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OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Mayor Kramer, Vice-Mayor Old, Councilmember Turner, Councilmember Winger, and Councilmember Howle
From: Wayne R. Coment – City Attorney *wrc*
Subject: Agreement of Purchase and Sale – Diesel Power Plant Property
Date: March 29, 2016

Attached hereto please find for your consideration and approval a copy of the Agreement of Purchase and Sale regarding the City's diesel power plant property located at 1133 19th Place in Vero Beach.

This Agreement was negotiated with the buyer, American Icon Brewery Real Estate Investments LLC as directed by the Council. The Agreement was negotiated based on the buyer's proposal submitted pursuant to the City's RFP process, and with the assistance of attorney Sandra Rennick of Gould Cooskey Fennell, P.A. Ms. Rennick will also handle the closing of the sale on behalf of the City.

Major points of the Agreement address the reduced cash purchase price, the property is sold "As-Is," any remaining environmental monitoring or remediation needed, and the land uses permitted on the property. Pursuant to the buyer's proposal, the purchase price of \$650,000 based on the property appraisal is reduced to \$500,000 in cash with the buyer in return taking the property "As-Is" and assuming responsibility for future monitoring or remediation of any remaining or future environmental contaminants on the property. The obligation of the buyer to close the sale is conditioned on the land uses permitted on the property including the buyer's intended use of a brewery and restaurant, as well as the resolution of any remaining interest the past tenant or their leasehold lender may claim based on that tenant's leasehold interest in the property.

Please let me know should you have any questions regarding this proposed transaction.

COPY

AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale (the "Agreement"), made and entered into this ____ day of _____, 2016 by and between the Seller (as hereinafter defined) and the Buyer (as hereinafter defined) is based upon the following recitals:

- A. Seller is the owner of the **Property** (as hereinafter defined) which Buyer desires to purchase upon the terms and conditions hereinafter set forth.
- B. Seller desires to sell the Property upon such terms and conditions.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby confirmed, Seller and Buyer do hereby mutually covenant and agree as follows:

1. DEFINITIONS.

(a) **Seller: The City of Vero Beach**, with an address of P.O. Box 1389, Vero Beach, FL 32961-1389.

(b) **Buyer: American Icon Brewery Real Estate Investments, LLC**, a Florida limited liability company with a mailing address of 241 East Prospect Road, Ft. Lauderdale, FL 33334.

(c) **Land:** Three (3) parcels of improved real property known as the Vero Beach Diesel Power Plant with a street address of **1133 19th Place, Vero Beach, FL 32960**, located in the City of Vero Beach (the "City"), Indian River County, Florida (the "County"), containing approximately 1.7 acres, together with a 10,000 square foot vacant building and all fixtures therein, a legal description of which is set forth on **Exhibit "A"** attached hereto and hereby made a part hereof, together with all existing easements, air and mineral rights and all tenements, hereditaments, privileges and appurtenances thereto belonging or in any way appertaining thereto including, but not limited to: any pending or future award made in condemnation or in lieu thereof, if any. If the Land consists of more than one parcel, there shall be no intervening strips, gaps, gores or lands to which any legal, equitable or beneficial interests are owned by others. In the event that the legal description as contained in the survey and in the title commitment described below deviates from the legal description attached hereto, the Buyer shall have the right to approve the change in the legal description to that contained in the Title Insurance Commitment.

(d) **Improvements:** All buildings and other improvements situated upon the Land.

(e) **Realty:** The Land and the Improvements.

(f) **Personalty:** The Personalty shall include: (i) all existing, valid and transferrable

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licenses, permits and franchises issued by any federal, state or local authorities, relating to the use, development, maintenance or operation of the Improvements, if any; (ii) all architectural, engineering and construction plans, specifications and drawings relating to the Property owned by Seller, if any; (iii) all logos, art work, signs, brochures, artists renderings and other advertising and promotional materials concerning the Property owned by Seller.

(g) **Property:** The Realty and the Personalty.

2. **PERSONALTY.** Seller agrees to sell and convey any Personalty to Buyer by Bill of Sale.

3. **PURCHASE PRICE.** The Purchase Price to be paid by Buyer to Seller for the Property shall be SIX HUNDRED AND FIFTY THOUSAND AND NO/100 DOLLARS (\$650,000.00) less a credit of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) for Buyer's purchase of the Property in an "as-is" condition, assuming all remediation efforts and in exchange for a Release and Indemnification of Seller, as more fully set forth below in Section 37, 38 and 39 of this Agreement, for a total of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00), payable as follows:

(a) A deposit of Fifty Thousand Dollars (\$50,000.00) (the "Deposit") shall be delivered to the Escrow Agent by Buyer upon full execution hereof by both Seller and Buyer, which deposit shall be held in escrow subject to the terms of this Agreement by the Escrow Agent.

