

Order 9-15/16

Passage: 9-0 on 7/20/2015

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 7/30/2015

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING PURCHASE AND SALE AGREEMENT
WITH BOTTLING GROUP, LLC
FOR 250 CANCO ROAD**

ORDERED, that the Acting City Manager or the City Manager is hereby authorized to execute the Purchase and Sale Agreement with Bottling Group, LLC for 250 Canco Road, in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the Acting City Manager or the City Manager is hereby authorized to execute whatever documents are necessary to effect the intent and purpose of the Agreement.

AGREEMENT OF PURCHASE AND SALE

Between

BOTTLING GROUP, LLC

Seller

and

CITY OF PORTLAND

Purchaser

Premises: 250 Canco Road, Portland, Maine

Dated: July __, 2015

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement") is made and entered into as of July __, 2015 (the "Effective Date"), between **BOTTLING GROUP, LLC**, a Delaware limited liability company, as seller ("Seller"), and **CITY OF PORTLAND**, a Maine municipality, as purchaser ("Purchaser").

RECITALS

A. Seller is the owner of the Property (hereinafter defined).

B. Seller desires to sell the Property to Purchaser and Purchaser desires to purchase the Property on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Purchaser agree as follows: **Purchase and Sale**.

Subject to all of the terms and conditions of this Agreement, Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase and acquire from Seller that certain real property located in the City of Portland, County of Cumberland, in the State of Maine, more particularly described on Exhibit "A" hereto, together with all rights, privileges and easements appurtenant thereto (if any), including, without limitation, any easements, rights-of-way, or other rights appurtenant thereto or used in conjunction therewith, if any (collectively, the "Land"), together with all buildings, improvements, structures and fixtures located therein or thereon (collectively, the "Improvements") now or hereafter located on the Land (the Land and the Improvements are collectively referred to herein as the "Property"). Exhibit A is a copy of the Deed to Seller, which is recorded at Book 21872, Page 312, in the Cumberland County Registry of Deeds.

1. Purchase Price

The purchase price ("Purchase Price") to be paid by Purchaser for the Property is **TWO MILLION SEVEN HUNDRED THOUSAND and 00/100 DOLLARS (\$2,700,000.00)**, payable as follows:

(a) Within two (2) business days after the Effective Date, Purchaser shall deposit with Escrow Agent (hereinafter defined), by wire transfer or by check made payable to Escrow Agent, the sum of **TWENTY-FIVE THOUSAND and 00/100 DOLLARS (\$25,000.00)** (the "Deposit"). The Deposit, subject to collection, shall be (a) non-

refundable except as otherwise expressly provided in this Agreement in connection with a termination of this Agreement, and (b) credited to the Purchase Price at Closing (hereinafter defined). If the transaction contemplated by this Agreement fails to close, the Deposit shall be paid to Seller or to Purchaser as provided in this Agreement.

(b) At the Closing, Purchaser shall deliver the balance of the Purchase Price in the amount of **TWO MILLION SIX HUNDRED AND SEVENTY-FIVE THOUSAND and 00/100 DOLLARS (\$2,675,000.00)**, less or plus the net debit or credit to Purchaser by reason of any prorations or allocations set forth herein, to Escrow Agent, by certified or cashier's check or, at Escrow Agent's option, by wire transfer of immediately available funds to an account designated by Escrow Agent.

3. Title and Survey.

(a) On or before the last day of the Feasibility Period (as defined in Section 13 below), Purchaser, at Purchaser's expense, shall cause CUMBERLAND TITLE COMPANY ¹(in its capacity as title agent and settlement agent, the "Title Company") to issue a title insurance commitment relating to the Property (the "Title Report") and to deliver a copy of same to Seller. Any exceptions to title or other matters shown on the Title Report shall be referred to herein as the "Exceptions". Purchaser may, on or before the last day of the Feasibility Period (the "Title Decision Date"), disapprove by notice to Seller any Exceptions which are unsatisfactory to Purchaser. Purchaser's failure to provide such notice on or before the Title Decision Date shall constitute approval of the Exceptions. Within three (3) business days after Seller's receipt of Purchaser's notice of such disapproval, if any, Seller shall deliver a notice to Purchaser (the "Seller's Title Notice") stating that: (i) Seller has removed such disapproved Exceptions such that title shall be marketable, as well as insurable at standard premium rates or will covenant to do so as of or before Closing, or (ii) Seller will not remove such disapproved Exceptions. If Seller does not remove or covenant to remove the disapproved Exceptions as aforesaid, Purchaser shall have the option, by notice to Seller given within two (2) business days after the date of Seller's Title Notice, to: (i) terminate this Agreement as of the date of Seller's Title Notice (upon which the Deposit shall be returned to Purchaser, together with any interest earned thereon, and neither party shall have any further rights or obligations under this Agreement, other than those expressly provided to survive such termination) or waive its objection to the disapproved Exception(s) in question and proceed to Closing, in which case Seller shall have no obligation to remove any such disapproved Exceptions. Notwithstanding the foregoing, Purchaser's right to receive a return of the Deposit shall be subject to Purchaser providing copies to Seller of all Assessment Reports (as defined below) and returning to Seller all Materials provided to Purchaser, each as a pre-condition to the return of such amount.

