



Department of Tourism and Special Events

TO: The Honorable Mayor and City Council

FROM: Kory Brown, Director of Tourism and Special Events

DATE: January 24, 2023

SUBJECT: EastSide Centre – PepsiCo Beverage Sales Agreement – 3 Years

DISCUSSION: EastSide Centre is up for renewal with our non-alcoholic beverage agreement with PepsiCo Beverage Sales, LLC. We have just completed a 5-year contract with this company and have been with this brand for over 10 years. The new contract being proposed is for a total of three (3) years with sponsorship monies being allocated to the facility each of those years. We are required to sell Pepsi products only for non-alcoholic beverages. The contract would begin February 8th, 2023, and run through February of 2026 or until the allotted gallon/case amount set forth has been fulfilled.

RECOMMENDATION: Approve and move forward with the new 3-year agreement with PepsiCo Beverage Sales, LLC.

RESOLUTION NO. 2223-143

East Peoria, Illinois
_____, **2023**

RESOLUTION BY COMMISSIONER _____

WHEREAS, EastSide Centre maintains a beverage contract for the sale of non-alcoholic beverages sold as concessions at events taking place at EastSide Centre; and

WHEREAS, EastSide Centre generates revenues from concession sales during the various events that take place at EastSide Centre, which includes the sale of non-alcoholic beverages, and such revenues allow EastSide Centre to make various improvements to ensure first class facilities at EastSide Centre; and

WHEREAS, EastSide officials have negotiated a new three-year contact with PepsiCo Beverage Sales, LLC for the exclusive sales of Pepsi products at EastSide Centre during the term of the contract as provided in "Exhibit A", attached hereto and incorporated by reference (the "Beverage Agreement"), which will assist EastSide Centre operations in maximizing revenues generated from the concession sales; and

WHEREAS, it is in the best interests of the City to enter into a Beverage Agreement with PepsiCo Beverage Sales, LLC for non-alcoholic beverages for EastSide Centre concessions as provided in the Beverage Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT the Beverage Agreement for supplying beverages for EastSide Centre concessions is hereby approved, and the Mayor or his designee is hereby authorized to execute the Beverage Agreement on behalf of the City as set forth attached as Exhibit A, together with such modifications therein as the Mayor in his discretion may approve; provided, however, that the City shall have no obligation under the terms of this Resolution until an executed original of the Beverage Agreement has been delivered to PepsiCo Beverage Sales, LLC.

APPROVED:

Mayor

ATTEST:

City Clerk

BEVERAGE SALES AGREEMENT

This sets forth the agreement (“*Agreement*”) between **PepsiCo Beverage Sales, LLC**, a Delaware limited liability company, and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company with an office located at 801 W. Birchwood Street, Morton, IL 61550 (“*Pepsi*”) and **City of East Peoria**, with its principal place of business at 401 W. Washington Street, East Peoria, IL 61611 on its own behalf, on behalf of its affiliates and wholly-owned subsidiaries, and on behalf of its individual franchisees and licensees, if any (“*Customer*”). The support described below is in lieu of any other discounts, allowances or rebates to which 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.

“*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.

“*Equipment*” means equipment loaned by Pepsi to Customer to dispense, store or cool Products (as defined below), as more fully described in Section 4 herein.

“*Facilities*” shall mean the entire premises of **EastSide Centre**, located at 1 EastSide Drive, East Peoria, IL 61611; including all buildings, the grounds, parking lots, dining/cafeteria facilities, snack bars, food carts, retail locations, the grounds, unbranded and branded food service outlets, parking lots and all vending areas located at or around the Facilities. A current list of the Facilities is set forth in attached Exhibit A.

“*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 B 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 B which may be amended by Pepsi from

time to time.

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

“**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 will commence on January 1, 2023 and the term will expire upon the later of December 31, 2025 or at such time as Customer’s collective purchases of Products meets or exceeds a volume threshold (the “**Volume Threshold**”) and Cases (the “**Term**”). For the purposes of measuring the Volume Threshold only, 1 Case of Packaged Product equals 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 will 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 will not provide any other funding to Customer.

