

BEVERAGE SALES AND SPONSORSHIP 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 5201 Blue Mound Rd. Fort Worth, TX 76106 (“*Pepsi*”) and **City of North Richland Hills**, a Texas municipality, with its principal place of business at 4301 City Point Drive, North Richland Hills, Texas 76180, on its own behalf, and on behalf of the NRH20 Family Water Park, owned and operated by the City of North Richland Hills (the “*Customer*”). Customer and Pepsi are herein individually referred to as a “party” and collectively as the “parties.” 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. When fully executed, this Agreement will constitute a binding obligation of both parties until expiration or termination.

Definitions

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

“*Affiliate*” means an entity that directly or indirectly is in control of, is controlled by, or is under common control with an entity.

“*Beverage*” or “*Beverages*” means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed during the Term of the Agreement.

“*Cases*” means cases of Packaged Products (as defined herein) purchased by Customer from Pepsi during the Term, initially delivered in quantities of 24 plastic bottles, aluminum cans, glass bottles (or equalized 24 pack cases, *e.g.*, two 12-pack cases), eight 2-liter plastic bottles, or such other size, quantity and type of containers as Pepsi may make available from time to time during the Term.

“*Competitive Products*” means any and all Beverages other than the Products.

“*Customer Location*” means the NRH20 Family Water Park located at 9001 Boulevard 26, North Richland Hills, TX 76180.

“*Customer Marks*” means (i) the Designations (as defined below) and (ii) Customer Marks including, without limitation, characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations associated with or related to the Customer, the Facilities and, if applicable, the Team(s), at the beginning of the Term or which will be created during the Term, if any.

“*Designations*” includes, but are not limited to, the following: “Official Water and Soft Drink of NRH20 Family Water Park” and “Official Sponsor of NRH20 Family Water Park.”

“**Equipment**” means equipment loaned by Pepsi to Customer to dispense, store or cool Products (as defined below), as more fully described in Section 5 herein.

“**Facilities**” means the entire premises of every facility owned, leased, occupied or operated by the Customer or its Food Service Provider throughout the Term, including all buildings, the grounds, parking lots, dining facilities, snack bars, food carts, retail locations, concession stands, unbranded and branded food service outlets and vending areas at the Customer Location. “**Facilities**” shall also be deemed to include: convenience store operations and restaurants in place at the beginning of the Term or initiated during the Term in space leased to third-party commercial tenants within Customer-owned buildings.

“**Food Service Provider**” means any third party which sells or serves Beverages at the Facilities during the Term.

“**Gallons**” means gallons of the Postmix Products purchased by Customer from Pepsi during the Term.

“**Packaged Products**” means Beverages that are sold or distributed by Pepsi in pre-packaged form (e.g., bottles and cans). A current list of Pepsi’s Packaged Products is listed in attached Exhibit A which may be amended by Pepsi from time to time.

“**Postmix Products**” means Beverages sold and/or distributed by Pepsi and used to create and prepare fountain beverages, frozen carbonated or non-carbonated beverages. A current list of Pepsi’s Postmix Products is listed in attached Exhibit A which may be amended by Pepsi from time to time.

“**Products**” means Postmix Products, and Packaged Products.

“**Units**” means the total combined Gallons and Cases during any applicable time period. For the purposes of measuring total Units only, 1 Case of Packaged Products equals 1 Gallon of Postmix Product.

“**Year**” means 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 is the seven (7) year period commencing on June 15, 2020 and expiring on May 31, 2027 (the “**Term**”).

2. **Performance**

This Agreement, including all of Pepsi’s support to Customer as described below, is contingent upon Customer’s compliance with all of the following performance criteria throughout the Term:

(A) **Exclusivity.** Pepsi will be the exclusive Beverage supplier to, and Beverage sponsor of,

Customer and the Facilities. Customer will take all necessary steps to ensure that the Products are the exclusive Beverages 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 Facilities by any method or through any medium whatsoever (including without limitation print, broadcast, direct mail, coupons, handbills, displays and signage), whether public or private. The Customer will not serve, dispense or otherwise make available or permit the availability of, or in any way advertise, display, represent or promote, beverage products licensed by, or produced by bottlers licensed by, The Coca-Cola Company or any affiliate thereof, or any other supplier of Competitive Products.