¹ Contact is Molly C. Litz, Esq., Staff Attorney, molly@cumberlandtitleme.com, 178 Middle St, Suite 402, Portland, ME 04101, 207.899.4907

(b) The Property shall also be conveyed subject to such state of facts as a current, accurate survey of the Property would disclose as of the last day of the Feasibility Period. The Purchaser may, at its sole expense, cause a survey of the Property to be prepared during the Feasibility Period, and may object to matters shown thereon which are unsatisfactory to Purchaser ("Survey Exceptions"). Following the expiration of the Feasibility Period Purchaser shall have no right to object to any matter shown on any survey of the Property or which a current, accurate survey of the Property would disclose as of the last day of the Feasibility Period (collectively, a "Survey"). Purchaser may, on or before the last day of the Feasibility Period (the "Survey Decision Date"), notify Seller in writing of any Survey Exceptions. Purchaser's failure to provide such notice on or before the Survey Decision Date shall constitute approval of the Survey Exceptions. Within three (3) business days after Seller's receipt of Purchaser's notice of such disapproval, if any, Seller shall deliver a notice to Purchaser (the "Seller's Survey Notice") stating that: (i) Seller has removed such Survey Exceptions or will covenant to do so as of or before Closing, or (ii) Seller will not remove such Survey Exceptions. If Seller does not remove or covenant to remove the Survey Exceptions, Purchaser shall have the option, by notice to Seller given within two (2) business days after the date of Seller's Survey Notice, to: (i) terminate this Agreement as of the date of Seller's Survey Notice (upon which the Deposit shall be returned to Purchaser, together with any interest earned thereon, and neither party shall have any further rights or obligations under this Agreement, other than those expressly provided to survive such termination) or waive its objection to the Survey Exception(s) in question and proceed to Closing, in which case Seller shall have no obligation to remove any such Survey Exceptions. Notwithstanding the foregoing, Purchaser's right to receive a return of the Deposit shall be subject to Purchaser providing copies to Seller of all Assessment Reports (as defined below) and returning to Seller all Materials provided to Purchaser, each as a pre-condition to the return of such amount.

(c) At the Closing, Seller shall convey to Purchaser fee simple title to the Property by a duly executed and acknowledged quitclaim deed with covenant (the "Deed"), subject to (i) the Exceptions and Survey Exceptions not removed or required to be removed by Seller hereunder, and (ii) all laws and governmental regulations and ordinances that affect the Property (collectively, the "Permitted Exceptions"). Notwithstanding anything to the contrary contained herein, the existence of any mortgages, liens or encumbrances other than the Permitted Exceptions shall not be objections to title provided that properly executed instruments in recordable form necessary to satisfy the same are delivered to the Title Company at the Closing. Further, unpaid liens for taxes, water and sewer charges and assessments shall not be objections to title, subject to the provisions of this Agreement pertaining to apportionments.

(d) Acceptance of the Deed by Purchaser shall constitute an acceptance of all of the obligations of Seller hereunder except such as may be expressly stated herein to survive of the delivery of the Deed.

4. Closing.

(a) The consummation of the transactions contemplated by this Agreement (the "Closing") shall take place on a mutually agreed upon business day not later than thirty (30) days following the last day of the Feasibility Period (the "Closing Date") by means of the Title Company's standard escrow closing procedures, **TIME BEING OF THE ESSENCE** with respect to Purchaser's obligation to close title on the Closing Date.

