STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANGELO’S AGGREGATE MATERIALS, LTD,
d/b/a ANGELO’S RECYCLED MATERIALS,

Petitioner,

vs. DOAH Case No. 09-1543

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Respondent,

and

CRYSTAL SPRINGS PRESERVE, INC.,
CITY OF TAMPA, and CITY OF
ZEPHYRHILLS,

Intervenors.

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CARL ROTH, JOHN FLOYD, LOUIS POTENZIANO,
and MARVIN HALL,

Petitioners,

vs. DOAH Case No. 09-1544

ANGELO’S AGGREGATE MATERIALS, LTD.,
d/b/a ANGELO’S RECYCLED MATERIALS,
and STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.

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WRB ENTERPRISES, INC.

Petitioner,

vs. DOAH Case No. 09-1545

ANGELO'S AGGREGATE MATERIALS, LTD.,
d/b/a ANGELO'S RECYCLED MATERIALS,
and STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents


NESTLE WATERS NORTH AMERICA, INC.

Petitioner,

vs. DOAH Case No. 09-1546

ANGELO'S AGGREGATE MATERIALS, LTD.,
d/b/a ANGELO'S RECYCLED MATERIALS,
and STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.


NESTLE WATERS NORTH AMERICA, INC.'S RESPONSE TO ANGELO'S MOTION FOR RECONSIDERATION OF ORDER GRANTING RENEWED MOTION FOR ENTRY UPON LAND

Nestle Waters North America, Inc. (NWNA) by and through its undersigned counsel files this response to Angelo’s Aggregate Materials, Ltd’s Motion for Reconsideration of Order Granting Renewed Motion for Entry Upon Land.

1. This attempt by NWNA, The Department of Environmental Protection (FDEP), and the City of Tampa (Tampa) to go upon the Angelo’s project area to dig soil profile trenches to display the nature of the soil depressions on the Angelo’s project area began on May of this
year. There have been numerous emails, telephone discussions, and a meeting with counsel for Angelo’s on the method that would be used and the limited number of trenches that would be dug. In a meeting on June 24th, 2012, counsel for Angelo’s specifically stated that they were contacting the tenant, Larkin, regarding the site visit and trenching. Further, the methods of the soil profile trenching have been described in prior filings in this case on this issue. The soil profile trench is to be dug to a depth of a maximum of 48 inches; most of the trenches will be no more than 36 inches deep. The backhoe will be using a bucket that is 24 inches wide and, to the extent possible, the trench will only be as wide as the bucket. The length of the soil profile trench can be limited to no more than 12 feet long. We have identified 8 potential locations for the maximum of 6 soil profile trenches. Each trench will only be open for 30 minutes for analysis, then the trench will be filled and compacted. We agree to assign a person to watch and make sure cattle stay clear of the activity until the trench is refilled and compacted.

2. Angelo’s owns over 900 acres of property contiguous to the 30 acre proposed landfill project. Sid Larkin and Son, Inc. ("Larkin") was the landowner that sold a portion of the property to Angelo’s. The current lease provides Larkin with approximately 440 acres of land, of which 22 acres are within the 30 acre proposed landfill project area. See Exhibit “1” aerial with approximate lease and property boundaries. Larkin is not a disinterested party in this litigation. Although they did not point out their interest in their August 23, 2012 Amended Petition to Intervene to Object to Entry Upon Land, Larkin stands to receive an additional $1,000,000.00 if the proposed project is permitted for a Class I landfill, royalty payments from the amount of garbage deposited and under the default provision of the Option, Larkin receives all engineering work and permits for the landfill. See Exhibit “2” Option to Purchase Real Estate specifically paragraphs 2.(d), 2. (e) (i), 7.2 and 21 (b).
3. On January 20, 2004, Larkin and Angelo’s entered into an “Option to Purchase Real Estate” (the “Option”) whereby Angelo’s acquired an option to purchase the roughly 440 acres of land described in the lease attached to Larkin’s affidavit. Angelo’s leased back the 440 acres of option property to Larkin to engage in agricultural operations until and if a landfill were permitted on the property, at which point the Option would be exercised. Counsel only recently became aware of this Option through the investigation into the lawsuit currently ongoing between Larkin and Angelo’s over the Option provisions regarding the revenue from the agricultural operation. By examining the Pasco County court file we obtained the copy of the Option.

4. Larkin certainly has a significant monetary interest to protect in keeping the experts in the employ of the DEP, NWNA, and Tampa off the property, and it is not its cattle operation that is at risk; it is the $1,000,000.00 purchase price bonus Larkin would receive if the option parcel were permitted for a Class I Landfill.

5. The parties tried to coordinate the planning and execution of the trenching so that it would not cause the alleged “injuries” of concern to Larkin. The Requesting Parties provided additional information to counsel for Larkin regarding the parameters of the site investigation scheduled to commence at 8:00 a.m. on August 28, 2012. This included agreeing to a Larkin representative on site during the investigation.

6. Angelo’s filed a Motion for Reconsideration of the Order Granting Renewed Motion for Entry Upon Land (the “Motion”) without disclosing Larkin’s monetary interest in the outcome of this proceeding and effectively argued on behalf of Larkin through the affidavit.

7. Larkin cannot object directly to granting access to the property. In the lease attached to the affidavit, Larkin contracted away any right to contest Angelo’s granting
permission for entry upon the land to the DEP, NWNA, the COT, or any party contesting the permit application sought by Angelo’s.

8. The lease specifically states: “ACCESS TO PREMISES: Landlord shall have complete, unrestricted access to the Premises at all times.”

9. Larkin’s affidavit makes certain allegations about the potential harm that the entry upon the land would bring down upon its cattle and citrus operations. However, he has stated that there are 346 cattle and has approximately a 440 acre lease. This is less than one cow per acre. The aerial over flight on July 23, 2012, shows no significant density of cattle on the site. See Exhibit “3”.

10. Larkin raises apparent concern that: “the presence of unfamiliar machinery will cause anxiety and affect the growth and productivity of the cattle operation.” ¶10 Affidavit. Larkin has employed what is more likely to be “unfamiliar machinery” in its sod cutting equipment, tractor-trailers, and sod perforation equipment.

11. The descriptive term “unfamiliar machinery” is more likely applicable to Angelo’s CPT drill rigs that forced sensors more than 100 feet into the soil and limestone, SPT drill rigs that bored holes and pounded sampling spoons every five feet into the soil to, in some cases, depths in excess of 100 feet, and other equipment utilized by Angelo’s’ experts in doing its multiple months of site inspections and testing. See Exhibit “4” fly over showing some of the AMEC equipment used by Angelo’s on the site in July 2012.

12. A backhoe is nothing more than a farm tractor with a piece of equipment mounted on the front and back. There is nothing “unfamiliar” about a tractor on a ranch.

13. The CPT and SPT boring rigs were on-site for weeks, whereas the tractor that will utilize the backhoe will only be on site for one day.
14. Larkin allowed the presence for over 59 days of a crew from Geohazards which extended over 550 feet of cabling down 178 traverses. Drilling equipment and CPT sounding equipment were on site for days at a time throughout much of July of 2012.

15. Larkin states that it has no objection to entry for testing that causes “minimum impacts,” such as from “boring”. ¶ 5 Affidavit. However, the standard SPT boring rig or a CPT drilling rig, and its associated support equipment, is many times the size and weight of a backhoe. Surface ruts and depressions caused by these heavy vehicles were evident on-site during the July 24, 2012 visit. See Exhibit “4” showing vehicle tire ruts.

16. The site evidences considerable damage from the unrepai red testing Angelo’s experts caused using that equipment in preparing their studies. None of the damage was repaired after drilling or boring as of NWNA site inspection on July 24, 2012.

17. In their Joint Motion, the DEP, NWNA, and Tampa attached photographs of ungrouted boreholes left unattended in the pastures. Cattle are more likely to break a leg in an open 3” borehole than an appropriately compacted and closed trench.

18. During a boring undertaken by Angelo’s, a six foot diameter crater, four feet deep, developed and had to be filled with sand to partially restore the site, but no sod was replaced by Angelo’s. That incident created a more likely erosion scenario than refilling a small trench and resodding it with its original covering vegetation.

19. Larkin claims that the soil profile trenches would cause erosion to the property, yet in all cases the soil will be replaced, compacted, and the sod returned. In the commercial sodding operation carried out by Larkin, ¶ 7 Affidavit, the sod was permanently removed from acres of property and none of it was replaced, without any apparent “erosion.”
20. Larkin had the site map with the locations for the trenching sites clearly marked on the map. Yet Larkin complains that “The act of digging any large trenches within the citrus groves could rip up large roots thus damaging the growth and future production of the trees.” ¶ 11 Affidavit. No trenching is planned or requested in any citrus grove. See map attached to Larkin affidavit.

CONCLUSION

Larkin, through its surrogate Angelo’s, seeks relief from this tribunal while failing to disclose Larkin’s business interest in the outcome of this proceeding. Larkin has no objection to Angelo’s extensive use of heavy equipment and long duration activity on site. Yet, now at this late date, after being aware of the potential for this testing for weeks, is strenuously objecting to, and attempting to prevent, the inspection of soil profile trenches on site. This is not the case of a disinterested cattle leasee; Larkin is a million dollar beneficiary of the permit Angelo’s is attempting to secure. It is clear that the objections are more related to Larkin’s common business interest with Angelo’s than the concern for the cattle. The motion for reconsideration should be denied.