(b) Subject to the terms of this Agreement, the balance of the Purchase Price, subject to prorations and adjustments as is provided for herein, is to be paid in unrestricted funds at the Closing.

4. **TIME FOR ACCEPTANCE AND EFFECTIVE DATE.** If this offer is not accepted by this Agreement being executed by both of the parties hereto on or before April 8, 2016, this offer shall thereafter be deemed null and void. The Property may be subject to a long-term lease with a third party other than Buyer (the "Lease"). Seller is currently involved in litigation with the Lessee under the subject Lease (the "Litigation"). The "Effective Date" of this Agreement shall be the date upon which the Seller has provided to Buyer satisfactory evidence in the form of a "clean" title insurance commitment, free of issues concerning the above described Lease, and Seller is ready to proceed with this transaction and, subject to the terms, conditions, and covenants contained herein below, prepared to close in accordance with the terms of this Agreement. In the event Seller is unable to provide to Buyer a clean title commitment within three hundred and sixty-five (365) days of the Execution Date as defined below this Agreement shall terminate, Escrow Agent shall return the Deposit to Buyer and the parties shall be relieved from any further obligation to the other.

5. **EVIDENCE OF TITLE.** Within five (5) business days from the execution of this Agreement by Seller and Buyer ("Execution Date") Seller shall provide to Buyer a copy of its pro forma title commitment together with a copy of all recorded documents listed as exceptions thereon and a copy of the recorded deed of conveyance into Seller showing the legal description thereof. Within twenty (20)

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days from the Execution Date, Seller shall, at Seller's expense, provide Buyer with a title insurance commitment, upon a nationally recognized title insurance company agreeing to issue to Buyer, upon recording of the deed to Buyer, an Owner's Title Insurance Policy in the amount of the purchase price paid in cash, insuring title of the Buyer to the Property, subject only to liens, encumbrances, exceptions or qualifications set forth in this Agreement as Permitted Exceptions and as set forth on Exhibit "B" ("Permitted Exceptions"), and those which shall be discharged by Seller at or before Closing. Any such matters other than the Permitted Exceptions are hereinafter referred to as "Title Defects". Survey defects concerning the Property shall be deemed as Title Defects pursuant to this Article. Buyer shall have ten (10) days from date of receiving evidence of title, in the form of a commitment to insure, to examine same. If Buyer objects to any exceptions or items contained therein, Buyer shall, within the above referenced ten (10) day period, notify Seller in writing specifying the objections or defects to which Buyer objects. Seller shall have thirty (30) days from receipt of such notice within which to use its best efforts to remove said defect(s), however, Seller shall have no obligation to institute legal proceedings in order to remove a title defect. If Seller is unsuccessful in removing them within said time, Buyer shall have the option of either (1) accepting the title as it then is, or (2) demanding a refund the Deposit paid hereunder which shall forthwith be returned to Buyer and thereupon Buyer and Seller shall be released, as to one another, of all further obligations under the Agreement. At Closing the Seller shall pay the necessary premium to the title agent selected by the Seller, to procure issuance of the Owner's Title Insurance Policy as above set forth.

6. INTENDED USE OF PROPERTY. It is the Buyer's intention to utilize the Property as a Brewery with onsite consumption (via 2COP and/or 4 COP) and a full service restaurant with outdoor seating (beer garden); retail sale of merchandise; and live entertainment, as well as all customary attendant uses and services. This will require a change of permitted use within the existing Vero Beach Downtown Zoning District. It shall be a condition precedent to Buyer's obligation to close that Buyer's intended use be a permitted use within the existing Vero Beach Downtown Zoning District. The failure of this condition precedent to occur shall permit the Buyer, at its option, to terminate this Agreement and to receive a return of Buyer's Deposit in full. Buyer agrees that the Property will continue with the same use for a five (5) year period from Closing. In the event the Property is not used for the above stated purposes during this five (5) year period, Buyer, at the option of Seller, shall convey all right, title and interest in the Property to Seller, by reversion of interest, and Seller shall pay unto Buyer, at the time of such reversion, eighty percent (80%) of the Purchase Price paid in cash. This provision shall survive the Closing and the restriction shall be included in the Special Warranty Deed.

7. SURVEY. Seller shall deliver to Buyer, within Five (5) days of the Execution Date, its existing survey of the Property. Buyer, within thirty (30) days of the Effective Date, may have the Property re-surveyed at Buyer's expense. If the Buyer's survey or the Seller's survey, certified by a Florida surveyor, shows any encroachment of said Property, or that improvements located on the Property in fact encroach on lands of others, or violate any of the covenants set forth in this Agreement, or contain any matters, other than the Permitted Exceptions, not approved or waived by Buyer, the same shall be treated as a Title Defect. Seller shall cooperate with Buyer in any re-certification of such surveys as Buyer may

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8. UNDERTAKINGS OF SELLER. Seller shall, within Five (5) business days from the Execution Date, deliver to the Buyer the following documents (the "Submittals"):

Copies of all engineering reports, traffic studies, plans, specifications, artist renderings, photographs, certificates of occupancy, permits, additional plans, renovation plans, if any, and other documentation pertaining to the construction, operation, maintenance and/or use of the Property as may be in the possession of Seller, or readily obtained from any consultant or agent of Seller.

9. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller hereby represents and warrants to Buyer as of the Execution Date and as of the Closing Date, as follows:

(a) Seller has good and marketable title to the Property, free and clear of all mortgages (except for the Mortgage and Security Agreement presently recorded in connection with the Lease which shall not serve as a Permitted Exception), liens, encumbrances, leases or tenancies (except for the previously defined Lease which shall be terminated prior to Closing), security interests (except for the Mortgage and Security Agreement presently recorded in connection with the Lease which shall not serve as a Permitted Exception), covenants, conditions, restrictions, rights-of-way, easements, judgments or other matters except the Permitted Exceptions as defined herein. No agreement other than this Agreement concerning or restricting the sale of the Property is in effect, and no person or entity has any right or option to acquire the Property other than Buyer.

(b) Except as set forth herein, or in the Submittals, Seller has not contracted for any services or employment and has made no commitments or obligations therefor which will bind Buyer as a successor in interest with respect to the Property and except as set forth herein, or in the Exhibits, Seller is not a party to any contracts affecting the Property which cannot be canceled upon not more than thirty (30) days' notice to the other parties thereto.

(c) Except as set forth herein, no commitments have been made to any governmental authority, utility company, school board, church or other religious body, or any homeowners or homeowners' association, or to any other organization, group or individual relating to the Property which would impose an obligation upon Buyer or its successors or assigns to make any contributions or dedications of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Property. Except as set forth herein, no governmental authority has imposed any requirement that any owner of the Property pay directly or indirectly any special fees or contributions or incur any expenses or obligations in connection with the ownership of the Property. Buyer understands that it may incur fees, contributions or expenses in connection with its planned redevelopment of the Property.

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(d) No notices or requests have been received by Seller from any insurance company issuing any of the insurance policies affecting the Property which have not been complied with. Any notices or requests from any such insurance company received prior to the Closing Date shall be complied with by Seller prior to the Closing Date.

(e) To the best of Seller's actual knowledge and belief, there are no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part thereof.

(f) Seller has received no notice of the intention of any public authority or other entity to take or use the Property or any part thereof.

(g) Except for as otherwise described in Section (a) above and with exception to the Litigation, Seller is not a party or otherwise subject to any commitment, obligation, agreement, litigation or other proceeding which would prevent Seller from completing the sale of the Property under this Agreement or knowingly adversely affect the value of the Property in the hands of Buyer. Seller has full power to consummate the transaction described in this Agreement, the execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions described herein having been duly and validly authorized by all necessary corporate action and the observance of all required formalities on the part of Seller, such that this Agreement constitutes a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms. Neither the execution and delivery of this Agreement nor the consummation by Seller of the transaction contemplated hereby, nor compliance by Seller with any of the provisions hereof will: (i) conflict with or result in a breach of or default under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which Seller is a party or by which it or the Property is bound, or (ii) violate any order, injunction, decree, statute, rule or regulation applicable to Seller or the Property, other than as disclosed to Buyer.

(h) Seller represents that at Closing there shall be no leases affecting the Property.

(i) Seller has not received any actual notice of violation, of any applicable building, zoning or other ordinances, resolutions, statutes, or regulations from any insurance company or governmental agency in respect to the operation or condition of Property and, to the best of Seller's actual knowledge, without independent inquiry, there are no such violations. Notwithstanding the above, Buyer is aware that Seller has received notice of environmental contaminants on the Property. Buyer acknowledges that Buyer has received and reviewed the Limited Site Assessment Report dated January 18, 2016 and prepared by SMW GeoSciences, Inc. and Buyer and its consultants and legal counsel have received free access to the Seller's contractor, Sarah Whitaker of SMW GeoSciences, Inc., to discuss any and all findings and any subsequent test results provided by SMW GeoSciences, Inc.

(j) To the best of Seller's actual knowledge and belief, the Property has not in the past, and

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is not now, used as a depository or storage area for trash, garbage or any toxic waste, hazardous materials or toxins. Buyer is fully aware that the previous use of the Property resulted in fuel storage and that related fuel products were stored on the Property.

(k) Seller has full power and authority to own and sell the Property and to comply with the terms of this Agreement.

(l) The execution and delivery of this Agreement by Seller and the consummation by Seller of the transaction contemplated by this Agreement are within Seller's capacity.

(m) At Closing there are no parties in possession except for Seller.

