



July 18, 2017

**The Town of Huntersville
Huntersville Parks & Recreation Center
Huntersville Recreation Center
Town Hall
Town Center
Huntersville Police Department**

FOUNTAIN BEVERAGE SALES AGREEMENT

This letter sets forth the agreement (the "Agreement") between Pepsi Bottling Ventures LLC ("PBV") and The Town of Huntersville-serving **Huntersville Parks and Recreation Center, Huntersville Parks & Recreation, Town Hall, Town Center, Huntersville Police Department, a North Carolina Municipal corporation** with its principal place of business at 105 Gilead Rd. location on its own behalf, on behalf of its affiliates and wholly-owned subsidiaries, and on behalf of its individual franchisees and licensees, if any, now or hereafter in existence (the "Customer"). Throughout this Agreement, PBV and the Customer may be referred to individually as a "Party" or collectively as the "Parties." In consideration of the mutual promises and covenants sets forth herein, the Parties hereto agree as follows:

1. **Term.** The term of this Agreement shall commence on August 7, 2017 and shall expire upon the later of August 6, 2022 or 7,550 cases (the "Term"). This Agreement shall thereafter automatically renew for successive additional terms of one (1) year each (a "Renewal Term") and upon its stated terms and conditions, unless contrary written notice is given by either Party to the other at least sixty (60) days prior to expiration of the Term or current Renewal Term. For purposes of this Agreement, the term "Year" shall mean a twelve (12) month period during the Term or any Renewal Term beginning on the first day of the Term, Renewal Term or anniversary thereof; the term "Gallons" shall mean gallons of postmix or premix Fountain Products, as defined below, purchased by Customer from PBV; and "Cases" shall mean cases of Packaged Products, as defined below, purchased by Customer from PBV and delivered in such other size, quantity and type of containers as the Parties may, from time to time, mutually agree upon in writing, during the Term or any Renewal Term.

2. **Scope and Exclusivity.** During the Term or any Renewal Term, Customer agrees that all non-alcoholic postmix or premix fountain, bottled or canned products served, or otherwise made available, on the premises of all of the outlets listed on page 8 of this agreement (the "Outlets") will be purchased exclusively from PBV (hereinafter, the postmix or premix

fountain products may be referred to as the "Fountain Products"; the bottled or canned products may be referred to as the "Packaged Products"; and collectively, the Fountain Products and Packaged Products may be referred to as the "Products"). The Products may include, without limitation, Pepsi-Cola Company branded soft drinks and non-carbonated beverages, Lipton branded non-carbonated beverages, Aquafina branded products, and such other soft drink, tea, juice, bottled water, and isotonic product as PBV may offer for sale to Customer.

The Customer agrees that all cases PBV will use commercially reasonable efforts to maintain its costs and prices throughout the Term or any Renewal Term of this Agreement. However, prices are subject to change upon notice to Customer throughout the Term or any Renewal Term, but in any event shall remain competitive with current average market prices.

The Customer agrees that no non-alcoholic fountain, bottled, or canned beverages other than the Products shall be in any way advertised, displayed, represented or promoted at or in connection with the Customer by any method or through any medium whatsoever (including, without limitation, print, broadcast, direct mail, coupons, displays and signage) at outlets listed on page 8 of this agreement.

3. Equipment and Service Support.

A. Equipment. Upon execution of this Agreement or at such time as the useful life of Customer's existing beverage dispensing equipment in any Outlet expires, PBV will install and maintain in each Outlet, at no charge to the Customer, a mutually agreed upon number of beverage dispensing units to be used exclusively for dispensing the Products (the "Equipment").

B. Maintenance. All Equipment shall at all times remain the sole property of PBV or its affiliate. PBV shall have the exclusive right to repair, replace, move or remove any and all Equipment. At no charge to the Customer, PBV will repair and maintain the Equipment, and agrees to keep the Equipment in good working order and condition at all times. Customer agrees to promptly notify PBV of any need for repair or service, and to fully cooperate with PBV in effecting such necessary repairs or service. Notwithstanding the foregoing, Customer agrees to use reasonable efforts to keep the Equipment in clean and sanitary condition, wholly free of all Customer or third party materials or advertising, at all times.

