

EXHIBIT A TO NEIL KAVANAUGH ANSWER-  
SHARE PURCHASE AGREEMENT, MADE AS OF DECEMBER 7, 1986,  
SIGNED, WITH SCHEDULES A AND B [431 - 456]

FILED: ERIE COUNTY CLERK 07/08/2022 12:00 PM

NYSCEF DOC. NO. 91

INDEX NO. 806587/2022

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*original*

SHARE PURCHASE AGREEMENT

THIS AGREEMENT is made as of the 27th day of December, 1986, by and among LAWRENCE M. KAVANAUGH, residing at 763 North Colony Drive, Grand Island, New York 14072, (the "Principal"), his children listed on Schedule A attached hereto and made a part hereof (such children are hereinafter collectively referred to as the "Shareholders" and individually as the "Shareholder") and CONSUMERS BEVERAGES, INC., a New York corporation having its principal office and place of business at 2230 South Park Avenue, Buffalo, New York 14220, (hereinafter referred to as the "Corporation").

Background. The parties hereto believe that it is in the best interest of the Corporation for the shares of the Corporation which the Shareholders now own or which they may hereafter acquire to be owned solely by the Shareholders or the Principal and for the voting common shares of the Corporation to be owned solely by the Principal or those Shareholders who are employed by the Corporation. Therefore, the parties to this Agreement wish to provide for the continuity of ownership and the orderly transfer of the shares of the Corporation which the Shareholders now own or which they may hereafter acquire, upon the terms and conditions contained in this Agreement.

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NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement the parties agree as follows:

1.0 General Restrictions Against Transfer and Other Dispositions of Shares.

Each of the Shareholders agrees that, except as specifically provided herein in Articles 2.0 through 6.0 hereof, neither the Shareholder nor his or her legal representatives shall sell, donate, assign, assign as collateral, pledge, hypothecate, encumber, suffer to be encumbered, transfer or otherwise dispose of in any manner whatsoever, whether voluntary or involuntary or by operation of law or otherwise, or enter into any agreement to do so, any shares of the Corporation or any interest therein which the Shareholder now owns or which he or she may hereafter acquire. The parties hereto agree that any attempt to make or to agree to make any such sale, donation, assignment, collateralization, pledge, hypothecation, encumbrance, transfer or other disposition in contravention of the provisions of this Agreement shall be null and void. Compliance with the provisions of this Agreement shall be a condition precedent to the transfer of shares of stock upon the books of the Corporation and of such transfer. No dividend shall be paid on any shares sold, donated, assigned, collateralized, hypothecated, pledged, encumbered,

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transferred or otherwise disposed of in breach of this Agreement and all such shares shall be denied all rights to vote.

2.0 Sale Upon Sale of Shares by Principal.

*Explains*

In the event that the Principal, or his legal representatives, agrees to or offers to sell all of the Principal's shares of the Corporation, each Shareholder shall, if the Principal or his legal representatives so direct in writing sent by certified mail to such Shareholder, offer in writing, sent by certified mail within thirty (30) days after such Shareholder's receipt of such written notice from the Principal or his legal representatives, to sell all of his or her shares of the Corporation to the same person or entity which agreed to purchase all of the shares of the Principal (the "Acquirer") at a price per share equal to the greater of (1) the purchase price per share determined in accordance with the provisions of Article 8.0 hereof or (2) the price per share to be paid by the Acquirer for the shares of the Principal. Each Shareholder's offer to the Acquirer shall be conditioned upon the occurrence of the closing of the sale and purchase of the Principal's shares of the Corporation to the Acquirer. Each Shareholder's offer to the Acquirer shall continue in effect for the thirty (30) day period commencing upon the date of Acquirer's receipt of such Shareholder's written offer, during which time the shares of such Shareholder shall not

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be sold, assigned, encumbered or transferred to anyone except the Acquirer pursuant to such offer. The Closing (as hereinafter defined in Article 9.0) of the sale and purchase of each Shareholder's shares of the Corporation pursuant to this Article 2.0 shall take place in accordance with the terms and conditions of the agreement for the sale of the Principal's shares to the Acquirer.