(n) All of the warranties and representations of the Seller set forth in this Agreement shall be true upon the execution of this Agreement, shall be deemed to be repeated at and as of the Closing Date, and shall be true as of the Closing Date.

10. SPECIAL ASSESSMENT LIENS. Certified, confirmed and ratified special assessment liens as of the Closing Date are to be paid by Seller. Pending liens as of the date of Closing shall be assumed by Buyer.

11. RISK OF LOSS. Seller shall bear all risk of casualty loss to Property occurring prior to Closing and shall maintain in full force and effect all liability insurance now in force through the Closing Date. In the event of any damage or destruction to any of the Property prior to Closing, not restored by the Closing Date, Buyer may rescind this Agreement and receive a refund of the Deposit together with all interest thereon, if any. Specifically excluded from this provision is any loss resulting from the past, present or future existence of environmental contaminants.

12. SELLER'S OPERATIONS PRIOR TO CLOSING. Seller agrees that between the Execution Date and the Closing Date, Seller shall:

(a) Not transfer any of the Property or voluntarily create on the Property any easements, liens, mortgages, encumbrances or other interests that would affect the Property or Seller's ability to comply with the terms and conditions of this Agreement.

(b) Promptly disclose in writing to Buyer any material change in any facts or circumstances which would make any of the representations, or other provisions of this Agreement, inaccurate, incomplete or misleading.

(c) Cooperate with Buyer to assist Buyer in carrying out the transaction contemplated herein,

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in obtaining any approvals and authorizations, and in delivering all documents, instruments, or copies thereof or other information as may be reasonably requested by Buyer.

13. INSPECTION AND FEASIBILITY. Buyer, after independent investigation and inquiry to Buyer's satisfaction, has determined that, subject to the completion of the Condition Precedent as provided for in Paragraph 6 herein above and as to matters concerning the Survey and the Condition of Title, both as provided for herein above, the Property is suitable for Buyer's intended use of the Property.

14. CLOSING DATE. Subject to all of the terms, covenants, and conditions hereof, the sale and purchase transaction contemplated in this Agreement shall be closed on or before thirty (30) days from the date that the completion of the Condition Precedent as provided for in Paragraph 6 hereinabove and as to matters concerning the Survey and the Condition of Title, both as provided for hereinabove, have been completed to Buyer's reasonable satisfaction. Provided that the Agreement has not been prior thereto terminated by the Buyer in accordance with any of the provisions of this Agreement, closing of this transaction shall occur at the offices of Seller's attorney, or shall occur without a sit down closing by utilizing delivery of documents by recognized courier service, wire transfer of funds, and other secure delivery methods. At such Closing, Buyer shall deliver to the Closing Agent, in the form hereinabove specified, all monies required to complete Buyer's payment of the Purchase Price of the Property, less the consideration for Buyer's acceptance of the Property "As-Is" and its indemnification of Seller provided for herein, and Seller shall execute and deliver the special warranty deed, and other documents contemplated and required to be executed and delivered pursuant to the provisions of this Agreement. Seller and Buyer shall also execute and deliver to the Closing Agent such other documents at such Closing as may be reasonably required of them in order to consummate and close the sale and purchase transaction contemplated in this Agreement pursuant to the terms hereof. The Closing Agent shall make all disbursements in accordance with a Closing Statement approved by Buyer and Seller. Seller shall pay the cost of the Owner's Title Insurance Policy. Buyer shall pay the cost of recordation. Each party shall bear their own attorney's fees.

15. CLOSING DOCUMENTS. In addition to those documents otherwise required herein to be delivered, Seller shall deliver to the Closing Agent the following documents at Closing:

- (a) A Special Warranty Deed, in recordable form, by which Seller shall convey the Property to Buyer, subject only to the Permitted Exceptions;
- (b) Such other items, instruments, or affidavits as may be required to issue an Owner's Title Insurance Policy as contemplated herein.

16. AD VALOREM TAXES. Buyer recognizes that Seller is exempt from the payment of ad valorem taxes. Buyer shall be solely responsible for the payment of ad valorem taxes commencing as of the Closing and Seller shall have no liability for the payment of any taxes that may have previously accrued or been assessed against the Property or any Leasehold interest thereon.

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17. LIENS. Buyer understands that Seller's property is not subject to mechanic's liens as it is government owned Property. Seller, consistent with the requirements of insuring title, shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statements, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements to the Property for ninety (90) days immediately preceding date of Closing. Buyer recognizes that Seller may continue environmental monitoring and testing of the Property and Seller shall be solely responsible for all costs incurred for same up to the time of closing.

18. EXPENSES. The cost of the title insurance policy and the cost of recording any corrective instruments or releases shall be paid by Seller. The cost of recording the deed, and all fees and costs in connection with any new mortgage (if any) shall be paid by Buyer.

