

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING AN AGREEMENT WITH COCA-COLA BOTTLING COMPANY FOR POURING RIGHTS AT BRICKYARD PARK AND DOMTAR PARK AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR THE SAME AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, in May, 2015, (Res, No. 2015-172) the city entered into a ten year agreement with Coca-Cola Bottling Company (CCBCC) for pouring rights at Domtar Park, Brickyard Park and Eastman Park at Horse Creek; and

WHEREAS, with the expiration of the current agreement proposals were solicited for pouring rights in response to which were submissions from CCBCC and PepsiCo that staff reviewed on May 30, 2025;

WHEREAS, based upon the proposals submitted the selection committee recommends accepting the proposal of CCBCC; and

WHEREAS, the agreement as set out below provides for \$10,000 in initial support funds with annual support funds of \$4,000 and a \$5 per case rebate at an estimated value of over \$10,000 annually for a potential total support of over \$146,000 over the term of the agreement

WHEREAS, the agreement will be for a 10-year period ending in 2035 with a minimum case purchase of 26,500 during the period of the agreement; and

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the proposal of CCBCC for pouring rights at Domtar Park and Brickyard Park, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an Agreement with CCBCC or pouring rights at Domtar Park and Brickyard Park, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution as set out below:

**CCBCC OPERATIONS, LLC  
CUSTOMER MARKETING AGREEMENT  
The City of Kingsport**

THIS CUSTOMER MARKETING AGREEMENT (the "**Agreement**") is made and entered into as of the 1st day of May, 2025 (the "**Effective Date**"), by and between CCBCC OPERATIONS, LLC ("**CCBCC**"), and The City of Kingsport ("**Customer**").

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CCBCC and Customer hereby agree as follows:

**1. Product Sale and Distribution.**

(a) General. During the Term (as defined in Section 9) of this Agreement, Customer shall (i) merchandise, advertise, display, vend, sell and otherwise distribute, all at retail (collectively,

hereinafter referred to as “**distribute**” or “**distribution**”), sparkling and still non-alcoholic beverages of any kind or form, and all beverage bases from which these can be prepared, including, without limitation, all carbonated soft drinks, noncarbonated drinks, juices and juice drinks, teas and tea drinks, packaged waters, energy drinks, isotonic and sport performance beverages, vitamin/mineral enhanced waters, and nutritional supplement beverages, that are (A) marketed under trademarks or brand names owned or controlled by or licensed for the use of CCBCC or an Affiliate (as defined below) thereof and (B) customarily and regularly distributed by CCBCC in the ordinary course under comparable circumstances at the then subject time (the “**Products**”) and (ii) obtain all of its requirements for Products from CCBCC. Customer shall distribute the Products in the manner set forth herein and shall use its best efforts to maximize the sales of, and revenue from, the Products. Such distribution shall be carried out at the locations specified on **Exhibit A** (the “**Locations**”). The brands and package forms for the Products to be distributed shall be determined by CCBCC in its discretion after consultation with Customer. CCBCC is entering into this Agreement with the understanding that it will have the flexibility to sell a range of beverage brands and packages that meet consumer demand and maximize sales volume and revenue, and any restriction on CCBCC’s rights to determine brands and package forms, whether as a result of actions or orders by Customer or any third party (including any governmental authority), shall be deemed a material breach of this Agreement. As used herein, “**Affiliate**” means, with respect to any specified entity or person, any other entity or person that, directly or indirectly, controls, is controlled by or is under common control with such specified person or entity, where “**control**” means, as to any entity, the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting equity, by contract or otherwise.

(b) **Full Service Vending Machine Sales.** With respect to self-operated, coin and bill and/or cashless vending machines placed at the Locations by CCBCC hereunder and identified as “Full Service Vending Machines” on **Exhibit C** (“**Full Service Vending Machines**”), if any, CCBCC shall stock such vending machines in accordance herewith. All Products in such Full Service Vending Machines (and all cash and other proceeds from sales of such Products) shall be at all times the property of CCBCC, and CCBCC shall be responsible for removing from the Full Service Vending Machines all such cash and other proceeds. Customer shall return to CCBCC all such Products and proceeds that might come into Customer’s possession. Customer shall have no right to access any internal areas or parts of such Full Service Vending Machines. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the servicing of Full Service Vending Machines may be provided by a full line operator as set forth in Section 7 of **Exhibit B**.