RESPECTFULLY SUBMITTED:

MANSON LAW GROUP, P.A.
1101 W. Swann Avenue
Tampa, Florida 33606
Ph.: (813) 514-4700
Fax: (813) 514-4701
Attorneys for Nestle WNA

By:

Douglas Manson
Florida Bar Number 0542687
dmanson@floridah2olaw.com
William S. Bilenky
Florida Bar Number 0154709
bbilenky@floridah2olaw.com
CERTIFICATE OF SERVICE

I hereby certify this 30th day of August, 2012, that a true and correct copy of the foregoing has been served by Electronic Mail to the parties on the following distribution list:

<table>
<thead>
<tr>
<th>Joseph D. Varn, Esquire</th>
</tr>
</thead>
<tbody>
<tr>
<td>Linda Loomis Shelley, Esquire</td>
</tr>
<tr>
<td>Karen A. Brodeen, Esquire</td>
</tr>
<tr>
<td>Fowler White Boggs P.A.</td>
</tr>
<tr>
<td>101 North Monroe Street, Suite 1090</td>
</tr>
<tr>
<td>Tallahassee, FL 32301</td>
</tr>
<tr>
<td><a href="mailto:ivarn@fowlerwhite.com">ivarn@fowlerwhite.com</a></td>
</tr>
<tr>
<td><a href="mailto:lshelley@fowlerwhite.com">lshelley@fowlerwhite.com</a></td>
</tr>
<tr>
<td><a href="mailto:kbrodeen@fowlerwhite.com">kbrodeen@fowlerwhite.com</a></td>
</tr>
<tr>
<td><em>Attorneys for Petitioner/Respondent Angelo’s Aggregate Materials, Ltd.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>William D. Preston, Esquire</th>
</tr>
</thead>
<tbody>
<tr>
<td>4832-A Kerry Forest Pkwy.</td>
</tr>
<tr>
<td>Tallahassee, FL 32309</td>
</tr>
<tr>
<td><a href="mailto:bill@wprestonpa.com">bill@wprestonpa.com</a></td>
</tr>
<tr>
<td><em>Attorney for Angelo’s Aggregate Materials, Ltd.</em></td>
</tr>
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<table>
<thead>
<tr>
<th>Christopher M. Kise, Esquire</th>
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<tr>
<td>Thomas K. Maurer, Esquire</td>
</tr>
<tr>
<td>Foley &amp; Lardner</td>
</tr>
<tr>
<td>106 E. College Ave., Suite 900</td>
</tr>
<tr>
<td>Tallahassee, FL 32301</td>
</tr>
<tr>
<td><a href="mailto:ckise@foley.com">ckise@foley.com</a></td>
</tr>
<tr>
<td><a href="mailto:tmaurer@foley.com">tmaurer@foley.com</a></td>
</tr>
<tr>
<td><em>Attorneys for WRB Enterprises, Inc.</em></td>
</tr>
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<table>
<thead>
<tr>
<th>David Smolker Esquire</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kristin M. Tolbert</td>
</tr>
<tr>
<td>Bricklemyer Smolker &amp; Bolves, P.A.</td>
</tr>
<tr>
<td>500 East Kennedy Boulevard</td>
</tr>
<tr>
<td>Suite 200</td>
</tr>
<tr>
<td>Tampa, FL 33602</td>
</tr>
<tr>
<td><a href="mailto:davids@bsbfirm.com">davids@bsbfirm.com</a></td>
</tr>
<tr>
<td><a href="mailto:KristinT@bsbfirm.com">KristinT@bsbfirm.com</a></td>
</tr>
<tr>
<td>cc: <a href="mailto:CristinaF@bsbfirm.com">CristinaF@bsbfirm.com</a></td>
</tr>
<tr>
<td><em>Attorneys for WRB Enterprises, Inc.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Wayne Flowers, Esquire</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lewis Longman &amp; Walker, P.A.</td>
</tr>
<tr>
<td>245 Riverside Avenue</td>
</tr>
<tr>
<td>Suite 150</td>
</tr>
<tr>
<td>Jacksonville, FL 32256</td>
</tr>
<tr>
<td><a href="mailto:wflowers@llw-law.com">wflowers@llw-law.com</a></td>
</tr>
<tr>
<td><em>Attorney for Crystal Springs Preserve, Inc.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mr. Carl Roth</th>
</tr>
</thead>
<tbody>
<tr>
<td>8031 Island Drive</td>
</tr>
<tr>
<td>Port Richey, FL 34668</td>
</tr>
<tr>
<td><a href="mailto:carlwroth@gmail.com">carlwroth@gmail.com</a></td>
</tr>
<tr>
<td><em>Spokesperson for Protector’s of Florida’s Legacy</em></td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Joseph A. Poblick, Esquire</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Zephyrhills</td>
</tr>
<tr>
<td>5335 8th Street</td>
</tr>
<tr>
<td>Zephyrhills, FL 33542</td>
</tr>
<tr>
<td><a href="mailto:jap@poblicklaw.com">jap@poblicklaw.com</a></td>
</tr>
<tr>
<td><em>Attorney for City of Zephyrhills</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Stan Warden, Asst. General Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Environmental Protection</td>
</tr>
<tr>
<td>3900 Commonwealth Blvd. – MS 35</td>
</tr>
<tr>
<td>Tallahassee, FL 32399-3000</td>
</tr>
<tr>
<td><a href="mailto:Stan.warden@dep.state.fl.us">Stan.warden@dep.state.fl.us</a></td>
</tr>
<tr>
<td>cc: <a href="mailto:lisa.l.brown@dep.state.fl.us">lisa.l.brown@dep.state.fl.us</a></td>
</tr>
<tr>
<td><em>Attorney for Department of Environmental Protection</em></td>
</tr>
</tbody>
</table>
Janice McLean, Esq.
Asst. City Attorney – City of Tampa
Old City Hall – 5th Floor
315 E. Kennedy Boulevard
Tampa, FL 33602
Jan.mclean@ci.tampa.fl.us
cc: Sabrina.Fernandez@ci.tampa.fl.us
Attorney for City of Tampa

Brian A. Bolves, Esq.
Brickleyer Smolker & Bolves, P.A.
500 East Kennedy Boulevard
Suite 200
Tampa, FL 33602
bbolves@bsbfirm.com
cc: betsyb@bsbfirm.com
Attorneys for Nestle Waters North America, Inc.

Attorney
OPTION TO PURCHASE REAL ESTATE

(OPTION II, SOUTH BENTON HILL)

THIS OPTION TO PURCHASE REAL ESTATE ("Agreement") is made and entered into on this 20th day of January, 2004, between and among SID LARKIN AND SON, INC., a Florida corporation, the address of which is P.O. Box 1747, Dade City, Florida 33526 ("Seller"), and ANGELO'S AGGREGATE MATERIALS, LTD., a Florida limited partnership, the address of which is 26400 Sherwood, Warren, Michigan 48091 ("Buyer").

RECITALS:

A. Seller owns approximately Four Hundred Forty-Three (443) acres MORE OR LESS of unimproved real property located in Dade City, Pasco County, Florida, which such property is more particularly described in Exhibit A, attached hereto and made a part hereof ("Option Parcel").

B. Seller desires to grant Buyer, and Buyer desires to obtain from Seller, the option to purchase the Option Parcel in accordance with the terms hereof.

THEREFORE, in consideration of the mutual covenants and the undertakings described in this Agreement, the parties agree as follows:

1. Option Parcel. The Option Parcel shall be deemed to include:

   (a) Real Property. The real estate described on Exhibit A together with Seller's interest, if any, in and to all air, mineral, subsurface and riparian rights appertaining thereto, if any, and all appurtenances. The legal descriptions of the real estate which is set forth in Exhibit A shall be verified by the Survey (defined below) prepared in accordance with Section 11 below, and amended.

   (b) Adjoining Roadways. Seller's right, title and interest, if any, in any land lying in the bed of any street, road, alley, right of way or avenue, open or proposed, at the foot of, adjoining or dividing the Option Parcel to the centerline thereof.

   (c) Easements. Seller's right, title and interest, if any, in the use and benefit of all appurtenant easements, whether or not of record, strips and rights of way abutting, adjacent, contiguous to and/or adjoining the Option Parcel.

   (d) Other Rights and Interests. All permits, general intangibles, fixtures, certificates, licenses, consents and approvals related to the Option Parcel.

   (e) Exclusion of Irrigation Equipment. Notwithstanding the provisions of Sections 1(a) through 1(d) hereinafter, the Option Parcel, and any sale and conveyance upon exercise of the Option, as defined below, shall exclude all irrigation equipment of Seller as now exists or in the future may exist, on the Option Parcel and any SWFMD permits associated with existing wells and irrigation system.
2. **Grant of Option and Payment of Purchase Price.** Seller hereby grants to Buyer the following option, subject to the terms and conditions contained in this Agreement.

(a) **Initial Consideration.** On the date of execution of this Agreement, as initial consideration for the Option herein granted, Buyer shall pay to Seller the sum of Twenty-Five Thousand and no/100 ($25,000.00) Dollars, which sum shall be nonrefundable to Buyer but shall be credited against the Purchase Price (as defined herein) in the event of exercise of the Option. Any amounts paid under this Agreement are collectively referred to as "Option Consideration."