19. ESCROW. The Escrow Agent, **ROBERT MARC SCHWARTZ, P.A.**, receiving funds pursuant to this Agreement is authorized and agrees by acceptance thereof to promptly deposit and to hold same in escrow and to disburse same subject to clearance thereof in accordance with the terms and conditions of this Agreement. Failure of clearance of funds shall not excuse performance by the Buyer. In the event of doubt as to his duties or liabilities under the provisions of this Agreement, the Escrow Agent may in his sole discretion, continue to hold the monies which are the subject of this escrow until the parties mutually agree to the disbursement thereof, or until a judgment or a court of competent jurisdiction shall determine the rights of the parties thereto, or he may deposit all the monies then held pursuant to this Agreement with the Clerk of the Circuit Court of the County having jurisdiction of the dispute, and upon notifying all parties concerned of such action, all liability on the part of the Escrow Agent shall fully terminate, except to the extent of accounting for any monies theretofore delivered out of escrow. In the event of any suit between Buyer and Seller wherein the Escrow Agent is made a party by virtue of acting as such Escrow Agent hereunder, or in the event of any suit wherein Escrow Agent interpleads the subject matter of this escrow, the Escrow Agent shall be entitled to recover a reasonable attorney's fee and costs incurred, said fees and costs to be charged and assessed as court costs in favor of the prevailing party. All parties agree that the Escrow Agent shall not be liable to any party or person whomsoever for misdelivery to Buyer or Seller of monies subject to this escrow, unless such misdelivery shall be due to willful breach of this Agreement or negligence on the part of the Escrow Agent. All parties acknowledge that the Escrow Agent has rendered and will continue to render legal services to Buyer in connection with the preparation of this Agreement, the consummation of the transaction to which it relates, and in the prosecution and resolution of any and all disputes which may arise in connection therewith.

20. ATTORNEYS' FEES AND COSTS. In connection with any litigation, including appellate proceedings, arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. Reasonable costs to which the prevailing party is entitled shall include costs which are taxable under any applicable statute, rule, or guideline.

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21. DEFAULT. If this Agreement is not otherwise terminated pursuant to the terms hereof, and should Buyer fail to perform this Agreement within the time specified, the Deposit paid by the Buyer aforesaid, together with interest thereon, if any, shall be retained by Seller as liquidated damages, consideration for the execution of this Agreement and in full settlement of any claims, and Buyer shall be obligated to return all documents to Seller; whereupon all parties shall be relieved of all obligations under the Agreement. Should the Seller default or breach any obligation hereunder, the Buyer's sole remedy, shall be either to seek specific performance of this Agreement, or elect to receive the return of its deposit, together with all interest thereon, if any, in which event the Agreement shall be terminated upon Buyer's receipt of the deposit and the interest, if any, and thereupon, neither party shall have any further rights hereunder or obligations to each other. In no event shall Seller be liable to Buyer for damages.

22. AGREEMENT NOT RECORDABLE, PERSONS BOUND AND NOTICE. Neither this Agreement nor any notice thereof shall be recorded in any public records. However, Buyer recognizes that this Agreement shall be part of the Official Public Records of the Seller. This Agreement shall bind and inure to the benefit of the parties hereto and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice given by or to the attorney for either party shall be as effective as if given by or to said party.

23. SOLE AND ENTIRE AGREEMENT. This Agreement supersedes all prior discussions and agreements between the Parties in respect to the conveyance of the Property and constitutes the sole and entire Agreement between Seller and Buyer in respect thereto.

24. MODIFICATIONS. No alteration, amendment, change or addition to this Agreement shall be binding upon either party hereto unless and until reduced to writing and signed by both parties.

25. ASSIGNMENT. It is the intention of the Buyer to assign this Agreement to Historic Diesel Plant- Vero Beach, LLC, a Florida limited liability company prior to Closing, which LLC is wholly owned and controlled by Michael Rechter and Seller hereby consents to the assignment. Seller and Buyer hereby agree that at the time of the assignment, Seller and Buyer shall execute a formal assignment agreement wherein Historic Diesel Plant-Vero Beach, LLC, formally takes assignment of all terms and conditions referenced herein including but not limited to the AS-IS and Release and Indemnification provisions of this Agreement.

26. INTERPRETATION. For all purposes of this Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

(a) This Agreement and all questions of interpretation, construction and enforcement hereof, and all controversies arising hereunder, shall be governed by and adjudicated in accordance with the internal laws of the State of Florida. Venue shall be in Indian River County, Florida.B

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(b) The captions, headings, and section numbers appearing in this Agreement are inserted as a convenience only and in no way define, limit, construe, or describe the scope or intent of such sections nor in any way effect the interpretation hereof.

(c) The phrase “**this Agreement**” means this Agreement as it may be amended and/or supplemented from time to time.

(d) Wherever the words “**includes**” or “**including**” as used in this Agreement, the same shall not be construed to restrict or limit any of the language, terms or definitions used in association therewith.

