

## AMENDMENT

This amendment (this "*Amendment*") effective December 14, 2017 ("Effective Date") is made by and between, on the one hand, Bottling Group, LLC, a Delaware limited liability company, and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company with an office located at 1881 Bilter Road, Aurora, IL 60502 ("*Pepsi*") and Wheaton Park District, with its principal place of business at 102 E. Wesley Street, Wheaton, IL 60187 (the "*Customer*").

WHEREAS, Pepsi and Customer are parties to an existing Beverage Sales Agreement that commenced on February 1, 2015, (the "*Agreement*"); and

WHEREAS, Pepsi and Customer now wish to amend the Agreement as hereinafter provided in this Amendment;

NOW, THEREFORE, in consideration of these premises and the covenants herein contained, it is hereby agreed that, as of the date set forth below, the Agreement is hereby amended as follows. As used in this Amendment, capitalized terms defined in the Agreement and not otherwise defined in this Amendment shall have the respective meanings assigned thereto in the Agreement.

1. The Term of the Agreement is hereby extended and therefore the first sentence of Section 1, Term, of the Agreement is hereby deleted and replaced with the following:

"The term of this Agreement shall commence on February 1, 2015 and expire upon the later of January 31, 2021 or at such time as Customer's collective purchases of Products meets or exceed a volume threshold (the "Volume Threshold") of 23,100 Gallons and Cases (the "Term")."

IN WITNESS WHEREOF, Pepsi and Customer have caused this Amendment to be executed by the authorized persons set forth below.

### BOTTLING GROUP, LLC

By Thomas F. O'Malley  
Name: Thomas F. O'Malley  
Title: Area Service Sales Rep  
Date: 1-04-2018

### WHEATON PARK DISTRICT

By [Signature]  
Name: Michael Barone  
Title: Exec Dir  
Date: 12/13/17

Exhibit B  
2018 Products and Prices

**Customer acknowledges and agree that Pepsi shall be entitled to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed) and that the pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products shall not be deemed as a price increase subject to any pricing cap or notification restrictions that may be specified in this Agreement.**

**Bag in Box**

3 gallon	- \$15.76 per gallon (\$47.28 per box)
5 gallon	- \$15.25 per gallon (\$76.25 per box)

**Cans & Bottles**

10 oz bottles	- \$14.78 per case of 24
12 oz cans	- \$11.64 per case of 24
16.9 oz Aquafina	- \$5.57 per case of 24
20 oz Aquafina	- \$16.32 per case of 24
20 oz carbs	- \$25.05 per case of 24
20 oz Gatorade	- \$26.17 per case of 24

**Cups & Lids**

24 ounce lids	- \$35.32 per box
24 ounce cups	- \$72.02 per box

**Co2**

20 lb Co2	- \$29.77 per tank
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Pricing will increase by no more than 4% per year

# MEMORANDUM OF INSURANCE

DATE  
11/1/2019

THIS MEMORANDUM OF INSURANCE IS FOR AUTHORIZED VIEWERS ONLY. USE, DUPLICATION OR ALTERATION OF THIS DOCUMENT, WITHOUT THE SPECIFIC WRITTEN CONSENT OF THE INSURED, IS EXPRESSLY PROHIBITED. THIS MEMORANDUM IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT EXTEND, ALTER OR AMEND THE COVERAGE NOTED OR CONFER RIGHTS UPON ANY VIEWER OR OTHER PARTY. COVERAGE DESCRIBED BELOW IS AS OF THE ABOVE DATE.

**PRODUCER**  
LOCKTON COMPANIES  
2100 ROSS AVENUE, SUITE 1400 DALLAS TX 75201  
214-969-6700

## COMPANIES AFFORDING COVERAGE

**INSURED**  
1069518  
PEPSICO, INC. FRITO-LAY NORTH AMERICA, INC. QUAKER  
OATS CO; PEPSI-COLA METROPOLITAN BOTTLING CO, INC.; TROPICANA PRODUCTS, INC.;  
NEW BERN TRANSPORT CORP. BOTTLING GROUP, LLC; IZZE BEVERAGE COMPANY; THE  
GATORADE CO, NAKED JUICE CO. OF GLENDORA, INC. 700 ANDERSON HILL RD,  
PURCHASE NY 10577

**COMPANY A:** ACE American Insurance Company  
**COMPANY B:** Indemnity Insurance Co of North America  
**COMPANY C:** ACE Fire Underwriters Insurance Company  
**COMPANY D:** Agri General Insurance Company  
**COMPANY E:**