(b) At the Closing, Seller shall deliver to Purchaser the Deed and the Non-Foreign Affidavit attached hereto as Exhibit "B" hereto. In addition, Purchaser and Seller shall each deliver such other instruments, funds and prorations as are reasonably required by Seller to close the transactions contemplated by this Agreement and to consummate the transfer of the Property in accordance with the terms hereof, including, without limitation, any necessary transfer tax forms, title affidavits, bills of sale, assignments of contracts and similar documents.

(c) The following prorations shall be made as of 12:01 a.m. on the day the Closing occurs on the basis of a 365 day year:

(i) Real estate taxes and municipal assessments shall be prorated as of the Closing on the basis of the most recent tax and assessment statements for the Property. If real estate tax and/or assessment prorations are not made on the basis of the current tax year or if supplemental taxes are assessed after the Closing for the period prior to the Closing, the parties shall make any necessary adjustment promptly after the Closing.

(ii) Any other items which are customarily apportioned in commercial real estate closings in Cumberland County, Maine.

5. Representations and Warranties.

(a) Seller represents and warrants to and agrees with Purchaser as follows:

(i) Seller is a limited liability company duly formed and existing and in good standing under the laws of the State of Delaware, and has the power and authority to own the Property and to consummate the transactions contemplated by this Agreement. This Agreement and all instruments, documents and agreements to be executed by Seller in connection herewith are or when delivered will be duly authorized, executed and delivered by Seller.

(ii) The representations and warranties of Seller set forth in Section 5(a) are true and correct as of the date of execution of this Agreement and shall be true and correct as of the Closing.

(b) Purchaser represents and warrants to Seller as follows:

(i) Purchaser is a Maine municipality existing under the laws of the State of Maine, and has the power and authority to purchase and own the property and to consummate the transactions contemplated by this Agreement. This Agreement and all instruments, documents and agreements to be executed by Purchaser in connection herewith are or when delivered will be duly authorized, executed and delivered by Seller.

(ii) The representations and warranties of Purchaser set forth in Section 5(b) are true and correct as of the date of execution of this Agreement and shall be true and correct as of the Closing.

6. Closing Costs.

(a) Seller shall bear the costs of one-half Escrow Agent's fee for settlement services, if any, the cost of Seller's legal counsel, the Brokers' commissions, as more particularly provided in Section 11 below, its portion of any real estate transfer taxes payable in connection with the transfer of the Property, and any additional costs and charges customarily payable by sellers in accordance with common real estate practices in Cumberland County, Maine, except to the extent such costs are Purchaser's express obligation under Section 6(b) below.

(b) Purchaser shall bear the costs of the title search and the title insurance premiums for fee title insurance and any mortgage insurance relating to the Property, the fee for recordation of the Deed and any mortgage or other security instrument, one-half Escrow Agent's fee for settlement services, if any, the cost of Purchaser's legal counsel, accountants and other experts, the cost of any Survey or environmental inspection performed in connection with transfer of the Property, and any additional costs and charges customarily payable by buyers in accordance with common real estate practices in Cumberland County, Maine.

7. "As Is".

Purchaser acknowledges that, subject only to the Assessment to be performed during the Feasibility Period pursuant to Section 13 below, it has inspected the Property and is fully familiar with the physical condition and state of repair of the Land and the Improvements, and that Purchaser is taking the Property, in its "as is" condition as of the Closing Date. In no event shall Seller be liable to Purchaser for any latent or patent defects in the Property or any part thereof, or required to remove any violations which may have been posted with regard to the Property. Purchaser acknowledges that, except as specifically set forth in Section 5 of this Agreement, Seller, its members, officers, agents, employees and representatives and their respective successors and assigns (together, the "Seller Parties") have made no representations or warranties to Purchaser, with respect to the past, present or future condition of all or any portion of the Property. Acceptance of the Deed by Purchaser shall constitute an acceptance of all of the obligations of Seller