(e) Any reference in this Agreement to an entity shall include and shall be deemed to be a reference to any entity that is a successor to such entity.

(f) The words “**Deposit**”, “**Land**”, “**Improvements**”, “**Realty**”, “**Property**”, “**Submittals**”, and “**Personalty**” shall be interpreted to include any and all respective portions thereof.

(g) Whenever this Agreement requires that something be done within a period of days, such period shall: (i) not include the day from which such period commences; (ii) include the day upon which such period expires; (iii) expire at 5:00 p.m. local time on the date by which such thing is to be done; (iv) if six (6) days or more, be construed to mean calendar days; provided that if the final day of such period falls on a Saturday, Sunday or legal holiday in the state where such thing is to be done, such period shall be extended to the first business day thereafter; and (v) if less than six (6) days, be construed to exclude any Saturday, Sunday, or legal holiday in the state where such thing is to be done which falls within such period, Time being of the essence.

(h) Wherever in this Agreement, the consent of either party to or of any act by the other is required, such consent shall not be unreasonably withheld or delayed, except as otherwise indicated, if at all. The consent by either party to or of any act by the other requiring further consent shall not be deemed to waive or render unnecessary the consent of such party to any subsequent similar act.

(i) It is understood and agreed that this Agreement may be executed in several counterparts, each of which, for all purposes, shall be deemed to constitute an original and all of which counterparts, when taken together, shall be deemed to constitute one and the same Agreement, even though all of the parties hereto may not have executed the same counterpart.

(j) Wherever in this Agreement provision is made for the doing of any act by any person it is understood and agreed that such act shall be done by such person at its own cost and expense unless a contrary intent is expressed.

(k) The phrase "**Execution Date**" shall be interpreted to mean the date, of execution of this Agreement by both Buyer and Seller.

27. JUDICIAL CONSTRUCTION. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it being agreed that the agents of all Parties have participated in the preparation hereof.

28. CLOSING DATE. The words "**Closing**" and "**Closing Date**", or words of similar importance as used in this Agreement, shall be construed to mean the originally fixed title and Closing Date specified herein or any adjourned time and date specified herein or agreed to in writing by the Parties or any earlier date permitted herein.

29. DELIVERY OF POSSESSION. Possession of the Property shall be delivered to Buyer at Closing.

30. NOTICES. All notices, demands, or requests required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served to the addresses shown below, and shall be effective upon being (a) delivered by recognized courier service such as Federal Express, (b) delivered via e-mail with confirmation of receipt, (c) delivered by fax with confirmation of receipt, (d) by hand delivery, or (e) by being deposited in the United States mail, postage prepaid and registered or certified with return receipt requested. Notice to or from counsel for a party shall be the same as notice to or from a party.

AS TO SELLER: The City of Vero Beach, Florida
 Attention: James O'Conner, City Manager
 P.O. Box 1389
 Vero Beach, FL 32961-1389
 Phone No.: 772-978-4710
 Fax No.: 772-978-4716
 jocconnor@covb.org

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Seller's Initials

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WITH A COPY TO:

Sandra G. Rennick, Esquire
Gould Cooksey Fennell, P.A.
979 Beachland Blvd.
Vero Beach, FL 32963
Phone No.: 772-231-1100
Fax No.: 772-231-2020
srennick@gouldcooksey.com

and

Wayne R. Coment, Esquire
City Attorney
City of Vero Beach
1053 20th Place
Vero Beach, FL 32960
Phone No.: 772-978-4730
Fax No.: 772-978-4733
wcoment@covb.org

AS TO BUYER:

Dr. Michael R. Rechter, Manager
241 East Prospect Road
Ft. Lauderdale, FL 33334
954-224-4655
MikeR@IntegraCorps.com

WITH A COPY TO:

Robert M. Schwartz, Esquire
ROBERT MARC SCHWARTZ, P.A.
4700 NW Boca Raton Blvd., Suite 104 Boca
Raton, FL 33431
Phone No.: 561-241-1850
Fax No.: 561-241-1845
Bob@RobertSchwartzPA.com

Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been given shall constitute receipt of the notice, demand, or request sent.

31. SELLER'S AGENT. Except as otherwise provided herein, the Seller's City Manager shall be Seller's agent and shall have the authority to administer this Agreement on behalf of Seller, including but not limited to the authority to cause notices to be served on Buyer; enforce or terminate the

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Agreement upon default of any terms by Buyer; and to enforce Seller's rights as provided herein.

32. SAVING CLAUSE. Should any provision of this Agreement or application thereof to any person or circumstance be held invalid or unenforceable, the remainder of this Agreement, or the application of such provision, to any person or circumstance, other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the full extent permitted by law.