## COVERAGES \*PEPSI01

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES, AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS	
A	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY OCURENCE GEN'L AGG LIMIT APPLIES PER: POLICY	HDO G27872335	1/1/2018	1/1/2019	EACH OCCURRENCE	\$ 5,000,000
					FIRE DAMAGE (Any one fire)	\$ 2,000,000
					MED EXP (Any one person)	\$ 1,000
					PERSONAL & ADV INJURY	\$ 5,000,000
					GENERAL AGGREGATE	\$ 5,000,000
					PRODUCTS - COM/OP AGG	\$ 5,000,000
A	AUTOMOBILE LIABILITY ANY AUTO	See Attached	1/1/2018	1/1/2019	COMBINED SINGLE LIMIT (Ea accident)	See Below
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	EXCESS LIABILITY	NOT APPLICABLE			EACH OCCURRENCE	\$
					AGGREGATE	\$
						\$
						\$
						\$
B A C D	WORKERS COMPENSATION/ EMPLOYER'S LIABILITY	WLRC64621154 A/O STATES WLRC64621166 AZ, CA & MA SCFC6462118A (WV) WLRC64621178 (TN)	1/1/2018	1/1/2019	WORKERS COMP LIMITS	STATUTORY
			1/1/2018	1/1/2019	E.L. EACH ACCIDENT	\$ 5,000,000
			1/1/2018	1/1/2019	E.L. DISEASE - EA EMPLOYEE	\$ 5,000,000
			1/1/2018	1/1/2019	E.L. DISEASE - POLICY LIMIT	\$ 5,000,000
A A A	Excess Workers Compensation	WCUC64621191 FL - OH & WA	1/1/2017	1/1/2019	WC Statutory Limits \$5,000,000 each accident \$5,000,000 each ee for disease	
		WCUC64621208 PCMBC - OH	1/1/2017	1/1/2019		
		WCUC6462121A PCMBC - WV	1/1/2017	1/1/2019		

## ADDITIONAL INFORMATION

ADDITIONAL NAMED INSURED: FRITO-LAY, INC., ROLLING FRITO-LAY SALES, LP; FL TRANSPORATION, INC.; IZZE BEVERAGE COMPANY; QUAKER OATS MANUFACTURING; SVC MANUFACTURING INC.; STACY'S PITA CHIP CO.; PEPSI-COLA SALES AND DISTRIBUTION, INC.; PEPSI-COLA TECHNICAL OPERATIONS, INC; P-AMERICAS, LLC.  
PEPSICO SALES, INC; PEPSI-COLA ADVERTISING AND MARKETING, INC.  
SEE ATTACHED FOR ADDITIONAL INFORMATION.

**POLICY TYPE** | Commercial Auto Liability

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**LIMIT OF INSURANCE** | See Below

**INSURER** | ACE American Ins. Co.

**NAMED INSURED**: PEPSICO, INC.

**LIMIT** | \$7,500,000

**POLICY NUMBER** | ISAH25097336

**POLICY TERM** | 1/1/2018 - 1/1/2019

**INSURER** | ACE American Ins. Co.

**NAMED INSURED**: PEPSI-COLA

METROPOLITAN BOTTLING COMPANY, INC.

**LIMIT** | \$10,000,000

**POLICY NUMBER** | ISAH25097348

**POLICY TERM** | 1/1/2018 - 1/1/2019

ADDITIONAL INSURED IS ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED HAS SPECIFICALLY AGREED BY WRITTEN CONTRACT TO PROVIDE ADDITIONAL INSURED STATUS, SUBJECT TO POLICY TERMS, CONDITIONS AND EXCLUSIONS, PROVIDED THAT:

A) THIS INSURANCE APPLIES ONLY TO EACH COVERAGE WHICH THE NAMED INSURED HAS AGREED TO PROVIDE BY WRITTEN CONTRACT, BUT IN NO EVENT SHALL THE COVERAGE EXCEED THE COVERAGE OTHERWISE AFFORDED BY THE POLICY.

B) THE AMOUNT OF INSURANCE IS LIMITED TO THAT REQUIRED BY SUCH WRITTEN CONTRACT, BUT IN NO EVENT SHALL THE LIMITS OF LIABILITY EXCEED THE LIMITS OF LIABILITY PROVIDED BY THE POLICY.

C) THE INSURANCE APPLIES ONLY WITH RESPECT TO LIABILITY ARISING OUT OF THE OPERATIONS, ACTIVITIES OR BUSINESS CONDUCTED BY OR ON BEHALF OF THE NAMED INSURED.

## BEVERAGE SALES AGREEMENT

This sets forth the agreement ("**Agreement**") between **Bottling Group, LLC**, a Delaware limited liability company, and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company with an office located at 1881 Bilter Road, Aurora, IL 60502 ("**Pepsi**") and **Wheaton Park District** with its principal place of business at 102 E. Wesley Street, Wheaton, IL 60187 (the "**Customer**") relating to the purchase by the Customer from Pepsi of the Products. The support described below is in lieu of any other discounts, allowances or rebates to which the Customer might otherwise be entitled from time to time.

### Definitions

As used in this Agreement, the following capitalized terms shall have the respective meanings assigned thereto below.

