

## **AGREEMENT**

**This Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008 by and between the Kennebunk, Kennebunkport and Wells Water District (the “District”) and Nestle Waters North America Inc., d/b/a Poland Spring (“Poland Spring”).**

## **RECITALS**

**A. Poland Spring owns and operates facilities in the State of Maine by which it pumps spring water from naturally-occurring underground water sources, bottles this water and sells it to retail markets.**

**B. Poland Spring proposes to purchase from Michiel Brown certain property situated in the Towns of Sanford, Kennebunk, and Wells, York County, State of Maine, identified on Sanford Tax Map 23 as Lots 8A and 10G and a portion of 10B, on Wells Tax Map 74A as Lot 1 and Kennebunk Tax Map 7 as Lot 25 and comprising approximately 139 acres (the “Brown Property”), which property is adjacent to certain property owned by the District which is more fully described on Exhibit A attached hereto and made a part hereof (the “District Property”).**

**C. Poland Spring wishes to lease from the District, and the District wishes to lease to Poland Spring, an approximately five (5) acre parcel of land which is a portion of the District Property, identified on Sanford Tax Map R23 as Lot 3 and which has direct access to State Highway 109, together with other portions of the District Property on which the boreholes are or will be located and over which pipelines connecting the spring water sources to the Loading Station run or shall run (the “Leased Premises”), all as approximately identified and described for the initial phase of development on Exhibit B**

attached hereto. Poland Spring proposes to develop, construct, operate and maintain on the Leased Premises a bulk truck loading station (and related pipelines and structures) for the loading and transport of spring water extracted from the Brown Property or the District Property (the “Loading Station”).

D. The District wishes to sell to Poland Spring, and Poland Spring wishes to purchase from the District, from time to time up to the amounts of spring water which may be lawfully extracted from the springs owned by the District (but in no case in excess of 300 gallons per minute, averaged over any consecutive twelve (12) month period) (the “Springs”) and approximately located for the initial phase of development as identified and depicted on said Exhibit B.

E. Poland Spring will have the right and the obligation, at Poland Spring’s sole expense, to design, install, operate and maintain spring water collection facilities and equipment at the Springs, as well as pipelines and other water transmittal and distribution facilities and equipment at the Springs and over, under, and across the Leased Premises (collectively, together with the Loading Station, the “Facilities”).

F. In consideration of Poland Spring’s agreements contained herein to make certain payments to the District and to restrict the use of the Brown Property, the District covenants herein, during the term of this Agreement, not to sell spring water extracted from the Springs (or any other spring located on the District Property) for resale to any other seller of containerized water-based beverages for profit.

G. The District has determined that it will serve a public purpose for the District to lease the Leased Premises to Poland Spring, to sell spring water originating from the Springs to Poland Spring and to enter into the other agreements contained herein. Among other things, by entering into this Agreement the District will maximize the use of

its resources by utilizing uncontaminated spring water before it flows into adjacent brooks, protecting the watershed, and assuring the long-term preservation of the Brown Property.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the District and Poland Spring agree as follows:

### AGREEMENT

1. **Scope and Effective Date of Agreement.**

This Agreement shall take effect upon: (a) approval of this Agreement by a vote of a majority of the Board of Trustees of the District, (b) satisfactory review and completion by Poland Spring (in its sole and absolute discretion) of (i) testing of the Springs for water quality and volume, and (ii) appropriate environmental due diligence (which shall be completed within 60 days after the approval of this Agreement by a vote of a majority of the Board of Trustees of the District, or such additional period of time as may be reasonably required to further investigate and address any issues identified during the course of such environmental due diligence), (c) approval of this Agreement by the Maine Public Utilities Commission (“MPUC”), on terms and conditions that are not materially adverse to Poland Spring or the District, or confirmation by the MPUC staff that such approval is not required, it being understood that the District shall file such application with the MPUC, (d) receipt by Poland Spring of local land use permits from the Town of Sanford and the Town of Wells sufficient to install and operate the Facilities, and (e) Poland Spring’s satisfaction as to the quality of the District’s title in and to the Leased Premises (hereinafter the “Effective Date”). Upon execution of this Agreement, the District hereby agrees to permit Poland Spring to enter upon the District Property to conduct all due diligence investigation referenced herein in connection with development and

construction of the Facilities, including without limitation investigation and drilling of test wells and boreholes.

**2. Term of Agreement; Termination.**

(a) The term of this Agreement will commence on the Effective Date and will continue in effect for a term of thirty (30) years, which term may be renewed and extended at the sole option of Poland Spring for five (5) consecutive additional terms of five (5) years, each exercisable by written notice from Poland Spring to the District at least one (1) year prior to the expiration of the then current term or renewal term, unless earlier terminated as provided in Section 2(b) hereof. The obligations set forth in Sections 3 and 5 hereof shall survive any termination of this Agreement.