hereunder except such as may be expressly stated herein to survive the delivery of the Deed. Purchaser represents and acknowledges that Seller Parties have made no representations, warranties or agreements (and Purchaser has not relied, directly or indirectly, upon any such representations, warranties or agreements), as to (i) the condition of the Property or any Improvements thereon, (ii) the Property's value, utility, fitness, suitability, use, or economic attributes, or (iii) any other matter. Without limiting the generality of the foregoing, Seller makes no representations, warranties, statements or covenants as to the size or configuration of the Land, the Improvements or any part thereof. Accordingly, Purchaser, on behalf of itself and all of its officers, directors, shareholders, employees, representatives and affiliated entities (collectively, the "Releasors") hereby expressly waives and relinquishes any and all rights and remedies Releasors may now or hereafter have against any of the Seller Parties, whether known or unknown, which may arise from or be related to (a) the physical condition, quality, quantity and state of repair of the Property and the operation of the Property, (b) the property information, the Property's compliance or lack of compliance with any federal, state or local laws or regulations, and any past, present or future presence or existence of Hazardous Materials on, under or about the Property or with respect to any past, present or future violation of any rules, regulations or laws, now or hereafter enacted, regulating or governing the use, handling, storage or disposal of Hazardous Materials, including, without limitation, (i) any and all rights and remedies Releasors may now or hereafter have under the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, and the Toxic Substance Control Act, all as amended, and any similar state, local or federal environmental law, rule or regulation, and (ii) any and all claims, whether known or unknown, now or hereafter existing, with respect to the Property under Section 107 of CERCLA (42 U.S.C.A. §9607). For purposes hereof, the term "Hazardous Materials" shall be deemed to mean any or all of the following: any substance that is toxic, ignitable, reactive or corrosive or that is identified or defined as a hazardous material, hazardous substance, a hazardous waste, a contaminant or a solid waste by any local government, the State of Maine, or the United States government as such identification or definition may be amended from time to time.

8. Inability To Perform.

If Seller shall be unable to perform its obligations under this Agreement for any reason whatsoever other than Seller's willful breach of its obligations under this Agreement, Purchaser's sole and exclusive remedy shall be either to (i) accept such title as Seller is able to convey, without abatement or reduction of the Purchase Price or any credit or allowance on account thereof, or (ii) terminate this Agreement on written notice to Seller, upon which the Deposit shall be returned to Purchaser, and neither party shall have any further rights or obligations under this Agreement, other than those expressly provided to survive such termination.

9. Default.

(a) If Seller shall default in the performance of its obligation to convey the Property to Purchaser in accordance with this Agreement, then Purchaser shall have all rights and remedies available at law or in equity.

(b) If Purchaser shall default in the performance of any of its obligations under this Agreement, Seller shall have all rights and remedies available at law or in equity.

10. Escrow of Deposit.

(a) The Deposit has been or shall be delivered to the Title Company (in its capacity as escrow agent and escrow closer, the "Escrow Agent"), and shall be held by Escrow Agent until the Closing or sooner termination of this Agreement in accordance with the provisions of this Section 10.

(b) Escrow Agent shall promptly place the Deposit into an IOLTA account or accounts pending disbursement in accordance with the terms of this Section 10. At the Closing, the Deposit shall be paid to Seller. If, for any reason, the Closing does not occur and either party makes a written demand upon Escrow Agent for payment of the Deposit, Escrow Agent shall give written notice to the other party of such demand. If Escrow Agent does not receive such written objection from the other party to the proposed payment within ten (10) days after the giving of such notice, Escrow Agent is authorized to make such payment to the requesting party. If Escrow Agent does receive such written objection within such ten (10) day period, or if for any other reason Escrow Agent is uncertain as to its obligations or the rights of the parties hereunder, Escrow Agent shall continue to hold the Deposit until otherwise directed either (i) by written instructions signed by both Seller and Purchaser, or (ii) in accordance with the provisions of a final judgment of a court of competent jurisdiction. In addition, Escrow Agent shall have the right at any time after notice to Seller and Purchaser to deposit the Deposit with the clerk of the court having jurisdiction in the city or in the county in which the Escrow Agent is located. In any such event, Escrow Agent shall give written notice of such deposit to Seller and Purchaser, and upon such deposit, Escrow Agent shall thereby be fully relieved and discharged of its obligations hereunder.

(c) The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience and that Escrow Agent shall not be deemed to be the agent of either of the parties. Seller and Purchaser shall indemnify and hold Escrow Agent harmless from and against any and all claims, liabilities, losses, costs, damages and expenses, including, without limitation, reasonable attorneys' fees, disbursements and court costs incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent in willful disregard of this Agreement or involving gross negligence on the part of Escrow Agent. Purchaser's indemnification obligation is made without waiver of Purchaser's rights under the Maine Tort Claim Act, all of Purchaser's rights thereunder being expressly reserved.

(d) Escrow Agent may act upon any writing believed by it in good faith to be genuine and to be signed and presented by the proper person or entity, and shall not be liable in connection with the performance of any duties imposed upon Escrow Agent by the provisions of this Agreement, except for Escrow Agent's own willful default or gross negligence. Escrow Agent shall have no duties or responsibilities except those set forth herein.

