

BOT99BRC

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: EASEMENT

NAME OF AGENCY OR CONTRACTOR: BOTTLING GROUP, LLC, A DELAWARE LIMITED LIABILITY COMPANY

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: PERPETUAL EASEMENT AGREEMENT DATED NOVEMBER 10, 1999 FOR PROVISION OF A STORM DRAINAGE RUNOFF FOR LOT ONE (1) OF BRACH'S SUBDIVISION, FOR DEVELOPMENT OF A SHOPPING CENTER

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1999

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

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PERPETUAL EASEMENT

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Book 2663 Page 170  
1932388 12/16/99 0427PM  
MONIKA TODD CLK&REG MESA COUNTY CO  
REG FEE \$20.00  
DOCUMENTARY FEE \$EXEMPT

**PERPETUAL EASEMENT AGREEMENT**

THIS PERPETUAL EASEMENT AGREEMENT is made November 10, 1999, by the CITY OF GRAND JUNCTION, a Colorado home rule municipality (the "City") and BOTTLING GROUP, LLC, a Delaware limited liability company ("BG").

RECITALS

A. BG owns certain real property ("BG Property") within the City in Mesa County, Colorado, legally described in Exhibit A attached to this Agreement and incorporated here by this reference.

B. Regency Realty Group, Inc., a Florida corporation ("Regency") owns certain real property ("Regency Property") directly west of the BG Property within the City in Mesa County, Colorado, legally described as:

Lot One (1) of Brach's Subdivision as recorded in Plat Book 17, Pages 114 and 115, Mesa County, Colorado records.

Regency is seeking approval from the City to develop the Regency Property as a shopping center, and one regulatory condition imposed by the City for development of the Regency Property as a shopping center is that Regency provide for storm drainage runoff from the Regency Property.

C. In fulfillment of that requirement of the City, BG and Regency have previously entered into that certain Agreement and Deed of Easement ("Regency Easement Agreement") recorded in Book 2614 at Page 923 of the Mesa County real estate records providing for conveyance by BG to Regency of a non-exclusive perpetual easement ("Regency Easement") for the installation, use and maintenance of an underground storm sewer pipeline across the BG Property, which restricts the use of the Regency Easement to drainage of storm water originating on the Regency Property.

D. The City has determined that an easement such as the Regency Easement is needed by the City in order to provide for drainage of storm water runoff which originates on Power Road, and that this public purpose may be achieved by the City obtaining from BG the right to utilize the Regency Easement for those purposes and oversizing the underground storm drainage pipeline to be installed by Regency in the Regency Easement in order to handle that additional storm drainage runoff.

FOR VALUABLE CONSIDERATION RECEIVED, the parties agree:

TERMS

1. All of the above Recitals are true and are incorporated into this Agreement.

2. BG sells and conveys to the City a non-exclusive perpetual easement for the installation, operation, maintenance, repair and replacement of an underground storm sewer pipeline through and across a portion of the BG Property, lying 12 feet on the North and West and 8 feet on the South and East of the following described center line, with end lines being lengthened or shortened as necessary for this easement to be 20 feet in width for its full length across the BG Property, and with that center line being more particularly described as follows:

Commencing at the Northwest corner of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 15, T1S, R1W, of the Ute Meridian, whence the Southwest corner of said Section 15 bears S 00°08'26"W, a distance of 1346.76 feet, for a basis of bearings, with all bearings contained herein relative thereto; thence N 76°17'51"E, a distance of 820.78 feet to the POINT OF BEGINNING, also being a point on the North right-of-way line of Power Road, as described in Book 786, Page 303 of the Mesa County Records; thence N 44°38'23"E, a distance of 197.39 feet; thence N40°09'23"E, a distance of 189.06 feet; thence N 21°13'19"E, a distance of 28.93 feet to the POINT OF TERMINUS, whence the Northwest corner of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 15, T1S, R1W, of the Ute Meridian bears S 64°38'41"W, a distance of 1182.41 feet.

The area covered by the easement granted by this Section 2 is identical to the Regency Easement.