(b) **Option.** Seller hereby grants to Buyer the exclusive right and option to purchase the Option Parcel (the "Option") subject to Buyer acquiring the Option I Parcel (as defined below) in accordance with the terms of Option I (as defined below). Buyer may exercise the Option by giving written notice to Seller prior to the Termination Date (as defined herein), and the closing shall occur within forty-five (45) days after Seller receives the notice that Buyer is exercising the Option. In the event Buyer fails to exercise its option as provided in Option I (as defined below), this option shall immediately terminate and be of no further effect without liability or obligation.

(c) **Option Period.** The option period ("Option Period") under this Agreement shall be five (5) years from the date of this Agreement so long as Buyer has applied for a landfill ("Landfill") Permit (as defined below) with Pasco County ("Pasco County Approval") within twenty-four (24) months from the date of this Agreement; provided, however, the Option Period may be extended for two (2) one (1) year periods upon Buyer paying to Seller before the expiration of the Option Period as it may be extended two (2) additional deposits of $150,000 for each one (1) year period which amounts shall be non-refundable but shall be credited against the Purchase Price ("Termination Date").

(d) **Purchase Price.** The purchase price for the Option Parcel shall be Seven Million Five Hundred Thirty-One Thousand and no/100 ($7,531,000.00) Dollars in the event the Option Parcel is permitted for use as a Class III Landfill ("Class III Landfill") at the time of Closing, and Eight Million Five Hundred Thirty-One Thousand and no/100 ($8,531,000.00) Dollars in the event the Option Parcel is permitted as a Class I Landfill ("Class I Landfill") prior to the Closing, payable as set
forth in Section 6 hereof, subject to adjustment as provided herein ("Purchase Price").

(e) **Additional Consideration.**

(i) In the event the transaction is initially closed based upon permitting for a Class III Landfill, and within thirty (30) years from Closing, the classification is upgraded to a Class I Landfill, Buyer shall pay Seller an additional One Million and no/100 ($1,000,000.00) Dollars (with the increased sum of One Million and no/100 ($1,000,000.00) Dollars to be paid under the provisions of Section 2(d) hereof if the Option Parcel is permitted as a Class I Landfill prior to Closing and any additional amounts to be paid pursuant to the provisions of this Section 2(e) are collectively referred to herein as the "Additional Consideration"). Subject to the terms of Section 2(e)(ii), if the Option Parcel is permitted as a Class I Landfill prior to Closing, then the Additional Consideration in the amount of One Million and no/100 ($1,000,000.00) Dollars shall be due and payable under Sections 2(d) and 6(ii) hereof and not this Section 2(e)(i) hereof. Subject to the terms of Section 2(e)(ii) hereof, the Option Parcel is not permitted as a Class I Landfill prior to the Closing, then the Additional Consideration provided for in this Section 2(e)(i) shall be due and payable within ninety (90) days following Buyer's receipt of the Permits allowing a Class I Landfill subject to the limitations set forth in Section 2(e)(ii) hereof. Seller and Buyer shall share equally any additional documentary stamp taxes due, with respect to the Additional Consideration. This agreement as to Additional Consideration shall be memorialized by a separate agreement to be executed by Buyer at Closing. Seller's rights and Buyer's responsibilities and obligations with regard to the Additional Consideration shall survive the Closing and the parties may record an acceptable instrument evidencing the obligation to pay such Additional Consideration.

(ii) It is acknowledged and agreed that Seller and Buyer have executed that certain Option to Purchase Real Estate (Option I, North Benton Hill) of approximate even date herewith ("Option I"). This Agreement and Option I provide for Additional Consideration if this Option Parcel and the parcel under Option I ("Option I Parcel") become Class I Landfills in accordance with the terms of this Agreement and Option I. Notwithstanding anything to the contrary in this Agreement or Option I, the total Additional Consideration due and payable under this Agreement and Option I is One Million Five Hundred Thousand and no/100 ($1,500,000.00) Dollars payable in accordance with the terms of this Agreement and Option I if both the Option Parcel and Option I Parcel become Class I Landfills as provided in this Agreement and Option I.

3. **Wetlands Adjustment Procedure.** Should Buyer exercise the Option, Seller shall have the option and obligation of either: (1) reducing the
such landfill activity on the Other Buyer’s Parcel without being in violation of the terms of this Agreement and Option 1.

5. Inspection.

(a) Deliveries. Seller shall, as soon as possible, but not later than thirty (30) days from the date of execution of this Agreement, deliver to Buyer copies of any and all surveys, soil reports, environmental reports, utility agreements and/or evidence of utilities, and any other reports pertaining to the Option Parcel, including documents relating to wetlands and/or consent judgments relating to wetlands or affecting the Option Parcel and/or the use thereof, and any and all contracts, leases, insurance policies, instruments, documents and other writings with respect to the Option Parcel that Buyer may reasonably request. In the event the Option is not exercised by Buyer, then Buyer shall return such documents to Seller within thirty (30) days after the Termination Date. The documents and materials provided pursuant to this Section 5(a) shall be limited to documents and materials in Seller’s actual possession, and in no event shall Seller be obligated to pay for or obtain new documents or reports.

(b) Inspection. At all times during the Option Period, Buyer shall have the right, at Buyer’s expense, to conduct any and all physical inspection and testing of the Option Parcel as desired by Buyer, at Buyer’s sole expense, including, without limitation, wetland analysis. In no event shall Seller be required to advance any costs or expenses relating to such inspections by Buyer. Buyer shall defend, indemnify and hold Seller harmless from and against all loss, expense, damage and liability resulting from claims for personal injury, wrongful death or property damage against Seller, including, without limitation, any liens filed against all or part of the Option Parcel to the extent arising from or as a result of any act or omission of Buyer and/or Buyer’s agents in connection with any inspection or examination of the Option Parcel, and any and all court costs and reasonable attorneys’ fees at the pretrial level, the trial level and in connection with all appellate proceedings, arising therefrom or incident thereto.

6. Payment of the Purchase Price. In the event Buyer exercises the Option, the Purchase Price shall be paid and collateralized as follows:

(i) At closing, twenty percent (20%) of the Purchase Price shall be paid to Seller.

(ii) Buyer shall execute a promissory note (“Note”) for the balance of the amount of the Purchase Price after the amounts paid pursuant to Sections 2(a) and 6(i) hereof, as adjusted herein. The terms of the Note shall be as follows: (1) interest shall accrue at the rate of five percent (5%) simple interest per annum from and after the Closing; (2) quarterly payments of interest only; (3) annual principal payments equal to one-tenth (1/10) of the unpaid principal balance of the Note; (4) the term of the Note will be ten (10) years; (5) the Note may be paid in part or in full at any time without the payment of any premium or fee; and the Note shall provide for a ten (10) day monetary cure
period and a thirty (30) day non-monetary notice and cure period. The Note shall be in the form attached hereto as Exhibit B.

(iii) The Note will be secured by a purchase money mortgage ("Mortgage"), which shall contain the same notice and cure period set forth in the Note. The Mortgage shall be in the form attached hereto as Exhibit C.

(iv) The Note and Mortgage will provide that all amounts owed under the Note and Mortgage shall become automatically due upon a sale, exchange, or any other disposition of all or any part of the Option Parcel (including, without limitation, any ground lease with a term more than fifty (50) years in a transaction in which Buyer shall retain less than a fifty-one percent (51%) interest in the Option Parcel or Buyer shall not retain control of the Option Parcel.

(v) During the Option Period and prior to Closing, Seller shall have the right to mortgage the Option Parcel so long as such mortgage does not exceed the balance of the Purchase Price outstanding at any time during the Option Period, and the mortgage can be paid in full or in part without premium or penalty.

7. **Deferred Remuneration.**

7.1 **Definitions.** For purposes of this **Section 7**, the following capitalized terms, whether singular or plural, shall have the meanings set forth below:

1. **Affiliate.** The term "Affiliate" means any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Person specified.

2. **Any Landfill on the Option Parcel.** The term "any Landfill on the Option Parcel" shall mean any portions of the Option Parcel which, at any time, have been permitted to accept for disposal C & D Waste, Class I Wastes, Household Waste, Class III Waste and/or Special Waste, excluding, however, any Landfill not located on the Option Parcel.

3. **Average Price Per Ton.** The term "Average Price Per Ton" shall have the meaning set forth in **Section 7.2(a)** hereof.

4. **Deferred Remuneration.** The term "Deferred Remuneration" shall mean the amounts set forth in **Section 7.2(a)** hereof.

5. **Disposal.** The term "disposal" or "disposal operations" shall mean Waste buried on any Landfill on the Option Parcel.

6. **Payee.** The term "Payee" shall mean Seller unless and until Seller gives Buyer written notice to change the Payee to any other party, which shall be accompanied by a representation from the Payee that any such person designated by Seller is entitled to such Deferred Remuneration in lieu of the Payee, in which case payment shall be made to such party.
Notwithstanding anything herein to the contrary, Seller shall not grant any rights to receive Deferred Remuneration to any competitor of Buyer as determined by Buyer in the exercise of its reasonable discretion.

(7) **Permitted Volume.** The term "Permitted Volume" shall have the meaning set forth in Section 7.5(b) hereof.

(8) **Waste.** The term "Waste" shall mean all waste and other materials delivered to the Option Parcel for disposal at any Landfill on the Option Parcel for burial to the extent allowed under applicable law.