(b) This Agreement may be terminated as follows:

(i) by Poland Spring at any time with or without cause upon one (1) year's prior written notice to the District;

(ii) by the District in the event of a breach by Poland Spring of any of the terms of this Agreement which is not cured within thirty (30) days after receipt by Poland Spring of written notice thereof (or, if it is not reasonably practicable to cure such breach within such time period, diligent efforts at cure have commenced within such period and continue thereafter for up to one hundred eighty (180) days);

(iii) by Poland Spring in the event of a breach by the District of any of the terms of this Agreement which is not cured within thirty (30) days after receipt by the District of written notice thereof (or, if it is not reasonably practicable to cure

such breach within such time period, diligent efforts at cure have commenced within such period and continue thereafter for up to one hundred eighty (180) days); or

(iv) by the District, effective at the end of the initial term of this Agreement, if it reasonably determines, based upon the periodic review process described in Section 5(g) hereof, supported by significant, credible evidence, that Poland Spring's extraction of water from the Springs or its use of the Leased Premises as then being conducted and proposed to be conducted (A) has jeopardized or imminently jeopardizes the District's ability to operate in accordance with its environmental permits and licenses, or (B) has had, or imminently threatens to have, a material adverse effect on domestic water supplies in the vicinity of the Springs and such condition or failure is not remedied to the reasonable satisfaction of the District within sixty (60) days after receipt of written notice thereof (and which termination notice must be given no later than one (1) year prior to the expiration of the initial term of this Agreement); or

(v) by the District, effective at the end of the initial term or any renewal term, with or without cause, upon one (1) year's prior written notice to Poland Spring.

### **3. Obligations of the District.**

(a) **Lease of Leased Premises.** Commencing on the Effective Date and continuing throughout the term of this Agreement, the District hereby agrees to lease and does hereby lease the Leased Premises to Poland Spring for its exclusive use and benefit solely for the purposes set forth in Section 5 hereof. On or prior to the Effective Date of this Agreement, in connection with its due diligence review set forth in Section 1 above, Poland Spring, at its sole cost and expense shall be permitted to enter upon the District

Property to survey the Leased Premises. The parties hereby acknowledge that as of the date of this Agreement the development of the Facilities is ongoing, such that design and location of the Facilities on the Leased Premises, as identified and described in Exhibit B, may be modified, and that such modification may result in modification of the boundaries of the Leased Premises. Upon request of Poland Spring, at its sole cost and expense, the District hereby agrees to amend or replace Exhibit B of this Agreement to reflect such modifications and to incorporate a specific metes and bounds legal description of the Leased Premises. The District shall ensure the undisturbed occupancy and use of the Leased Premises by Poland Spring, and, subject to the next succeeding sentence, shall keep such Leased Premises free and clear of all liens, encumbrances, mortgages, easements, rights of access and other adverse claims whatsoever throughout the term of this Agreement. Notwithstanding the foregoing, in the event that the District is required to grant a mortgage in respect of the Leased Premises in connection with a financing transaction, it will do so only upon receipt of a duly executed non-disturbance agreement in favor of Poland Spring in form and substance satisfactory to Poland Spring. The District shall ensure that the Leased Premises have such frontage on State Highway 109 as local zoning may require. Except as otherwise expressly provided in this Agreement, such lease of the Leased Premises is being made on an “as is, where is” basis, Poland Spring having conducted prior to the Effective Date all due diligence and other review with respect to the Leased Premises as it may deem necessary or advisable. The parties agree and acknowledge that Poland Spring shall be entitled to develop other spring water sources on the Brown Property and to utilize the Facilities and equipment on the Leased Premises to transport water obtained from such additional sources.

Upon the payment of the rent and observing, keeping and performing all of the terms and provisions of this Agreement on its part to be observed, kept and performed, Poland Spring may lawfully, peaceably and quietly have, hold, occupy and enjoy the Leased Premises during the term of this Agreement without hindrance or ejection by any persons lawfully claiming under the District, subject to the terms and conditions of this Agreement.

If at any time this Agreement is found to be subordinate to a mortgage or other instrument evidencing that the Leased Property serves as security for any financing commitment of the District, the District shall procure from its lender or mortgagee a subordination, non-disturbance, and attornment agreement in which such lender or mortgagee consents to this Agreement and recognizes and agrees not to disturb Poland Spring's rights under this Agreement in the event that such lender or mortgagee exercises any remedies under its mortgage or any similar instrument, including without limitation, foreclosure.