4. Support Funds. PBV shall provide Customer the following support funds (the "Support Funds"):

A. Marketing Fund. Following the execution of the Agreement, PBV will purchase 2 scoreboards for Huntersville Parks and Recreation Center (facility across from Huntersville Aquatics). Pepsi will be included on scoreboard (out of 5 panels Pepsi can use 2). At the end of the term the customer will take over ownership of the scoreboards.

B. Rebate Funds. PBV will pay a case rebate on all products purchased at a rate of \$2.00 per case throughout term of agreement. To be

paid to customer on anniversary of contract year. In first year of agreement, rebate to be paid from May 23, 2017 to August 6, 2018.

- C. **Commission:** PBV will pay 40% commission on \$1.50 vend price for full service vending, for HFAA and Huntersville Parks & Recreation. ** The full service vending for Town Hall, Police Department, and Town Center will be .85 cents vend price for 20oz. bottles or .50 cents for 12oz. cans and *No commission.
- D. **Pricing:** PBV will price the soft drinks the same for all locations under this contract outlet page, and that price will be- 20oz. soft drinks at \$17.74 a case and 20oz. Gatorade at \$19.67 a case and Aquafina 20oz. at \$9.84 per case for 2014 for all of the outlets listed on outlet page. This will include all Parks & Recreation locations. With a guarantee of (*No more than a 4% increase on these products annually.)
- E. **Special Events:** PBV will support with 30 cases (12oz cans and/or 16.9oz water) annually for events the town may need.

5. **Performance Requirements.** This Agreement, including payment of all Support Funds, is contingent upon the Customer complying with the following performance criteria throughout the Term or any Renewal Term in or with respect to each of the Outlets:

A. **Products Availability.** At a minimum, the Customer agrees that the following Fountain Products will be available throughout the Term or any Renewal Term: **[Pepsi, Diet Pepsi, Mountain Dew, Sierra Mist]**, plus **[3]** additional carbonated or non-carbonated Product(s) (such as, but not limited to, soft drink, tea, lemonade, fruit punch, or sports drink) to be selected in PBV's sole discretion.

B. **Brand Identification.** There will be brand identification for each Fountain Product served on all menus, menuboards and Fountain Product dispensing valves.

C. **No Re-Sale.** Customer shall not resell the Fountain Product postmix or premix to non-affiliated outlets or to consumers in any form other than as finished Fountain Products. Further, Customer will prepare the Fountain Products:

- (i) only in accordance with PBV's procedures and standards; and
- (ii) only for immediate or imminent consumption.

D. Marketing Programs. PBV shall work directly with the Customer to promote Product sales through appropriate point-of-sale materials and other advertising materials bearing the trademarks of the Products. Customer will participate in at least [1] PBV-approved marketing programs per Year. Customer may use the Support Funds available under this Agreement to help offset the advertising and promotion costs of such programs.

E. List of Outlets. Attached hereto as **EXHIBIT 1** is a list of all Outlets, including name, location, telephone number(s) and points of contact for each Outlet. Hereafter, for the remainder of the Term or any Renewal Term, Customer shall notify PBV, in writing, of each Outlet that is opened, acquired, closed or sold, and the relevant information pertaining thereto.

F. Payment Terms. Throughout the Term or any Renewal Term, Customer agrees that payment for Products delivered to Customer will be received by PBV within thirty (30) days of invoice (if Customer pays by invoice) or within fifteen (15) days of statement (if Customer pays by statement), or in accordance with such other payment terms as PBV may establish from time to time.