(B) **Purchase of Products.** Customer agrees to purchase and require its Food Service Providers and purchasing representatives to purchase, Products exclusively and directly from Pepsi.

(C) **Fountain Products.** Customer agrees to 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; Customer agrees not to resell the Postmix Products either to nonaffiliated outlets or to consumers in any form other than the Fountain Products.

(D) **Ancillary Product.** Customer agrees to purchase and require its food Service Providers and purchasing representatives to purchase all their respective requirements for carbon dioxide and branded disposable cups (“*Ancillary Products*”) exclusively from Pepsi.

(E) **Sponsorship and Promotional Rights.** Pepsi shall have the right to advertise its Products on signage at the Facilities and in print advertising as more fully set forth on Exhibit B attached hereto. In addition, Customer hereby grants Pepsi the right to promote the fact that Pepsi is the official and exclusive Beverage sponsor of the Customer, the Facilities, including the right of Pepsi to use and promote the Customer Marks. Such promotion may be conducted through the distribution channels of television, radio and print media; on the packaging of (including cups and vessels); and at the point-of-sale of any and all Products wherever they may be sold or served. In connection therewith, Customer hereby grants to Pepsi a nonexclusive license to use the name of the Facilities and applicable Teams and the Customer Marks for the limited purposes of promoting Products within the context of promotional activities and activation of sponsorship benefits as set forth herein. Customer represents and warrants that it is the sole and exclusive owner of all right, title and interests in and to the Customer Marks (including without limitation, all goodwill associated therewith) and Pepsi’s use of the Customer Marks pursuant to this Agreement will not infringe the rights of any third parties. Pepsi and Customer agree that advertising and promotional copy produced by each of them relating to the sponsorship rights granted herein will be subject to the prior written approval of the other party as not to be unreasonably withheld.

(F) **Brand Identification.** Customer must display mutually agreed upon appropriate PepsiCo brand identification for each Product served on all menus (including catering and digital), menuboards and postmix dispensing valves at each of the Facilities throughout the Term.

(G) **Hospitality Rights.** Customer hereby agrees to provide Pepsi with the event tickets and

other hospitality rights as may be set forth on Exhibit B attached hereto.

(H) **Product Mix; Minimum SKU/Brand Requirement.** Throughout the Term, Customer agrees to offer a reasonable mix of Pepsi's Products and package sizes for sale and distribution throughout the Facilities including, carbonated soft drinks, water, isotonic, coffees and teas, juices, energy drinks and other beverages available from Pepsi, If Customer limits the portfolio of Products and/or package sizes offered at the Facilities at any time during the Term, Customer acknowledges that Pepsi will have the right to adjust the funding offered hereunder to Customer on an equitable basis commensurate with any negative impact such portfolio change may have on projected sales under the Agreement. .

(I) **Restrictions for Products.** The parties recognize and agree that there are certain additional territorial restrictions that pertain to the purchase and resale of the Products. To the extent any prospective Facilities are located outside the territories serviced by Pepsi, then Pepsi may, upon request by the Customer, use commercially reasonable efforts to facilitate an agreement between the Pepsi-Cola bottler servicing the applicable territory and the Customer with terms substantially similar to the terms of this Agreement. Furthermore, Customer agrees not to distribute or resell the Products, directly or indirectly, outside the territories serviced by Pepsi and shall cause its purchasing representative to abide by such territorial restrictions.

(J) **Food Service Providers.** The terms and conditions of this Agreement, including the pricing, funding and other consideration provided for herein is based on the Customer's current operating model/use of third-party Food Service Provider at commencement date of this Agreement. If either: (i) Customer switches Food Service Providers during the Term or (ii) Customer is self-operated and converts to a Food Service Provider model during the Term, then Customer must require such Food Service provider to abide by the applicable pricing and other terms set forth in this Agreement to the exclusion of all other benefits, including in connection with any agreement such Food Service Provider may separately have with Pepsi or Pepsi's affiliates. In the event that the Customer fails to adhere to this requirement (or the Food Service Provider refuses to abide accordingly), then Pepsi shall be entitled to adjust its pricing, funding or other consideration offered to Customer herein on an equitable basis to neutralize any negative impact such change may have on the economics of the original Agreement.

