

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

INTERLOCAL AGREEMENT TO PROVIDE FOR THE MERGER OF ABC SYSTEMS

THIS INTERLOCAL AGREEMENT TO PROVIDE FOR THE MERGER OF ABC SYSTEMS (“Interlocal Agreement”), entered into on the ____ day of _____, 2024, by and between the City of Hendersonville, a North Carolina municipal corporation (“City”), and the Town of Laurel Park, a North Carolina municipal corporation (“Town”),

WITNESSETH:

THAT WHEREAS, the City Council for the City of Hendersonville is the appointing authority for the Hendersonville ABC Board, duly established by election, pursuant to the authority of chapter 954 of the 1955 North Carolina Session Laws; and

WHEREAS, the Town Council for the Town of Laurel Park is the appointing authority for the Laurel Park ABC Board, duly established by election, pursuant to the authority of chapter 163 of the 1981 North Carolina Session Laws; and

WHEREAS, the City of Hendersonville Board of Alcoholic Beverage Control currently operates an ABC system consisting of three stores and a warehouse, plus inventory and equipment, said stores being located at 205 Church Street, Hendersonville, NC (“Church Street Store”), 275 Thompson Street, Hendersonville, NC (“Thompson Street Store”), and 32 McMurray Road, Hendersonville, NC (“McMurray Road Store”), the warehouse being located at the Church Street store (“Hendersonville Warehouse”), the Hendersonville System being collectively hereinafter referred to as the “Hendersonville System”; and

WHEREAS, the Town of Laurel Park Alcoholic Beverage Control Board currently operates an ABC system consisting of one store plus inventory and equipment, said store being located at 1709 Brevard Highway, Laurel Park, NC (“Laurel Park Store”), the Laurel Park System being collectively hereinafter referred to as the “Laurel Park System”; and

WHEREAS, the stores operated by the Hendersonville ABC System and the Laurel Park ABC System are operated in the same general area, and are in close proximity to one another;

WHEREAS, the Hendersonville City Council and the Laurel Park Town Council wish to merge the ABC systems, currently operated independently by the City of Hendersonville Board of Alcoholic Beverage Control and the Town of Laurel Park Alcoholic Beverage Control Board pursuant to the authority of N.C.G.S. § 18B-703 and N.C.G.S. Chapter 160A Article 20, Part 1; and

NOW THEREFORE THIS AGREEMENT, that for and in consideration of the mutual promises and covenants contained hereinbelow, the mutuality and sufficiency of each being acknowledged by the parties hereto, the parties agree as follows:

1. Whereas Clauses. The Whereas clauses are incorporated into this Agreement.

2. Merger. Upon the due approval and execution of this Interlocal Agreement by and on behalf of the City and the Town, the City of Hendersonville Board of Alcoholic Beverage Control, the Town of Laurel Park Alcoholic Beverage Control Board, and the approval by the North Carolina Alcoholic Beverage Control Commission (“Commission”), the independent boards shall be merged into one consolidated board and the Hendersonville System and the Laurel Park System shall be merged into one consolidated system, having a Hendersonville Division and a Laurel Park Division, said merger to be effective July 1, 2024, or the date approved by the Commission, whichever is later.
3. Name. The name of the consolidated ABC Board shall be the “Blue Ridge Alcoholic Beverage Control Board.”
4. Composition of the Board. The Blue Ridge Alcoholic Beverage Control Board (“Blue Ridge ABC Board”) will have five (5) members, with three members being appointed by the City Council, and two members being appointed by the Town Council. The initial members of the Blue Ridge ABC Board shall be appointed and serve an initial term as follows:
 - a. The City Council shall appoint an initial member to serve an initial three (3) year term.
 - b. The City Council and the Town Council shall each appoint an initial member to serve a two (2) year term.
 - c. The City Council and the Town Council shall each appoint an initial member to serve a one (1) year term.

From and after the initial appointments, each member seat shall be appointed by the original appointing Council for three-year staggered terms. Mid-term vacancies in a member seat shall be filled by the appointing Council for the remainder of the unexpired term. No member may serve for more than two (2) consecutive terms at a time. The Town Council and City Council shall appoint members on the basis of the appointees’ interest in public affairs, good judgment, knowledge, ability, and good moral character (ref. NCGS § 18B-700(d)).