"**Beverage**" or "**Beverages**" means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks, (vii) packaged carbonated or still water (including spring, mineral or purified), (viii) liquid concentrate teas ("**LCT**"), (ix) frozen carbonated and non-carbonated beverages ("**FB**"), and (x) any future categories of nonalcoholic beverage products that may be distributed by Pepsi.

"**Cases**" shall mean the number of cases of Packaged Products purchased by the Customer from Pepsi, initially delivered in quantities of 24, 15, and 12 bottle/can units, and thereafter in such other size, quantity and type of containers as determined by Pepsi, from time to time.

"**Gallons**" shall mean the number of gallons of the Postmix Products purchased by the Customer from Pepsi.

"**Outlets**" shall mean the existing Customer facilities operated under the **Wheaton Park District** trademarks as listed in attached Exhibit A and shall include any restaurant, outlet or other facility in the Customer's system that may be opened or acquired by the Customer under those trademarks during the Term. In the event that Customer acquires, owns or operates facilities under a different concept and/or trademark during the Term, Customer will purchase Products pursuant to the terms of this Agreement for service in such facilities, which will be considered Outlets under this Agreement. In the event that new Outlets are added during the Term of this Agreement, the parties shall create an updated Exhibit A and attach it hereto. The Outlets shall include the parking garages or other Customer-owned/controlled/operated surrounding areas located at or within those facilities.

**"Packaged Products"** shall mean Beverages that are distributed in pre-packaged form (e.g., bottles and cans). A current list of Pepsi's Packaged Products is listed in attached Exhibit B which may be amended by Pepsi from time to time.

**"Postmix Products"** shall mean Beverages used to create and dispense fountain beverages and/or frozen carbonated and non-carbonated beverages. A current list of Pepsi's Postmix Products is listed in attached Exhibit B which may be amended by Pepsi from time to time.

**"Products"** shall mean Postmix Products, Packaged Products and LCT manufactured, bottled, sold and/or distributed by Pepsi.

**"Year"** shall mean each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

1. **Term**

The term of this Agreement shall commence on February 1, 2015 and expire upon the later of January 31, 2018, or at such time as Customer's collective purchases of Products meets or exceeds a volume threshold (the "**Volume Threshold**") of 11,700 Gallons and Cases (the "**Term**"). For the purposes of measuring the Volume Threshold only, 1 Case of Packaged Product shall be deemed equal to 1 Gallon of Postmix Product. Thus, in the event the Volume Threshold is not met on or before the date indicated above, then the Term shall automatically extend for the period of time necessary until the Volume Threshold has been met (the "**Automatic Extension**"). Except for applicable Rebates, which may be earned during the Automatic Extension, Pepsi shall not provide any other consideration to Customer. When fully executed, this Agreement will constitute a binding obligation of both parties until expiration or termination.

2. **Scope**

(A) **Exclusive Pouring Rights**

During the Term of this Agreement Pepsi shall have the exclusive right to make all Beverages (including Fountain Products and Packaged Products) available for sale and distribution within the Customer's Outlets, including at all locations located within the Outlets where Beverages are sold and catering operations for Customer or its Outlets. Accordingly, the Products shall be the only Beverages of their respective type sold, dispensed or served anywhere at the Outlets, and Customer will cause the purchasing representative for each of the Outlets to purchase all its respective requirements for such Products directly and exclusively from Pepsi.

(B) **Ancillary Products**

During the Term, Customer will cause the purchasing representative for each of the Outlets to purchase all its respective requirements for carbon dioxide and branded disposable cups ("**Ancillary Products**") exclusively from Pepsi.

### (C) Advertising Rights

Pepsi may advertise and promote its Products in and with respect to the Customer and its Outlets upon mutually agreed to terms and conditions.

### 3. Performance

This Agreement, including all of Pepsi's support to the Customer as described below, is contingent upon the Customer complying with all of the following performance criteria:

(A) **Exclusivity.** For the Term of this Agreement, the Products shall be the exclusive Beverage of their respective types sold, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted at or in connection with the Outlets by any method or through any medium whatsoever (including without limitation print, broadcast, direct mail, coupons, handbills, displays and signage), whether public or private. In no event shall there be served, dispensed or otherwise made available, or in ~~any way~~ advertised, displayed, represented or promoted, beverage products licensed by, or produced by bottlers licensed by, The Coca-Cola Company or any affiliate thereof, or any other supplier of competitive nonalcoholic Beverages for the Term of this Agreement.

(B) **Product Mix.** The Customer represents that it shall purchase and shall cause its Outlets to purchase Products exclusively from Pepsi and that it shall use reasonable efforts to maintain a mix of both Postmix Products and Packaged Products at each of the Outlets throughout the Term.

(C) **Fountain Products.** The Customer shall only use the Postmix Products for use in preparing the fountain beverage products (the "*Fountain Products*"): (i) in accordance with the standards established by Pepsi; and (ii) only for immediate or imminent consumption and shall not resell the Postmix Products either to nonaffiliated outlets or to consumers in any form other than the Fountain Products.