11. Broker.

(a) Seller represents and warrants to the Purchaser that Seller has not dealt with any brokers or finders in connection with the transfer of the Property other than NAI The Dunham Group (the "Broker"). Seller shall pay the commission owed to the Broker if, as and when the Closing occurs pursuant to a separate agreement. Seller agrees to indemnify and hold harmless the Purchaser against any loss, liability, damage, cost, claim or expense (including, without limitation, reasonable attorneys' fees, disbursements and court costs) incurred by the Purchaser by reason of the breach by Seller of the foregoing representation.

(b) Purchaser represents and warrants to the Seller that (i) neither Purchaser nor anyone on behalf of Purchaser has dealt with any brokers or finders in connection with the transfer of the Property other than the Broker. Purchaser agrees to indemnify and hold harmless the Seller against any loss, liability, damage, cost, claim or expense (including, without limitation, reasonable attorneys' fees, disbursements and court costs) incurred by the Seller by reason of the breach by Purchaser of any of either of the foregoing representation. The provisions of this Section 11 shall survive the delivery of the Deed.

12. Notices.

For purposes of the payment of any amounts due hereunder and all other notices and communications between the parties, the addresses of Seller and Purchaser shall be as follows:

Seller: Bottling Group, LLC
 c/o Pepsi Beverages Company
 1 Pepsi Way
 Somers, New York 10589-2201
 Attn: Cynthia M. Poggiogalle, Director of
 Real Estate
 FAX: (914) 767-1076
 Email: cindy.poggiogalle@pepsico.com

with a copy to:

Law Offices of Dale J. Lois, PLLC
2 Jefferson Plaza, Suite 100
Poughkeepsie, New York 12601
FAX: (845) 473-2200
Email: dale@levinelevinelaw.com

Purchaser: Michael Sauschuck, Acting City Manager
Portland City Hall
389 Congress St.
Portland, Maine 04101
FAX: (207) 874-8669
Email: mjs@portlandmaine.gov

with a copy to:

Danielle West-Chuhta, Esq.
Corporation Counsel
City Hall
389 Congress St
Portland, ME 04101
FAX (207) 74-8497
Email: DWCHUHTA@portlandmaine.gov

Any notices and other communications to be delivered by either party to the other pursuant to this Agreement shall be in writing and shall be deemed delivered as follows, except as otherwise specifically provided in this Agreement: (a) when hand delivered or telecopied (provided that telecopied notices must be confirmed within any applicable time period plus two (2) days by one of the following methods of notice); (b) one (1) business day after mailing by Federal Express or other overnight courier service; or (c) three (3) business days after deposit in the United States mail by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to be charged with notice at the above-recited address or the above-recited telecopier number or such other address or telecopier number as either party from time to time may designate by notice delivered to the other; provided, however, that no notice of change of address or telecopier number shall be deemed given until received by the party to be notified. Except as otherwise specifically provided herein, in the computation of any period of time which shall be required or permitted hereunder or under any law for any notice or other communication or for the performance of any term, condition, covenant or obligation, the day from which such period runs shall be excluded and the last day of such period shall be included unless it is a Saturday, Sunday or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday or legal holiday.

13. Feasibility Period.

(a) Subject to the terms of Sections 13(c)- 13(e), from the Effective Date to and including the date which is forty-five (45) days after the Effective Date (the "Feasibility Period"), Purchaser, and its licensed (where applicable) and insured consultants (collectively, the "Consultants") shall have the right to conduct due diligence on the Property (the "Assessment"), which shall include, without limitation, the right to enter onto the Property to conduct such tests, inspections and assessments as the Purchaser may desire of the Property at Purchaser's sole cost and expense. In its capacity as Purchaser, in no event shall Purchaser have the right to request a change the zoning status of the Property or enter into any agreement or restriction which would be binding upon, encumber or restrict Seller or the Property prior to Closing. This provision shall not be binding on the City of Portland to its boards as a municipality or its board, respectively, to change the zoning status of the Property.