At any time, and from time to time, upon the written request of the District or Poland Spring, or any mortgagee, the other party within twenty (20) days of the date of such written request agrees to execute and deliver to the requesting party and/or such mortgagee, and in a form reasonably satisfactory to the requesting party and/or such mortgagee, a written statement: (i) ratifying this Agreement; (ii) confirming the commencement and expiration dates of the term of this Agreement; (iii) certifying, to the best of its knowledge, that Poland Spring is in occupancy and has accepted possession of the Leased Premises, and that the Agreement is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated; (iv) certifying, to the best of its knowledge, that all conditions and agreements under this

Agreement to be satisfied or performed by each party have been satisfied and performed except as shall be stated; (v) certifying, to the best of its knowledge, that the other party is not in default under this Agreement and there are no defenses or offsets against the enforcement of this Agreement by either party, or stating the defaults and/or defenses claimed; (vi) reciting the amount of advance rent, if any, paid by Poland Spring and the date to which such rent has been paid; and (vii) any other information which the requesting party or the mortgagee may reasonably require.

The parties agree not to record this Agreement, but each party hereto agrees, on request of the other, to execute a short form memorandum of this Agreement in recordable form in compliance with the requirements of 33 M.R.S.A. § 201, as amended, and satisfactory to Poland Spring and the District, which memorandum may be recorded by either party. In no event shall such memorandum set forth the rental or other charges payable by Poland Spring under this Agreement and any such memorandum shall expressly state that it is executed pursuant to the provisions contained in this Agreement, and is not intended to vary the terms and conditions hereof.

(b) Sale of Water. The District shall sell to Poland Spring such quantities of spring water as Poland Spring may from time to time elect to extract from the Springs, up to the quantities thereof that may permissively be extracted from the Springs under the terms of any limitations set forth in the permit or permits applicable to the Springs, and subject to the limitation set forth in Recital D above. Metering with respect to such water will be installed and maintained by Poland Spring at its sole expense, subject to the approval of the District of such metering equipment, which approval shall not be unreasonably withheld, conditioned or delayed. The point of measurement for the metering will be at the wellhead of each well associated with the Springs and as totalized at

the load station. Spring water extracted from the wellheads identified on Exhibit B as being located in the immediate vicinity of Valley 1 (V1), shall be deemed to be derived fifty percent (50%) from the District Property and fifty percent (50%) from the Brown Property. The data gathered by such meters will be provided to the District by Poland Spring on a monthly basis with respect to each calendar month during the term of this Agreement. Such meters will be periodically calibrated as part of Poland Spring's maintenance obligations with respect to the Facilities, to be conducted on a frequency and in a manner consistent with generally accepted water utility practices. Notwithstanding the foregoing, the District shall have the right at any time to request an audit of such meters, the expense of which audit shall be borne by the District unless it is demonstrated that such meters are inaccurate by more than 2%, in which case the cost of such audit (and any resulting calibration) shall be borne by Poland Spring, and Poland Spring shall be responsible for any underpayment (i) for the preceding three (3) months, or (ii) the period since the last calibration of the meters, whichever is shorter, calculated using the assumption that such miscalibration had been in effect for the entirety of such period.

(c) Cooperation in Permitting and Licensing. The District will cooperate with Poland Spring in connection with obtaining and maintaining in effect all permits, licenses and approvals that Poland Spring may deem necessary or desirable in connection with the operation and maintenance of the business conducted from time to time by Poland Spring at or about the Leased Premises and the Brown Property. All water extraction permits, licenses and approvals, including, if required, a permit from the Maine Department of Environmental Protection pursuant to the Natural Resources Protection Act, shall be applied for and maintained in the name of the District; provided, however, that bulk water transfer permits shall be applied for and maintained in the name of Poland Spring. The

District will promptly review, assist in the preparation of and execute such applications and other materials as are necessary or advisable in connection with obtaining and maintaining in effect any such permits and licenses. As provided in Section 5(c) hereof, however, Poland Spring shall be solely responsible for any and all expenses associated with obtaining and maintaining in effect any such permits, licenses or approvals.

(d) **Exclusivity.** During the term of this Agreement, Poland Spring shall have exclusive use of the Leased Premises and the Facilities. In partial consideration for the payments being made by Poland Spring to the District under this Agreement and the other agreements and obligations of Poland Spring contained herein, the District covenants and agrees that, for so long as this Agreement remains in effect, it will not sell or enter into a contract for the sale of spring water from the District Property for resale by another seller of containerized water-based beverages for profit.

