

## 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 2422 E. U.S. Highway 30 Grand Island Nebraska ("Pepsi") and City Of Grand Island, a [Nebraska] corporation, with its principal place of business at [Island Oasis, 321 E Fonner Park Road] (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, 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) bottled or canned water whether carbonated or still (spring, mineral or purified), and (viii) 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 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 (the "Outlets"). 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. 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 and Packaged Products 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 March 1, 2014 and expire upon the later of February 28, 2015, or at such time as Customer's collective purchases of Products meets or exceeds a volume threshold (the "Volume Threshold") of 1500 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"). After February 28, 2015, this agreement may be extended 2 years if mutually agreed upon by both parties. After February 28, 2017 this agreement may be extended another 2 years if mutually agreed upon by both parties. Except for applicable Marketing Support Funds, 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.** 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.

(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 Beverage 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:

#### 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) **Initial Support Funds.** Pepsi shall provide Customer with initial support funds in the amount of Two Thousand Two Hundred (\$2,200), payable to the Customer within sixty (60) days of the signing of this Agreement by both parties (the "Initial Support Funds"). The Initial Support Funds are earned by the Customer over the Term. In the event Pepsi terminates this Agreement due to the Customer's failure to cure a breach hereof, the unearned Initial Support Funds will be repaid to Pepsi pursuant to the terms of Section 7(B)(1) herein.

(B) **Annual Support Funds.** Pepsi shall provide Customer with annual support funds in the amount of Two Thousand Two Hundred (\$2,200), payable to the Customer within sixty (60) days after the commencement of Year 2 and each anniversary thereafter until the end of the Term of this Agreement not to exceed Four (4) 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 pursuant to the terms of Section 7(B)(1) herein.

(C) **Marketing Support Funds.** Each Year throughout the Term, PepsiCo shall payout Six Hundred (\$600) Dollars in mutually agreed upon marketing items or advertisements.

5. **Equipment**

Pepsi will loan each Outlet, at no charge, appropriate 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. 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, 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.

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 Products and Ancillary Products shall be purchased by the Customer from Pepsi at prices established by Pepsi. The current pricing schedule for Products is set forth on attached Exhibit B. Thereafter, the prices may be changed from time to time at Pepsi's discretion, except that Pepsi shall provide thirty (30) days notice of any price increases during the Term. No greater than 5% per year annual Increase.

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 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).

(B) **Remedies.** If Pepsi terminates this Agreement as a result of default by Customer or its Outlets, 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, Pepsi shall have the right to immediately seek reimbursement from Customer and the Outlets for the following:



(1) A payment 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 Initial Support Funds, the amount of such reimbursement shall be determined by 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 [60 months] or the number of months expected to comprise the Term based on volume trends as of the time of termination and the Volume Threshold. 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;

(2) A payment to Pepsi 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 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.** 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 suits resulting from the use or consumption of the Products; and/or (iii) the negligence or willful misconduct of Pepsi. 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) 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.

(G) **Assignment.** In the event that a third party acquires Customer or all or a group of the Outlets, 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/merged entity within ten (10) days following the closing of the transaction, Pepsi may, at its option, terminate this Agreement effective immediately and Customer will pay to Pepsi all sums specified in paragraph 7(B) herein. The Agreement shall not be otherwise assignable without the express written consent of Pepsi.



(H) **Governing Law.** This Agreement shall be governed by the laws of the State of New York 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 Beverage 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 incurred by the Customer in connection with the consideration or any other fees payable by Pepsi under 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 Beverage 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.

(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.

(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.

(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 telecopier, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Pepsi:

Pepsi Beverages Company  
2422 E. U.S. Highway 30  
Grand Island NE 68801  
Attn: Director, FoodService

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

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

If to Customer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(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) 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.** Customer represents and warrants to Pepsi that the execution, delivery and performance of this Agreement by Customer will not violate any agreements with, or rights of, third parties. The Customer and undersigned represent that the undersigned is duly authorized and empowered to bind the Customer to the terms and conditions of this Agreement for the duration of the Term.

**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: Joe Urbanec  
Title: FSR  
Date: 2-24-2014

Customer


By:   
Print Name: Jay Vavricek  
Title: Mayor  
Date: 2/25/2014



Exhibit A  
Customer Outlets



Exhibit B  
Products and Prices

Customer acknowledges and agrees (and shall require that any third parties or Food Service Providers purchasing Products through this Agreement 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.

Package	Units	2014 Pricing	Per Unit
BIB	5	\$64.90	\$12.98
20oz CSD	24	\$18.50	\$0.77
20oz Gatorade	24	\$19.00	\$0.79
20oz Aquafina Water	24	\$10.00	\$0.42
32oz Cups	480	\$54.00	\$0.11

Package	Units	Pricing	Unit/Price
Rockstar	24	\$36.00	\$1.50
AMP	12	\$20.88	\$1.74
Pure Leaf Tea	12	\$15.03	\$1.25
Lipton Tea	24	\$22.10	\$0.92
Ocean Spray	12	\$15.03	\$1.25
Starbucks Coffee	12	\$23.20	\$1.93
Sobe Life Water	12	\$16.24	\$1.35
Kickstart	12	\$12.33	\$1.03
12oz Cans	24	\$12.37	\$0.52