(D) **Brand ID.** The Customer shall have appropriate brand identification, as identified by Pepsi, for each Product served on all menus (including catering), menuboards and postmix dispensing valves at each of the Outlets throughout the Term.

(E) **Changes in Outlet(s).** The Customer agrees that it shall promptly notify Pepsi, in writing, of each new Outlet which is opened or acquired during the Term, as well as of any Outlet which is closed, sold or otherwise disposed of during the Term so that the parties may promptly update Exhibit A.

(F) **Minimum SKU Requirement.** At all times during the Term, the Customer agrees to mandate the distribution of a minimum of the following skus of Products, as applicable, at each of the Outlets ("*Required SKUs*"). The Required SKUs shall be determined as follows:

Pepsi, Diet Pepsi, Mountain Dew, Aquafina, Gatorade, Lipton



#### 4. Consideration

In consideration of the exclusive rights granted to Pepsi by Customer over the Term of this Agreement, and provided Customer is not in breach of this Agreement, Pepsi shall provide Customer with the following:

(A) **Annual Support Funds.** Pepsi shall provide Customer with annual support funds in the amount of Fifteen Thousand Dollars (\$15,000), payable to the Customer within sixty (60) days following signing of this Agreement by both parties and after the commencement of each Year thereafter until the end of the Term of this Agreement not to exceed Three (3) consecutive payments (the "*Annual Support Funds*"). The Annual Support Funds are earned throughout the Year in which they are paid. In the event Pepsi terminates this Agreement due to the Customer's failure to cure a breach hereof, the unearned Annual Support Funds will be repaid to Pepsi on a pro rata basis pursuant to the terms of Section 7(B)(i) herein.

(B) **Rebates.** Each Year throughout the Term, Pepsi shall calculate the total number of Cases of Packaged Products and Gallons of Postmix Products purchased by each of the applicable Outlets from Pepsi pursuant to this Agreement, and shall provide the Customer with rebates calculated based on applicable amounts set forth below (the "*Rebates*"). The Rebates Funds, if applicable, shall be paid by Pepsi within sixty (60) days of the end of each applicable Year during the Term. In the event that any Outlet is closed during the Term of this Agreement, Pepsi agrees to provide Customer with all Marketing Support Funds accrued on behalf of that applicable Outlet as of the time of closing, provided that such Outlet was in full compliance with the terms and conditions of this Agreement.

<b>Rebate Rate</b>	<b>Applicable Products</b>
\$1.00/Gallon	All Gallons Postmix Products
\$2.00/Case	All Cases (excluding Cases of 16.9 oz. Aquafina, 20 oz. Aquafina and 20 oz. Gatorade)
\$3.00/Case	24-count Cases of 20 oz. Aquafina
\$4.00/Case	24-count Cases of 20 oz. Gatorade

The parties agree that Pepsi shall not accrue or pay any Rebates for sales to Outlets that are in breach of the Performance Requirements listed in Section 3 above.

(C) **Marketing, Merchandising and Equipment Support.** Each Year throughout the Term, Pepsi will make available to Customer marketing, merchandising and/or Equipment support with a value not to exceed One thousand Five Hundred Dollars (\$1,500) to be used and spent by Pepsi to provide mutually agreed to marketing support (i.e. menu boards), merchandising items (i.e. clocks) and/or equipment (i.e. cold barrels) for the benefit of Pepsi and Customer.

(D) **Free Equipment Loan and Service.** As further outlined in Section 5 below, Pepsi shall provide at no cost to Customer or the Outlets necessary dispensing/selling Equipment for Beverages at the Outlets. Such Equipment shall be in sufficient quantities (in light of sales volume) as determined by Pepsi to satisfy the Outlet's reasonable needs.

(E) **Free Product.** Pepsi will provide annual Product donations of up to a total of 50 cases per Year of 12 oz. cans and/or 16.9 oz. Aquafina Products to be used at the Outlets upon request of the Customer; *provided, however*, that the Customer will administer all requests through a central contact so that the Customer may prioritize the requests. Customer acknowledges and agrees that donated Product requests not used/made in any Year shall not be carried over to the subsequent Year.

#### 5. Equipment

Pepsi will loan each Outlet and will maintain in good, clean, sanitary and safe operating condition and at its sole cost and expense, high-quality, undamaged, user-friendly, dependable equipment for dispensing the Products during the Term ("*Equipment*"). Customer agrees that the Equipment shall be exclusively used to display and merchandise the Products, and the Customer shall not use the Equipment to display, stock, advertise, sell or maintain any other products (including on the exterior of the Equipment). Pepsi will also provide, at no charge to the Customer, service to the Equipment. Except as otherwise provided in this Agreement, title to such Equipment will remain vested in Pepsi or its affiliate and all such Equipment will be returned to Pepsi upon expiration or earlier termination of this Agreement. Each Year during the Term or at Pepsi's request, which Customer shall have a reasonable timeframe to respond to said request, and in no case shall Customer have less than seven (7) business days to respond, Customer shall provide Pepsi with a written Equipment verification list indicating the asset number, Equipment type and location of the Equipment loaned to the Customer pursuant to this Agreement. Failure to provide such verification list to Pepsi shall be deemed a material breach of this Agreement.