(e) **Right to Suspend.**

(i) The District shall have the right from time to time to suspend or reduce the sale of spring water from the Springs to Poland Spring, upon seven (7) days prior written notice to Poland Spring, for a period not to exceed sixty (60) days, in the event and to the extent, on the basis of significant credible evidence, that the District reasonably deems such action to be necessary in order to end, shorten or ameliorate a short term water shortage or other emergency. For purposes hereof, a reduction in flow of Branch Brook adjacent to the District's treatment plant to less than 3,000,000 gallons per day shall be grounds for the District to suspend or reduce the sale of spring water to Poland Spring.

(ii) The District shall have the right to suspend or reduce the sale of spring water from the Springs to Poland Spring if and to the extent that the District reasonably determines, based upon the

review process described in Section 5(g) hereof, supported by significant credible evidence, that Poland Spring's extraction of water from the Springs or its use of the Leased Premises as then being conducted and proposed to be conducted (A) has jeopardized, or imminently jeopardizes, the District's ability to operate in accordance with its environmental permits and licenses, or (B) has had, or imminently threatens to have, a material adverse effect on domestic water supplies in the vicinity of the Spring, and such condition or failure is not remedied to the reasonable satisfaction of the District within sixty (60) days after receipt by Poland Spring of written notice thereof, which suspension or reduction shall continue for the duration and to the extent of such uncured condition or failure of such consequences thereof described in clause (A) or (B).

(iii) The obligation of Poland Spring to pay minimum rent to the District set forth in subsection 5(h)(iii) hereunder shall be proportionately abated for the duration of any suspension or reduction invoked by the District pursuant to this Section 3(e) that did not arise out of the breach by Poland Spring of any provision of this Agreement.

**4. Representations and Warranties of the District.**

The District hereby represents and warrants to Poland Spring as follows:

(a) The execution and delivery of this Agreement by the District and the performance by the District of the obligations contemplated hereby have been duly authorized by all necessary action on the part of the District, subject, however, to the approval of the District's board of trustees contemplated by Section 2 hereof.

(b) The execution and delivery of this Agreement by the District and the performance by the District of its obligations hereunder do not and will not violate or

conflict with any regulation, permit, license, ordinance or contractual obligation to which the District is subject or by which it or any of its assets are bound.

(c) This Agreement constitutes the valid and binding agreement of the District and is enforceable against the District in accordance with its terms, subject to bankruptcy and equitable principles.

(d) Except for approval of this Agreement by the MPUC, the District holds all permits, licenses and approvals of any governmental agency or instrumentality necessary in order for it to enter into this Agreement and to perform its obligations hereunder.

**5. Obligations of Poland Spring.**

(a) Use of Leased Premises. Unless the District consents to other uses, which consent shall not be unreasonably withheld, delayed or conditioned, Poland Spring covenants and agrees to utilize the Leased Premises solely for the purposes set forth in the Recitals above and other uses reasonably incident or related thereto, but specifically agrees that it will not transfer water from other spring sites to the Leased Premises and will not store or package spring water or other material and equipment on the Leased Premises (beyond that which is incidental to operation and maintenance of the Facilities, it being understood that the Facilities may include one or more silos for the temporary storage of water extracted from the Brown Property and the District Property only before it is loaded onto tankers). All alterations, improvements, personal property and fixtures constructed and/or placed on or at the Leased Premises at the expense of Poland Spring shall be deemed the property of Poland Spring and upon termination of this Agreement Poland Spring shall remove such items unless otherwise agreed to by the parties in writing. In case of damage caused by such removal, the cost of reasonable repairs shall be borne by Poland

**Spring. Upon termination of this Agreement, Poland Spring shall restore the Leased Premises substantially to their condition as of the Effective Date.**

**(b) Restrictions on Brown Property; Right of First Refusal; Purchase Option.**

**During the term of this Agreement and thereafter so long as the Brown Property is owned by (i) Poland Spring or (ii) a permitted assignee pursuant to Section 8(a) below (and, in the case of this clause (ii), the water purchase and facilities lease provisions of this Agreement remain in effect), Poland Spring will keep and maintain the Brown Property in its natural state (other than such development and activities as may reasonably be deemed necessary or appropriate to develop, operate, improve, conduct, and secure the operation of the wellheads thereon ) and will, as of the Effective Date, execute an appropriate document reflecting such restriction to be recorded in the appropriate Registry of Deeds. The District shall have (i) a right of first refusal to purchase the Brown Property in the event that Poland Spring receives, either during the term of this Agreement or within ten (10) years thereafter, a bona fide purchase offer from a third party, and (ii) an option to purchase the Brown Property for a period of five (5) years after the termination of this Agreement; provided, however, that the option to purchase shall expire if (a) prior to the exercise thereof as hereinafter provided, the District receives from Poland Spring the written notice of bona fide purchase offer hereinafter described, or (b) the District terminates this Agreement pursuant to Section 2(b)(v). Such right of first refusal shall be exercisable by written notice from the District to Poland Spring within thirty (30) days after receipt by the District of written notice of such a bona fide purchase offer, after which such right shall be deemed waived. Such right of first refusal shall not apply in connection with a proposed transaction described in Section 8 hereof. Such option to purchase shall be exercisable by written notice from the District to Poland Spring up to thirty (30) days**