3.0 Sale Upon Death.

3.1 Offer To Principal. Each Shareholder agrees that upon his or her death, his or her legal representatives shall offer in writing, sent by certified mail within thirty (30) days after their appointment, to sell all of the shares of the Corporation owned by such Shareholder at the time of his or her death to the Principal at a purchase price per share determined in accordance with the provisions of Article 8.0 hereof. Such offer shall continue in effect for a period of thirty (30) days from the date of its making, during which time the deceased Shareholder's shares shall not be sold, assigned, encumbered or transferred to anyone except the Principal pursuant to such offer. The Principal shall have the option to elect to accept such offer in whole or in part by sending written notice of such election to the deceased Shareholder's legal representatives by certified mail prior to the expiration of such thirty (30) day period. The

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Closing of the sale and purchase of the deceased Shareholder's shares shall take place in accordance with the provisions of Article 9.0 hereof within thirty (30) days of the expiration of the option period provided in this Section 3.1.

3.2 Purchase By Corporation. If the Principal does not elect to purchase all of the shares offered for sale pursuant to Section 3.1 hereof prior to the expiration of the thirty (30) day period provided for therein, or if the Principal is not then living, then the legal representatives of the deceased Shareholder shall sell to the Corporation, and the Corporation shall purchase, all of such shares which the Principal did not elect to purchase, at a purchase price per share determined in accordance with the provisions of Article 8.0 hereof. The Closing of the sale and purchase of the deceased Shareholder's shares shall take place in accordance with the provisions of Article 9.0 hereof within thirty (30) days of the expiration of the option period provided in Section 3.1 hereof.

4.0 Right of First Refusal.

4.1 Offer. Each Shareholder agrees that, if at any time during his or her lifetime he or she shall receive a bona fide offer from a third party for, and he or she shall desire to sell, all, but not less than all, of his or her shares of the

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Corporation, such Shareholder shall first offer to sell all of his or her shares of the Corporation to the Principal, those other Shareholders entitled to purchase such shares pursuant to Section 7.2 hereof and the Corporation (sometimes hereinafter referred to individually as the "Offeree" and collectively as the "Offerees"), who shall have the option to purchase such shares pursuant to the provisions of Article 7.0 hereof at a purchase price per share computed under the provisions of Article 8.0 hereof. Said first offer to the Offerees shall be in writing, shall be sent by certified mail, and shall be accompanied by an executed copy of the bona fide offer which sets forth all of the terms and conditions of the bona fide offer. Said first offer may be accepted only in whole, not in part, by one or more of the Offerees pursuant to Article 7.0 hereof. Said first offer to the Offerees shall continue in effect during each of the Option Periods provided in Article 7.0 hereof, during which time the selling Shareholder's shares shall not be sold, assigned, encumbered or transferred to anyone except the Offerees pursuant to said first offer.

4.2 Acceptance of Offer. If one or more of the Offerees accepts in whole said first offer prior to its expiration, the Closing of the sale and purchase of the Shareholder's shares shall take place in accordance with the provisions of

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Article 9.0 hereof within thirty (30) days from the end of the Option Periods provided for in Article 7.0 hereof.

4.3 Non-Acceptance of Offer. If one or more of the Offerees does not accept in whole said first offer prior to its expiration, all, but not less than all, of the selling Shareholder's shares may be sold, assigned or transferred by him or her to the bona fide offeror pursuant to the terms of the bona fide offer within one hundred twenty (120) days after the expiration of said first offer to the Offerees. If all of the selling Shareholder's shares are not sold, assigned or transferred by him or her to the bona fide offeror pursuant to the terms of the bona fide offer within said one hundred twenty (120) days, said shares shall remain subject to the restrictions of this Agreement and shall not be sold, assigned or transferred except in accordance with the terms and conditions of this Agreement.