(9) **Household Waste.** The term "Household Waste" shall have the meaning set forth in Florida DEP Rule 62-701.200(55), Florida Administrative Code, as the same exists on the date of this Agreement.

(10) **Class I Waste.** The term "Class I Waste" shall have the meaning set forth in Florida DEP Rule 62-701.200(13), Florida Administrative Code, as the same exists on the date of this Agreement.

(11) **Class III Waste.** The term "Class III Waste" shall have the meaning set forth in Florida DEP Rule 62-701.200(14), Florida Administrative Code, as the same exists on the date of this Agreement.

(12) **C & D Waste.** The term "C & D Waste" shall have the meaning for "construction and demolition debris" set forth in Florida DEP Rule 62-701.200(27), Florida Administrative Code, as the same exists on the date of this Agreement.

(13) **Special Waste.** The term "Special Waste" shall have the meaning set forth in Florida DEP Rule 62-701.200(119), Florida Administrative Code, as the same exists on the date of this Agreement.

(14) **Person.** The term "Person" shall mean any natural person, corporation, partnership, trust, joint venture, limited liability company, unincorporated organization, government or department or agency thereof, or other entity whatsoever.

7.2 **Deferred Remuneration-Provisions.**

(a) **Pricing.** Commencing with any opening of a Landfill on the Option Parcel, and continuing during the operating life of each such Landfill at any time located on the Option Parcel, Buyer shall pay to Payee an amount equal to three and one-half percent (3.5%) of the Gross Revenues from the actual disposal operations of any Landfill on the Option Parcel exclusive of trucking fees. The term "Gross Revenues", with respect to any month, shall mean the total tonnage of Waste disposed of on
any Landfill on the Option Parcel during such month multiplied times the Average Price Per Ton for the particular month of operation on any Landfill on the Option Parcel. The term "Average Price Per Ton", with respect to any month, shall mean all revenues received for the disposal of such Waste by Landfill classification (i.e., Class III Landfill or Class I Landfill) for the particular month divided by the total tonnage as to each Landfill classification for such month; provided, however, the Average Price Per Ton for any month shall not be less than Seventeen and 50/100 ($17.50) Dollars per ton for Waste attributable to a Class III Landfill and Twenty-Seven and 50/100 ($27.50) Dollars per ton for Waste attributable to a Class I Landfill.

(b) **Similar Pricing.** Notwithstanding any contrary provision contained in this Agreement, if any Waste is disposed of by Buyer or by any of Buyer's Affiliates at any Landfill on the Option Parcel, then the charge to Buyer or any of Buyer's Affiliates shall not be less than the Price Per Ton for similar Waste or similar tonnages charged by Buyer to the most favored third party customers of Buyer.

(c) **Weighing.** Buyer covenants and agrees with Payee that all Waste delivered to the Option Parcel for disposal in any Landfill on the Option Parcel shall be weighed on a certified scale (a "Certified Scale"), with each such Certified Scale to be maintained at all times by Buyer in good operating condition and repair. Buyer shall maintain complete and accurate records, by Landfill classification, of all such Waste and all tonnages disposed of in any Landfill located on the Option Parcel.

(d) **Computation.** As soon as is reasonably practicable after the last day of each applicable calendar month, and, in all events, within fifteen (15) days following the last day of such calendar month, Buyer shall compute the amount of any Deferred Remuneration to which Payee is entitled with respect to such calendar month. Furthermore, within fifteen (15) days following the last day of each calendar month, Buyer shall deliver to Payee payment of any Deferred Remuneration accompanied by a statement setting forth all computations with respect to any Deferred Remuneration.

7.3 **Accounting for Deferred Remuneration.**

(a) **Books and Records.** So long as Payee is entitled to any Deferred Remuneration under the provisions of this Section 7, Buyer shall maintain complete and accurate records as to the total amount of Waste actually received for disposal at the Option Parcel. Such records shall be maintained in accordance with generally accepted accounting principals consistently applied.
(b) **Audit.** So long as Payee shall be entitled to any Deferred Remuneration under the provisions of this Section 7, Buyer shall maintain on the Option Parcel, Option II, Buyer’s Parcel or the Other Buyer’s Parcel, a set of books and records pertaining to the determination of any Waste disposed of on any Landfill at the Option Parcel. Furthermore, so long as Payee shall be entitled to any Deferred Remuneration under the provisions of this Section 7, Buyer shall permit Payee, and its designated representatives, to have access to (i) any Landfill on the Option Parcel, Option I Parcel, Buyer’s Parcel, or the Other Buyer’s Parcel, (ii) the gates and scale houses located on the Option Parcel, Option I Parcel, Buyer’s Parcel and/or the Other Buyer’s Parcel and/or (iii) any office of Buyer located on the Option Parcel, Option I Parcel, Buyer’s Parcel and/or the Other Buyer’s Parcel during normal business hours and at Payee’s expense, for the purpose of inspecting, verifying and copying any and all books and records pertaining to the amounts and types of all Waste disposed on any Landfill at the Option Parcel; provided, however, Payee shall not have the right to copy any documents containing customer names, customer lists and/or any other business or financial information except to the extent such information is related to the entitlement of Deferred Remuneration. The foregoing right of access shall include, at the option of Payee, the right to install, at Payee’s expense, one (1) or more cameras to monitor the number of loads of Waste delivered to any Landfill on the Option Parcel. Furthermore, at any time, and from time to time, the Payee shall have the right to conduct, or cause to be conducted, an audit with respect to any Deferred Remuneration to which Payee is entitled under the provisions of this Section 7. Buyer shall be obligated to cooperate fully with Payee, and Payee’s representatives, in the conduct of any such audit. If any audit with respect to any Deferred Compensation shall reflect that Buyer’s computations with respect thereto were correct, then Payee shall be solely responsible for the cost of such audit. On the other hand, if any audit shall establish an error of more than ten percent (10%) in the amount of the particular Deferred Remuneration as computed by Buyer, then Buyer, within a period of ten (10) days after written demand by Payee, shall make any required corrective payment to Payee and, in addition, Buyer shall reimburse Payee for all costs incurred by Payee with respect to such audit. If no Deferred Remuneration is owed to Payee with respect to the Option Parcel only under the terms of this Agreement, Payee and its designated representatives shall not have the right to review the books and records related to the Other Buyer’s Parcel.

Payee agrees to keep all information obtained pursuant to the exercise of its rights pursuant to this subparagraph (b) of this Section 7.3 confidential except such information which:

(i) becomes available to the public other than through an unauthorized disclosure by Payee,
(ii) is required by law or is used in connection with a dispute over the amounts payable to Payee under this Section 7; or

(iii) is lawfully obtained by Payee from a source other than Buyer or its Affiliates free of any obligation to keep it confidential.

7.4 Deferred Remuneration as to this Option Parcel, Option Parcel I and Buyer’s Parcel. It is expressly acknowledged and agreed that any Landfill on the Option Parcel may be operated or combined with Landfills to be located on this Option Parcel, Option Parcel I and Buyer’s Parcel. The obligation to pay any Deferred Remuneration shall arise only as to any Landfill actually operated on this Option Parcel and/or Option Parcel I and not Buyer’s Parcel. Buyer shall not pay any Deferred Remuneration except as to operations with respect to the disposal of Waste on any Landfill at the Option Parcel or Option Parcel I. If the Option Parcel and Option Parcel I are both acquired by Buyer, then Buyer shall have the right to allocate any Waste to ensure proper payment of Deferred Remuneration in accordance with generally accepted accounting principles. Buyer shall have the right to exhaust the Landfill capacity on the Buyer’s Parcel before commencing any Landfill activity on the Option Parcel or Option Parcel I before being liable to pay Deferred Remuneration if the Option Parcel and Option Parcel I are acquired by Buyer.

7.5 Termination of Deferred Remuneration. The right of Payee to receive Deferred Remuneration, unless terminated sooner as provided herein, shall automatically terminate as soon as there is no further capacity as to any Landfill on the Option Parcel and Buyer’s Parcel.