5. Appointment of a Chair. The initial Chair of the Blue Ridge ABC Board shall be the initial member appointed by the City Council to a three (3) year membership term. The initial Chair of the Blue Ridge ABC Board shall serve as Chair for the first two years of their initial three (3) year term as a Blue Ridge ABC Board member. Subsequent appointments of a member to the office of Chair shall be for one (1) year, with the Chair appointments alternating between the Town Council and the City Council. All mid-year vacancies in the office of Chair shall be filled by the Council that named the vacating member as Chair, for the remainder of the one-year service period left by the vacating member. If the vacating Chair’s membership seat is also vacant, the membership vacancy shall be filled in accordance with paragraph 4, above.
6. Organizational Meeting. The initial Chair shall call a special meeting during the first week of July , 2024, to take all such actions as may be necessary to complete the organization of the Blue Ridge ABC Board and the Blue Ridge ABC System. Such meeting shall be advertised in accordance with the North Carolina Open Meetings Law. Such actions shall include, but not be limited to:

- a. Appointment of other officers (reference paragraph 7 below), including the Finance Officer and Secretary.
 - b. Adopt initial bylaws and rules of procedure.
 - c. Appointment of all employees, including approval of salaries and benefits (reference paragraph 11(c) below).
 - d. Adoption of the Hendersonville System policies and procedures, including but not limited to personnel policies and operations manuals (reference paragraph 11(c) below).
 - e. Ratification or termination of existing contracts and leases of the Hendersonville System and the Laurel Park System.
 - f. Adopt an interim budget until the budget for the remainder of the fiscal year can be approved.
 - g. Set a date for the required public hearing for the new budget of the merged Blue Ridge ABC System.
 - h. Such other actions as are required.
7. Other Officers. At their organizational meeting, and annually thereafter, the Blue Ridge ABC Board shall appoint a Vice Chair to serve for 1 year. The Vice Chair shall serve as Chair in the absence of the Chair. The Blue Ridge ABC Board shall also appoint a Secretary and Finance Officer. The Secretary shall be the official records custodian, shall take and compile minutes of the Blue Ridge ABC Board, and advertise Blue Ridge ABC Board meetings in accordance with the North Carolina Open Meetings Law, where required. The Secretary and Finance Officer shall be staff persons, employed by the Blue Ridge ABC Board who will serve at the pleasure of the Blue Ridge ABC Board.
8. Removal. Blue Ridge ABC Board members may be removed for cause, at any time, 1) by the Council that appointed the member without the consent or approval of the other Council, or 2) by the Commission in accordance with Chapter 18B of the North Carolina General Statutes. (ref NCGS § 18B-202, 700(f), and 704) Removal of a member appointed by the City Council shall only require action by the City Council and consent or approval by the Town Council shall not be required. Removal of a member appointed by the Town Council shall only require action by the Town Council and consent or approval by the City Council shall not be required.
9. Compensation. The Chair shall receive \$500.00 per meeting, and members shall receive \$150.00 per meeting.
10. Powers and Duties of the Blue Ridge ABC Board. Upon the effective date of the merger (ref paragraph 1 above), the Blue Ridge ABC Board shall have the powers and duties granted by Chapter 18B of the North Carolina General Statutes, in addition to and as modified by the powers and duties granted to the City of Hendersonville Board of Alcoholic Beverage Control or the Town of Laurel Park Alcoholic Beverage Control Board by local act.

11. Merger of ABC Systems. The Hendersonville System and the Laurel Park System shall become assets of the Blue Ridge ABC Board, and together both systems shall collectively be known as the Blue Ridge ABC System. A notice of merger shall be filed in the Henderson County Register of Deeds Office. Notwithstanding the merger, all tangible and intangible assets and inventory shall be accounted for separately within the merged system, as a Hendersonville division and a Laurel Park division. All assets, including inventory, and liabilities belonging to the Hendersonville System on June 30, 2024, shall be attributed to the Hendersonville division, and likewise, all assets, including inventory, and liabilities belonging to the Laurel Park System on June 30, 2024, shall be attributed to the Laurel Park division.