5.0 Sale Upon Bankruptcy.

Each Shareholder agrees that upon the occurrence of any of the following events:

- (a) his or her adjudication as a bankrupt,
- (b) the institution by or against him or her of a petition for arrangement or of any other type of insolvency proceeding under the Bankruptcy Code or otherwise,

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(c) his or her making of a general assignment for the benefit of creditors,

(d) the appointment of a receiver or trustee in bankruptcy of him or her for any of his or her assets, or

(e) the taking, making or institution of any like or similar act or proceeding involving him or her,

and in the event such adjudication, institution, making, appointment or like or similar act or proceeding shall not be cured or rescinded within sixty (60) days, then at the end of said sixty (60) day period, the Shareholder, or his or her successor or successors in interest (the Shareholder and his or her successor or successors in interest are hereinafter collectively referred to as the "Insolvent Shareholder") shall offer in writing, sent by certified mail, to sell all of the shares of the Corporation owned by the Insolvent Shareholder as of the date on which such event occurs to the Offerees, who shall have the option to purchase such shares pursuant to Article 7.0 hereof, at a purchase price per share computed under the provisions of Article 8.0 hereof. Said offer may be accepted in whole or in part by one or more of the Offerees pursuant to Article 7.0 hereof. If said offer is accepted by one or more of the Offerees, the Closing of the sale and purchase of the Insolvent Shareholder's shares shall



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take place in accordance with the provisions of Article 9.0 herein within thirty (30) days from the end of the Option Periods provided for in Article 7.0 hereof.

6.0 Sale Upon Termination of Marriage.

In the event that a final order, judgment or decree of a court in a divorce proceeding, not subject to appeal, is entered with respect to the marriage of a Shareholder directing the transfer of all or part of such Shareholder's shares of the Corporation to his or her spouse, such Shareholder shall offer in writing, sent by certified mail within five (5) days of the entry of said final order, judgment or decree, to sell to the Offerees, and the Offerees shall have the option to purchase in the manner provided in Article 7.0 hereof, all of the shares of the Corporation so directed to be transferred by such Shareholder at a purchase price computed under the provisions of Article 8.0 hereof. Such offer shall include notice of the entry of said order, judgment or decree. Said offer may be accepted in whole or in part by the Offerees. If said offer is accepted by one or more of the Offerees prior to the expiration thereof, the Closing of the sale and purchase of such Shareholder's shares shall take place in accordance with the provisions of Article 9.0 hereof within thirty (30) days from the end of the Option Periods provided for in Article 7.0 hereof.

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7.0 Option Periods.

7.1 First Option Period. From the date of his receipt of a written offer to purchase shares of the Corporation made pursuant to any of Articles 4.0 through 6.0 hereof, the Principal shall have thirty (30) days ("First Option Period") to elect to purchase all or a portion of such shares.

7.2 Second Option Period. If the Principal does not elect pursuant to Section 7.1 hereof to purchase all of the shares offered for sale pursuant to Articles 4.0 through 6.0 hereof, each of the nonselling Shareholders shall have thirty (30) days ("Second Option Period") from the expiration of the First Option Period or, if the Principal is not then living, from the date of his or her receipt of a written offer to purchase shares made pursuant to any such Article, to elect to purchase all of his or her proportionate fraction of the shares offered for sale; provided, however, that those Shareholders who are not employed by the Corporation at the time of such offer shall not be entitled to purchase voting shares of the Corporation pursuant to this Agreement. The proportionate fraction for each such Shareholder shall be a fraction with the number of shares owned by such Shareholder as the numerator, and the number of shares owned by all of such Shareholders who are entitled to purchase as the denominator.

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7.3 Third Option Period. If any Shareholder who is entitled to do so does not elect to purchase his or her entire proportionate fraction of the shares offered for sale pursuant to Articles 4.0 through 6.0 hereof, whichever is applicable, prior to the expiration of the Second Option Period, and if any of the other Shareholders who are entitled to do so have elected to purchase their entire proportionate fraction during said period, then each such Shareholder who has elected to purchase his or her entire proportionate fraction shall have fifteen (15) days ("Third Option Period") from the expiration of the Second Option Period to elect to purchase all or part of the shares remaining for sale. If such Shareholders respectively elect to purchase pursuant to this Section 7.3, in the aggregate, a greater number of shares than are remaining for sale, each such Shareholder shall be entitled to purchase only his or her proportionate fraction thereof, with the number of shares owned by such Shareholder as the numerator and the number of shares owned by all of the remaining Shareholders who have elected to purchase shares pursuant to this Section 7.3 as the denominator.