(b) **Expiration of Feasibility Period.** If the Assessment reveals any condition on, in, under or regarding the Property which is unsatisfactory to Purchaser, Purchaser shall have the right, subject as hereinafter provided, to terminate this Agreement by giving written notice to that effect to Seller and Escrow Agent on or before 5:00 p.m. (in the time zone in which the Escrow Agent is located) on the date of expiration of the Feasibility Period. If Purchaser exercises such right, this Agreement shall terminate and be of no further force and effect, subject to and except for Purchaser's liability pursuant to Section 13(d) and any other provision of this Agreement which survives such termination, and Escrow Agent shall forthwith return the Deposit to Purchaser (subject to Purchaser's obligation under Section 13(e)(ii) to provide copies to Seller of all Assessment Reports (as defined below) and to return to Seller all Materials provided to Purchaser, each as a pre-condition to the return of such amount). If Purchaser fails to provide Seller with written notice of termination prior to the expiration of the Feasibility Period in strict accordance with the notice provisions of this Agreement, Purchaser's right to terminate under this Section 13(b) shall be permanently waived and this Agreement shall remain in full force and effect, the Deposit shall be non-refundable, and Purchaser's obligation to purchase the Property shall be non-contingent. For purposes of this Agreement, "Assessment Reports" means any reports, studies or other information prepared or compiled for Purchaser by any Consultant in connection with Purchaser's Assessment of the Property.

(c) **Conduct of Investigation.** Purchaser shall not permit any mechanic's or materialmen's liens or any other liens to attach to the Property by reason of the performance of any work or the purchase of any materials by Purchaser or any other party in connection with the Assessment conducted by or for Purchaser. Purchaser shall give notice to Seller a reasonable time prior to entry onto the Property and shall permit Seller to have a representative present during each entry onto the Property in connection with the Assessment. Purchaser shall cause the Consultants to conduct the Assessment in such a manner as to avoid any damage or disturbance to the Property. In the event any such damage or disturbance is created by Purchaser or a Consultant, Purchaser agrees to restore and repair same at Purchaser's sole cost and expense. All information made available by Seller to Purchaser in accordance with this Agreement or obtained by Purchaser in the course of its Assessment shall be treated as confidential information by both Seller and Purchaser, and, prior to the purchase of the Property by Purchaser, Purchaser shall use its best efforts to prevent the Consultants from divulging such information to any unrelated third parties except as reasonably necessary to third parties engaged by Purchaser for

the limited purpose of analyzing and investigating such information for the purpose of consummating the transaction contemplated by this Agreement. The provisions of this Section 13(c) shall survive the termination of this Agreement, and if not so terminated shall survive (except for the confidentiality provisions of this Section 13(c) as related to Purchaser) the Closing and delivery of the Deed to Purchaser.

(d) **Purchaser Indemnification.**

(i) Purchaser shall reimburse Seller for any actual losses for any and all damages, losses, demands, costs and expenses (including reasonable attorneys' fees, including the cost of in-house counsel and appeals) (collectively, "Losses") arising from or related to Purchaser's or any Consultant's entry onto the Property, and the Assessment or other matters performed by Purchaser with respect to the Property during the Feasibility Period or otherwise.

(ii) Notwithstanding anything in this Agreement to the contrary, Seller shall have the right, without limitation, to disapprove any and all aspects of the Assessment (including, without limitation, a Phase II environmental study of the Property) that in Seller's reasonable judgment could result in any injury to the Property or breach of any contract, or expose Seller to any Losses or violation of applicable law, or otherwise adversely affect the Property or Seller's interest therein. No consent by the Seller to any such activity shall be deemed to constitute a waiver by Seller or assumption of liability or risk by Seller. Purchaser hereby agrees to restore, at Purchaser's sole cost and expense, the Property to the same condition existing immediately prior to Purchaser's exercise of its rights pursuant to this Section 13. Purchaser shall cause all Consultants to maintain (a) casualty insurance and comprehensive public liability insurance with coverages of not less than \$1,000,000.00 for injury or death to any one person and \$3,000,000.00 for injury or death to more than one person and \$500,000.00 with respect to property damage, by water or otherwise, and (b) worker's compensation insurance for all of their respective employees in accordance with the law of the state in which the Property is located.

(e) **Property Materials.**

(i) Not later than five (5) business days after the Effective Date, and subject to Section 13(e)(ii), Seller agrees to provide the following to Purchaser: Phase _ Environmental Site Assessment dated _____ prepared by _____ (the "Materials").