33. NO WAIVERS. No delay or omission by either Party hereto to exercise any right or power accruing on any noncompliance or default by the other Party in respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof, except as otherwise herein provided. A waiver by either of the Parties hereto or any of the covenants, conditions, or agreements hereof to be performed by either shall not be construed to be a waiver of any succeeding breach thereof or any other covenant, condition, or agreement herein contained.

34. NO MERGER. The statements, representations and warranties set forth in this Agreement shall not survive the Closing, except where specifically provided to the contrary.

35. BROKERS. Seller and Buyer hereby acknowledge, represent, and warrant to each other that no broker or finder has been employed by either Seller or Buyer. Seller and Buyer each warrant to the other that no commissions are payable by Seller and Buyer or due to any broker or finder in connection with this Agreement or the transaction contemplated herein, and Seller and Buyer each hereby agree to indemnify, defend, save and hold the other harmless from and against the payment of any commissions or fees or claims for commissions or fees due to the indemnifying party becoming liable for or incurring such commissions or fees; it being expressly agreed that the foregoing agreement of indemnification shall survive any Closing under this Agreement.

36. DISCLOSURES. Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

37. AS IS. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON AN "AS IS", "WHERE IS," AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING ANY REPRESENTATION OR WARRANTY CONCERNING THE PHYSICAL CONDITION OF THE PROPERTY (INCLUDING THE CONDITION OF THE SOIL, AIR, WATER OR THE IMPROVEMENTS OR FIXTURES), THE ENVIRONMENTAL CONDITION OF THE PROPERTY (OR ANY PORTION THEREOF) INCLUDING THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON OR AFFECTING THE PROPERTY (OR ANY PORTION

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THEREOF), THE COMPLIANCE OF THE PROPERTY (OR ANY PORTION THEREOF) WITH APPLICABLE LAWS AND REGULATIONS (INCLUDING ZONING AND BUILDING CODES OR THE STATUS OF DEVELOPMENT OR USE RIGHTS RESPECTING THE PROPERTY), THE FINANCIAL CONDITION OF THE PROPERTY (OR ANY PORTION THEREOF) OR ANY OTHER REPRESENTATION OR WARRANTY RESPECTING ANY INCOME, EXPENSES, CHARGES, LIENS OR ENCUMBRANCES, RIGHTS OR CLAIMS ON, AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF. BUYER ACKNOWLEDGES THAT BUYER, PRIOR TO THE EXECUTION DATE OF THIS AGREEMENT HAS HAD THE OPPORTUNITY TO REVIEW AND INSPECT ALL MATTERS WHICH IN BUYER'S JUDGMENT BEAR UPON THE PROPERTY AND ITS VALUE AND SUITABILITY FOR BUYER'S PURPOSES. BUYER IS A SOPHISTICATED BUYER WHO IS FAMILIAR WITH THE OWNERSHIP AND OPERATION OF REAL ESTATE SIMILAR TO THE PROPERTY AND THAT BUYER HAS OR WILL HAVE ADEQUATE OPPORTUNITY TO COMPLETE ALL PHYSICAL AND FINANCIAL EXAMINATIONS RELATING TO THE ACQUISITION OF THE PROPERTY HEREUNDER IT DEEMS NECESSARY, AND WILL ACQUIRE THE SAME SOLELY ON THE BASIS OF AND IN RELIANCE UPON SUCH EXAMINATIONS AND THE TITLE INSURANCE PROTECTION AFFORDED BY THE OWNER'S POLICY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER (OTHER THAN AS EXPRESSLY PROVIDED HEREIN). EXCEPT AS TO MATTERS SPECIFICALLY SET FORTH IN THIS AGREEMENT, BUYER WILL ACQUIRE THE PROPERTY SOLELY ON THE BASIS OF ITS OWN PHYSICAL AND FINANCIAL EXAMINATIONS, REVIEWS AND INSPECTIONS AND THE TITLE INSURANCE PROTECTION AFFORDED BY THE OWNER'S POLICY.

38. RELEASE. Buyer, in consideration of payment by Buyer of the reduced Purchase Price as set forth more fully above in Section 3 of this Agreement, and other good and valuable consideration to be paid at Closing, accepts the Property in its AS IS condition.