Pepsi will provide, at no charge to the Customer, preventative maintenance and service to the Equipment. Pepsi will also provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment after business hours. Pepsi will promptly respond to each applicable Customer request, and will use reasonable efforts to remedy the related Equipment problem as soon as possible.

Repairs and replacements of malfunctioning, damaged or destroyed Equipment, or provision of a temporary, comparable substitute Equipment, shall be made by Pepsi promptly and, in no event, later than twenty-four (24) hours from the time of notification by Customer, unless such repair or replacement requires labor or materials from third parties, in which event it shall be made as soon as reasonably possible from the time of notification by Customer. Pepsi represents and warrants that it is the sole owner of the Equipment.

Upon termination or expiration of this Agreement for any reason, Pepsi shall remove the Equipment from Customer and shall return and restore the Outlets in the condition as when originally made available to Pepsi, reasonable wear and tear excepted. If upon termination of the Agreement for any reason, Pepsi fails to remove the Equipment within fifteen (15) days of such termination, Pepsi shall be deemed automatically and without further action on the part of Customer to have abandoned the Equipment, and Customer shall have the right to dispose of the Equipment in any manner it deems desirable and the proceeds, if any, obtained from such disposition shall be and remain the sole property of Customer in consideration for having to

dispose of the Equipment, and shall not reduce the amount of money, if any, otherwise owed by Pepsi to Customer under this Agreement.

## **6. Pricing**

Pepsi will provide Customer/Outlets a complete supply of Products during the Term of this Agreement and shall deliver such Products in a timely manner (based on mutually agreed upon delivery schedules) and in good and sanitary condition. The current pricing schedule for Products is set forth on attached Exhibit B; thereafter commencing February 1, 2016 annual prices increases shall not exceed 4%. Pepsi shall provide thirty (30) days notice of any annual price increases during the Term.

## **7. General Terms**

(A) **Termination.** Either party may terminate this Agreement if the other commits a material breach of this Agreement; provided, however, that the terminating party has given the other party written notice of the breach and the other party has failed to remedy or cure the breach within thirty (30) days of such notice. If for any reason, except for a Force Majeure Event as set forth in Section 7(k) of this Agreement, the Customer closes one or more of its Outlets for a period of ten (10) business days or more, then such event shall be deemed a material breach of this Agreement, and Pepsi shall have the right to immediately terminate this Agreement upon five (5) days prior written notice.

In the event of breach of this Agreement by one or more Outlet(s), the parties agree that Pepsi shall have the option, in lieu of termination of the entire Agreement, to terminate the Agreement only as it pertains to the applicable breaching Outlet(s) and to obtain an equitable reimbursement for the portions of funding and other costs attributable to such breaching Outlet(s).

Customer may terminate this Agreement upon thirty (30) days prior written notice to Pepsi for convenience and such termination shall be subject to the remedies set forth below in Section 7(B).

(B) **Remedies.** If Pepsi terminates this Agreement as a result of default by Customer or its Outlets, or if Customer terminates this Agreement other than due to Pepsi's failure to cure a breach hereof, then Customer and its Outlets will surrender to Pepsi all Equipment provided by Pepsi and shall forfeit all funding not paid as of the date of termination. In addition, without prejudice to any other right or remedy available to Pepsi, Pepsi shall have the right to immediately seek reimbursement from Customer and the Outlets for the following:

- (i) An amount reflecting reimbursement for all funding previously advanced by Pepsi but not earned by the Customer pursuant to the terms of this Agreement. With regard to the Annual Support Funds, the amount of such reimbursement shall be determined by multiplying Annual Support Funds by a fraction, the numerator of which is the number of months remaining in the Year in which the Agreement is terminated at the time such termination occurs and the denominator of which is 12 (twelve);