prior to the fifth anniversary of the termination of this Agreement, which notice shall include evidence reasonably satisfactory to Poland Spring that such exercise and the purchase of the Brown Property has been duly authorized by all necessary action on the part of the District (including the availability of funding therefor). After receipt of such notice, the parties shall have thirty (30) days in which to agree on a purchase price, and if they fail to do so either party shall have the right to initiate valuation process by designating to the other party in writing a qualified commercial real estate appraiser. The other party shall thereafter shall have thirty (30) days to designate a second qualified commercial real estate appraiser, and the two appraisers so chosen (the “Party-Selected Appraisers”) shall thereafter have thirty (30) days to designate a third qualified commercial real estate appraiser (the “Neutral Appraiser”), and the three appraisers shall thereafter have ninety (90) days in which to arrive at their independent appraisals of the fair market value of the Brown Property. The purchase price shall be the appraisal of the Party-Selected Appraiser that is closest to that of the Neutral Appraiser, and the parties agree to be bound by such determination. Each party shall bear the cost of its own appraisal, and the cost of the third appraisal shall be shared equally by the parties. The closing of the sale shall take place at a mutually agreeable time and place within sixty (60) days after the purchase price has been determined. Poland Spring shall transfer the Brown Property to the District by quitclaim deed with covenant conveying good and marketable title, subject to easements and restrictions of record. The foregoing right of first refusal and option to purchase shall be evidenced by a mutually agreeable document to be recorded at the appropriate Registry of Deeds.

(c) Permits and Licenses. Poland Spring agrees to promptly and diligently apply for and pursue, in cooperation with the District, all permits, licenses and other

regulatory consents and approvals that may be necessary in connection with the activities it proposes to conduct at the Leased Premises and the Brown Property as contemplated by this Agreement, including without limitation in connection with the operation and maintenance of the pipeline, truck loading and spring water collection facilities contemplated hereby. Poland Spring agrees to fund all costs associated with obtaining and maintaining in effect such permits, licenses and approvals, including without limitation the cost of any testing or other activities required in order to obtain such permits. Poland Spring will provide such technical and other assistance as may be reasonably requested by the District in connection with the District's fulfillment of its obligations to make all filings of any reports and other items with governmental agencies related to the subject matter of this Agreement.

(d) **Operation and Maintenance.** Poland Spring will operate and maintain the Facilities in all material respects in accordance with all applicable laws and regulations; provided, however, that any major alterations, repairs or additions to the Facilities will be the sole responsibility of Poland Spring and subject to the approval of the District, which approval shall not be unreasonably withheld, delayed or conditioned. All of such activities shall be conducted at Poland Spring's sole expense.

(e) **District Access to Facilities.** Poland Spring will make available to the District access to the Leased Premises and the Brown Property for purposes reasonably related to this Agreement, including but not limited to verification of Poland Spring's compliance therewith, upon reasonable prior notice, during normal business hours and subject to other conditions reasonably imposed by Poland Spring, including without limitation the requirement that representatives of the District be accompanied at all times by one or more designated employees or representatives of Poland Spring (unless otherwise directed by

Poland Spring) and that such access not interfere with Poland Spring's operations. Notwithstanding the foregoing, the District shall be entitled to have immediate access to the Facilities for shutoff of the spring water collection facilities in the event of an emergency necessitating such action. The District shall exercise diligent efforts to notify Poland Spring as soon as practicable of any such emergency access and any responsive action taken, and shall exercise reasonable efforts to enable representatives of Poland Spring to be present for any such activity. The District shall indemnify and hold Poland Spring harmless from and against any and all loss, cost, expense, injury or other damage arising out of any such access by the District, provided that such indemnification shall not be deemed to and is not intended to waive, release, alter or exceed any liability protections, caps or immunities that are applicable to and/or benefit the District, including without limitation those created under worker's compensation laws and/or the Maine Tort Claims Act.

(f) **Extraction of Water from Springs.** Poland Spring covenants and agrees not to extract from the Springs water in quantities greater than those permitted under Recital D above and the permits and licenses applicable to the Springs.