3. The easement described in the preceding section is granted subject to the following terms, conditions and limitations:

a. A single pipeline ("Pipeline") will be utilized for the easement rights granted under this Agreement and by the Regency Easement Agreement. The Pipeline shall be engineered and constructed as necessary to protect the Pipeline from any use of the surface of the easement area by BG, as well as to comply with any applicable federal, state and local requirements, and no part of the cost of construction shall be paid by BG. The City acknowledges and agrees that BG's use of the surface of the easement does now and will in future include parking on and movement over the easement of heavy trucks, with trucks such as those currently used weighing up to 200,000 pounds and with the City's understanding and agreement that heavier trucks may be used for these purposes in the future. The City agrees that use of the surface of the easement as described in this subsection will not constitute unreasonable interference by the surface owner or user with the easement or its use by the City, although this agreement by the City does not waive any truck weight limitations for the use of City streets in effect currently or in the future.

b. The City engineer will inspect and approve engineering and construction of the Pipeline and, after acceptance by the City in accordance with the Development Improvements Agreement between Regency and the City, the City will be responsible for all operation, maintenance, repair and replacement of the Pipeline, except as described in Section 4 below;

c. Subject to Section 4 below, no structures, facilities or improvements on the BG Property at or above ground level shall be constructed or permitted as part of the rights granted by this Agreement;

d. In its exercise of rights granted under this Agreement, the City shall minimize interference with or disruption of BG's use of, or operations on, the BG Property.

e. The size of the Pipeline as initially constructed will be sufficient to handle storm runoff water from the BG Property as presently developed in addition to storm runoff water from the Regency Property and Power Road, and the City will reserve sufficient capacity in the Pipeline to handle storm water runoff from the BG Property as presently developed.

4. Despite anything to the contrary stated in this Agreement, at BG's cost BG may tie into the Pipeline with one or more surface storm water inlets on the BG Property for the purpose of draining storm water runoff originating on the BG Property as it is presently developed. Any construction under this provision shall meet the then current engineering and construction requirements of the City and be subject to inspection and approval by the City engineer.

5. Nothing in this Agreement shall change BG's rights or obligations under the Regency Easement Agreement, and nothing in this Agreement shall create any obligations for the City under the Regency City Agreement except as expressly stated in this Agreement.

6. The provisions of this Agreement shall be binding upon and inure to the benefit of BG, the City, and their respective successors and assigns.

CITY OF GRAND JUNCTION,  
a Colorado home rule municipality

BOTTLING GROUP, LLC,  
a Delaware limited liability company

By: *Mark K. Achen*  
Mark K. Achen, City Manager

By: *[Signature]* CA  
Name: KEVIN ALLEGRETTI-DEVEREAUX  
Title: MANAGING DIRECTOR - DELEGEE



By: *Stephanie Nye*  
Stephanie Nye, City Clerk

**EXHIBIT A**

A tract of land in NW¼ SW¼ of Section 15, Township 1 South, Range 1 West of the Ute Meridian, described as follows:

Beginning at a point in the NW¼ SW¼ of said Section 15, which bears North 10°18' East 1676.9 feet from the Southwest corner of said Section,  
 thence North 39°16½' West 114 feet;  
 thence North 17°23½' West 538 feet,  
 thence North 56°34½' West about 70 feet to the West boundary line of said NW¼ SW¼,  
 thence North about 382 feet to the Northwest corner of said NW¼ SW¼,  
 thence East 1320 feet,  
 thence South 1440 feet,  
 thence North 66°45' West 376 feet,  
 thence North 50°53' West 236 feet,  
 thence North 75°30' West 141 feet,  
 thence North 75°20' West 380 feet to the point of beginning;

EXCEPT the East 260 feet thereof;  
 AND EXCEPT Beginning at a point in the NW¼ SW¼ of said Section 15, which bears North 10°18' East 1676.9 feet from the Southwest corner of said Section,

thence South 75°20' East 380 feet,  
 thence South 75°30' East 141 feet,  
 thence South 50°53' East 97.5 feet to the POINT OF BEGINNING;  
 thence South 50°53' East 138.5 feet,  
 thence South 66°45' East 93 feet,  
 thence North 212.5 feet,  
 thence North 78°35' West 218.8 feet,  
 thence South 8°32' East 132 feet to the POINT OF BEGINNING;

AND EXCEPT that portion lying North and East of the Westerly bank of the Colorado River as described in Book 1401 at page 185.

AND EXCEPT tract conveyed to Mesa County by instrument recorded in Book 786 at page 303;

AND EXCEPT tract conveyed to Mesa County by instrument recorded in Book 941 at page 324.

TOGETHER WITH a right of way 20 feet in width extending 10 feet on each side of the following described line: Beginning at a point on the East line of the NW¼ SW¼ of Section 15, Township 1 South, Range 1 West of the Ute Meridian, whence the Southeast corner of the said NW¼ SW¼ of Section 15, as evidenced in Book 983 at Page 95, bears S 00°00'00" E a distance of 214.12 feet; thence N 50°26'23" W a distance of 337.24 feet, more or less, to the West line of the Holland Property, as conveyed in document recorded in Book 2164 at Page 157 of the records of the Clerk and Recorder of Mesa County, Colorado.