G. Payment Terms. PBV agrees to provide prompt/ quality service to all Town locations. Any concern related to slow or poor quality service shall be reported by the Town and PBV shall have 60 days to remedy the quality/service complaint or Town shall have the right to termination as indicated in item 6 below.

6. Default and Termination. A breach of any of the terms or conditions of this Agreement not cured within [sixty (60)] days after the non-breaching Party provides written notice of the breach to the breaching Party shall conclusively be a material breach (a “Material Breach”). For the avoidance of doubt, any sale of competitive beverages or Product purchased from any supplier other than PBV, or any other failure to serve Product provided by PBV pursuant to the terms of this Agreement, will constitute a breach of this Agreement. Either Party to this Agreement shall have the right to immediately terminate this Agreement upon the occurrence of a Material Breach by the other Party. Notwithstanding the foregoing, either Party may terminate this Agreement immediately upon written notice to the other Party in the event the other Party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such Party and such proceeding shall continue without dismissal or stay for a period of thirty (30) consecutive days, or an order granting the relief requested in such proceeding shall be entered. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights available to either Party in law or in equity.

7. Rights upon Termination.

A. If this Agreement is terminated before the end of the Term or any Renewal Term, then Customer shall:

i. permit PBV reasonable access for thirty (30) days, free from any claims of trespass, for purposes of removing all Equipment in the Outlets (and until such time as all Equipment is removed or for thirty (30) days, whichever comes first, Customer's obligations shall continue under the terms of this Agreement);

ii. immediately remit to PBV any amount that may be due pursuant to Section 4(a).

B. If this Agreement is terminated at its expiration date, then Customer shall permit PBV reasonable access for thirty (30) days, free from any claims of trespass, for purposes of removing all Equipment in the Outlets (and until such time as all Equipment is removed or for thirty (30) days, whichever comes first, Customer's obligations shall continue under the terms of this Agreement).

The foregoing remedies are not intended to restrict the right of either Party to pursue other remedies or damages if the other Party has breached the terms of this Agreement.

8. Right of Set Off. In the event Customer is delinquent in its payment hereunder or is required to indemnify PBV pursuant to Section 12 hereof, PBV reserves the right to withhold Support Funds payments otherwise due hereunder as an offset against amounts owed to PBV.

9. Customer Representations and Warranties. The Customer represents and warrants to PBV that:

A. it has full right, power and authority to enter into this Agreement and to grant, transfer and sell to PBV all of the rights, privileges, terms and conditions set forth herein; and

B. the granting of such rights and privileges to PBV shall not violate, interfere with nor infringe upon the rights of any third parties pursuant to written agreements or otherwise.

10. Use of Trademarks. Customer agrees that all uses of the Product brand names, logos, and trademarks (collectively "Product Trademarks") during the Term or any Renewal Term, including, but not limited to, press releases, statements or other announcements, shall be subject to PBV's prior approval or scripting, which approval shall not be unreasonably withheld or delayed. Except as set forth in the proceeding sentence, Customer shall have no right or license to use the Product Trademarks. Nothing herein, nor any act or failure to act by PBV or the Customer, shall give the Customer any proprietary or ownership interest of any kind in the Product Trademarks or in the goodwill associated therewith.

11. Indemnification.

A. **PBV.** PBV will indemnify and hold the Customer harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; and/or (ii) claims for personal injury resulting from the use or consumption of the Products.

B. **The Customer.** To the extent permitted by law, Customer will indemnify and hold PBV harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any representation, warranty, term or condition of this Agreement; and/or (ii) any claims for property damage, personal injury or death by any person injured through the negligence or willful misconduct of the Customer.

12. Insurance.

13. Relationship of the Parties. The Parties are independent contractors with respect to each other; nothing contained in the Agreement will be deemed or construed as creating a joint venture or partnership between the Parties.

14. Assignment. This Agreement shall not be assigned by either Party hereto without the prior written consent of the other Party, which consent shall not be unreasonably withheld and which consent shall not be required with respect to the successor or purchaser of substantially all of the business of a PBV, or with respect to any such assignment by PBV to any affiliate of PBV.