(g) **Periodic Reporting Obligations.** No later than sixty (60) days after the end of each calendar year, Poland Spring agrees to deliver to the District a written report describing:

(i) any change since the Effective Date or the most recent such report in the location or configuration of the water extraction facilities located at the Springs and operated by Poland Spring hereunder, other than any such change that has previously been approved in writing by the District;

(ii) any material failure by Poland Spring to comply with any provision of this Agreement, any law, regulation, license or regulatory approval applicable to Poland Spring's activities under this Agreement;

(iii) evidence of compliance by Poland Spring with any easement restrictions established between the District and The Nature Conservancy relevant to the Leased Premises or the Brown Property;

(iv) evidence confirming or reflecting that Poland Spring's ongoing operations are not likely to have any significant negative impact on the District's ability to comply with its existing environmental permits or on domestic water supplies in the vicinity of the Springs.

(h) **Payments to the District.**

(i) Concurrently with the execution by the parties of this Agreement, Poland Spring will pay to the District the sum of Seventy-Five Thousand Dollars (\$75,000). In addition, upon the Effective Date, Poland Spring will pay to the District an additional Seventy-Five Thousand Dollars (\$75,000). Upon commencement of operation of the Facilities by Poland Spring (consisting of the commencement of drawing water from the Springs and the transportation of such water (other than solely for testing purposes) to the Loading Station located on the Leased Premises), Poland Spring will pay to the District an additional payment of One Hundred Thousand Dollars (\$100,000).

(ii) Poland Spring will pay the District for water drawn from the Springs at a rate equal to the annual water rates from time to time being charged by the District to its largest volume non-residential customers (which class shall consist of no fewer than twenty (20) customers). Such rate will change effective at the

beginning of the immediately succeeding full calendar month following receipt by Poland Spring of written notice thereof from the District.

(iii) In payment of rent for the lease of the Leased Premises, Poland Spring will pay to the District, in arrears on the last business day of each month, the greater of (A) an amount equal to the monthly water rate with respect to the immediately preceding calendar month calculated in accordance with clause (ii) of this Section 5(h), applied to all water passing through the Loading Station (regardless of whether such water is derived from the Springs or the Brown Property), or (B) a minimum payment of \$50,000 on an annual basis.

(iv) As provided elsewhere herein, Poland Spring shall be solely responsible for all operating costs and expenses associated with the Facilities. In addition, Poland Spring shall be solely responsible for the payment of any real or personal property taxes imposed with respect to the Leased Premises or the Facilities and upon the District's Property on which the Facilities are located and any other taxes or fees resulting from the activities of Poland Spring on the District Property and the Leased Premises during the term of this Agreement.

(i) **Insurance.** Poland Spring shall maintain the following insurance, throughout the term of this Agreement, at Poland Spring's sole cost and expense: (i) commercial general liability insurance providing, on an occurrence basis, a per occurrence limit of not less than \$2,000,000, (ii) automobile liability coverage of not less than \$1,000,000, and (iii) causes of loss-special form (formerly "all risk") property insurance, including flood, covering the Facilities in the amount of the full replacement cost thereof. The District shall be named as an additional insured on both liability and property insurance. Poland Spring's liability coverage shall be primary and non-contributory with

respect to any insurance carried by the District. Poland Spring's insurance policies shall include a provision or endorsement waiving the insurer's right of subrogation against the District. Poland Spring shall promptly provide the District with evidence of the insurance coverage required hereunder and any thirty (30) day notice of cancellation.

(j) **Legal Challenges.** In the event that either the District's or Poland Spring's authority to enter into and perform its respective obligations under this Agreement become subject to a legal challenge, whether in a court of law or administrative proceeding, the District and Poland Spring agree to cooperate with one another in opposing such a challenge. Poland Spring shall promptly reimburse the District for all legal costs reasonably incurred by the District in connection with such a challenge. The District and its counsel shall consult with Poland Spring and its counsel on a regular basis throughout the pendency of such proceedings, and shall not enter into any settlement or other consensual resolution of such proceedings that would have a material adverse effect on Poland Spring without the consent of Poland Spring, which may not be unreasonably withheld, delayed or conditioned.

**6. Representations and Warranties of Poland Spring.**

Poland Spring hereby represents and warrants to the District as follows:

(a) The execution and delivery of this Agreement by Poland Spring and the performance by Poland Spring of the obligations contemplated hereby have been duly authorized by all necessary action on the part of Poland Spring.

(b) The execution and delivery of this Agreement by Poland Spring and the performance by Poland Spring of its obligations hereunder do not and will not violate or conflict with the organizational documents of Poland Spring or any law, regulation, permit,

license, ordinance or contractual obligation to which Poland Spring is subject or by which it or any of its assets are bound.

