

**THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.**

**AUCTION CONTRACT TO BUY AND SELL REAL ESTATE**

This Auction Contract to Buy and Sell Real Estate (“Contract”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between The City of Boise (“Seller”) and \_\_\_\_\_ (“Buyer”).

**1. PROPERTY.** Seller agrees to sell and Buyer agrees to purchase that certain real property located in Boise, Idaho, ADA County, which is more particularly described on EXHIBIT “A” attached hereto, commonly known as **1518 West Fort Street, Boise Idaho 83702** together with all buildings, fixtures, and other improvements located thereon and all easements, rights, and appurtenances thereto, including without limitation, any oil, gas and mineral rights, water and water rights, and ditch and canal company rights appurtenant thereto, except as herein excluded (“Property”). Seller and Buyer may be referred to individually as the “Party” or collectively as the “Parties” as may be appropriate under the circumstances.

**2. CLOSING.** The date of closing shall be the \_\_\_\_\_, day of \_\_\_\_\_ 2017 or such earlier date agreed to by the parties (“Closing Date”). The closing shall take place at TitleOne, 1101 W. River St. Suite #201, Boise, ID (“Closing Agent”). Possession shall be transferred to Buyer on the Closing Date.

**3. INCLUSIONS AND EXCLUSIONS.** The sale includes and excludes those items listed as Inclusions and Exclusions, respectively, on Exhibit “B” attached hereto.

**(a) Transfer of Personal Property.** The personal property to be conveyed at closing as set forth on attached Exhibit “B”, if any, shall be conveyed, without warranty, by Seller, free and clear of all personal property taxes and assessments (except personal property taxes and assessments for the year of closing), liens and encumbrances. Conveyance shall be by bill of sale or other applicable legal instrument, without warranty.

**4. PURCHASE PRICE AND TERMS.** The purchase price of the Property is \$ \_\_\_\_\_ which is the aggregate of the highest bid price made at the auction, which was \$ \_\_\_\_\_ (“Highest Bid Price”) plus the Buyer’s Premium, as set forth below, which is \$ \_\_\_\_\_ (collectively “Purchase Price”). The Purchase Price shall be payable in collectible U.S. Dollars as follows:

**(a) Earnest Money.** An amount of Fifteen Thousand Dollars and no/100’s (\$15,000.00) in the form of a check acceptable to Seller (“Earnest Money”) is to be paid on the

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*Buyer*  
*Seller*

date of this Contract and held by TitleOne. The Earnest Money shall be non-refundable to Buyer, except in the event of Seller's default, and applied to the Purchase Price at closing.

(b) **Payment of Balance of Purchase Price.** The balance of the Purchase Price after credits, adjustments and pro-rations, shall be paid to Seller by Buyer at the time of closing by cashier's or certified check or by wire transfer or other immediately available funds acceptable to the Closing Agent.

**5. BUYER'S PREMIUM.** Buyer shall pay a fee of 5% of the Highest Bid Price, as set forth in Section 4 ("Buyer's Premium"), at closing. Buyer acknowledges that this fee shall be paid to Seller, who shall then pay the fee to CORBETT BOTTLES REAL ESTATE MARKETING, LLC, an Idaho limited liability company ("Listing Broker"). This fee does not create an agency relationship between Buyer and the Listing Broker. Buyer agreed to this Buyer's Premium prior to participating in the auction for the purchase of the Property.

**6. NO FINANCING CONTINGENCY.** This Contract is NOT contingent upon Buyer obtaining financing.

**7. EVIDENCE OF TITLE.** Seller will furnish to Buyer, at Seller's expense, a current commitment for a standard owner's title insurance policy ("Title Commitment"). By entering into this Contract, Buyer accepts the status of title to the Property as shown in the Title Commitment, other than for those monetary liens, delinquent taxes and assessments, if any, which are to be paid at closing and exclusions including, but not limited to the referenced Façade Easement. Seller shall pay the premium for a standard form title insurance policy at closing. If Buyer desires extended coverage title insurance or any endorsements to the title policy, Buyer shall be responsible for all additional title insurance fees over the cost of standard title insurance. Seller has delivered to Buyer true copies of all lease(s) and survey(s) in Seller's possession pertaining to the Property, if any, and shall disclose to Buyer all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Prior to signing this contract, Buyer has had the right to inspect the Property to determine, among other matters, if any third party(s) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

**8. LEAD-BASED PAINT AND ASBESTOS.** By initialing below, Buyer acknowledges that Buyer has received from the Seller a disclosure of lead based paint and asbestos within the Property. By initialing below the Buyer does hereby acknowledge that Buyer is purchasing the Property knowing it contains lead-based paint and asbestos and is hereby waiving any and all claims related to such lead-based paint and asbestos.