15. Customer Change of Control. In the event that a third party acquires Customer or all or a group of the Outlets, or if Customer merges with a third party, Customer shall, in connection with such transaction, cause the acquiring party/merged entity, in writing, to ratify this Agreement and assume all of the obligations of Customer hereunder. In the event that Customer does not deliver written evidence of such ratification and assumption of this Agreement by the acquiring party/merged entity within ten (10) days following the closing of the transaction, PBV may, notwithstanding the cure period set forth in Section 6, terminate this Agreement effective immediately and Customer shall pay to PBV all sums specified in Section 7(A) with respect to all affected Outlets.

16. Confidentiality.

17. Notices. Any notice or communication which either Party is required or permitted to give hereunder shall be given in writing and when received if delivered in person, when receipt is acknowledged if sent by facsimile, on the next business day if timely delivered by a nationally recognized courier service that guarantees overnight delivery or two business days after deposit if mailed by first-class mail, postage prepaid, addressed as follows:

A. **If to PBV:**

**PBV
22 Pepsi Way
Harrisburg, NC 28075
Attention: Billy Cruz**

**B. If to Customer:
The Town of Huntersville Parks & Recreation
Town Hall, Town Center, Huntersville Police Dept.
105 Gilead Rd., Huntersville, N.C. 28078
Contact Number: 704-766-2203
Attention: Gerry Vincent**

18. Entire Agreement. This Agreement contains the entire understanding and agreement between the Parties hereto regarding the subject matter herein and supersedes all other agreements between the Parties respecting such. This Agreement may be amended or modified only by written statement, signed by each of the Parties.

19. Force Majeure. Any delay in the performance of any of the duties or obligations of either Party hereto (except the payment of money) caused by an event outside the affected Party's reasonable control which it could not have avoided by the exercise of reasonable diligence shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay. Such events shall include without limitation acts of God; acts of a public enemy; insurrections; riots; injunctions; embargoes; fires; explosions; floods; or domestic acts of terrorism. The Party so affected shall give prompt notice to the other Party of such cause, and shall take whatever reasonable steps are appropriate in that Party's discretion to relieve the effect of such cause as rapidly as possible.

20. Choice of Law. This agreement will be governed by the laws of the State of North Carolina, without regard to conflicts of laws principles. The sole venue for any dispute or action hereunder shall be in a State or Federal Court sitting in Mecklenburg County, North Carolina.

21. No Waiver. The failure of either Party to object to a breach of any representation, warranty, term or condition of this Agreement will not be deemed a waiver of any right or remedy the non-breaching Party may have arising out of the breach, nor will it be deemed a waiver of its right to subsequently enforce the representation, warranty, term or condition.

If the foregoing correctly sets forth our understanding, please sign below to confirm our agreement.

PEPSI BOTTLING VENTURE LLC

**Huntersville Parks & Recreation, Town Hall &
Town Center**

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Outlets

**Huntersville Recreation Center
11836 Verhoeff Drive. Huntersville, N.C. 27078**

**Huntersville Town Center (Town Administrative Offices)
105 Gilead Rd. Huntersville, N.C. 27078**

**Huntersville Police Department
9630 Julian Clark Ave. Huntersville, N.C. 27078**

**Huntersville Town Hall
101 Huntersville-Concord Rd. Huntersville, N.C. 27078**

**Bradford Park-17005 Davidson-Concord Rd.
Huntersville, N.C. 27078**

**David B. Waymer Park-14200 Holbrooks Rd.
Huntersville, N.C. 27078**

**Huntersville Athletic Park-11720 Verhoeff Rd.
Huntersville, N.C. 27078**

**North Mecklenburg Park-16131 Old Statesville Rd.
Huntersville, N.C. 27078**

**Richard Barry Memorial Park-13707 Beatties Ford Rd.
Huntersville, N.C. 27078**