(ii) The Materials are not, and shall not be, certified to Purchaser by any party, and are provided to Purchaser for informational purposes only. In providing the Materials to Purchaser, Seller makes no representation or warranty, express, written, oral, statutory, or implied, and all such representations and warranties are hereby expressly excluded and disclaimed. The above Materials, and any further Materials provided by Seller to Purchaser under the terms of this Agreement are for informational purposes only and, together with all Assessment Reports, shall be returned by Purchaser to Seller as a condition to return of the Deposit to Purchaser (if Purchaser is otherwise entitled to such Deposit pursuant to the terms of this Agreement) if this Agreement is terminated for any reason. Purchaser recognizes and agrees that the Materials and other documents and information delivered or made available by Seller

pursuant to this Agreement may not be complete or constitute all of such documents which are in Seller's possession or control. Purchaser will not rely on such Materials or other documents as being a complete and/or accurate source of information with respect to the Property, and will instead in all instances rely exclusively on its own Assessment and Consultants with respect to all matters which it deems relevant to its decision to acquire, own and operate the Property.

(iii) The provisions of this Section 13(e) shall survive the Closing and delivery of the Deed to Purchaser.

14. Risk of Loss or Casualty.

(a) **Major Damage.** In the event that the Property is damaged or destroyed by fire or other casualty prior to Closing, and the cost of repair is more than \$50,000, then Seller shall have no obligation to repair such damage or destruction and shall notify Purchaser in writing of such damage or destruction (the "Damage Notice"). Within 10 days after Purchaser's receipt of the Damage Notice, Purchaser may elect at its option to terminate this Agreement by delivering written notice to Seller, and if Purchaser so terminates this Agreement shall recover the Deposit hereunder (subject to Purchaser's obligation to provide copies of all Assessment Reports and return all Materials to Purchaser as a pre-condition to the return of the Deposit). In the event Purchaser fails to terminate this Agreement within the foregoing 10-day period, this transaction shall be closed in accordance with the terms of this Agreement for the full Purchase Price notwithstanding any such damage or destruction and Purchaser shall receive an assignment of all insurance proceeds pertaining thereto at Closing.

(b) **Minor Damage.** In the event that the Property is damaged or destroyed by fire or other casualty prior to the Closing, and the cost of repair is less than \$50,000, this transaction shall be closed in accordance with the terms of this Agreement, notwithstanding the damage or destruction; provided, however, Seller shall make such repairs to the extent of any recovery from insurance carried on the Property if they can be reasonably effected before the Closing. Subject to Section 14(c), if Seller is unable to effect such repairs, then Purchaser shall receive an assignment of all insurance proceeds pertaining thereto at Closing.

(c) **Repairs.** To the extent that Seller elects to commence any repair, replacement or restoration of the Property prior to Closing, then Seller shall be entitled to receive and apply available insurance proceeds to any portion of such repair, replacement or restoration completed or installed prior to Closing, with Purchaser being responsible for completion of such repair, replacement or restoration after Closing from the balance of any available insurance proceeds. The provisions of this Section 14(c) shall survive the Closing and delivery of the Deed to Purchaser.

15. Eminent Domain.

In the event that, at the time of Closing, any material part of the Property is (or previously has been) acquired, or is about to be acquired, by any governmental agency by the powers of eminent domain or transfer in lieu thereof (or in the event that at such time there is any notice of any such acquisition or intent to acquire by any such governmental agency), Purchaser shall have the right, at Purchaser's option, to terminate this Agreement by giving written notice

within 10 days after Purchaser's receipt from Seller of notice of the occurrence of such event, and if Purchaser so terminates this Agreement shall recover the Deposit hereunder (subject to Purchaser's obligation to provide copies of all Assessment Reports and return all Materials to Purchaser as a pre-condition to the return of the Deposit). If Purchaser fails to terminate this Agreement within such 10-day period, this transaction shall be closed in accordance with the terms of this Agreement for the full Purchase Price and Purchaser shall receive the full benefit of any condemnation award. It is expressly agreed between the parties hereto that this Section shall in no way apply to customary dedications for public purposes which may be necessary for the development of the Property.

16. General Provisions.

(a) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. Neither Seller nor Purchaser shall have any right, duty or obligation under this Agreement unless and until this Agreement or counterparts hereof have been executed and delivered by both Seller and Purchaser.

(b) This Agreement contains the entire agreement between the parties respecting the subject matter of this Agreement and supersedes all prior understandings and agreements, whether oral or in writing, between the parties with respect to the subject matter of this Agreement.

(c) This Agreement shall be governed by the laws of the State of Maine.

(d) If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any other person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(e) The waiver by one party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by the waiving party of any other covenant or condition under this Agreement. The waiver by either or both parties of the time for performing any act under this Agreement shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

(f) Time shall be of the essence as to all dates and times of performance under this Agreement.