8. Dade City Agreement. The parties acknowledge that a portion of the Option Parcel is currently being utilized as an orange grove, and that portions of the Option Parcel are presently encumbered under an Agreement with the City of Dade City for distribution of treated reclaimed water and/or any related agreements (collectively, “Dade City Agreement”). Upon the execution of this Agreement, Seller shall provide a copy of the Dade City Agreement to Buyer. The Dade City Agreement must be acceptable to Buyer in all respects. Such determination shall be made within thirty (30) days of the execution of this Agreement, and if the Dade City Agreement is unacceptable, Buyer shall have the right to terminate this Option without a refund of the Option Consideration. The term of the Dade City Agreement is twenty (20) years from the date of D.E.P. permitting, but can be cancelled by either party after five (5) years from the commencement date of said Agreement upon twenty-four (24) months’ notice given within thirty (30) days before or after the anniversary date of said Agreement. For this reason, should Buyer exercise and close the Option herein granted, Seller shall, subject to the terms hereof, have the continuing right through the date upon which Seller can effectively terminate the Dade City Agreement as to the said encumbered parcel or parcels, to continue to conduct orange grove and farming operations on said encumbered parcels. Notwithstanding anything to the contrary contained herein, if at anytime after the execution of this Agreement, Buyer determines, in its sole judgment, that it needs or will need
all or any portion of the portion of the Option Parcel affected by the Dade City Agreement for Buyer's operations, Buyer shall so notify Seller, and Seller and Buyer shall promptly commence to fully cooperate to the greatest extent possible, and use good faith efforts, to engineer, design and permit a substitute irrigation system of similar or greater disposal capacity, or on another portion of the Option Parcel, or on a different parcel of property owned by Seller; provided, however, such irrigation system cannot be located on any other part of the Option Parcel without the consent of Buyer, which consent shall not be unreasonably withheld. At any time after a substitute area is permitted, engineered, designed and constructed, Buyer shall have the right to require Seller, and Seller agrees, to terminate the Dade City Agreement as it relates to the portion of the Option Parcel required for Buyer's operations within thirty (30) days after notice from Buyer, and cease permitting activity under the Dade City Agreement and cease conducting orange grove and farming operations on the portion of the Option Parcel required for Buyer's operations within such thirty (30) day period. All costs associated with such engineering, design, permitting and construction, including without limitation, consulting and legal fees, shall be paid by Buyer (except that any equipment, machinery, or apparatus previously paid for by Seller, and re-used in the relocation project, shall not be included in the cost to be paid by Buyer. If more than five (5) years of the term of the Dade City Agreement have elapsed, and Buyer has exercised this Option, then Buyer may, at its sole option, either in lieu of or addition to the foregoing, direct Seller to give Dade City notice to terminate the Dade City Agreement as soon as possible; and Seller shall cease conducting orange grove and farming operations on the property as of the effective date of termination of the Dade City Agreement.

9. **Lease.** At the Closing, Seller and any other owner of the Option Parcel and Buyer shall enter into a lease agreement (the "Lease") acceptable to the parties, providing for the use and occupancy of the Option Parcel by Seller for agricultural purposes only ("Approved Agricultural Purposes"), solely limited to farming, sod harvesting, cattle, ranching, or the operation and maintenance of citrus groves and for no other uses, until Buyer notifies Seller in writing that Buyer intends to develop or operate all or a portion of the Option Parcel. Upon delivery of such notice, Seller's right to use the Option Parcel under the Lease shall automatically terminate within sixty (60) days after the delivery of such notice to Seller as to that portion of the Option Parcel identified by Buyer in such notice and the balance of the unreleased Option Parcel may continue to be used by Seller as provided in the Lease. Seller shall have the right to harvest any planted or pending crop or farm products before Buyer commences development of the released Option Parcel. Seller shall vacate within such time as to all Lease terminations described herein. Seller shall have no right to assign or sublet its interest under the Lease.

Buyer shall only require the termination of Seller's use of the Option Parcel as to portions thereof actually required for Buyer's commencement of development or operation of any portion of the Option Parcel ("Buyer's Approved Use") and no amount shall be due to Seller for such termination because of Buyer's Approved Use except as otherwise specifically provided below. The moving of dirt by Buyer to commence any development or operation of the Option Parcel shall trigger Buyer's right to terminate.
The Purchase Price provided herein assumes Seller's continued use of the Option Parcel for Approved Agricultural Purposes, and the expected income to Seller derived therefrom. Therefore, Buyer hereby agrees that in the event Buyer terminates Seller's use from time to time within the five (5) years from the Closing of the subject sale, of what ultimately equals sixty-five percent (65%) or greater of the Option Parcel, within such five (5) year period, Buyer shall pay Seller an additional One Million and no/100 ($1,000,000.00) Dollars, with payment of this additional consideration due within thirty (30) days of such vacation by Seller. Seller and Buyer shall share equally any additional documentary stamp taxes due, with respect to the additional consideration. This agreement as to such additional consideration shall be memorialized by the Lease and related Memorandum of Lease. Seller's rights and Buyer's responsibilities and obligations with regard to the additional consideration shall survive the Closing.

The Purchase Price provided herein assumes Seller's continued use of the Option Parcel for Approved Agricultural Purposes, and the expected income to Seller derived therefrom. Therefore, Buyer hereby agrees that in the event Buyer terminates Seller's use from time to time within the ten (10) years from the Closing of the subject sale, of what ultimately equals sixty-five percent (65%) or greater of the Option Parcel, within such ten (10) year period, Buyer shall pay Seller an additional Seven Hundred Fifty Thousand and no/100 ($750,000.00) Dollars, with payment of this additional consideration due within thirty (30) days of vacation by Seller. Seller and Buyer shall share equally any additional documentary stamp taxes due, with respect to the additional consideration. This agreement as to such additional consideration shall be memorialized by the Lease and related Memorandum of Lease. Seller's rights and Buyer's responsibilities and obligations with regard to the additional consideration shall survive the Closing.

The Purchase Price provided herein assumes Seller's continued use of the Option Parcel for Approved Agricultural Purposes, and the expected income to Seller derived therefrom. Therefore, Buyer hereby agrees that in the event Buyer terminates Seller's use from time to time within the fifteen (15) years from the Closing of the subject sale, of what ultimately equals sixty-five percent (65%) or greater of the Option Parcel, within such fifteen (15) year period, Buyer shall pay Seller an additional Five Hundred Thousand and no/100 ($500,000.00) Dollars, with payment of this additional consideration due within thirty (30) days of vacation by Seller. Seller and Buyer shall share equally any additional documentary stamp taxes due, with respect to the additional consideration. This agreement as to such additional consideration shall be memorialized by the Lease and related Memorandum of Lease. Seller's rights and Buyer's responsibilities and obligations with regard to the additional consideration shall survive the Closing.

The Purchase Price provided herein assumes Seller's continued use of the Option Parcel for Approved Agricultural Purposes, and the expected income to Seller derived therefrom. Therefore, Buyer hereby agrees that in the event Buyer terminates Seller's use from time to time within the twenty (20) years from the Closing of the subject sale, of what ultimately equals sixty-five percent (65%) or greater of the Option Parcel, within such twenty (20) year period, Buyer shall pay Seller an additional Two Hundred Fifty Thousand and
no/100 ($250,000.00) Dollars, with payment of this additional consideration due within thirty (30) days of vacation by Seller. Seller and Buyer shall share equally any additional documentary stamp taxes due, with respect to the additional consideration. This agreement as to such additional consideration shall be memorialized by the Lease and related Memorandum of Lease. Seller's rights and Buyer's responsibilities and obligations with regard to the additional consideration shall survive the Closing.

Seller shall have an unrestricted right to (1) dump Waste generated by Seller's current operations as to an Approved Agricultural Purpose on Seller's property or on property possessed by Seller at the Buyer's Landfill, free of charge and (2) to obtain all loaded fill dirt Seller requires for its current operations as to an Approved Agricultural Purpose, likewise free of charge. Further, Seller shall have continuous exclusive possession, without interruption for Buyer's operations, of three (3) tenant houses, two (2) located on Singletary Road, and one (1) located on Duck Lake Canal Road, each comprised of approximately one (1) acre each of land, for purpose of housing of Seller's employees. Seller shall be responsible for the reasonable maintenance of these three (3) properties.

The term of the Lease, as to all of the above, shall be for forty (40) years from Closing, and the Lease otherwise shall be in form and content mutually acceptable to the parties unless terminated sooner as provided herein. Seller shall not be obligated to pay any rent under the Lease except for the amounts required of Seller under this Agreement. However, Seller shall be liable for its prorata portion of all real property taxes relating to Option Parcels, and all utilities, if any, utilized by Seller thereon. Seller shall further be obligated to maintain casualty and public liability and insurance with respect to its use thereof in amounts and coverage of the replacement cost of the improvements and One Million and no/100 ($1,000,000.00) Dollars for public liability insurance, and operations thereon, which such insurance shall name Buyer as loss payee and an additional named insured. If necessary, Buyer shall grant Seller all necessary temporary easements providing ingress and egress between said parcels and the private or public right-of-way serving the Option Parcel so long as such easements do not materially and adversely affect Buyer's development or use of the Option Parcel. All operation costs associated with the Dade City Agreement, the operation of such orange grove and farming operations shall be borne by Seller, and all income derived therefrom shall be for the benefit of Seller. During such period, Seller shall indemnify, defend and hold harmless Buyer from and against any and all obligations, actions, suits, damages, losses, liabilities, costs and expenses, including reasonable attorneys' fees, relating to or arising out of Seller's use of such property or out of any default or violation of law by Seller under the Lease and/or Dade City Agreement, except to the extent caused by Buyer or one or more of its agents or Affiliates. Likewise, during such period, Buyer shall indemnify, defend and hold harmless Seller from and against any and all obligations, actions, suits, damages, losses, liabilities, costs and expenses, including reasonable attorneys' fees, relating to or arising out of any default or violation of law by Buyer under the Lease, except to the extent caused by Seller. Seller shall provide evidence of payment of such insurance premiums. If Seller shall fail to provide evidence of payment or fail to pay such insurance premiums, Buyer may obtain such insurance and the cost of such insurance
shall be deducted from the Purchase Price, Deferred Remuneration or other amounts owed Seller by Buyer under this Agreement.