Buyer's Initials \_\_\_\_\_

**9. INSPECTION.** Buyer acknowledges that Buyer was and is responsible for making a thorough inspection of the Property and Inclusions at its own expense, as well as thoroughly researching any information available about the Property and its surroundings, prior to the date of this Contract. Prior to signing this Contract, Buyer acknowledges that Buyer or

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*Buyer*  
*Seller*

any designee was afforded the right to have an inspection(s) of the physical condition of the Property and Inclusions, at Buyer's expense. This Contract is NOT contingent upon any further inspections by Buyer.

**10. TRANSFER OF TITLE.** Subject to tender or payment of the Purchase Price at closing as required herein and compliance by Buyer with the other terms and provisions hereof, and subject to City Council approval, Seller shall, at closing, execute and deliver a good and sufficient Special Warranty Deed to Buyer conveying the Property free and clear of all taxes except the general real property taxes and assessments for the year of closing not yet due and payable, if any; and except (i) those matters of record, (ii) those rights, if any, of third parties in the Property not shown by the public records, (iii) any building, zoning, subdivision and other land use laws, code, ordinances and regulations, Façade Easement, and any non-compliance therewith, and (iv) those exceptions created by Buyer.

**11. PAYMENT OF ENCUMBRANCES.** Any encumbrance, including delinquent taxes and assessments, if any, required to be paid shall be paid at or before closing by Seller from the proceeds of this transaction or from any other source.

**12. DISCLAIMER.** BUYER ACKNOWLEDGES AND AGREES THAT THEY HAVE BEEN INFORMED AND UNDERSTAND THAT SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ASPECT, FIXTURE OR CONDITION OF THE PROPERTY AND THE INCLUSIONS INCLUDING, WITHOUT LIMITATION, THE EXISTENCE OF HAZARDOUS WASTE OR MATERIALS THEREON, OR THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE, TO BUYER BEYOND THOSE EXPRESSLY PROVIDED IN THIS CONTRACT.

Buyer acknowledges that Seller has made no representations of any material fact concerning the Property beyond those expressly provided in this Contract, that Buyer has had an adequate opportunity to inspect and investigate the Property; and, that Buyer has made a thorough independent examination and inspection of the Property, and is relying solely upon their own examination and inspection thereof. Buyer further acknowledges that Seller has made no representations or warranties as to whether the boundary lines of the Property are accurate, nor any representation as to the number of acres or the number of square feet or frontage of the Property. Buyer has had an adequate opportunity to examine and inspect the boundaries of the Property and will make their own determination as to acreage, square footage, and/or frontage, and whether the location of improvements and boundaries are accurate, and is purchasing the Property in reliance upon their own determination thereof and regardless of whether or not said location of improvements and boundaries are accurate. Seller makes no warranty or representation with respect to the legal description as may be used herein. Buyer acknowledges further that Seller is not responsible or liable to obtain or provide a survey of the Property to Buyer. Accordingly, buyer is purchasing the Property "AS IS, WHERE IS."

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*Buyer*  
*Seller*

**13. CLOSING COSTS, DOCUMENTS AND SERVICES.** Buyer and Seller shall pay their respective closing costs and all other items required to be paid at closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before closing. Fees for closing services shall be shared equally by Seller and Buyer. Any sales and use tax that may accrue because of this transaction shall be paid when due by Buyer. Any fees and costs assessed by any home owner's association or similar association to which the Property is subject, including but not limited to transfer fees, set up fees, administrative fees, a fee for the issuance of the association's statement of account, utility hookup or transfer fees, or any other such fees and costs, shall be paid when due by Buyer.

**14. PRORATIONS.** The following shall be prorated to the Closing Date, except as otherwise provided:

(a) **Taxes.** Personal property taxes, if any, and general real estate taxes and assessments for the year of closing, based on the most recent assessment;

(b) **Other.** Water, sewer and any other utility charges associated with the Property;

(c) **Final Settlement.** Unless otherwise agreed in writing by Seller and Buyer, the prorations set forth herein shall be final.

**15. CONDITION OF, DAMAGE TO PROPERTY AND INCLUSIONS.** Except as otherwise provided in this Contract, the Property, Inclusions or both shall be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted. In the event the Property or Inclusions shall be damaged by fire or other casualty or shall fail prior to closing, in an amount not to exceed ten percent (10%) of the Purchase Price, Seller may, but shall not be obligated to, repair the same before the Closing Date. In the event such damage or failure is not repaired or replaced with a unit of similar size, age and quality or an equivalent credit (less insurance proceeds to be received by Buyer covering such repair or replacement) within said time or if the damages exceed such sum, this Contract may be terminated at the option of Buyer. Should Buyer elect to carry out this Contract despite such damage or failure, Buyer shall be entitled to a credit for all the insurance proceeds paid from such damage or failure to the Property and Inclusions, not exceeding, however, the Purchase Price.