- a. Inventories. On June 30, 2024, both the Hendersonville System and the Laurel Park System shall be inventoried.
- b. Reserved.
- c. Employees. All employees of the Hendersonville System and the Laurel Park System shall become employees of the the Blue Ridge ABC Board. All policies and procedures of the City of Hendersonville Board of Alcoholic Beverage Control, including pay scale and benefits, shall apply to the Blue Ridge ABC System until such time as the Blue Ridge ABC Board can adopt new policies.
 - i. The current general manager of the Hendersonville System shall be the initial general manager of the Blue Ridge ABC System.
 - ii. A new position shall be created for the Blue Ridge ABC System—the position of assistant general manager. The initial assistant general manager of the Blue Ridge ABC System shall be chosen as provided in this subparagraph ii. The current general manager of the ABC system will advertise the new position with the goal of hiring an assistant general manager by September 30, 2024. The general manager shall select from among the pool of applicants 3-5 applicants for interviews. Interviews shall be conducted by a 3-member panel consisting of 2 members of the Blue Ridge ABC Board – one City appointee and 1 Laurel Park appointee, and the general manager. The final decision on the applicant selected to fill the assistant general manager position shall be made by the general manager. The selected assistant general manager, and all future assistant general managers, shall be an employee of the Blue Ridge ABC System, subject to the same policies and benefits as the other employees of the merged system.
 - iii. A final payroll shall take place prior to the effective date of the merger, or if paid in whole or in part after the effective date of the merger, such cost paid after the merger shall be paid from the Hendersonville division assets (for Hendersonville System employees) and Laurel Park division assets (for Laurel Park System employees). All employees may carry forward any accumulated vacation leave; however such accumulated leave shall be a liability against the division assets of their former ABC system – former Hendersonville System employees’ accumulated leave will be a liability of the Hendersonville division, and former

Laurel Park System employees' accumulated leave will be a liability of the Laurel Park division.

- iv. All eligible employees of the Blue Ridge ABC System and the Blue Ridge ABC Board shall be participating members of the Local Government Employees' Retirement System.

- d. Outstanding Expenses and Obligations. All outstanding expenses and obligations of the individual ABC systems existing on the effective date of the merger shall be satisfied from the division assets of each former ABC system – liabilities of the Hendersonville System will be a liability of and shall be satisfied from the Hendersonville division, and liabilities of the Laurel Park System will be a liability of and be satisfied from the Laurel Park division. Any and all claims, actions, or other liabilities, whether known or unknown, arising from the operations of the Laurel Park System shall be satisfied from the Laurel Park division. Any and all claims, actions, or other liabilities, whether known or unknown, arising from the operations of the Hendersonville System shall be satisfied from the Hendersonville division.
- e. Net Position. Unrestricted net position shall be determined for both the Hendersonville System and the Laurel Park System as of June 30, 2024. Any unrestricted net position for the Hendersonville System in excess of ten percent (10%) of its operating budget for FY 2023-24 shall be distributed to the City of Hendersonville (after deducting Statutory Distribution Requirements for the Hendersonville System) with the City's first quarterly distribution from the Blue Ridge ABC System. Any unrestricted fund balance for the Laurel Park System in excess of ten percent (10%) of its operating budget for FY 2023-24 shall be distributed to the Town of Laurel Park with the Town's first quarterly distribution from the Blue Ridge ABC System, and the Town shall comply with the Statutory Distribution Requirements for the Laurel Park System with respect to the fund balance so distributed to the Town.

12. Distribution of Profits.

- a. Allocation Between Divisions. Accounting for revenues, expenses, debt, liabilities, payables, receivables, profits, depreciation, and assets (both tangible and intangible), and all other financial and managerial accounting, shall occur on a division basis (Hendersonville division and Laurel Park division), in addition to the overall merged system, in accordance with generally accepted accounting principles.
- b. ABC Stores. Each store operated by the merged ABC system shall be operated as its own profit center. Except as provided in 12.b.ii, 12.b.iii, 13.c.1 and 13.c.ii below, net profits from those stores currently located in the City of Hendersonville shall be attributed to the Hendersonville division, and net profits from those stores currently located in the Town of Laurel Park shall be attributed to the Laurel Park division. If any existing store is relocated, the net profits from such store shall continue to be attributed to the division where such store was originally located regardless of its new location.
 - i. In calculating net profit for a store, a proportional share of system wide administrative expenses shall be allocated to each store according to its gross

revenue share as compared to the gross revenue of the merged system for the applicable period. As an example, system wide administrative expenses for the first quarter would be allocated to each store proportionally based on gross revenues of the store compared to the gross revenues of the entire system for the first quarter.