(c) **Direct Sales Vending Machines.** Except as provided in **Section 1(b)** above with respect to Full Service Vending Machines, if any, Customer shall stock all self-operated, coin and bill and/or cashless vending machines, if any, placed at the Locations by CCBCC (“**Direct Sales Vending Machines**” and together with Full Service Vending Machines, “**Vending Machines**”) in accordance herewith. Products sold through Direct Sales Vending Machines shall be purchased by Customer from CCBCC as provided herein and resold by Customer only to retail consumers in the ordinary course of Customer’s operations. Once delivered to Customer, all Products in such Direct Sales Vending Machines (and all cash and other proceeds from sales of such Products) shall be the property of Customer, with Customer having all attendant risk of loss and ownership obligations.

(d) **Delivered Bottle, Can and Fountain Sales.** In addition to sales through Vending Machines, Products will also be sold at the Locations through cashier assisted (or comparable) cold cases, kiosks, fountain dispensers, coolers, hawking, vending, shelf displays and/or other nonvending machine vehicles of distribution (collectively, for convenience of reference, “**Cold Cases**”). Products sold through Cold Cases shall be purchased by Customer from CCBCC or an Authorized Distributor (as defined in **Section 22**) as provided herein and resold by Customer only to retail consumers in the ordinary course of Customer’s operations. Once delivered to Customer, any such Products sold to Customer shall become the property of Customer, with Customer having all attendant risk of loss and ownership obligations. Proceeds from the sales of such Products shall be the property of Customer. CCBCC shall sell Products to Customer (in the manner provided herein) in such amounts as are reasonably required by Customer, from time to time, subject to such reasonable caps on such requirements as may be determined, from time to time, by CCBCC, and subject to any Total Purchase Requirements (as defined in **Section 1(e)**) on **Exhibit B**. CCBCC shall not be liable to Customer for failure to make shipments of Products where such failure is due to any cause or condition beyond the reasonable control of CCBCC.

(e) **Minimum Required Sales.** CCBCC is entering into this Agreement on the basis that Product sales at the Locations will achieve certain targets. Accordingly, the sales of Products through Full Service Vending Machines and/or to Customer for resale through Direct Sales Vending Machines and Cold Cases shall in no event be less than the minimums set forth on **Exhibit B** (such minimum(s), the “**Total Purchase Requirement(s)**”). Failure to achieve the minimum Total Purchase

Requirements shall constitute an event of Cause (as defined in Section 9) hereunder and CCBCC shall be entitled to the remedies set forth in Exhibit B, in addition to any other remedies CCBCC may have hereunder or at law or in equity.

**2. Promotional Recognition.** Customer hereby grants to CCBCC (and the Products) promotional recognition and the right to promote (and the cooperation and active involvement of Customer in promoting) CCBCC and the Products in connection with Customer, the Locations and any activities, functions and event venues operating under the auspices of Customer ("**Related Activities**"). Promotional recognition benefits include, without limitation, those set forth on Exhibit A. CCBCC shall have the right to use any trademark, trade name, service mark, design, logo, slogan, symbol, mascot, character, identification, or other proprietary design now or in the future owned, licensed, or otherwise controlled by Customer (collectively, the "**Customer Marks**") on a royalty-free basis during the Term. Without limiting the generality of the foregoing, CCBCC shall submit to Customer, and Customer shall have the right to approve within ten (10) days of receipt from CCBCC, which approval shall not be unreasonably withheld, conditioned or delayed, (a) any concept for any promotional activity undertaken by CCBCC hereunder with respect to Customer or any Location or Related Activity and (b) any artwork or other items created by CCBCC that incorporate any Customer Marks for use in any such promotional activity. In the event that Customer fails to provide any response to CCBCC within such ten (10) day period, such submission shall be deemed approved by Customer. CCBCC shall have access to the Locations and any Related Activities at all reasonable times for any appropriate purposes hereunder and, with respect to promotions, agrees to comply with any reasonable requirements of Customer regarding operation, placement, set-up and tear-down of CCBCC's promotional materials.