3. Monetary Funding

Provided Customer is not in breach of this Agreement and the Facilities are open, Pepsi will provide Customer with the funding described below.

(A) **Initial Support Funds.** Pepsi will provide Customer with initial support funds based on the number of days that the Facilities will be open for business during the 2020 season of the Agreement (the "**Initial Support Funds**"). The amount of the Initial Support Funds shall be calculated according to the index below. The Initial Support Funds will be payable to Customer within sixty (60) days after the later of (i) the first day of the Customers opening for the 2020 season or (ii) the signing of this Agreement by both parties. In the event that the Initial Support Funds are paid to Customer, and then the opening date is delayed or cancelled, the amount paid to Customer will be either offset against amounts that may concurrently or thereafter become due to

Customer under this Agreement or will be paid by Customer to Pepsi within 30 days following Pepsi’s invoice. The Initial Support Funds are earned by Customer over the Term. In the event of early termination for any reason other than an uncured material breach by Pepsi pursuant to Section 7(A) herein, the unearned Initial Support Funds will be repaid to Pepsi pursuant to the terms of Section 7(B)(i) herein.

<u>Index</u>	<u>Number of Anticipated Days Open</u>	<u>Funding Amount</u>
1.00	102	\$10,000
0.75	77	\$7,500
0.50	51	\$5,000
0.25	26	\$2,500

(B) **Annual Support Funds.** In each of Years two (2) through seven (7), Pepsi will provide Customer with annual support funds in the amount of Fifteen Thousand US Dollars (\$15,000) not to exceed six (6) consecutive payments (the “*Annual Support Funds*”). The Annual Support Funds will be paid to Customer within sixty (60) days after the commencement of each applicable Year. The Annual Support Funds are earned throughout the Year in which they are paid. In the event of early termination for any reason other than an uncured material breach by Pepsi pursuant to Section 7(A) herein, the unearned Annual Support Funds will be repaid to Pepsi pursuant to the terms of Section 7(B)(i) herein.

4. Non-Monetary Consideration

(A) **Marketing Support.** Pepsi will provide Customer with marketing support that will be used and spent by Pepsi to pay for point-of-sale materials and promotional programs in support of the sale of the Products at the Facilities, as mutually agreed to by the parties. (the “*Marketing Support*”). The Marketing Support for Year one shall be calculated based on the number of days that the Facilities will be open for business during the 2020 season of the Agreement, according to the index below. In Years two through seven (7), the value of the Marketing Support will be Seven Hundred Fifty US Dollars (\$750). The Customer acknowledges and agrees that unused Marketing Support in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash payment.

<u>Index</u>	<u>Number of Anticipated Days Open</u>	<u>Value of Marketing Support</u>
1.00	102	\$750
0.75	77	\$563
0.50	51	\$375
0.25	26	\$188

(B) **POS Support.** Each Year during the Term, Pepsi will provide Customer with point-of-sale merchandise (“*POS*”) support valued at up to Seven Hundred Fifty US Dollars (\$750) (“*POS*”).

Support”). The POS Support will be used and spent by Pepsi to pay for point-of-sale materials in support of sale of the Products at the Facilities, as mutually agreed to by the parties. Customer acknowledges and agrees that unused POS Support in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash payment.

(C) **Product Free of Charge.** Upon request from Customer, Pepsi will provide up to a total of 150 Cases of 20oz carbonated soft drinks per Year at no additional charge to 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 unrequested Product in any Year shall not be carried over to the subsequent Year or be redeemable for cash payment.