- (ii) An amount reflecting reimbursement for the cost of service and refurbishing of Equipment provided during the Term and the cost of removal of all Equipment that has been installed in the Outlets, if applicable; and
- (C) **Expiration.** Upon expiration of this Agreement, if Customer has not entered into a further agreement with Pepsi for the purchase of the Products, Customer shall surrender to Pepsi all Equipment installed in the Outlets, whether leased, loaned or otherwise made available by Pepsi.
- (D) **Right of Offset.** Pepsi reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer or its Outlets for Products ordered from and delivered by Pepsi pursuant to this Agreement.
- (E) **Non-Disclosure.** Except as may otherwise be required by law or legal process, neither party shall disclose to unrelated third parties the terms and conditions of this Agreement without the consent of the other.
- (F) **Indemnification.** To the extent permitted by law and, to the extent not caused by Customer's gross negligence or willful misconduct, Pepsi shall defend and fully indemnify and hold harmless Customer, its commissioners, officers, employees, agents and volunteers (the Customer and such other persons being hereinafter referred to collectively as the "Indemnified Parties") against and from any and all claims, damages or expenses (including attorneys' fees and court costs) sustained or incurred by them or any of them and caused by the acts or omissions of Pepsi or its agents or employees relating directly or indirectly to this Agreement or any of the activities conducted by or on behalf of Pepsi under this Agreement. Without limiting the scope of the foregoing obligations and to the extent permitted by law, to the extent not caused by Customer's gross negligence or willful misconduct, Pepsi expressly agrees to defend and fully indemnify and hold harmless the Indemnified Parties against and from any claim or suit alleging personal injury, property damage, sickness, or disease arising from or relating directly or indirectly to the Equipment or other equipment of Pepsi, or the use thereof, or the consumption or use of the merchandise sold therefrom, or the wrongful or negligent act of Pepsi's agents or employees. In the event of any claim therefor, Pepsi shall give immediate notice thereof to Customer and any and all other affected Indemnified Parties and they shall be entitled, at their option, to participate in the defense of such claim. Pepsi shall fully indemnify and hold harmless the Indemnified Parties against and from any and all claims, damages or expenses (including attorneys' fees and court costs) sustained or incurred by them or any of them and resulting directly or indirectly from Pepsi's breach of any of its obligations under this Agreement. In furtherance and not in limitation of the foregoing defense and indemnification obligations of Pepsi, Pepsi will procure and maintain during the Term the insurance coverages provided in Exhibit C, attached to and incorporated by this reference in this Agreement.
- (G) This Agreement shall be binding and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (H) **Governing Law.** This Agreement shall be governed by the laws of the State of Illinois without regard to conflict of laws principles.

(I) **Price Discrepancy.** Any price discrepancy claim must be submitted to Pepsi within 365 days of the date of the invoice in question. If the Customer makes a price discrepancy claim within 90 days of the invoice date, the Customer must submit a written request specifying the particular Product, amount in dispute and reason for the dispute. This request should be addressed to:

Accounts Receivable  
Pepsi-Cola Customer Service Center  
P.O. Box 10  
Winston-Salem, North Carolina 27102.

If the Customer makes a price discrepancy claim from 91 to 365 days after the date of invoice, in addition to the written request as specified above, the Customer must submit to Pepsi a copy of the invoice in question, copies of any check remittances pursuant to the invoice in question and any additional supporting documentation.

(J) **Tax.** The Customer acknowledges and agrees that neither Pepsi nor its affiliates shall be responsible for any taxes payable, fees or other tax liability in connection with the consideration provided to Customer under Section 4 of this Agreement. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment at the Outlets.

(K) **Force Majeure.** Pepsi will not be responsible for any delay or lack of delivery resulting directly or indirectly from any foreign or domestic embargo, product detention, seizure, act of God, insurrection, war and/or continuance of war, the passage or enactment of any law ordinance, regulation, ruling, or order interfering directly or indirectly with or rendering more burdensome the purchase, production, delivery or payment hereunder, including the lack of the usual means of transportation due to fire, flood, explosion, riot, strike or other acts of nature or man that are beyond the control of Pepsi or that of the suppliers to Pepsi unless such contingency is specifically excluded in another part of this Agreement. Subject to the provisions below, this Agreement will be suspended as to both Product and delivery during any of the above force majeure contingencies. Any and all suspended deliveries will resume after such contingencies cease to exist, if possible, and this Agreement will resume in accordance with its terms, unless otherwise provided for herein. Customer will not be responsible for closing one of its Outlets due, indirectly or directly, to fire, storm, flood, earthquake, explosion, accident, public disorders, riot, strike, lockouts, labor disputes, labor shortages, or other acts of God or man that are beyond the Customer's control ("Force Majeure Event"). This Agreement will be suspended at no cost to the Customer during any of Force Majeure Event and will resume accordance with its term, after such Force Majeure Event cease to exist, if possible, unless otherwise provided herein.

(L) **Release, Discharge or Waiver.** No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or



remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

The acceptance of any payment by Customer shall not be deemed to constitute a waiver of any prior occurring breach or default by Pepsi of any provision of this Agreement regardless of the knowledge of Customer of such breach or default at the time of its acceptance of such payment.

**(M) Relationship of the Parties.** The parties are independent contractors with respect to each other. Nothing contained in this Agreement will be deemed or construed as creating a joint venture partnership between the parties. Pepsi will provide trained personnel to properly service the Equipment ("Pepsi's Employees"). Pepsi will select, train and direct Pepsi's Employees to perform the required tasks and Pepsi will be responsible for their appearance and conduct while on Customer property. Pepsi's Employees will wear uniforms for identification purposes at all times while on Customer property to perform the tasks required under this Agreement. Pepsi represents that it has performed reference and criminal history background checks on all Pepsi's Employees assigned to service the Equipment prior to hiring. Pepsi's Employees will be subject to the rules and regulations of Customer while on Customer property.