**3. Exclusivity.** In consideration for, and as a material inducement to, CCBCC entering into this Agreement, Customer expressly agrees that, during the Term, Customer shall not (a) distribute, or allow any others to distribute, to any person in any manner, for compensation or otherwise, directly or indirectly, any products or supplies on or at the Locations or any Related Activities that are similar to, the same as or comparable to or compete with the Products ("**Competing Products**") or (b) grant any similar marketing or sponsorship recognition to any Competing Products (or any distributor of Competing Products). In the event that any third party attempts, without CCBCC's prior written consent, to distribute any Competing Product at the Locations or any Related Activities or to associate any Competing Product with Customer, or to suggest that a Competing Product is endorsed by, or 1 associated with, Customer, then Customer will promptly take any steps necessary to stop and prevent such actions and to protect the exclusive rights granted to CCBCC under this Agreement.

**4. Marketing Fees; Rebates.** During the Initial Term (as defined in Section 9) of this Agreement, provided that Customer is not in breach of any provision hereunder, CCBCC shall pay to Customer the marketing fees ("**Marketing Fees**") and/or rebates as set forth on Exhibit A. In the event of a breach of this Agreement by Customer and while such breach is continuing, (a) CCBCC shall be under no obligation to make any additional Marketing Fees or rebate payments to Customer after the date of such breach, and (b) upon request by CCBCC, Customer shall promptly refund to CCBCC all unearned initial and annual Marketing Fees paid by CCBCC prior to such breach based on the prorated portion of such fees allocable to the period from the date of the breach to the end of the applicable period for which such fees had been provided.

**5. Marketing Support.** During the Initial Term of this Agreement, so long as Customer is not in breach of any provision hereunder, CCBCC shall endeavor to provide annual marketing support with a value in the amount set forth on Exhibit A (the "**Marketing Support**"), provided that CCBCC is not obligated to make cash expenditures up to such amount, and marketing support may include provision of in-kind services or other non-cash assets or benefits or any combination thereof in CCBCC's sole discretion. If, as of the end of any Agreement Year (as defined in Section 9) during the Initial Term of the Agreement, there is any unused Marketing Support specified for such Agreement Year, the difference between the Marketing Support and the amount of the marketing support actually provided for such year shall be forfeited and shall not roll over to the following Agreement Year. If, at the end of the Initial Term, there is any unused Marketing Support, CCBCC shall have no obligation to pay, and shall not pay, the amount of any such unused Marketing Support to Customer. Upon expiration of the Initial Term or termination of this Agreement, the marketing program hereunder (e.g., Marketing Fees and Marketing Support) will no longer be made available to Customer, and CCBCC shall have no further obligations with respect to such marketing program.

**6. Product Support.** During the Initial Term of this Agreement, provided that Customer is not in breach of any provision hereunder, CCBCC shall, at no cost to Customer, provide Product support (the "**Product Support**") each Agreement Year in the amount set forth on Exhibit A; provided, however, that CCBCC shall not be liable to Customer for failure to provide such Product Support where such failure is due to any cause or condition beyond the reasonable control of CCBCC.

Customer shall request Product Support in writing at least fourteen (14) days prior to the desired delivery date, and any such requests shall be for an amount of Product that is equal to or greater than twenty (20) cases. For the avoidance of doubt, if, with respect to any Agreement Year during the Initial Term, Customer fails to request all of the Product Support available for such year, the amount of any Product Support not requested by Customer shall not carry over to the next Agreement Year nor shall Customer be entitled to receive any compensation from CCBCC with respect thereto. Customer shall not, and shall not permit others to, resell any Product provided by CCBCC to Customer pursuant to this Section 6. If, with respect to any Agreement Year during the Initial Term of this Agreement, Customer requires Product Support in excess of the amount set forth on Exhibit A, CCBCC shall provide such additional Products to Customer; provided, however, that Customer shall purchase such Products from CCBCC at the then-current prices for the Products.