39. INDEMNIFICATION. Buyer, in consideration of payment by Buyer of the reduced Purchase Price as set forth more fully above in Section 3 of this Agreement, and other good and valuable consideration to be paid at Closing, agrees to fully defend, indemnify and hold Seller, harmless from and against all demands, claims, civil or criminal actions or causes of action, liens, assessments, civil or criminal penalties or fines, losses, damages, liabilities, obligations, costs, disbursements, expenses or fees of any kind or of any nature which may at any time after the Closing of this Transaction be imposed upon, incurred by or asserted or awarded related to or resulting from the presence, of any Hazardous Substance on, in or about the Property after the Closing including (i) any acts or omissions of Buyer, its Agents, employees or contractors at, on or about the Property which contaminate air, soils, surface waters or ground waters over, on or under the Property; (ii) the breach by Buyer of any representation or warranty under this Agreement; (iii) pursuant to or in connection with the application of any Environmental Law, to the acts or omissions of Buyer and any environmental damage alleged to have been caused, in whole or in part, by the manufacture, processing, distribution, use, handling, transportation, treatment, storage or disposal of any Hazardous Substance by Buyer; or (iv) the presence of any Hazardous Substance on, in or about the

Property occurring after the Closing of the Sale from Seller to Buyer. The term "Hazardous Substance" means: (i) any substance or material determined to be toxic, a pollutant or contaminant, under Federal, State or local statute, law, ordinance, rule or regulation or judicial or administrative order or decision, as the same may be amended from time to time, including but not limited to petroleum and petroleum products as defined in Section 376.301(10), Florida Statutes, as the same may be amended from time to time; (ii) asbestos; (iii) radon; (iv) polychlorinated biphenyls (PCBs); and (v) such other materials, substances or waste which are otherwise dangerous, hazardous, harmful or deleterious to human health and safety or the environment.

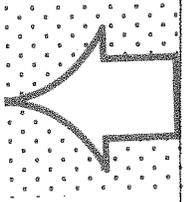
40. SECTION 1031 EXCHANGE. Seller and Buyer agree to cooperate with each other in closing the sale of the Property as a like-kind exchange under Section 1031 of the Internal Revenue Code (the "Code"). Such cooperation shall include, without limitation, the substitution by either of an intermediary (the "Intermediary").

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year indicated.

{SIGNATURE PAGES TO FOLLOW}

ATTEST:

SELLER:
The City of Vero Beach, Florida

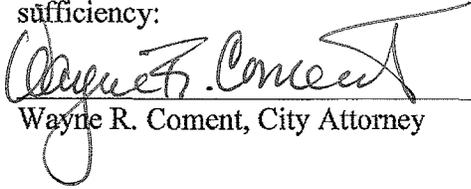


Tammy K. Vock, City Clerk

By: _____
Jay Kramer, Mayor

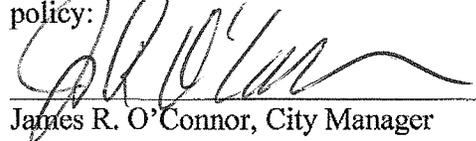
Executed this March ____, 2016.

Approved as to form and legal
sufficiency:



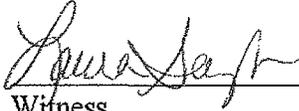
Wayne R. Coment, City Attorney

Approved as conforming to municipal
policy:

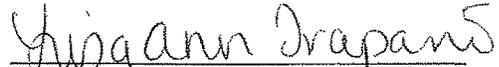


James R. O'Connor, City Manager

MR



Witness



Witness

BUYER:
American Icon Brewery Real Estate
Investments, LLC



Michael R. Rechter, Manager and
individually for purposes of Section 37, 38
and 39 of this Agreement.

Executed this March 25, 2016.

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EXHIBIT "A"

CITY OF VERO BEACH DIESEL POWER PLANT

Situated in the State of Florida, County of Indian River, City of Vero Beach and being a part of Edgewood Addition to Vero Subdivision as recorded in Plat Book 2, Page 28 of the Public Records of St. Lucie County, and also being a part of R. E. Bullington's Subdivision as recorded in Plat Book 2, Page 5 of the Public Records of St. Lucie County, said lands now lying in Indian River County, and being more particularly bounded and described as follows:

Lots 1 - 7, inclusive, of Block 12 of said Edgewood Addition to Vero Subdivision;
Together with:

The south 210 feet of the north 425 feet of block 5 of said R.E. Bullington's Subdivision, lying west of the Florida East Coast Railway;

Together with:

All that part of a 25 foot unnamed and unnumbered right of way being within Block 12 of said Edgewood Addition to Vero Subdivision, lying east of the east right of way of Pine Street as shown on said plat and now known as 12th Court;

Also including:

That part of the old existing right of way for State Road 60 as conveyed to the city Vero Beach in Official Record Book 1126, Pages 2015-2019, of the Public Records of Indian River County and being more particularly bounded and described as follows:

Bounded on the east by the Florida East Coast Railroad right of way;

On the south by the south 210 feet of the north 425 feet of Block 5 of said R.E. Bullington's Subdivision and by Block 12 of Edgewood Addition to Vero Subdivision;

On the west by the east right of way of 12th Court;

And on the north by the south right of way line of state road 60 as it exists today.

Containing 74,137 square feet or 1.70 acres more or less.

Property Control Numbers:
33-39-01-00029-0050-00002.0
33-39-02-00007-0120-00001.0
33-39-02-00007-0120-00003.0

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