10. **Title**

(a) **Condition of Title.** In the event Buyer exercises the Option at the Closing, Seller shall convey to Buyer fee simple, marketable title to the Option Parcel via Warranty Deed subject to the following (the "Permitted Exceptions"): (i) the lien of real estate taxes and assessments which are not yet due and payable; (ii) easements, exceptions and building and use restrictions of record which are waived or accepted by Buyer after reviewing the Commitment (as defined below) as provided in Section 12 below; (iii) zoning ordinances and other governmental statutes and regulations pertaining to the use and operation of the Option Parcel; (iv) such encumbrances which are caused by the acts or omissions of Buyer or its assigns; and (v) the Mortgage. Once the condition of title as evidenced in the Commitment is reviewed and accepted by Buyer, Seller shall not permit any change in the condition of title through the date of Closing of the Option Parcel.

(b) **Evidence of Title.** As soon as possible after the execution of this Agreement, Seller, at Seller’s expense, shall deliver to Buyer a commitment for ALTA Owner’s Title Insurance Policy with standard exceptions deleted and creditors’ rights exclusion deleted (the “Commitment”) in the amount of the total purchase price for the Option Parcel, and identifying the condition of title to the Option Parcel, together with legible copies of the instruments and documents referenced in the Commitment. The Commitment shall be written on a title company acceptable to Buyer (the “Title Company”). Seller shall be responsible for all costs associated with the title search, the Commitment and the owner’s policy issued in connection with the Closing. Buyer shall be responsible for all costs associated with the Mortgagee Title Policy issued in connection with the Closing.

(c) **Seller Financing.** Prior to Closing (as defined below), Seller shall have the right to mortgage or finance the Option Parcel for an amount (principal, interest and prepayment fees) not greater than the Purchase Price so long as such mortgage is paid in full by Seller at Closing and appropriate discharges are delivered to the Title Company as to such mortgage at Closing.

11. **Survey.** As soon as possible after the execution of this Agreement, Buyer, at Buyer’s expense, may obtain a current survey of the Option Parcel prepared by a Florida Licensed Surveyor (the “Surveyor”), which survey shall contain accurate metes and bounds descriptions of the Option Parcel; prepared in accordance with the most recent minimum standard detail requirements for ALTA/ASCM Land Title Surveys, and shall identify the location of all structures, easements, rights of way, and improvements and encroachments thereon (the “Survey”). The Survey shall be certified to Seller, Buyer and the Title Company, and will otherwise be in a form that permits the issuance of a Title Insurance Policy without standard survey exceptions.
12. **Objections to Title and Survey.** Buyer shall have a period of thirty (30) days from Buyer’s receipt of the Commitment, recorded title exceptions and the Survey to object in writing to the condition of title and/or the Survey. Seller shall have sixty (60) days from its receipt of Buyer’s written objection(s) to use its good faith efforts to cure the title and/or survey defect(s) or provide evidence satisfactory to Buyer that the title and/or survey defect(s) will be cured on or before Closing. If Seller is unwilling or unable to remedy the defect(s) within the sixty (60) day period, then (i) Buyer, at its option, may waive the defect(s) and the parties shall continue to perform their obligations, subject to the terms and conditions of this Agreement; or (ii) Buyer may terminate this Agreement, in which event the parties shall have no further rights or obligations under this Agreement. If Buyer does not provide Seller with written notice of termination within thirty (30) days from the date Seller notifies Buyer in writing that Seller is unwilling or unable to remedy the defect(s), Buyer shall be deemed to have elected to waive the defect(s). If, at the Closing, there exists any lien or other encumbrance granted or permitted by Seller that secures or seeks to enforce against the Option Parcel being acquired by Buyer, a specified sum of money that has not been discharged or satisfied by Seller, Buyer, may, in addition to its other rights and remedies, elect to satisfy and discharge or assume the payment of said lien or encumbrance, in which event Buyer shall receive a credit to the Purchase Price being paid at such Closing, equal to the amount expended or assumed by Buyer. If Buyer does not raise a title objection within the foregoing forty-five (45) day period, or in the event Seller cures (or Buyer waives) Buyer’s title and/or Survey objection(s), the exceptions of the record identified in the Commitment (by reference to recorded instruments) and/or Survey, shall be deemed accepted by Buyer and shall be Permitted Exceptions to the condition of title to the Option Parcel.

13. **Seller’s Representations, Warranties and Covenants.** Seller represents, warrants and covenants to Buyer the following:

   (a) **Title, Power and Capacity.** Seller has the full power, capacity and legal right to execute and deliver this Agreement and to sell the Option Parcel to Buyer pursuant to the terms of this Agreement. At all times prior to Closing, Seller shall not transfer any portion of the Option Parcel or grant or permit any easements, liens, mortgages, encumbrances or other interests with respect to the Option Parcel, other than the Mortgage which shall provide for the release of the Option Parcel upon payment of the purchase price for the Option Parcel.

   (b) **Foreign Person.** Seller is not a “Foreign Person” within the meaning of the Internal Revenue Code of 1986, Section 1445(f)(3), as amended.

   (c) **Contractual Obligations.** The execution and delivery of this Agreement, and the performance by Seller of all transactions contemplated by this Agreement, will not breach any mortgage, lien, encumbrance or charge on the Option Parcel.
Litigation. There is no pending or, to Seller's knowledge, threatened litigation, administrative action or examination, claim or demand whatsoever relating to the Option Parcel.

Violations. Seller has not received any notice of any violations of any laws, zoning ordinances, regulations, orders or requirements of departments of housing, building, fire, labor, health, or other municipal departments or other governmental authorities against or affecting the ownership, use, or operation of the Option Parcel. In the event Seller receives any such notice, Seller shall furnish Buyer with a copy of such notice within five (5) days from the date of receipt of such notice.

Condemnation Proceedings. Seller has not received notice of any condemnation or eminent domain proceeding regarding any part of the Option Parcel, and has not entered into any negotiations for the disposition of any part of the Option Parcel in lieu of the commencement of condemnation or eminent domain proceedings.

Hazardous Substances. With the exception of any matters identified in any environmental report, if any, provided by Seller to Buyer, Seller has not, and to Seller's knowledge, prior to the date hereof, no other person or entity has: (i) used the Option Parcel for any activities which, directly or indirectly, involve the use, generation, treatment, storage, transportation or disposal of any Hazardous Materials (as such term is defined below); (ii) released, or discharged any Hazardous Materials into the environment from, at, on or under the Option Parcel; (iii) used the Option Parcel at any time as a landfill or a disposal site for garbage, waste or refuse any kind; or (iv) installed or removed underground storage tanks on or from the Option Parcel. To Seller's knowledge, the Option Parcel does not contain any Hazardous Materials. As used herein, the term "Hazardous Materials" shall mean any substances, waste, toxin, pollutant or contaminant, including but not limited to, radiation and electromagnetic forces and any materials, substance or activity now or in the future defined, listed or classified by the Environmental Protection Agency, the Occupational Safety And Health having jurisdiction over a workplace, safety or environmental protection, or any of their successor agencies or authorities, as a hazardous activity, hazardous substance, hazardous waste, toxic substance, toxic waste, pollutant or contaminant.

For purposes of the foregoing representations and warranties, the term "Seller's knowledge" shall mean the current actual knowledge of Jon S. Larkin, II, President of Seller.

14. Buyer's Representations, Warranties and Covenants. Buyer represents, warrants and covenants to Seller as follows:

(a) Due Organization. Buyer is a limited partnership duly organized under the laws of the State of Florida and has the power and authority to purchase the Option Parcel.
(b) **Power And Capacity.** Buyer has the full power, capacity, authority and legal right to execute and deliver this Agreement and to perform its obligations under this Agreement.

(c) **Due Authorization.** This Agreement has been duly authorized, executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms. Prior to or at the Closing, all documents required by this Agreement to be executed and delivered by Buyer shall have been duly authorized, executed and delivered by Buyer and all such documents shall be legal, valid and binding obligations of Buyer, enforceable in accordance with their terms.

15. **Closing.** The Closing shall take place within thirty (30) days from the last day of the Option Period at the Title Company (“Closing”).

16. **Closing Documents And Actions.** At the Closing, Seller shall execute and deliver to Buyer and Buyer shall execute and deliver to Seller the following:

(a) **Note and Mortgage.** Buyer shall deliver to Seller the Note and the Mortgage in form acceptable to the parties. The amount of the Note shall be subject to applicable adjustments and prorations as provided for in this Agreement.

(b) **Warranty Deed.** Seller shall deliver to Buyer a fully executed and recordable Warranty Deed for the Option Parcel, conveying to Buyer fee simple marketable title to the Option Parcel, subject only to the Permitted Exceptions.

(c) **Assignment and Easements.** Any and all rights, consents, approvals, licenses, permits, easements and other rights benefiting the Option Parcel shall be assigned to Buyer by an appropriate transfer instrument, which shall be recordable.

(d) **Seller’s Affirmance.** Seller shall execute and deliver to Buyer a certificate reaffirming all of Seller’s representations and warranties as being true and correct as of the Closing Date and confirming that Seller has performed all of its pre-closing obligations under this Agreement, with the exception of only those obligations which have been waived by Buyer.

(e) **Buyer’s Affirmance.** Buyer shall execute and deliver to Seller a certificate reaffirming and all of Buyer’s representations and warranties as being true and correct as of the Closing Date and confirming that Buyer has performed all of its pre-closing obligations under this Agreement, with the exception of only those obligations which have been waived by Seller.

(f) **Non-Foreign Person Affidavit.** Seller shall furnish Buyer with an affidavit stating that Seller is not a “Foreign Person” within the meaning of IRC Section 1445(f)(3), as amended. In the event Seller is a “Foreign Person” under the meaning of IRC Section 1445(f)(3),
Buyer shall withhold the appropriate taxes from the proceeds due Seller at Closing.