**7. Prices and Commission.**

(a) Product Prices. Subject to Sections 21 and 22, CCBCC agrees to sell to Customer Products for resale by Customer through Direct Sales Vending Machines and Cold Cases, in accordance with CCBCC's trade letter pricing in effect from time to time, during the period in which Customer is in full compliance with the terms and conditions of this Agreement.

(b) Commission on Sales. CCBCC shall pay to Customer a commission on CCBCC's sales of Products through any Full Service Vending Machines at the Locations ("**Commission**"), during the period in which Customer is in full compliance with the terms and conditions of this Agreement. Commissions shall be computed and paid in the manner, and subject to the provisions, set forth on Exhibit B. Notwithstanding the foregoing, if the servicing of Full Service Vending Machines is transferred to a full line operator pursuant to Section 7 of Exhibit B, Commissions will be paid in accordance with the terms thereof.

**8. Equipment.**

(a) General. CCBCC shall provide and install all Vending Machines, Cold Cases and other equipment necessary and appropriate (as determined by CCBCC in its sole discretion) to distribute the Products at the Locations. Those Vending Machines, along with any Cold Cases and other equipment, if any, provided by CCBCC to Customer (in CCBCC's sole discretion) to assist Customer in Cold Case distribution, are referred to collectively as the "**Equipment**". The initial Equipment at the Effective Date consists of those items set forth on Exhibit C. All Equipment is and shall remain the property of CCBCC at all times. Customer shall take no action inconsistent with such ownership and shall cooperate with CCBCC in preserving and evidencing the same, including execution, delivery and filing of financing statements and other documents, as CCBCC may require. Customer agrees that it will (i) maintain a safe environment at the Locations, so as to protect the Equipment from theft and vandalism and (ii) reimburse CCBCC for any loss or damage to any Equipment, other than reasonable wear and tear or loss or damage caused by CCBCC. Customer will not encumber the Equipment in any manner or permit any attachment thereto. No logo, trademark, advertisement or other indication of CCBCC's ownership of the Equipment shall be obstructed, defaced or removed, and no logo, trademark or advertisement other than those of or related to CCBCC or the Products shall be attached to the Equipment. The Equipment shall be used exclusively to merchandise Products and shall not be used for any other purpose, including the storage or merchandising of any other products. Upon expiration or termination of this agreement, Customer shall immediately return all Equipment or other property of CCBCC and provide access to the Locations for CCBCC's removal of the same (and in no event shall Customer remove or attempt to remove any Equipment without the prior written consent of CCBCC). If Equipment is not returned to CCBCC pursuant to the terms of the immediately preceding sentence, then CCBCC shall submit an invoice to Customer setting forth the replacement cost of any such unreturned Equipment and any costs and expenses incurred by CCBCC (including labor and collection costs) in connection with CCBCC's attempt to remove the Equipment from the Locations. Customer shall pay such invoice in accordance with the payment terms set forth in Section 3(b) of Exhibit B.

(b) Installation Sites. The Equipment installation sites at the Locations shall be as set forth on Exhibit C and as otherwise mutually agreed upon by the parties. The Equipment may not be removed from the installation sites without CCBCC's prior written consent. Customer represents and warrants that electrical service at each installation site is proper and adequate for the Equipment.