7.4 Fourth Option Period. If the Principal or the nonselling Shareholders elect pursuant to Sections 7.1 through 7.3 hereof to purchase none or less than all of the shares offered for sale pursuant to any of Articles 5.0 and 6.0 hereof,

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the Corporation shall have ten (10) days (the "Fourth Option Period") from the expiration of the Third Option Period to elect to purchase any or all of the shares of the selling Shareholder remaining for sale. If the Principal or the nonselling Shareholders elect pursuant to Sections 7.1 through 7.3 hereof to purchase none or less than all of the shares offered for sale pursuant to Article 4.0 hereof, the Corporation shall be entitled during the Fourth Option Period to elect to purchase all, but not less than all, of such shares remaining for sale. In the event that the Corporation does not elect to purchase all of such shares remaining for sale pursuant to Article 4.0 hereof, then the selling Shareholder shall be entitled to sell all of his or her shares of the Corporation to the bona fide offeror pursuant to Section 4.3 hereof.

7.5 Effecting Election. Election by an Offeree to purchase shares of the Corporation offered for sale by a selling Shareholder pursuant to this Agreement shall be effected by sending, by certified mail, written notice of such election to such selling Shareholder prior to the expiration of the applicable Option Period specified in this Article 7.0.

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8.0 Determination of Purchase Price.

8.1 The Valuation. Except as otherwise provided in Sections 8.2 or 8.3 hereof, the purchase price per share of the voting and non-voting shares of the Corporation to be sold to any Offeree pursuant to this Agreement (the "Purchase Price") shall be the "Valuation" (as defined in this Section 8.1) as of the "date of the event giving rise to a sale" (as defined in this Section 8.1). At least annually within sixty (60) days of the preparation of the Financial Statements (as defined in Section 8.2 hereof) of the Corporation at the place of the Corporation's annual shareholders' meeting, or more frequently if all of the parties hereto so elect, the Principal, if then living, the Shareholders and the Corporation shall in good faith endeavor to reach agreement as to a single fair market valuation per share of the Corporation's voting and non-voting shares. Such valuation shall be determined by the Principal, if then living, the Corporation and a majority of the Shareholders, whereupon such valuation shall be reflected in a writing prepared and executed by the Principal, if then living, such majority of the Shareholders and the Corporation (the "Valuation"). The Valuation so established shall remain in effect until thereafter jointly redetermined by the Principal, if then living, a majority of the Shareholders and the Corporation, notwithstanding the fact that a redetermination

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of the Valuation may not have occurred annually as provided in this Section 8.1. Until the first such determination, the Valuation for each voting and non-voting share of the Corporation shall be Two Hundred Dollars per share (\$200.00).

The "date of the event giving rise to a sale" shall be the date of the Principal's agreement to sell his shares pursuant to Article 2.0 hereof, the Shareholder's date of death pursuant to Article 3.0 hereof, the date of the first offer to the Offerees pursuant to Article 4.0 hereof, sixty (60) days from the date on which any of the events listed in Article 5.0 hereof occurs, whichever is applicable, or the date of the entry of the final order, judgment or decree pursuant to Article 6.0 hereof.

8.2 Book Value. In the event that the Valuation has not been redetermined pursuant to Section 8.1 hereof within the one-year period immediately preceding the applicable date of the event giving rise to a sale, the Purchase Price of the voting or non-voting shares of the Corporation to be sold to any Offeree pursuant to this Agreement shall be equal to the greater of (a) the "Book Value" (as defined in this Section 8.2) per share as of such date of the event giving rise to a sale or (b) the most recent prior Valuation per share. The "Book Value" per share for purposes of this Section 8.2 shall mean (i) the shareholders' equity as shown on the fiscal year-end financial statements of

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the Corporation prepared by the certified public accountants regularly employed by the Corporation (the "Financial Statements") for the fiscal year immediately preceding the applicable date of the event giving rise to a sale, divided by (ii) the number of voting and non-voting shares of the Corporation issued and outstanding as of the applicable date of the event giving rise to a sale.

8.3 Optional Price. With respect to an offer to purchase pursuant to Article 4.0 hereof only, each Offeree shall have the option, in his, her or its sole discretion, to pay the Purchase Price based upon the price per share to be paid under the bona fide offer.