- ii. From and after the effective date of this Agreement, net profits from existing commercial accounts shall continue to be attributed to the division serving such account prior to the merger of the Hendersonville System and the Laurel Park System. As an example, net profits from a commercial customer whose account was with the Laurel Park System prior to the merger shall continue to be attributed to the Laurel Park division after the merger.
- iii. From and after the effective date of this Agreement, net profits from new commercial accounts shall be attributed to the ABC store located closest to the business being served by the commercial account, regardless of whose geographic jurisdiction the business is located in. Distance shall be judged as the crow flies. As an example, a restaurant located 1 mile from the Laurel Park Store, and 1.5 miles from the Hendersonville Church Street store, opens a new commercial account with the Blue Ridge ABC System. Net profits from this new commercial account would be attributed to the Laurel Park division. For the avoidance of doubt, annual renewals of a business's ABC permit shall not constitute new commercial accounts.
- c. Warehouse. The warehouse operated as part of the Hendersonville Division; however inventory shall be sold at cost to each store within both the Hendersonville Division and the Laurel Park Division.
- d. Other Revenues and Expenses. All other revenues and expenses for the merged system shall be shall allocated proportionally between the Hendersonville Division and the Laurel Park Division according to gross revenues of each, as compared to the gross revenues of the total system for the applicable period. As an example, other revenues for the first quarter would be allocated proportionally between the Hendersonville division and the Laurel Park Division based on gross revenues of each for the first quarter as compared to the gross revenues of the entire system for the first quarter.
- e. Statutory Distributions. Revenues from the Hendersonville division shall be used to meet the Statutory Distribution Requirements previously existing for the Hendersonville System, and revenues from the Laurel Park division shall be used to meet the Statutory Distribution Requirements existing as of the date of this Interlocal Agreement for the Laurel Park System, as either or both may be amended by local or generally applicable laws.

13. Location of ABC Stores.

- a. Within the Town or City. With the approval of the Commission, and as allowed by applicable law, future stores may be operated inside of municipal limits for the Town or the City. The location of ABC stores inside of the municipal limits of the Town and the City shall be at the discretion of the Blue Ridge ABC Board, as approved by the Commission. Notwithstanding this discretion, the Blue Ridge ABC Board shall operate at least one ABC store in the Laurel Park town limits for the duration of this interlocal agreement. If approval by the appointing authority is required for the operation of a new store within the City or the Town, new stores operated within the City shall only require the approval of the City Council, and new stores operated within the Town shall only require the approval of the Town Council.
- b. Outside the Town or City. With the approval of the Commission, and as allowed by applicable law, future stores may be operated outside of the municipal limits of the Town or the City. The location of ABC stores outside of the municipal limits of the Town and the City shall be at the discretion of the Blue Ridge ABC Board, as approved by the Commission. If approval by the appointing authority is required for the operation of a new store outside the City or the Town, new stores operated outside the City shall require the approval of both the City Council and the Town Council.
- c. Net Profit from New ABC Stores. Regardless of whether a new store is located within or outside the municipal limits of the Town or the City, net profit from a new ABC store opening from and after the effective date of this Agreement shall be attributed as follows:
 - i. Net profit from new ABC stores located in Area I on the attached Exhibit A shall be divided equally between the Hendersonville division and the Laurel Park division.
 - ii. Net profit from new ABC stores located in Area II on the attached Exhibit A shall be attributed to the Hendersonville division.

Exhibit A is incorporated herein by reference.

14. Allocated and Specialty Bourbons. The number of bottles of allocated and specialty bourbons shall not be decreased for the Laurel Park ABC Store beyond levels currently received as of the date of this Agreement unless distributions from the State of North Carolina are decreased below the levels currently received as of the date of this Agreement. Any increases or decreases in distributions from the State of North Carolina beyond the levels currently received shall be divided proportionately between the Hendersonville Division and the Laurel Park Division based upon the prior fiscal year's gross sales. As an example, if in FY 2025 9 additional bottles of specialty bourbon are allocated to the Blue Ridge ABC System, and for FY 2025 the Hendersonville Divisions gross sales were \$1.0 Million, and the Laurel Park Division's gross sales were \$500,000, then 2/3 of the bottles (6) would be allocated to the Hendersonville Division, and 1/3 of the bottles (3) would be allocated to the Laurel Park Division.
15. Delivery of Product to Laurel Park. The Laurel Park Store, or such other ABC store(s) as may be operated within the Town of Laurel Park shall receive at least one delivery of products every week from the Hendersonville warehouse.

16. Hours of Operation. All stores operated by the Blue Ridge ABC System shall be open from 9am to 9pm, except that the Laurel Park Store shall extend the hours of operation to 9am-9pm not later than twenty-four months after the effective date of the merger of the Hendersonville System and the Laurel Park System.