**(N) Effect of Headings.** The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.

**(O) Construction.** This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in such party's reasonable judgment and reasonable discretion, and shall be in writing unless otherwise mutually agreed by the parties. If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

**(P) Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**(Q) Further Assurances.** Each party hereto shall execute any and all further documents or instruments and take all necessary action that either party hereto may deem reasonably necessary to carry out the proper purposes of this Agreement.

**(R) Notices.** Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have

been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or by facsimile, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Pepsi:

Pepsi Beverages Company  
1881 Bilter Road  
Aurora, IL 60502  
Attn: Director, Food Service

With a copy to (which shall not constitute notice):

Pepsi Beverages Company  
One Pepsi Way  
Somers, NY 10589  
Attn: Legal Department

If to Customer:

Wheaton Park District  
102 E. Wesley Street  
Wheaton, IL 60187  
Attn: Executive Director

(S) **Right of First Negotiation/Refusal.** As of the commencement of this Agreement until ninety (90) days prior to the expiration of the Term, the Customer hereby agrees to grant Pepsi exclusive negotiation rights with respect to extending the current Agreement or entering into a new agreement for Beverage pouring rights at the Outlets upon expiration of the current Term. Thereafter, if the parties have not entered into a new agreement, the Customer shall be free to enter into discussions/negotiations with third parties except that Customer shall grant Pepsi the absolute right of first refusal to match any bona fide offers made by a third party with respect to Beverage pouring rights/sales at the Outlets. The Customer shall provide Pepsi with details of any such bona fide offers, and Pepsi shall have a fifteen (15) day window to decide whether it will match such offer and exercise its right of first refusal. The parties agree that beverage type/category and not brand names shall be considered for the purposes of determining a match. In the event that Pepsi declines to match such offer, or fails to respond within the fifteen (15) day period, then Customer shall be free to enter into an agreement with any third party based on terms and conditions equal or favorable to those presented to Pepsi in connection with the notice specified herein.

(T) **Limitations/Offset Rights.** Pepsi reserves the right to limit quantities, withhold or deduct funding as an offset to amounts not paid by Customer or terminate this Agreement if the Customer (i) sells Products directly or indirectly for resale outside of the Pepsi's exclusive

territory where the Outlet operates, (ii) purchases Products outside Pepsi's exclusive territory where the Outlet operates and resells such Products within Pepsi's exclusive territory or (iii) does not comply with Pepsi's payment terms or makes an unauthorized deduction from amounts due.

(U) **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto regarding the subject matter hereof and supersedes all other agreements between the parties. This Agreement may be amended or modified only by a writing signed by each of the parties.

(V) **Customer Representations.** Each party represents and warrants to the other party that all appropriate approvals required to enter into this Agreement have been granted and the individual executing this Agreement on behalf of each respective party has been duly authorized by any and all persons or entities of which authorization is required to enter into this Agreement on behalf of said party. Each party also agrees that at no time will either party challenge, contest, disclaim or deny the authority of the individual signing this Agreement on behalf of the party or use as a basis to void, cancel or nullify this Agreement a claim that the individual signing below was not authorized to sign this Agreement on behalf of the respective party. Further, each party guarantees and warrants that the execution, delivery and performance of this Agreement will not and does not violate any agreements with or the rights of third parties.

(W) **Compliance with Applicable Law.** Pepsi shall comply with, and cause its employees and agents to comply with, all applicable laws, rules and ordinances including, but not limited to: local, state and federal tax laws; state and federal non-discrimination laws applicable to employees, participants, invitees and licensees; workers' compensation laws; state and federal wage and hour laws and any license requirements. Without limiting the generality of the foregoing, Pepsi specifically agrees to comply fully with the requirements of the *Illinois Human Rights Act*, 775 ILCS 5/1-101 *et seq.*, including, but not limited to, the provision of sexual harassment policies and procedures pursuant to Section 2-105 (A)(4) of the Act, and with all federal Equal Employment Opportunity Laws, including, but not limited to, the *Americans With Disabilities Act*, 42 U.S.C. Sections 12101 *et seq.*, and rules and regulations promulgated thereunder to the extent applicable. All of the vending machines shall be usable by persons with disabilities.



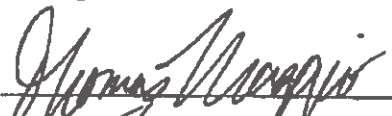


(X) **Third Party Claims.** Nothing contained in any provision of this Agreement, or any Addendum thereto, is intended to constitute nor shall constitute a waiver of immunities or defenses available to Customer under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, with respect to claims by third parties. Nothing contained in any provision of this Agreement, or any Addendum thereto, is intended to convey a leasehold interest to Pepsi.