(c) Stocking and Maintenance. Subject to Section 7 of Exhibit B, CCBCC shall stock the Full Service Vending Machines, if any, with Products through CCBCC's regular, full service delivery drivers or agents, in accordance with CCBCC's delivery policies in effect from time to time. CCBCC shall perform repair services on the Equipment, at its expense, in accordance with CCBCC's repair policies, in effect from time to time, but shall not be liable for damages of any kind arising out of delays in providing service to the Equipment. Customer shall not perform any maintenance or repairs on any Equipment without CCBCC's prior authorization. CCBCC may, at its option, remove, replace or supplement the Equipment at any time during the Term. Customer shall provide CCBCC with

reasonable access to the Equipment in order to allow CCBCC to stock any Full Service Vending Machines, perform any repair services on the Equipment or remove, replace or install Equipment.

**9. Term and Termination.** As used herein, “Initial Term” means the initial term of this Agreement set forth in Section 1 of Exhibit B.

This Agreement may be terminated, effective at the end of the Initial Term (as it may be extended pursuant to Section 2 of Exhibit B), by either party giving the other party written notice of termination at least thirty (30) days prior to the end of the Initial Term. If not terminated effective at the end of the Initial Term, this Agreement shall continue in full force and effect thereafter until either party gives the other party written notice of termination of this Agreement at least thirty (30) days prior to the effective date of such termination, as specified in such notice; provided, however, that CCBCC shall have no obligation to pay or provide any Marketing Fees, Marketing Support, Product Support or rebates following the Initial Term, except, in the case of rebates, as may be otherwise expressly set forth herein. The Initial Term, together with any such additional period after the Initial Term until the Agreement is terminated, shall be referred to herein as the “Term”. Each twelve month period during the Term that commences with the Effective Date or each subsequent anniversary thereof shall be referred to herein as an “Agreement Year”. Notwithstanding the foregoing, this Agreement may be terminated by CCBCC, for Cause, at any time during or after the Initial Term, without notice and effective immediately. “Cause” means and refers to (a) a material breach by Customer of this Agreement, including, without limitation, the exclusivity provisions in Section 3, (b) Customer becoming unable to pay its liabilities when due, filing a petition in bankruptcy or being adjudicated bankrupt or insolvent or becoming otherwise subject to bankruptcy, insolvency or other similar proceedings, or (c) Customer engaging in (i) unethical business practices, (ii) conduct that violates widely held public moral beliefs or that brings public disrepute on Customer or CCBCC, or (iii) a misrepresentation of the Products.

**10. Damages Relating to Removal of Equipment.** If (a) any piece of Equipment is removed from an outlet or other part of a Location at any time without the prior written consent of CCBCC, or (b) if this Agreement is terminated by Customer in violation of this Agreement or terminated by CCBCC for Cause, then Customer will pay CCBCC the actual cost of removal (including standard shipping and handling charges) and any repair, cleaning and/or remanufacturing of the Equipment necessary for reuse of the Equipment, as well as the unamortized portion of the costs of (i) installation and (ii) non-serialized parts (e.g., pumps, racks, and regulators) and other ancillary equipment installed at the Location(s). The remedies provided in this Section 10 are cumulative and not exclusive of any other rights or remedies that may be available to CCBCC under other provisions of this Agreement or at law or in equity.

**11. Repayment of Fees Upon Termination.** Upon termination of this Agreement, Customer must re-pay to CCBCC any and all paid but unearned funding provided by CCBCC based on the prorated portion of such funding allocable to the period from the date of termination to the end of the period for which such funding had been provided. The remedies provided in this Section 11 are cumulative and not exclusive of any other rights or remedies that may be available to CCBCC under other provisions of this Agreement or at law or in equity.

**12. Representations, Warranties and Covenants.** Each of the parties represents and warrants that this Agreement is valid and legally binding upon that party and enforceable in accordance with its terms. Customer represents, warrants and covenants that (a) Customer has, and will have throughout the Term, the sole and exclusive authority (i) to distribute, and authorize distribution of, the Products at the Locations and any Related Activities and (ii) to grant the marketing, beverage distribution and promotional rights to CCBCC set forth herein with respect to the Locations and any Related Activities, in each case, without violating the rights of any third party or any agreement or binding obligation to which it is a party or by which it or its assets is bound, (b) Customer has taken all required and advisable action necessary to enter into, and complied with all applicable laws and regulations in entering into, this Agreement and (c) Customer will ensure that any and all of its employees, agents and authorized representatives shall adhere to the terms and conditions of this Agreement.