(c) This Agreement constitutes the valid and binding agreement of Poland Spring and is enforceable against Poland Spring in accordance with its terms, subject to bankruptcy and equitable principles.

(d) Except for those permits contemplated pursuant to Sections 3(c) and 5(c), Poland Spring holds all permits, licenses and approvals of any governmental agency or instrumentality necessary in order for it to enter into this Agreement and to perform its obligations hereunder.

**7. Indemnity, Release and Duty to Defend.**

Poland Spring shall protect, defend, indemnify and hold harmless the District and its officers, directors, employees, and agents from any and all liabilities, taxes, penalties, fines, forfeitures, demands, claims, causes of action, suits and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorney's fees), which such indemnified parties may hereafter suffer, incur, be responsible for or pay out as a result of or arising out of personal injury, bodily injury or property damage attributable to the acts or omissions of Poland Spring or its agents in connection with its ownership and operation of the Facilities, its use of the Leased Premises or its activities otherwise contemplated by this Agreement, or the breach by Poland Spring of this Agreement. The District shall, in writing and within ten (10) business days of receipt, notify Poland Spring of any claim, suit, costs, damages, expenses or liabilities for which indemnity is sought hereunder. Poland Spring shall not be obligated to indemnify the District from any such liabilities or costs primarily arising from the negligence or willful misconduct of the District, or the negligence or willful misconduct of those acting in concert with the District including its

employees and agents, as to which the District hereby agrees to indemnify and hold harmless Poland Spring and its affiliates, employees and agents, provided that such indemnification shall not be deemed to and is not intended to waive, release, alter or exceed any liability protections, caps or immunities that are applicable to and/or benefit the District, including without limitation those created under worker's compensation laws and/or under the Maine Tort Claims Act. In no event shall Poland Spring be liable hereunder for any punitive, special, consequential, exemplary or similar damages. The rights of the District hereunder shall be exclusive of any other rights the District may have, whether under statute or common law.

**8. Assignment/Transfer of Agreement.**

Poland Spring may not assign this Agreement without the prior written consent of the District, which consent shall not be unreasonably withheld, delayed or conditioned, and which consent shall not be required (a) in connection with a sale or other transfer to a single purchaser or transferee of all or substantially all of the assets of Poland Spring located in the State of Maine provided that the purchaser or transferee has agreed to assume the obligations of Poland Spring set forth herein, or (b) in connection with the assignment of this Agreement as collateral in connection with debt financing provided by one or more institutional lenders. Upon any assignment in compliance with the terms of Section 8(a), the District releases Poland Spring from its obligations set forth herein.

**9. Specific Performance.**

The parties agree that breach of certain of the provisions of this Agreement cannot be remedied by damages and that all parties shall have the right to seek specific performance to enforce compliance with the material provisions of this Agreement. Such

remedy, however, shall not be exclusive, but shall be in addition to any other remedy that such party may have under the terms of this Agreement and/or the law.

**10. Miscellaneous.**

**10.1 This Agreement and the performance hereof will be construed and interpreted in accordance with, and governed by, the laws of the State of Maine.**

**10.2 This Agreement may not be modified orally and no modification will be effective unless in writing and signed by the parties to be bound, making specific reference to the changes made to this Agreement. A facsimile signature of a party shall have the same binding legal effect as an original signature.**

**10.3 This Agreement is intended by the parties to integrate all prior discussions and writings, including memoranda and e-mail messages, term sheets, and similar expressions of intent into a single, complete statement of the understandings of the parties with respect to the matters covered by this Agreement and the documents referred to in it. Accordingly, the parties agree that this Agreement supersedes all prior agreements and understandings between the parties with respect to its subject matter (including the letter dated February 22, 2008) and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. The parties further agree and acknowledge that**

**(i) this Agreement has not been entered into under undue time pressure, and that both parties have had an adequate opportunity to review this Agreement with counsel,**

**(ii) no oral assurances have been given by either party that this Agreement is an interim agreement or that a more comprehensive agreement is or will be forthcoming,**

(iii) there are no oral conditions or promises that supplement or modify this Agreement, and

(iv) this Section 10.3 does not constitute “boilerplate”, but rather is a critical substantive provision of this Agreement.

**10.4** Each of the parties agrees that this Agreement is legal and binding upon them and that the Agreement inures to the benefit of all parties, and their respective successors and assigns.

