall occur at the offices of the Seller’s Attorney, or as agreed, providing all the conditions of sale have been satisfied. The parties agree that the Purchaser retains the right to assign this contract to an entity of which it, or its shareholders or officers, possess an interest, provided that Purchaser shall remain liable for the obligations hereunder.

20. **WAIVER OF CONDITIONS OF SALE**

At any time during the process of obtaining the necessary permits, variances, special use permits and other approvals from the required governmental agencies, the Purchaser shall have the right to waive any and all conditions associated with this sale and purchase the premises.

21. **SURVIVAL OF COVENANTS AFTER CLOSING**

The terms and provisions of this Agreement shall not merge with the closing herein and all promises and covenants therein contained shall survive the closing and bind the parties thereto, their heirs, executors, administrators and assigns.

All prior agreements between the parties relating to any portion of the Premises are deemed terminated and of no further force nor effect.

22. **NOTICES**

Any notice or report required or permitted to be given to Seller or Purchaser shall be in writing and shall be addressed to the party to whom the notice is directed at its address specified below:

If to Seller:
Jeremy Evans
Executive Director
355 West Main Street, Ste. 428
Malone, New York 12953
23. **CLOSING**

The Closing shall occur within 30 days of the satisfaction of all conditions and approvals set forth in paragraph 12.

24. **ENTIRE AGREEMENT**

This Agreement contains all agreements of the parties hereto. There are no promises, agreements, terms, conditions, warranties, representations or statements other than contained herein.

DATED:

SELLER: 

[Signature]

By: **Jeremy Evans**

CEO

PURCHASER: 

[Signature]

By: **Adam Boudreau**

President, Kentile Excavating