9.0 Closing of Sale and Purchase.

9.1 Delivery of Share Certificates. The certificate or certificates representing the shares to be purchased, properly endorsed for transfer, or with an executed stock power attached, shall be delivered to each purchaser of shares under this Agreement free and clear of all liens and encumbrances on the date fixed in Articles 2.0 through 6.0, whichever is applicable, for the sale and purchase of the shares (the "Closing") against payment of the Purchase Price due from the purchaser.

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9.2 Payment of the Purchase Price. Except as otherwise required under Section 9.3 hereof, or except as to payment of the Purchase Price for shares purchased pursuant to Article 3.0 hereof which shall be paid entirely in cash, the Purchase Price shall be paid by each purchaser of shares under this Agreement to the Shareholder at the Closing (a) entirely in cash or (b) by a portion of the Purchase Price in cash in an amount equal to at least ten percent (10%) of the Purchase Price and the remaining balance of the Purchase Price in the form of a promissory note of such purchaser to the Shareholder, as such purchaser shall determine in his, her or its sole discretion. Any promissory note delivered in payment of the Purchase Price shall be non-negotiable, shall be payable in forty (40) equal quarterly installments commencing three months after the Closing, shall bear interest, payable when payment of principal is due, on the unpaid balance thereof at a rate per annum which shall be equal to the minimum rate of interest permitted by the Internal Revenue Code of 1986, as amended, without the imputation of interest, and shall otherwise be substantially in the form of Schedule B, attached hereto and made a part hereof, (the "Note"). The Note shall be subject to prepayment, without penalty, in whole or in part; provided, however, that all partial prepayments shall be applied against the outstanding installments of principal in the inverse order of their maturity.



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9.3 Payment Option. If an Offeree purchasing shares pursuant to Article 4.0 hereof elects, in his, her or its sole discretion, to pay the Purchase Price based upon the price per share under the bona fide offer, as permitted under Section 8.3 hereof, then such Offeree shall pay the Purchase Price in accordance with all of the terms and conditions set forth in the bona fide offer, rather than as provided in Section 9.2 hereof.

10.0 Surplus.

The Principal and the Shareholders agree, for themselves and their respective legal representatives, and the Corporation agrees, that if at any time it is necessary to create additional surplus to permit the Corporation to carry out any of its obligations under this Agreement, the Corporation shall promptly take such steps, and the Principal and each Shareholder, or their respective legal representatives, shall cooperate in causing it to take such steps as may legally be taken to create such surplus.

11.0 Termination of Employment.

In the event a Shareholder who is employed by the Corporation ceases to be employed by the Corporation for any reason whatsoever, whether voluntarily or involuntarily, such

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Shareholder shall deliver all certificates representing voting common shares owned by such Shareholder, if any, to the Corporation to be redeemed, and the Corporation shall redeem all of such shares, in exchange for an equal number of non-voting common shares.

12.0 Payment of Stock Transfer Stamp Taxes.

The Corporation shall pay any applicable federal, state or local stock transfer stamp taxes upon the purchase or redemption of any shares from any Shareholder, or his or her or her legal representatives, by any Offeree pursuant to this Agreement.

13.0 Legend.

Each of the Shareholders agrees that, upon the execution of this Agreement, he or she will cause all share certificates of the Corporation owned by him or her, and the Corporation agrees to cause all share certificates hereafter issued pursuant to this Agreement, to be endorsed with a legend in substantially the following form:

"This certificate and the shares represented thereby are subject to the provisions of an Agreement dated as of December, 1986 whereby by the sale, donation, assignment, assignment as collateral, pledge, hypothecation, encumbrance, transfer or other disposition of such shares is restricted. A copy of said Agreement is on file at the principal office of the Corporation where it may be inspected."

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#### 14.0 Equitable Relief.

Since the shares of the Corporation cannot be readily purchased or sold in the open market, the parties hereto will be irreparably damaged in the event that this Agreement is not enforced. Therefore, should any dispute arise concerning the sale or other disposition of any of the shares of the Corporation subject to this Agreement, each of the Shareholders agrees and consents, for himself or herself and his or her legal representatives, that an injunction may be issued by a court of competent jurisdiction restraining any sale or other disposition of such shares pending the termination of such dispute. Each of the Shareholders agrees, for himself or herself and his or her legal representatives, not to urge in any such action that an adequate remedy exists at law. In the event of any dispute concerning the right or obligation to purchase, redeem or sell any of the Shareholders' shares of the Corporation, such right or obligation shall be enforceable in a court of competent jurisdiction by a decree of specific performance. Such remedies shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy which the parties hereto may have. The parties hereto consent to jurisdiction in the State of New York and venue in the County of Erie for any action or proceeding arising under this Agreement.