(g) Purchaser shall not assign its rights or delegate its duties or obligations hereunder, except to an entity owned or controlled by Purchaser. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties to this Agreement.

(h) In the event of any litigation involving the parties to this Agreement to enforce any provision of this Agreement, to enforce any remedy available upon default under this Agreement, or seeking a declaration of the rights of either party under this Agreement, the prevailing party shall be entitled to recover from the other such attorneys' fees and costs as may be reasonably incurred, including the costs of reasonable investigation, preparation and professional or expert consultation, by reason of such litigation.

(i) Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party as the source of the language in question. Headings used in this Agreement are for convenience of reference only and shall not be used in construing this Agreement.

(j) Purchaser represents, warrants and covenants that neither Purchaser nor any of its partners, officers, directors, members or shareholders (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury ("**OFAC**") pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) ("**Order**") and all applicable provisions of Title III of the USA Patriot Act (Public Law No. 107-56 (October 26, 2001)); (ii) is listed on the Denied Persons List and Entity List maintained by the United States Department of Commerce; (iii) is listed on the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State, (iv) is listed on any list or qualification of "Designated Nationals" as defined in the Cuban Assets Control Regulations 31 C.F.R. Part 515; (v) is listed on any other publicly available list of terrorists, terrorist organizations or narcotics traffickers maintained by the United States Department of State, the United States Department of Commerce or any other governmental authority or pursuant to the Order, the rules and regulations of OFAC (including without limitation the Trading with the Enemy Act, 50 U.S.C. App. 1-44; the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06; the unrepealed provision of the Iraq Sanctions Act, Publ. L. No. 101-513; the United Nations Participation Act, 22 U.S.C. § 2349 as-9; The Cuban Democracy Act, 22 U.S.C. §§ 60-01-10; The Cuban Liberty and Democratic Solidarity Act, 18 U.S.C. §§ 2332d and 233; and The Foreign Narcotic Kingpin Designation Act, Publ. L. No. 106-120 and 107-108, all as may be amended from time to time); or any other applicable requirements contained in any enabling legislation or other Executive Orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively called the "**Orders**"); (vi) is engaged in activities prohibited in the Orders; or (vii) has been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes or in connection with the Bank Secrecy Act (31 U.S.C. §§ 5311 et seq.).

(k) Seller and Purchaser each expressly acknowledge and agree that the transactions contemplated by this Agreement and the terms, conditions, and negotiations concerning the same will be held in the strictest confidence by each of them until Closing and

will not be disclosed by either of them to any party outside their respective organizations, except to their respective legal counsel, investors, lenders, accountants and consultants, and except and only to the extent that such disclosure may be necessary for their respective performances hereunder. Nothing contained in this Section will preclude or limit either party to this Agreement from disclosing or accessing any information otherwise deemed confidential under this Section (i) which is, at the time of such disclosure, a part of the public domain through no violation or breach of the confidentiality provisions contained herein, (ii) in response to lawful process or subpoena or other valid or enforceable order of a court of competent jurisdiction or any filings with governmental authorities required by reason of the transactions provided for herein pursuant to an opinion of counsel or (iii) in connection with Purchaser obtaining due diligence information.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

SELLER: BOTTLING GROUP, LLC

By: _____
Name: Cynthia M. Poggiogalle
Its: Director of Real Estate
Date Signed: April/May __, 2015

PURCHASER: CITY OF PORTLAND

By: _____
Name: Michael Sauschuck
Its: Acting City Manager
Date Signed:
May __, 2015

AGREED TO AND ACCEPTED:

ESCROW AGENT: Cumberland Title Company

By: _____
Name:
Its:
Date Signed: _____

Exhibit "A"

Legal Description of Land

[Deed recorded at Book 21872, Page 312, in the Cumberland County Registry of Deeds]

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Exhibit "B"

Non-Foreign Affidavit

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by the transferor, the undersigned hereby certifies the following on behalf of the transferor named below:

1. The transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. The transferor's U.S. employer identification number is _____.

3. The transferor's office address is c/o Pepsi Beverages Company, 1 Pepsi Way, Somers, New York 10589-2201.

The transferor understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of the transferor.

transferor	name of person signing	signature	date

* PRINT OR TYPE

The transferee must retain this certificate until the end of the fifth taxable year following the taxable year in which the transfer takes place and make it available to the Internal Revenue Service when requested.