5. Equipment and Service

(A) **Equipment.** Pepsi will loan to the Customer, at no charge, appropriate Equipment for dispensing the Products at the Facilities. Customer agrees that the Equipment will be exclusively used to display and merchandise the Products as reasonably determined by Pepsi, and subject to applicable local law, rule or regulation. Customer will not use the Equipment to display, stock, advertise, sell or maintain any other products (including on the exterior of the Equipment). Title to such Equipment will remain vested in Pepsi or its affiliate and Customer will return all Equipment to Pepsi upon expiration or earlier termination of this Agreement. At Pepsi’s request, Customer will provide Pepsi with a written Equipment verification list indicating the asset number, Equipment type, and location of the Equipment loaned to Customer pursuant to this Agreement. To the extent that future technology enhancements, equipment platforms or products to support these platforms are substantially different in scope or composition compared to existing equipment components and products, Pepsi and Customer will work in good faith to negotiate the economic terms for implementation of the new technology equipment.

(B) **Vending Machines.** With respect to the vending machine Equipment placed at the Facilities (the “*Vending Machines*”), Pepsi will have the additional responsibility for (i) stocking the Vending Machines with the Products and (ii) collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for collected monies. Customer agrees to provide reasonable assistance to Pepsi in apprehending and prosecuting vandals. Pepsi shall not be obligated to pay Commissions on documented revenue losses resulting from vandalism or theft of Product with respect to any Vending Machines. 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 Facilities.

(C) **Service.** Pepsi will provide, at no charge to 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 Customer request, and will use reasonable efforts to remedy the related Equipment problem as soon as possible. Notwithstanding the foregoing, Customer acknowledges that delays in service may be caused by factors well outside of Pepsi’s control, and therefore Pepsi’s service record will be measured in the aggregate such that an isolated failure is not a material breach of the Agreement.

6. Pricing

Customer will purchase, and will require that its Food Service Providers and any other third parties or purchasing representative for the Facilities to purchase, Products and Ancillary Products directly and exclusively from Pepsi pursuant to the pricing and terms and conditions set forth herein. The initial pricing schedule for Products is set forth on attached Exhibit A, which may be changed by Pepsi from time to time during the Term, provided, however, annual price increases will not exceed 5%. Pepsi will be entitled to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed on manufacturers, distributors, consumers or otherwise). The pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products will not be subject to any pricing cap or notification restrictions that may be specified in this Agreement.

7. General Terms

(A) **Termination for Default.** 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 Customer closes one or more Facilities or if one or more Facility breaches the Agreement, then Pepsi shall have the option, in lieu of termination of the entire Agreement, to (i) adjust funding in Section 3 commensurate with the projected decline in volume; (ii) terminate the Agreement only as it pertains to the sold, closed or breaching Facilities; and (iii) obtain an equitable reimbursement for the portions of funding and other costs attributable to such sold, closed or breaching Facilities. Notwithstanding the foregoing, this paragraph will not apply to seasonal Facility closures with Pepsi prior written approval, such approval not to be unreasonably withheld.

(B) **Additional Termination Rights Available to the Parties.**

- i. Without prejudice to any other remedy available to Pepsi at law or in equity in respect of any event described below, this Agreement may be terminated in whole or in part by Pepsi upon thirty (30) days' advance written notice to Customer if (i) any of the Products are not made available at the Facilities as required in this Agreement, (ii) any of the rights granted to Pepsi herein are materially restricted or limited during the Term and such restriction or limitation is reasonably beyond Pepsi's control; or (iii) a final judicial opinion or governmental regulation prohibits, or materially impacts or impairs (*e.g.*, beverage tax or package size restriction) the availability or cost of Beverages, whether or not due to a cause beyond the reasonable control of Customer. Before Pepsi exercises its right to terminate as described in this Section, Pepsi agrees to engage in good faith renegotiations with Customer to adjust the funding offered to Customer herein on an equitable basis to neutralize any negative impact such change may have on the economics of the original Agreement.
- ii. Customer shall have the right to terminate this Agreement in the event Customer does not appropriate sufficient funding to meet Customer's financial obligations

under this Agreement, during the Term or any renewal term. If the Agreement is terminated due to non-appropriation of funds, Customer will use commercially reasonable efforts to provide Pepsi with 60 days advance notice, and Customer shall reimburse Pepsi for any unearned portion of funds advanced by Pepsi pursuant to section 7(C)(i) below. Additionally, the Customer shall not procure similar goods and services as described herein from a third party during such time as it is unable to make payments to Pepsi.