2. **Performance**

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

(A) **Exclusivity.** Pepsi is the exclusive Beverage supplier to Customer for the Facilities. Customer agrees to 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 digital, print, broadcast, direct mail, coupons, handbills, displays and signage), whether public or private. The Facilities and 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 at the Facilities.

(B) **Purchase and Resale of Products.** Customer agrees to continuously purchase, and require its Facilities and purchasing representatives to purchase, Products exclusively and directly from Pepsi. Throughout the Term, Customer will continuously serve, dispense, sell and/or otherwise make Products available to its customers throughout the Facilities. Customer agrees to pay all accounts owing to Pepsi in accordance with payment terms as established by 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) **Advertising Rights.** Pepsi may advertise and promote its Products in and with respect to Customer and its Facilities upon mutually agreed to terms and conditions. In addition, Customer must display appropriate 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.

(E) **Changes in Facilities.** Customer will promptly notify Pepsi, in writing, of each new Facility which is opened or acquired during the Term, as well as of any Facility which is closed, sold or otherwise disposed of during the Term so that the parties may promptly update Exhibit A. If Customer or more than 50% of its Facilities are temporarily closed for more than thirty (30) days during the Term, Customer and Pepsi agree that any fixed, advance, or guaranteed funding will be adjusted proportionate with the period of time in which Customer or its Facilities are closed. Notwithstanding the foregoing, Pepsi will not prorate fixed, advanced, or guaranteed funding during seasonal Facility closures or Facility renovations acknowledged with Pepsi's prior written approval, which shall not be unreasonably withheld.

(F) **Product Mix; Minimum SKU/Brand Requirement.** Customer must mandate the distribution of a minimum core assortment of Products, including a mix of both Postmix Products and Packaged Products at each of the Facilities throughout the Term, as identified by Pepsi, based on Equipment type at the Facilities.

(G) **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 Facility are located outside the territories serviced by Pepsi, then Pepsi may, upon request by Customer, use commercially reasonable efforts to facilitate an agreement between the Pepsi-Cola bottler servicing the applicable territory and 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.

(H) **Best Taste Limit and Product Handling.** Customer understands that the Products provided hereunder are provided with a best taste limit ("**BTL**") date printed on the packaging. Neither Pepsi nor the bottlers replace Products that are past the BTL date. Customer agrees that no Product shall be sold past the BTL date, and that it shall abide by policies on product handling and quality control periodically published by the manufacturer.

3. **Funding**

Provided Customer is not in breach of its performance obligations under this Agreement, Pepsi agrees to provide Customer with the funding described below.

(A) **Initial Support Funds.** Pepsi agrees to provide Customer with initial support funds _____, payable to Customer within ninety (90) days after the later of (i) the first day of the Term or (ii) the signing of this Agreement by both parties (the "**Initial Support Funds**"). 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 6(A) herein, the unearned Initial Support Funds will be repaid to Pepsi pursuant to the terms of Section 6(B)(i) herein.

(B) **Annual Support Funds.** In each of Years two (2) through three (3), Pepsi agrees to provide Customer with annual support funds

(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 6(A) herein, the unearned Annual Support Funds will be repaid to Pepsi pursuant to the terms of Section 6(B)(i) herein.

(C) **Rebates.** Each Year throughout the Term, Pepsi agrees to calculate the total number of eligible Cases and Gallons purchased by each of the applicable Facilities from Pepsi pursuant to this Agreement, and will provide Customer with rebates calculated based on applicable rates set forth below (the “**Rebates**”). The Rebates, as applicable, will be paid by Pepsi within ninety (90) days after the end of each Year. The parties agree that Pepsi will not accrue or pay any Rebates for sales to Facilities that are in breach of the Performance Requirements listed in Section 2 above.