17. Definitions and Generally Applicable Terms.

- a. Appointing Authority. Except as otherwise provided in this Agreement, the term “appointing authority” shall be deemed to refer to both the Town Council and the City Council acting jointly.
 - i. Where applicable law requires approval by the “appointing authority,” if such approval is with respect to the assets or operations of the Hendersonville division approval by just the City Council shall be required. Likewise, if such approval is with respect to the assets or operations of the Laurel Park division, approval by just the Town Council shall be required.
 - ii. Where applicable law requires approval by the “appointing authority,” and such approvals are with respect to matters of the Blue Ridge ABC System as a whole, the approval of both the City Council and the Town Council shall be required.
 - iii. Where approval of both Councils is required, and both Councils do not approve, the matter shall be considered not approved. If the nonapproval by one Council results in a stalemate which negatively impacts the operations of the Blue Ridge ABC System, the Blue Ridge ABC Board may request that both Councils employ a mediation process to resolve the stalemate.
- b. Fiscal Year. The fiscal year for the Blue Ridge ABC System shall be July 1 – June 30.
- c. Systemwide Administrative Expenses. Systemwide administrative expenses are those expenses incurred that benefit the entire merged system including, but not limited to, the salary and office space of the general manager and assistant general manager, back office operations, accounting services, insurance, legal services, etc.
- d. Statutory Distribution Requirements. Statutory Distribution Requirements are those distributions mandated by Chapter 18B of the North Carolina General Statutes from alcohol sales, as modified by local acts of the North Carolina General Assembly. For the Hendersonville System, as of the date of this Interlocal Agreement, the following local acts have been adopted: Chapter 954 of the 1955 Session Laws, Chapter 341 of the 1967 Session Laws, Chapter 672 of the 1967 Session Laws, Chapter 105 of the 1995 Session Laws, and Chapter 177 of the 1999 Session Laws. For the Laurel Park System, the following local acts have been adopted: Chapter 163 of the 1981 Session Laws.

18. Term. This Interlocal Agreement shall have a term of twenty (20) years.

19. Termination of the Interlocal Agreement. Either party hereto may terminate this Interlocal Agreement by giving at least 1 year's advanced notice in writing to the other party. Any such termination shall be effective at the end of a fiscal year. The notice required herein shall be a

Resolution, duly adopted by the terminating party, and delivered in person or by certified mail to the mayor for the non-terminating party. No such termination shall be effective until approved by the Commission. Upon the effective date of termination, Blue Ridge ABC System shall be dissolved, and a notice of dissolution shall be filed in the Henderson County Register of Deeds Office. The City shall reconstitute and appoint the City of Hendersonville Board of Alcoholic Control, and the Town shall reconstitute and appoint the Town of Laurel Park Alcoholic Beverage Control Board. All assets of the Hendersonville division shall be distributed to the City of Hendersonville Board of Alcoholic Control and all assets of the Laurel Park division shall be distributed to the Town of Laurel Park Alcoholic Beverage Control Board. Such distribution shall be confirmed and adjusted as required after an audit has been performed as of the effective date of the termination and dissolution. Notwithstanding the foregoing, neither party may terminate this Interlocal Agreement if there is outstanding debt, secured by revenues of the entire Blue Ridge ABC System, unless such debt can be retired through a refinancing or other available means as of the effective date of such termination.

20. This Interlocal Agreement constitutes the complete and entire agreement between the parties and supersedes all prior and contemporaneous negotiations. This Agreement may only be amended by written instrument, duly approved by Resolution of both parties hereto, and where required, with the approval of the Commission. There shall be no intended nor incidental beneficiaries of this Agreement.

21. Except a notice to terminate this Interlocal Agreement, all notices shall be deemed effective upon receipt if in writing, and delivered to the following persons in person, by certified mail, or by commercial carrier providing the ability to track delivery:

a. If to the City: The City Manager
 160 6th Avenue West
 Hendersonville, NC 28792

b. If to the Town: The Town Manager
 441 White Pine Dr
 Hendersonville, NC 28739

22. This Agreement shall be governed by the laws of the State of North Carolina. Exclusive venue shall be in a court having jurisdiction in Henderson County, North Carolina.

23. This Agreement may be executed in duplicate, each to have the force and effect of an original.

In witness whereof, the parties cause this contract to be duly approved by Resolution and have set their hand and seal.

THE TOWN OF LAUREL PARK

THE CITY OF HENDERSONVILLE

BY: _____

BY: _____

Mayor

Mayor

Attest:

Attest:

Town Clerk

City Clerk

(Town Seal)

(City Seal)

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