(C) **Remedies.** If the Term of this Agreement is terminated early for any reason other than an uncured material breach by Pepsi pursuant to subsection (A) above, the Customer and its Facilities will surrender to Pepsi all Equipment provided by Pepsi and will forfeit all funding not paid as of the date of termination. For clarity, Parties agree that in the case of non-appropriation of funds as described in section 7(B)(ii) above, Customer will only be responsible for the reimbursement of funds as described in section 7(C)(i). below. In addition, without prejudice to any other right or remedy available to Pepsi, Pepsi will have the right to immediately seek reimbursement from Customer and the Facilities for the following:

- i. An amount reflecting reimbursement for all funding previously advanced by Pepsi but not earned by Customer pursuant to the terms of this Agreement. With regard to the Initial Support Funds, if any, the amount of such reimbursement will be the result of multiplying the Initial Support Funds by a fraction, the numerator of which is the number of months remaining in the Term at the time such termination occurs and the denominator of which is the higher of the total number of months in the Term (e.g., 5 year term is 60 months) or, as applicable, the number of months expected to comprise the Term based on volume trends as of the time of termination and the Volume Threshold (if applicable). With regard to the Annual Support Funds and, if applicable, any other annual funds, the amount of such reimbursement will be the result of multiplying, the total amount of such funds paid to Customer in the Year in which the Agreement is terminated 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 installation, service and refurbishing of Equipment provided during the Term and the cost of removal of all Equipment that has been installed in the Facilities, as applicable; and
- iii. An amount as liquidated damages, for lost sales suffered by Pepsi as a result of such termination, equal to Ten Thousand US Dollars (\$10,000) per Year remaining in the Term at the time of the early termination. For example, if the Agreement is terminated with 18 months remaining in the Term, then the total amount of liquidated damages that the Customer will pay Pepsi is \$15,000.

(D) **Expiration.** Upon expiration of this Agreement, if Customer has not entered into a further agreement with Pepsi for the purchase of the Products, Customer will surrender to Pepsi all Equipment installed in the Facilities.

(E) **Indemnification.** Pepsi will indemnify and hold the Customer harmless from 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; (ii) product liability, copyright, trademark, and patent suits resulting from the use or consumption of Products purchased directly from Pepsi; and/or (iii) the negligence or willful misconduct of Pepsi under this Agreement, (except to the extent such claims arise out of the Customer’s negligence or willful misconduct). To the extent permitted by applicable law, the Customer will indemnify and hold Pepsi, its subsidiaries, affiliates or assigns harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys’ fees that are necessary and just as awarded by a court of competent jurisdiction) arising out of (i) its breach of any term or condition of this Agreement; and/or (ii) the negligence or willful misconduct of the Customer (except to the extent such claims arise out of Pepsi’s negligence or willful misconduct). Notwithstanding any of the foregoing, nothing herein shall require Customer to create a sinking fund to satisfy any obligations under this Agreement. The provisions of this Section shall survive the termination of this Agreement.

(F) **Insurance.** Pepsi will obtain and maintain and keep in full force and effect the following forms of insurance with the minimum limits of insurance stated below. Furnishing acceptable evidence of insurance as required hereunder shall not relieve either party or any subcontractor from any liability or obligation for which it is otherwise liable under the terms of this contract, nor is liability limited to the amount of this contract.

Form of Insurance	Minimum Limits of Insurance
(i) Disability	As required by law
(ii) Unemployment	As required by law
(iii) (1) Workers Compensation and (2) Employers Liability	Statutory \$1,000,000 per occurrence (BI/disease)
(iv) Commercial General Liability on an occurrence basis, and shall be at least as broad as ISO 2007 form CG 00 01	\$1,000,000 per occurrence and aggregate
(v) Business Automobile Liability (rented or owned) written on an occurrence form and shall be at least as broad as ISO form CA 00 01	\$1,000,000 per occurrence combined single limit for bodily injury and property damage liability
(vi) Umbrella/Excess Liability on a follow form basis excess of the Commercial General Liability, Business Automobile Liability Insurance and Employers Liability	\$2,000,000 per occurrence and aggregate

The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those required.