(D) **Commissions.** Pepsi will provide Customer with commissions, as a percentage of the actual cash (“**cash in bag**” or “**CIB**”) collected by Pepsi from the Vending Machines placed at the Facilities, less any applicable government-imposed taxes/fees and deposits, as applicable (“**Commissions**”). Such Commissions shall be at the rate(s) set forth below (the “**Commission Rate**”) and shall be calculated as follows:

(1) **Commissions Payment.** Pepsi shall pay Commissions to Customer within thirty (30) days of the end of each 4-week accounting period established by Pepsi. Pepsi shall make all pertinent revenue and sales records respecting the Vending Machines available to Customer. Customer agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by Customer in writing within one (1) year of the date such Commissions payment is due. Customer further acknowledges and agrees that it shall not receive any Commissions payment from Pepsi if Commissions fail to reach a certain threshold amount per period or quarter. The current threshold amounts are \$50 per four-week period or \$75 per quarter. The threshold may be revised by Pepsi from time to time.

(2) Change to Commission Rate/Formula. Customer agrees that Pepsi shall have the right to change the Commission Rate and/or its formula/method for calculating Commissions as may be required by applicable laws or as reasonably necessary to respond to legislative acts in order that the Commission Rate remains cost neutral.

(3) Vend Price. The initial vend prices for Customer to qualify for any Commissions are set forth in the Commission chart above. Pepsi shall have the right to increase vend prices by \$0.25 in Year two (2). Customer acknowledges that Pepsi has the right 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 be in addition to any scheduled Vend Prices increases set forth herein or notification restrictions that may be specified in this Agreement.

4. Equipment and Service

(A) **Equipment.** Pepsi will loan to Customer, at no charge, appropriate Equipment for dispensing the Products at the Facilities (except where local law, rule or regulation prohibits uncompensated placement of Equipment by soft drink vendors, in which case Pepsi will charge the minimum legal rental fee pursuant to a separate agreement with Customer). Where permitted by applicable local law, rule or regulation, the Equipment will be exclusively used to display and merchandise the Products as reasonably determined by Pepsi, and 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, however because delays in service may be caused by factors well outside of Pepsi's control, Pepsi's service record will be measured in the aggregate such that an isolated failure is not a material breach of the Agreement.

5. Pricing

Customer will purchase, and will require that any third parties or purchasing representative for the Facilities to purchase, 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 B, which may be changed by Pepsi from time to time during the Term. 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.

6. 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 Facilities 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 Facility); and (iii) obtain an equitable reimbursement for the portions of funding and other costs attributable to such sold, closed or breaching Facility. 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) **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, 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. 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, such 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 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 the sum of: (a) the product of \$7 multiplied by the projected number of Gallons of Postmix Products that Customer would have been expected to purchase during the remainder of the Term based on the Volume Threshold and Customer's average annualized purchase rate and (b) the product of \$10 multiplied by the projected number of 24-pk case equivalents of Packaged Products that Customer would have been expected to purchase during the remainder of the Term based on the Volume Threshold and Customer's average annualized purchase rate.

(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 will surrender to Pepsi all Equipment installed in the Facilities.

(D) **Right of Offset.** Pepsi reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer or its Facilities for Products ordered from and delivered by Pepsi and any and all balances due and payable to Pepsi pursuant to this Agreement or any separate services agreement between Customer and Pepsi and/or its subsidiaries and affiliates.

(E) **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 the terms and conditions of this Agreement without the consent of the other.

(F) **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 (x) capable of fully performing all obligations of the assignor hereunder and (y) 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.

(G) **Governing Law.** The laws of the state of Illinois govern all matters arising out of this Agreement.

(H) **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.

(I) **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 3 above to offset for such costs.

(J) **Force Majeure.** No party will 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 beyond the control of the parties 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.

(K) **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.

(L) **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.

(M) **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.

(N) **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. If to Pepsi, to the name and address set forth in the preamble herein, with a copy thereof to: Pepsi Beverages Company, 700 Anderson Hill Road, Purchase, NY 10577, Attention: PBNA Division General Counsel 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.

(O) **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 except that Customer hereby grants 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 Facilities. Customer will provide Pepsi with details of any such bona fide offers, and Pepsi will 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 will 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 will 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.

(P) **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.

(Q) **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.

(R) 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.

PepsiCo Beverage Sales, LLC

Customer

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

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

Exhibit A
Customer Facilities

EastSide Centre
1 EastSide dr, East Peoria, IL 61611