**13. Confidentiality.** During the Term of this Agreement and for a period of three (3) years immediately following the expiration or termination of this Agreement (and for such longer period as may be required to protect trade secrets and comparable rights), Customer shall hold, and shall cause its officers, directors, employees, accountants, counsel, consultants, advisors and agents (collectively, “Designees”) to hold, in confidence, all documents and information concerning the business relationship embodied in this Agreement (including, without limitation, the terms and conditions of this Agreement) or which CCBCC or its Affiliates furnish to Customer in connection with this Agreement, except to the extent that such information can be shown to have been (a) previously known on a nonconfidential basis by Customer, (b) in the public domain through no fault of Customer or (c) later lawfully acquired by Customer from sources other than CCBCC or its Affiliates; provided,

that Customer may disclose such information (x) to its Designees in connection with the business relationship contemplated by this Agreement so long as such Designees are informed by Customer of the confidential nature of such information and agree to treat such information as confidential or (y) if disclosure is compelled by judicial or administrative process or by other requirements of law (in which case Customer shall give CCBCC written notice of the intended disclosure promptly after becoming aware of such disclosure requirement and prior to the actual disclosure, if possible, so that CCBCC may seek a protective order or other appropriate remedy). Upon the expiration or termination of this Agreement, Customer shall, and shall cause its Designees to, destroy or deliver to CCBCC, upon request, all documents and other materials, and all copies thereof, obtained by them or on their behalf from CCBCC or its Affiliates in connection with this Agreement. The provisions of this Section 13 shall survive the expiration or termination of this Agreement, regardless of the date, cause or manner of such termination.

**14. Indemnification.** CCBCC agrees to indemnify and hold Customer harmless from and against, and to pay to Customer, any and all losses, claims, demands, liabilities and damages incurred by Customer, including, without limitation, reasonable attorneys' fees and court costs, directly arising out of or relating to the defective manufacture of the Products. Customer agrees to indemnify and hold CCBCC and any affiliated entity harmless from and against, and to pay to CCBCC, any and all losses, claims, demands, liabilities and damages incurred by them, including, without limitation, reasonable attorneys' fees and court costs, arising out of or relating to (a) Customer's negligent or wrongful acts or omissions in connection with the distribution of the Products or operation of the Locations, (b) any material breach by Customer of this Agreement or (c) any confiscation or encumbrance of the Equipment.

**15. Insurance.** During the Term, Customer shall maintain (a) commercial general liability insurance with limits of no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, and (b) worker's compensation insurance as is required by applicable law, from an insurer which is A.M. Best Company rated A- or higher. Any such commercial general liability insurance policy shall be endorsed to specifically name CCBCC and its subsidiaries, affiliates, successors and assigns as additional insureds. Customer shall provide any certificates of insurance to CCBCC upon request, and Customer or its insurer shall provide thirty (30) days' prior written notice (or such other notice as may be provided in the policy provisions) to CCBCC of cancellation or non-renewal of such policies.

**16. No License.** Nothing contained in this Agreement shall be deemed to grant Customer any right in, or license to, any intellectual property owned or controlled by, or licensed for the use of, CCBCC or its Affiliates (collectively, "**CCBCC IP**"), and Customer shall not copy, reproduce, distribute or otherwise use any trademarks, service marks, logos or slogans of CCBCC or its Affiliates or other CCBCC IP, without the prior written consent of CCBCC.

**17. Notices.** Any and all notices or communications between the parties with respect to this Agreement shall be deemed given when made in writing and delivered by hand or sent by first-class mail (registered or certified, with return receipt requested), overnight courier (guaranteeing next business day delivery) or by email (followed by first-class mail confirmation), to the address of the party appearing under its name on the signature page below (or to such other address as may be designated in a notice given hereunder).