All coverage must be written on an occurrence basis and must be maintained without interruption from the date of this agreement until the date of termination of this agreement. All coverage shall

be primary and non-contributory to any other insurance available to the other party. Should any of the above described policies be cancelled before the expiration date thereof, the party or party's representative will mail thirty (30) days written notice to the certificate holder. The policies shall be written with insuring company(ies) with AM Best financial strength ratings of "A-" or higher and financial size categories of "VII" or greater. The commercial general liability, business automobile liability and umbrella/excess liability policies shall list the other party and its subsidiaries, affiliates, directors, officers, employees, partners and agents as additional insured. The commercial general liability, business automobile liability, workers compensation and employer's liability and umbrella/excess liability policies shall contain a waiver of subrogation in favor of the other party where allowed by law. Pepsi shall provide certificates of insurance evidencing the insurance required within prior to commencing any work. Customer is a self-insured entity. In lieu of procuring a commercial insurance policy, Customer shall provide a letter indicating self-insured status upon request of Pepsi.

(G) **Right of Offset.** Pepsi reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer or its Food Service Providers for Products ordered from and delivered by Pepsi, and any and all balances due and payable to Pepsi pursuant to this Agreement.

(H) **Non-Disclosure.** Except as may otherwise be required by law or legal process or as reasonably necessary for either party to enforce its rights hereunder, neither party will disclose to unrelated third parties any information that is considered confidential information of the other party without that party's consent. The terms and conditions of this Agreement, and any other information required to be disclosed by law, rule, regulation or court order, are considered public information and shall be disclosed in accordance with applicable law.

(I) **Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned or otherwise transferred by either party (whether by operation of law or otherwise) without the prior written consent of the other party, *provided, however*, that Pepsi may assign and transfer this Agreement (in whole and not in part) to an affiliate without the consent of Customer hereto if such affiliate is capable of fully performing all obligations of the assignor hereunder and agrees, in writing to perform all of the obligations and assume all liabilities of the assignor hereunder. In the event that a third party acquires Customer or substantially all Facilities or if Customer is acquired or merges with a third party, Customer will, 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 or merged entity within ten (10) days following the closing of the transaction, Customer will be in breach of this Agreement and Pepsi may, at its option, terminate this Agreement effective immediately and Customer will pay to Pepsi all sums specified in Section 6(B) herein.

(J) **Governing Law.** The laws of the state of Texas govern all matters arising out of this Agreement. Venue for any claims or lawsuits arising under this Agreement shall be in the state courts of Tarrant County, Texas or the US district court for the Northern District of Texas, Fort Worth division.

(K) **Price Discrepancy.** Any price discrepancy claim must be submitted to Pepsi within 365 days of the date of the invoice in question. If Customer makes a price discrepancy claim within 90 days of the invoice date, 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 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, 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.

(L) **Tax.** Neither Pepsi nor its Affiliates will be responsible for any taxes payable, fees or other tax liability incurred by Customer in connection with the consideration or any other fees payable by Pepsi under this Agreement. If Pepsi is charged common area maintenance fees, taxes or other charges related to Pepsi's occupation of the space allocated to its Equipment at the Facilities, Pepsi may make an adjustment to the consideration provided Section 4 above to offset for such costs.