**16. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Seller and Buyer acknowledge that their respective brokers have advised each of them that this Contract has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

**17. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence hereof. If any payment due, including the Purchase Price, hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

\_\_\_\_\_  
Buyer  
\_\_\_\_\_  
Seller

(a) **If Buyer is in Default:** All payments and things of value received hereunder shall be forfeited by Buyer and retained on behalf of Seller and both parties shall thereafter be released from all obligations hereunder and this Contract shall be terminated and of no further force and effect. It is agreed that such payments and things of value are **LIQUIDATED DAMAGES** and are **SELLER'S SOLE AND EXCLUSIVE REMEDY** for Buyer's failure to perform its obligations under this Contract.

(b) **If Seller is in Default:** Buyer, as its sole remedy, may elect to treat this Contract as canceled, in which case all payments and things of value received hereunder by Seller or the Closing Agent shall be returned to Buyer..

**18. ATTORNEYS' FEES.** In the event either party initiates or defends any legal action or proceeding in any way connected with this Contract, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

**19. ADDITIONAL PROVISIONS.** This Contract contains the entire agreement of the parties regarding the subject matter hereof.

**20. MODIFICATION, SURVIVAL.** No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Contract that, by its terms, is intended to be performed after termination or closing shall survive the same.

**21. BUYER'S WAIVER OF IDAHO CODE § 55-2515. BY INITIALING BELOW, BUYER ACKNOWLEDGES THAT BUYER HAS PREVIOUSLY RECEIVED THE SELLER'S PROPERTY DISCLOSURE FORM, AS MAY BE REQUIRED BY IDAHO CODE, TITLE 55, CHAPTER 25, THAT BUYER HAS HAD AN OPPORTUNITY TO REVIEW THE SELLER'S PROPERTY DISCLOSURE FORM AND THAT BUYER WAIVES BUYER'S THREE (3) DAY RIGHT TO RESCIND THIS CONTRACT BASED UPON THE SELLER'S PROPERTY DISCLOSURE FORM AS SET FORTH IN IDAHO CODE § 55-2515.**

Buyer's Initials \_\_\_\_\_

**22. BROKER.** Seller and Buyer each represent and warrant to the other that except for Corbett Bottles Real Estate Marketing, LLC, which is representing Seller ("Seller's Broker"), and \_\_\_\_\_ (Buyer's Agent), which is representing Buyer, that neither of them have employed nor associated with any other broker or agent in connection with this transaction. Seller, pursuant to a separate agreement with Seller's Broker, has agreed to pay a commission in connection with this transaction. Seller and Buyer

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*Buyer*  
*Seller*

each hereby agree to indemnify and defend the other against any and all commissions, finder's fees or other fees or any claim therefore by any broker in connection with this transaction claiming through the indemnifying party.

**23. CONSTRUCTION.** In construing the provisions of this Contract and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

**24. AGENCY REPRESENTATION.** Buyer and Seller understand and agree that \_\_\_\_\_ is involved in this transaction on behalf of Buyer and that Corbett Bottles Real Estate Marketing, LLC, an Idaho limited liability company, is involved in this transaction on behalf of Seller, and that no other broker or agent was the procuring cause of the transaction contemplated by this Agreement.

REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 below and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- A.  The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- B.  The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
- C.  The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT NONAGENT for the BUYER(S), and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
- D.  The broker working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- A.  The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- B.  The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
- C.  The brokerage working with the SELLER(S) is acting as LIMITED DUAL AGENT for the SELLER(S), and has an ASSIGNED AGENT acting solely on behalf of SELLER(S).
- D.  The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he or she has received, read and understood the Agency Disclosure brochure and has elected the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review.

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*Buyer*  
*Seller*

EACH PARTY UNDERSTANDS THAT HE OR SHE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

Responsible and Listing Broker: Corbett Bottles Real Estate Marketing, LLC

Selling Broker: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer \_\_\_\_\_ Buyer \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Email: \_\_\_\_\_ Email: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Seller \_\_\_\_\_ Seller \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Email: \_\_\_\_\_ Email: \_\_\_\_\_

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\_\_\_\_\_  
*Buyer*  
*Seller*

**EXHIBIT "A"**

**DESCRIPTION OF THE REAL PROPERTY**

**DRAFT**

• **EXHIBIT “B”**

1. INCLUSIONS:

PERSONAL PROPERTY INCLUDED IN SALE – NONE

2. EXCLUSIONS:

PERSONAL PROPERTY EXCLUDED FROM SALE – NONE

Deed of Reservation of Façade Easement.

DRAFT