(Y) **Insurance.** Pepsi agrees to maintain, at all times during the Term a comprehensive program of risk retention and insurance in accordance with the terms of Exhibit C, attached hereto.

**IN WITNESS WHEREOF,** the undersigned have caused this Agreement to be duly executed as of the date set forth below.

Bottling Group, LLC

By:   
Print Name: Thomas Maggio  
Title: General Manager, Recreation's Retail  
Date: 1/13/15

Wheaton Park District

By:   
Print Name: Michael J. Bernan  
Title: Executive Director  
Date: 12/19/14

### Exhibit A Customer Outlets

COF #	Account Name	Account Address	City	State	Zip	MU	AP Supplier #
9545748	ARROWHEAD GOLF CLUB	26W151 BUTTERFIELD RD	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9478845	WHEATON PK DIST COSLEY ZOO	1356 N GARY AVE	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9277830	WHEATON PK DIST ATTEN PARK INB	1720 S WIESSBROOK RD	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9277828	WHEATON PK DIST GRAFF PARK	1855 MANCHESTER RD	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9129882	WHEATON PK NORTHSIDE POOL SEASONAL	11509 N WEST	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9124557	WHEATON PK DIST COMMUNITY CTR	1777 S BLANCHARD ST	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9274305	WHEATON PK DIST COM CENTER 1.00	1777 S BLANCHARD ST	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9113653	ARROWHEAD GOLF CLUB	26W151 BUTTERFIELD RD	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9438221	WHEATON PK DIST CLOCK TOWER MINI GO	100 N NAPERVILLE RD	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9438220	WHEATON PK DIST CLOCK TOWER MINI GO	100 N NAPERVILLE RD	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9424385	WHEATON PK DIST COM CTR	1777 S BLANCHARD ST	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9276085	WHEATON PK DIST CLOCK TOWER	100 N NAPERVILLE RD	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9274308	WHEATON PK DIST FITNESS (2.00)	1777 S BLANCHARD ST	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9117451	WHEATON PK DIST RICE INB POOL SEAS	1777 S BLANCHARD ST	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
9277828	WHEATON PK DIST MEMORIAL PARK	208 W UNION AVE	WHEATON	IL	60187	CHICAGO/WISCONSIN	1430232
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Exhibit B  
Products and Prices

Customer acknowledges and agree that Pepsi shall be entitled to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed) and that the pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products shall not be deemed as a price increase subject to any pricing cap or notification restrictions that may be specified in this Agreement.

**Bag in Box**

3 gallon	- \$14.02 per gallon (\$42.06 per box)
5 gallon	- \$13.57 per gallon (\$67.85 per box)

**Cans & Bottles**

10 oz bottles	- \$13.16 per case of 24
12 oz cans	- \$10.36 per case of 24
16.9 oz Aquafina	- \$4.97 per case of 24
20 oz Aquafina	- \$14.52 per case of 24
20 oz carbs	- \$22.28 per case of 24
20 oz Gatorade	- \$23.28 per case of 24

Pricing will increase by no more than 4% in years two and three of the agreement.

**Exhibit C****INSURANCE COVERAGE**

Pepsi shall obtain insurance of the types and in the amounts listed below.

**A. Commercial General and Umbrella Liability Insurance**

Pepsi shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence.

CGL insurance shall be at least as broad as Insurance Services Office (ISO) 2007 occurrence form CG 00 01, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Customer, its elected and appointed officials, employees and agents shall be included as an insured under the CGL, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Customer. Any insurance or self-insurance maintained by the Customer shall be excess of Pepsi's insurance and shall not contribute with it.

**B. Business Auto and Umbrella Liability Insurance**

Pepsi shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be at least as broad as Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

**C. Workers Compensation Insurance**

Pepsi shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If Customer has not been included as an insured under the Commercial General and Umbrella Liability Insurance required in this Agreement, Pepsi waives all rights against Customer and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to this Agreement.

**D. General Insurance Provisions****1. Evidence of Insurance**

Pepsi shall furnish Customer with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All policies shall provide for 30 days' written notice to Customer prior to the cancellation or material change of any insurance referred to therein. Failure of Customer to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Customer to identify a deficiency from evidence that is provided shall not be construed as a waiver of Pepsi's obligation to maintain such insurance.

Customer shall have the right, but not the obligation, of prohibiting Pepsi from entering the premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Customer. Failure to maintain the required insurance may result in termination of this Agreement at Customer's option.

## **2. Acceptability of Insurers**

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A- VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A- VII or a Best's rating is not obtained, Customer has the right to reject insurance written by an insurer it deems unacceptable.

## **3. Deductibles and Self-Insured Retentions**

Any self-insured retentions must be declared to the Customer.

## **4. Subcontractors**

Pepsi shall cause each subcontractor employed by Pepsi to purchase and maintain insurance of the type specified above. When requested by the Customer, Pepsi shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

## Product List

[illegible]