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**15.0 Notice.**

All notices and other communications given pursuant to this Agreement shall be deemed to have been properly given (i) if hand delivered, or (ii) if mailed, addressed to the appropriate party at the address of such party as shown on Schedule A hereto, postage prepaid, by certified mail return receipt requested. A copy of any notice sent pursuant to this Article shall also be sent to Hodgson, Russ, Andrews, Woods & Goodyear, 1800 One M & T Plaza, Buffalo, New York 14203 Attention: Paul R. Comeau, Esq. Any party may from time to time designate by written notice given in accordance with the provisions of this Article 15.0 any other address or party to which such notice or communication or copies thereof shall be sent.

**16.0 General.**

This Agreement shall be governed by and construed under the internal domestic laws of the State of New York. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. Headings and subheadings in this Agreement are for convenience of reference only and are not of substantive effect. This Agreement constitutes the entire agreement between the parties with respect of the subject matter hereof and shall

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supersede all prior negotiations, understandings and writings (or any part thereof), whether oral or written, between any of the parties relating to the subject matter of this Agreement. Except as otherwise provided in this Agreement, this Agreement may not be terminated, modified or amended orally or by any course of conduct or usage of trade, but only by an agreement in writing duly executed by all parties. If any restriction with respect to the disposition of shares of the Corporation is found to be unreasonable by a court of competent jurisdiction, the parties agree to submit to such modification of such restriction as a court may determine to be reasonable. If any article, section, subsection, paragraph or portion of this Agreement shall be determined to be invalid, it shall not effect the remainder of this Agreement, which shall be and remain binding and effective as against all parties. This Agreement may be executed in counterparts each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument, which may be sufficiently evidenced by one counterpart.

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

Lawrence M. Kavanaugh  
Lawrence M. Kavanaugh

Cornelius Kavanaugh  
Cornelius Kavanaugh

Mary Ellen Kavanaugh  
Mary Ellen Kavanaugh

Lawrence M. Kavanaugh, Jr.  
Lawrence M. Kavanaugh, Jr.

Matthew Kavanaugh  
Matthew Kavanaugh

James E. Kavanaugh  
James Kavanaugh

Helen V. Kavanaugh  
Helen Kavanaugh

Mark J. Kavanaugh  
Mark Kavanaugh

Cornelius Kavanaugh  
Cornelius Kavanaugh  
As custodian for  
Martha Kavanaugh under  
the New York Uniform  
Gifts to Minors Act.

CONSUMERS BEVERAGES, INC.

By Lawrence M. Kavanaugh  
Lawrence M. Kavanaugh, President

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SCHEDULE A

## CONSUMERS BEVERAGES, INC.

Shareholder list as of  
August 25, 1986

<u>Shareholder</u>	<u>Address</u>	<u>Voting Common Shares</u>	<u>Non-Voting Common Shares</u>
Lawrence M. Kavanaugh	2230 South Park Ave. Buffalo, New York 14220	435	9,285
Cornelius Kavanaugh	2230 South Park Ave. Buffalo, New York 14220	35	
Mary Ellen Kavanaugh	2230 South Park Ave. Buffalo, New York 14220		35
Lawrence M. Kavanaugh, Jr.	2230 South Park Ave. Buffalo, New York 14220		35
Matthew Kavanaugh	2230 South Park Ave. Buffalo, New York 14220	10	25
James Kavanaugh	2230 South Park Ave. Buffalo, New York 14220	10	25
Helen Kavanaugh	2230 South Park Ave. Buffalo, New York 14220	10	25
Mark Kavanaugh	2230 South Park Ave. Buffalo, New York 14220		35
Cornelius Kavanaugh, As custodian for Martha Kavanaugh under the New York Uniform Gifts to Minors Act.	2230 South Park Ave. Buffalo, New York 14220		35