(g) **Closing Statement.** Seller and Buyer shall execute and deliver to each other a Closing Statement, showing all expenses and costs of Closing and the distribution of all proceeds of Closing.

(h) **Title Insurance Policy.** Seller shall order and Seller shall pay for a policy of title insurance through the Title Company, without standard exceptions and with the creditors' rights exclusion deleted, and with any Endorsements requested by Buyer which are allowed under Florida law, with coverage in an amount equal to the Purchase Price, subject only to the Permitted Exceptions. Seller shall deliver to the Title Company an Owner's Affidavit and such other documents reasonably required by the Title Company to enable the Title Company to satisfy its Schedule B-I requirements and to delete its standard exceptions and creditors rights, if available.

(i) **Lease.** Seller and Buyer shall execute and deliver the Lease described in Section 9 hereof, as well as a Memorandum of Lease to be recorded in the public records.

(j) **Twenty-Five (25) Acre Existing Option.** Replacement Option Number I as provided in Section 16 of Option Number I entered into between the parties simultaneous with the execution hereof shall automatically terminate upon giving of the notice of the exercise of this Option II and the closing thereon, to the end that the parties shall be fully released therefrom. Upon such occurrence, and in substitution of Replacement Option Number I, Seller shall agree to grant to Buyer, by written agreement to be executed and delivered at the closing of this Option II transaction, an exclusive option to purchase real property consisting of 11.5 acres, more or less, located in Pasco County, Florida, as depicted and described as set forth on Exhibit D attached hereto, together with all easements, rights, and appurtenances, including, without limitation, any land necessary to tie into the existing railroad tracks not to exceed three (3) acres ("Replacement Option Number II").

Replacement Option Number II shall have a term equal to the term of this Option II, to the end that each shall terminate simultaneously.

The purchase price for Replacement Option Number I shall be $750,000.00, regardless of total area of said acreage as ultimately certified to Buyer and Seller by a Florida licensed surveyor. Buyer may exercise Replacement Option Number II by giving written notice to Seller, and the closing shall occur within thirty (30) days after Seller receives the notice that Buyer is exercising the option. No inspection or due diligence shall be applicable to Replacement Option Number II, as it is assumed such investigation would occur prior to giving of notice of exercise of option. Payment of the purchase price shall be in cash at closing with no financing contingencies, and provision for title, survey, prorations, etc., shall be as provided in this Agreement.
(k) **Further Assurances.** Seller and Buyer shall execute such additional documents and instruments and take such further actions as may be necessary or desirable to consummate the sale of the Option Parcel in accordance with the terms of this Agreement, specifically including an agreement memorializing all rights, obligations, and liabilities of the parties to survive Closing.

(l) **Costs and Expenses.** Seller shall pay the documentary stamp tax and intangible taxes on the deed and the premium for any owner’s title policy as provided herein. Buyer shall pay all other expenses of Closing, including, without limitation, all costs and expenses associated with any financing and all required surveys, inspections, and title insurance policies. Each party shall be responsible for its own attorney’s fees in connection with the preparation of this Agreement and in connection with the Closing.

17. **Tax Prorations.** Seller shall pay in full on or before the Closing any and all real estate taxes which relate to the Option Parcel and which are due as of the Closing. Seller shall also pay in full, on or before the Closing, all special and other assessments which were established and constituted a lien against the Option Parcel being conveyed prior to the Closing, regardless of whether or not such special or other assessment may be paid in installments subsequent to the date of the Closing. All current real estate taxes with respect to the Option Parcel shall be prorated as of the Closing Date based on the custom in the jurisdiction where the Option Parcel is located, as verified by the Title Company. In the event the Option Parcel is being taxed as part of a larger parcel, the real estate taxes applicable to the Option Parcel shall be based upon the relation of the acreage of the Option Parcel to the total acreage of the real property which is covered by such tax bill.

18. **Possession.** At the Closing, Seller shall deliver to Buyer possession of the Option Parcel, free and clear of any rights or claims of possession by Seller or any third party, except the Lease referred to in Section 9 hereof.

19. **Real Estate Commission.** Seller and Buyer each represent and warrant to the other that they have not used the services of any broker in connection with this transaction. Each party agrees to indemnify and hold harmless the other party from and against any claim that a commission or fee is due to any broker who dealt with the party from whom indemnification is sought.

20. **Condemnation.** In the event that, prior to the Closing, notice of any action, suit or proceeding shall be given for the purpose of condemning any part of the Option Parcel, then either Seller or Buyer shall have the right to terminate its obligations under this Agreement with respect to the Option within sixty (60) days from its receipt of such notice of condemnation proceeding, and upon such termination, the proceeds resulting from the condemnation shall be paid to Seller, and the parties shall have no further rights or obligations under this Agreement. In the event neither party terminates this Agreement, at the Closing of the Option Parcel, the condemnation proceeds shall be assigned and belong to Buyer.
21. **Failure to Exercise Option; Default.**

(a) In the event Seller defaults in its obligations, prior to or on the Closing date, Buyer may elect to: (i) specifically enforce the terms and conditions of this Agreement; and/or (ii) exercise all other rights and remedies available hereunder, at law and/or in equity, all of the foregoing which shall be cumulative, and in which event Buyer shall be entitled to recover from Seller, the court costs and reasonable attorneys’ fees incurred by Buyer in specifically enforcing this Agreement and/or seeking to enforce its other rights and remedies.

(b) In the event Buyer is successful in obtaining the Permits for a Class III Landfill and/or Class I Landfill as to the Option Parcel and/or Buyer’s Parcel with the assistance of Seller as provided in this Agreement, and Buyer fails to timely exercise its option to purchase hereunder, Seller or Seller’s successors and assigns, without reimbursement to Buyer, shall be entitled to retain all Permits issued in Seller’s or Buyer’s name and all other matters relating thereto as described herein as it relates to the Option Parcel, including all related engineering and plans and within ten (10) days of receiving the written request from Seller, Buyer shall assign all such Permits and deliver the assigned Permits and all documents relating thereto to Seller.

(c) In the event Buyer defaults in its obligations to be performed under this Agreement, prior to or on the Closing date, or subsequent to the Closing date, as to any obligations to survive the Closing of the subject transaction (after the passage of ten (10) days from receipt of notice of such defaults), Seller may elect to: (i) specifically enforce the terms and conditions of this Agreement; and/or (ii) exercise all other rights and remedies available hereunder, at law and/or in equity, all of the foregoing which shall be cumulative, and in which event Seller shall be entitled to recover from Buyer the court costs and reasonable attorneys’ fees incurred by Seller in specifically enforcing this Agreement and/or seeking to enforce its other rights and remedies; provided, however, in the event Buyer exercises its option provided hereunder and Buyer fails to close the subject transaction, then in such event, Buyer shall not be liable for lost profits or consequential damages for Buyer’s failure to close.

22. **No Joint Venture.** Neither party is the agent, partner or joint venture partner of the other; neither party has any obligation to the other except as specified in this Agreement.

23. **Non-Waiver.** The failure of either party to complain of any act or omission on the part of the other party, no matter how long it may continue, shall not be deemed to be a waiver by any party to any of its rights hereunder except as expressly provided for in this Agreement. No waiver by any party at any time, expressed or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision. If any action by any party shall require the consent or approval of another party, the consent or approval of the action on any one occasion shall not be deemed a consent to or approval of that action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasions.
24. **Third Party Rights.** No party other than Seller and Buyer and their successors and assigns, shall have any right to enforce or rely upon this Agreement, which is binding upon and made solely for the benefit of Seller and Buyer, and their respective successors or assigns, and not for the benefit of any other party.

25. **Survival.** The parties' obligations under this Agreement shall survive Closing and shall not merge upon the delivery of the Warranty Deed for the Option Parcel. In addition, Buyer's indemnity obligations under this Agreement and any obligations of Seller or Buyer which are required to be performed as a result of the termination of this Agreement shall survive the termination of this Agreement.


27. **Notices.** Any notice to be given or served upon any party to this Agreement must be in writing and shall be deemed to have been given: (i) upon receipt in the event of personal service by actual delivery; or (ii) five (5) days after posting if deposited in the United States mail, certified mail, return receipt requested, with proper postage; or (c) twenty-four (24) hours after deposit with a nationally known overnight delivery service, when delivery requires a signature. Notice shall be given to the parties at the following addresses:

**If To Buyer:**
ANGELO'S AGGREGATE MATERIALS, LTD.
26400 Sherwood
Warren, Michigan 48091
Attention: Dominic Iaffrate
Fax No. (586) 756-5615

**With A Copy To:**
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
Detroit, Michigan 48226
Attention: Gregory J. DeMars, Esq.
Fax No. (313) 465-7357

**If To Seller:**
SID LARKIN AND SON, INC.
P.O. Box 1747
Dade City, Florida 33526
Attention: Jon S. Larkin, II

**With A Copy To:**
Johnson, Auvil, Brock & Wilson, P.A.
37837 Meridian Avenue, Suite 314
Dade City, Florida 33525
Attention: Jonathan L. Auvil, Esq.
Fax No. (352) 567-6813

Any party to this Agreement may at any time change the address for notices to that party by giving notice in this manner.