(M) **Force Majeure.** Neither party shall be responsible to the other for any failure, in whole or in part, to perform any of its respective obligations hereunder, to the extent and for the length of time that performance is rendered impossible or commercially impracticable resulting directly or indirectly from any foreign or domestic embargo, product detention, seizure, act of God, pandemic, epidemic, 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 reasonably beyond the control of the Parties, or that of the suppliers to Pepsi, unless such contingency is specifically excluded in another part of this Agreement. (*"Force Majeure Event"*) Any Party(s) so affected, will (i) use all reasonable efforts to minimize the effects thereof and (ii) promptly notify the other Party(s) in writing of the Force Majeure and the effect of the Force Majeure on such party's ability to perform its obligations hereunder. The affected party(s) will promptly resume performance after it is no longer subject to Force Majeure. In the event Customer's performance is temporarily suspended pursuant to a Force Majeure Event, Pepsi's funding obligations will be suspended for the duration of Customer's nonperformance. Once Customer resumes performance or in the event Customer is able to perform some, but not all of its obligations herein, any fixed, advanced, or guaranteed funding will be adjusted commensurate with the decline in volume associated with the suspended or partial performance. If the Force Majeure period continues beyond 90 days, the parties agree to discuss in good faith potential modifications to this Agreement and in the event an agreement cannot be reach, any party may terminate the Agreement.

(N) **Waiver.** No failure or delay of either party to exercise any rights or remedies under this

Agreement will operate as a waiver thereof, nor will any single or partial exercise of any rights or remedies preclude any further or other exercise of the same or any other rights or remedies. Any waiver must be in writing and signed by the party waiving the rights.

(O) **Relationship of the Parties.** The parties are independent contractors with respect to each other. Nothing contained in this Agreement creates a joint venture partnership between the parties.

(P) **Construction.** Customer and Pepsi acknowledge that both parties participated equally in the negotiation of this Agreement and that, accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted.

(Q) **Notices.** Any notice which either party is required or permitted to give hereunder will be in writing, signed by the notifying party and will be either delivery by hand or nationally-recognized overnight courier service or deposited in the United States mail, certified or registered mail, return receipt requested, postage paid, addressed as follows: If to Customer, to the name and address set forth in the preamble herein, with a copy to the City Attorney at 4301 City Point Drive, North Richland Hills, Texas 76180. If to Pepsi, to the name and address set forth in the preamble herein, with a copy thereof to: Pepsi Beverages Company, 1111 Westchester Avenue, White Plains, NY 10604, Attention: Law Department or to such addresses as the parties may subsequently provide in writing. Notice will be deemed to have been given when delivered by hand or nationally recognized overnight courier service, or when received as evidenced by the return receipt, or the date such notice is first refused, if that be the case.

(R) **Right of First Negotiation/Refusal.** As of the commencement of this Agreement until ninety (90) days prior to the expiration of the Term, 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 Facilities upon expiration of the current Term. If the parties have not entered into a new agreement by the ninetieth day prior to expiration of the Term, Customer will be free to enter into discussions/negotiations with third parties.

(S) **Distribution Limitations.** 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 Customer (i) sells Products directly or indirectly for resale outside of the Pepsi's exclusive territory where the Facility operates and (ii) purchases Products outside Pepsi's exclusive territory where the Facility operates and resells such Products within Pepsi's exclusive territory.

(T) **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.


(U) **Representations.** Each of the undersigned parties, represent and warrant to the other that (i) the execution, delivery and performance of this Agreement will not violate any agreements with, or rights of, third parties or any statute, rule or regulation applicable to the party or any of its properties, assets or operations (including without limitation any financial reporting and disclosure requirements promulgated by the Securities and Exchange Commission), (ii) it is duly authorized and empowered to bind itself to the terms and conditions of this Agreement for the duration of the

Term and (iii) it possesses legal authority to enter into and perform the terms and conditions of this Agreement.

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

Bottling Group, LLC

Customer

By: 
Print Name: Shawn Armstrong
Title: Key Account Manager
Date: 6/5/20

By: _____
Print Name: _____
Title: _____
Date: _____

Exhibit A
Product and Pricing

5 Gallon Corporate BIB \$83.95

5 Gallon Dr Pepper BIB \$\$86.60

24 oz Cups \$84.12 1000 Cups

24 oz Lids \$35.17 2400 Lids

5 Gallon Frozen Carbonated BIB \$200.00

20 oz CSD \$24.76

20 oz Aquafina \$14.40

20 oz Gatorade \$21.33

20 oz Lipton \$24.76

18.5 oz Pure Leaf Tea \$19.94

20 oz Life WTR \$26.33