**10.5** All required notices and other communications permitted or required will be made in writing, and will be deemed to have been given if delivered or mailed by certified mail or by a nationally recognized overnight mail service, or via facsimile, to the parties, at the following addresses provided, however, that any party may change the address(es) to which all notices, requests and other communications are to be sent by giving written notice of such address change to the other parties, but such change shall not be effective until notice of such change has been received by the other parties:

**To the District:** Norm Labbe  
Superintendent  
Kennebunk, Kennebunkport and Wells Water District  
P.O. Box 88  
Kennebunk, ME 04043

**With a copy to:** Patrick J. Scully, Esq.  
Bernstein, Shur, Sawyer & Nelson  
100 Middle Street  
Portland, ME 04101

**To Poland Spring:** Tom Brennan  
Northeast Natural Resource Manager  
Nestle Waters North America Inc.  
109 Poland Spring Drive  
Poland Spring, ME 04274

**With a copy to:** Mark Evans, Esq.  
General Counsel

**Nestle Waters North America Inc.  
777 West Putnam Avenue  
Greenwich, CT 06830**

**and to: Philip Ahrens, Esq.  
Pierce Atwood LLP  
One Monument Square  
Portland, ME 04101**

**10.6 This Agreement is for the exclusive benefit of the parties and will not be deemed to give any legal or equitable right, remedy or claim whatsoever to any other person.**

**10.7 This Agreement may be executed in counterparts, each such counterpart will constitute an original and all such counterparts will constitute one and the same instrument.**

**10.8 The invalidity or unenforceability of any provision or part thereof of this Agreement shall not affect the remainder of the provision or any other provisions. This Agreement shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.**

**10.9 The parties have cooperated in the drafting and preparation of this Agreement, which is the product of detailed arms-length negotiation, and have each been represented by counsel; therefore, in interpreting this Agreement, neither party shall be deemed the drafter hereof.**

**10.10 IT IS MUTUALLY AGREED BY AND BETWEEN POLAND SPRING AND THE DISTRICT THAT THE RESPECTIVE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, INCLUDING**

**WITHOUT LIMITATION ANY EVICTION OR FORCIBLE ENTRY AND DETAINER  
ACTION, EXCEPT TO THE EXTENT THAT SUCH WAIVER IS PROHIBITED BY  
APPLICABLE LAW.**

IN WITNESS WHEREOF, the parties have executed this Agreement on the \_\_\_\_  
day of \_\_\_\_\_, 2008.

**NESTLE WATERS NORTH AMERICA INC.**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**KENNEBUNK, KENNEBUNKPORT AND  
WELLS WATER DISTRICT**

**By its Duly Authorized Superintendent:**

\_\_\_\_\_  
**Name:** \_\_\_\_\_

**EXHIBIT A  
(District Property)**

**Tract I-Wells, Portion of Tax Map 75, Lot 2 (Wells Blueberry, Inc)**

Quitclaim Deed with Covenant from Wells Blueberry, Inc. dated October 24, 2007  
and recorded in the York County Registry of Deeds in Book 15291, Page 792.

**Tract II-Wells, Tax Map 74A, Lots 2 and 6 (Stevens)**

Warranty Deed from Jeffrey V. Stevens dated April 7, 2000 and recorded in said  
Registry of Deeds in Book 10259, Page 254.

**Tract III-Wells, Tax Map 74, Lot 3 EXE (DeCormier)**

Quitclaim Deed from William A. DeCormier, Trustee of the Robert DeCormier  
Trust, dated April 5, 2007 and recorded in said Registry of Deeds in Book 15136, Page 120.

**Tract IV-Wells, Tax Map 74A, Lot 5 EXE (Hardy)**

Quitclaim Deed from Dennis L. Hardy and Melodie B. Hardy dated November 8,  
1988 and recorded in said Registry of Deeds of Book 9628, Page 88.

**Tract V-Sanford, Tax Map R23, Lot 9 (Harthorne)**

Warranty Deed from Harthorne Homes, Inc. dated July 23, 1999 and recorded in  
said Registry of Deeds in Book 9595, Page 287.

**Tract VI-Sanford, Tax Map R23, Lots 3, 4, and 8 (Lavalley)**

Deed from A R L Timberlands, Inc. f/k/a Albert R. Lavalley, Inc. dated December 6,  
2000 and recorded in said Registry of Deeds in Book 10345, Page 279.

**Tract VII-Kennebunk, Tax Map 8, Lot 3 (Cook)**

Deed from Jon R. Cook dated March 30, 2007 and recorded in said Registry of  
Deeds in Book 15125, Page 632.

**Tract VIII-Wells, Tax Map 74, Lot 5A EXE (Jewett)**

Deed from Martin H. Jewett dated April 20, 2001 and recorded in said Registry of  
Deeds in Book 10616, Page 288.

**EXHIBIT B**  
**(Leased Premises & Spring Sites)**