28. **Days.** Whenever this Agreement requires that something be done within a specified period of days, that period shall: (i) not include the day from which
the period commences; (ii) include the day upon which the period expires; (iii) expire at 5:00 p.m. local time on the day upon which the period expires; and (iv) be construed to mean calendar days; provided, that if the final day of the period falls on a Saturday, Sunday or legal holiday, the period shall extend to the first business day thereafter.

29. **Severability.** If one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained within the body of this Agreement.

30. **Entire Agreement.** This Agreement embodies the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded by and merged into this Agreement. Neither this Agreement nor any of its provisions may be waived, modified or amended except by an instrument in writing signed by the party against which enforcement is sought, and then only to the extent set forth in that instrument.

31. **Governing Law.** This Agreement shall be governed by and construed in accordance with the provisions of the laws of the State of Florida.

32. **Captions.** Captions to paragraphs and sections of this Agreement have been included solely for the sake of convenient reference and are entirely without substantive effect.

33. **Successors and Assigns.** This Agreement shall be binding upon, and its benefits shall inure to, the parties hereto and their respective heirs, personal representatives, successors and assigns. Buyer may not assign its rights and obligations under this Agreement without Seller’s prior written consent, which consent shall be in Seller’s sole discretion except to any entity pursuant to which (i) Angelo Iafrate, Sr. or his children, (ii) Angelo Iafrate, Jr. or his children and (iii) Dominic Iafrate or his children own more than fifty-one percent (51%) as to any entity controlled by either of them. Seller shall have the right to assign its interest under the Agreement to Larkin (as defined below), his children, an Affiliate of Larkin and/or an entity related to Larkin upon prior written notice to Buyer.

34. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

35. **Agreement Preparation.** The parties acknowledge and agree that each party, and its legal counsel, have reviewed and revised this Agreement, and the parties agree that the rule of interpretation of contracts, to the effect that any doubt concerning a provision in a contract is to be resolved against the drafting party or party who furnished its text, shall not be employed in the interpretation of this Agreement or any Amendments or Exhibits hereto.
36. **Attorneys' Fees.** In the event any litigation is instituted for the purpose of interpreting or enforcing any of the provisions of this Agreement, the prevailing party, as determined by the court having jurisdiction thereof, shall be entitled to recover from the non-prevailing party, in addition to all other relief, all costs and expenses incurred in connection with such litigation including, without limitation, reasonable attorneys' fees at the trial level and in connection with all appellate proceedings. Furthermore, each party to this Agreement severally acknowledges and confirms that the proper, exclusive and convenient venue for any legal proceeding instituted in connection with this Agreement shall be Sixth Judicial Circuit Court, Pasco County, Florida and each party waives any defense, whether asserted by motion or pleading, that such court is an improper or inconvenient venue, and each party hereby consents to the personal jurisdiction of such court, which court shall have exclusive jurisdiction of any controversy arising out of this Agreement, regardless of any party's then domicile.

37. **Non-Compete and Right of First Refusal.**

(a) For a period of twenty-five (25) years from the closing of the subject transaction, Seller, Jon S. Larkin, II ("Larkin") and their shareholders, affiliates, successors, and assigns (collectively "Larkin Group") shall not, directly or indirectly, own, finance or compete with Buyer, its affiliates, successors or assigns, only as to the actual permitting of any land the Larkin Group presently owns ("Larkin Land"), for any class or type of Landfill for the disposal of any type of Waste for actual burial in any Landfill on the Larkin Land.

(b) Notwithstanding anything herein to the contrary, the covenant set forth in Paragraph 37(a) hereof shall not be deemed or construed to preclude any development activity or sale of the Larkin Land for any use related or incidental to a landfill operation that does not involve actual burial of Waste on a Landfill located on the Larkin Land.

(c) For a period of five (5) years from the Closing, Buyer is hereby granted a right of first refusal to acquire any land owned by Seller, Larkin or their Affiliates, land south of Enterprise Road and located between this Option Parcel and Road 35A ("Seller’s Adjacent Land"). If Seller shall receive an offer ("Offer") from an independent third party to acquire all or part of the Seller’s Adjacent Land that Seller intends to accept, Seller shall provide a copy of such Offer within three (3) days of receipt to Buyer. Buyer shall have ten (10) days to accept such Offer in writing to Seller. Upon such acceptance, Buyer shall close in accordance with the terms of the Offer.

38. **Like Kind Exchange.** Notwithstanding anything to the contrary contained herein, Seller shall have the right, without notice to, or consent of, Buyer, to assign any or all of its right, title and interest in one or more of the Option Parcels to an intermediary or other party to effect a like-kind exchange or exchanges under Internal Revenue Code Section 1031 and the Implementing Treasury Regulations, including any deferred exchange or exchanges; provided, however, that in no event shall such procedure delay the Closing. If Seller so elects, then Buyer shall cooperate fully. Such cooperation shall include, without limitation, time and execution of any exchange agreement or
other documents necessary or convenient to consummate a like-kind exchange or exchange under the Internal Revenue Code Section 1031 and Implementing Treasury Regulations; provided, however, in no event will Buyer be required to advance any deposits, be required to execute any document or perform any act upon which it could be held liable, or take title to any other property, or to incur any costs or other liability.

[Signatures on following pages]
THIS AGREEMENT has been executed by the parties hereto on the date set forth above.

SELLER:

SID LARKIN AND SON, INC.,
a Florida corporation

By: [Signature]
Jon S. Larkin, II
President

Jon S. Larkin, II as to Section 37 only

(Signatures continue on following page)
THIS AGREEMENT has been executed by the parties hereto on the date set forth above.

BUYER:

ANGELO'S AGGREGATE MATERIALS, LTD.,
a Florida limited partnership

By: IAIFRATE FLORIDA PROPERTIES, INC.,
a Florida corporation
   Its: General Partner

By: [signature]
   Dominic Iafrate
   Its: President

Exhibits:

A - Legal Description
B - Note.
C - Mortgage
D - Legal Description of Replacement Option II Parcel
EXHIBIT A

LEGAL DESCRIPTION

All that part of the South ¾ of Section 7, Township 25 South, Range 22 East, lying East of the following described boundary: begin at a point where the North line of the South 3/4 of Section 7 intersects the centerline of Duck Lake Canal Road, thence South 3975 feet, more or less to the South line of Section 7 and a point of terminus. Less right-of-way on Enterprise Road.

AND:

All that part of the South ¾ of Section 8, Township 25 South, Range 22 East, lying West of Singletary Road; less and except the South one acre lying South of and adjacent to an existing fence line. Less right-of-way on Enterprise Road.

All in Pasco County, Florida, containing 443 acres more or less.

DISCLAIMER:

This description is published for planning purposes only and should not be used for transfer of title and boundaries and subject to actual field survey.
PROMISSORY NOTE
(Option II)

$__________

__________, Florida

_______, 200___

FOR VALUE RECEIVED, the undersigned (hereinafter "maker"), jointly and severally,
promises to pay to SID LARKIN & SON, INC., a Florida corporation (hereinafter referred to as
"Payee"), or order, in the manner hereinafter specified, the principal sum of
__________, AND NO/100 ($__________) DOLLARS, together with interest from
the date hereof, at the rate of five (5%) percent per annum, on the balance from time to time
remaining unpaid. Principal and interest shall be payable in lawful money, at Post Office Box
1747, Dade City, Florida 33526, or at such place as may hereinafter be designated by written
notice from the holder to the maker hereof, on the date and in the manner following:

The principal balance of _________ AND NO/100 ($__________) DOLLARS, shall be due
and payable in ten (10) annual installments of _________ ($______) Dollars each; the first
installment to become due and payable on or before the ___ day of _____, 200___, and one
installment to become due and payable annually thereafter, with interest from date at the rate of five
(5%) percent per annum until paid in full; said interest being payable quarterly (defined as ________);
said payments to be applied first to the interest then accrued, and the residue to the reduction of the
principal. This Note may be prepaid at any time without penalty or premium.

If default be made in the payment of any of the sums or interest mentioned herein after written
notice and a ten (10) day cure period as to any monetary default, or in the performance of any of
the agreements contained herein after written notice and a thirty (30) cure period as to any
non-monetary default, then the entire principal sum and accrued interest shall, at the option of
the holder hereof, become at once due and collectable without notice, time being of the essence;
and said principal sum and accrued interest shall both bear interest from such time until paid at
the highest rate allowable under the laws of the State of Florida. Failure to exercise this option
shall not constitute a waiver of the right to exercise the same in the event of any subsequent
default.

From and after an event of default under this Note after the passage of any applicable notice and
cure period, interest shall accrue at the rate of fifteen percent (15%) simple interest per annum.

Each person liable hereon, whether maker or endorser, hereby waives presentment, protest,
notice, notice of protest and notice of dishonor, and agrees to pay all costs, including a
reasonable attorney's fee, whether suit be brought or not, if, after maturity of this Note or default
hereunder, counsel shall be employed to collect this Note.

The maker or makers hereof reserve the right to pay off this Note or any part thereof prior to its
due date, and to be liable for interest thereon only to the date of such payment.
Whenever used herein, the terms "holder", "maker" and "payee" shall be construed in the singular or plural, as the context may require or admit.

ANGELO'S AGGREGATE MATERIALS, LTD.,
a Florida limited partnership

Address:
26400 Sherwood
Warren, Michigan 48091

By: ______________________________

Its: ______________________________