**18. Equitable Relief.** Customer acknowledges that the rights granted to CCBCC hereunder are special, unique and extraordinary and are of indeterminant value, the loss of which cannot be fully compensated by damages, actions at law or by application of other remedies described herein. Consequently, Customer acknowledges and agrees that, in addition to any other available remedies hereunder, in the event of a breach by Customer of its obligations hereunder, CCBCC shall be entitled to seek and obtain equitable relief, including an injunction requiring the Customer to comply fully with its obligation under this Agreement. Further, CCBCC shall have the right to withhold, and not pay, further Marketing Fees or any other amounts that would otherwise become due and payable to Customer hereunder if, and so long as, Customer is in breach of its obligations hereunder.

**19. Right of First Refusal.** Prior to, and for a period of sixty (60) days following, expiration or termination of the term of this Agreement, before Customer enters into an agreement with a third party beverage provider or distributor with respect to distribution of non-alcoholic beverages at any of Customer's retail locations following the expiration or termination of the term hereof, Customer shall first offer the proposed beverage arrangement to CCBCC on the same terms and conditions as offered by the third party. CCBCC shall have thirty (30) days during which to accept said offer. If CCBCC does not accept said offer within said period, Customer shall be free to accept the third party offer, provided that Customer shall not enter into a beverage arrangement with such third party or any other third party on terms and conditions more favorable to the third party than the terms and conditions offered to CCBCC.

**Transshipping.** As a purchaser of Products distributed by CCBCC, and in consideration thereof,

Customer shall comply with the provisions herein with respect to Transshipping. **"Transshipping"** is the act of (a) buying the types of products distributed by CCBCC from outside of CCBCC's beverage distribution territory for re-sale in such territory, (b) the sale of CCBCC's Products outside of such territory, or (c) the sale of such 3 Products within such territory to any third party that intends to ship or sell such Products outside of such territory. Customer shall not engage in Transshipping during the Term. If Transshipping occurs, CCBCC has the right, in addition to any other rights and remedies available to CCBCC under this Agreement or at law or in equity, (x) to discontinue the sale of Products to Customer and/or to terminate this Agreement, (y) to limit the Products purchased by Customer to amounts which CCBCC reasonably determines Customer needs solely for its retail sales in CCBCC's beverage distribution territory, and not for sale to other resellers, and/or (z) to collect from Customer any and all damages incurred by CCBCC as a result of Customer's Transshipping.

**21. Concessionaires.** To the extent that any concessionaire, provider of managed food/beverage services or other third party (each, a **"Concessionaire"**) operates, manages, or leases a Location (or any outlet, portion of or space within a Location), Customer shall cause such Concessionaire to comply with the terms of this Agreement with respect to such Locations (or portions thereof or outlets or spaces therein); provided, however, that if a Concessionaire has a separate agreement with CCBCC or The Coca-Cola Company that includes pricing, rebate, allowance, equipment or service terms, CCBCC may elect in its sole discretion to sell Products to such Concessionaire in accordance with the pricing, rebate and other terms of such other agreement, and there will be no duplication of rebates, allowances, funding or benefits to Customer and the Concessionaire; provided that any purchases of Products by Concessionaire for sale at the Locations will be credited toward any minimum Total Purchase Requirements set forth in **Exhibit B**.

**22. Purchases from Food Service Distributors.** Notwithstanding any provision of this Agreement to the contrary, CCBCC may elect, in its sole discretion at any time, to permit Customer to purchase Products from either CCBCC and/or from a food service distributor authorized by CCBCC to distribute Products (an **"Authorized Distributor"**). If CCBCC elects to permit Customer to purchase Products from an Authorized Distributor, the following terms and conditions shall apply:

(a) Customer will purchase Products from an Authorized Distributor at the Authorized Distributor's prices and on its pricing terms, not on CCBCC's trade letter pricing or any pricing terms set forth in this Agreement, subject to **Section 22(b)**;

(b) CCBCC will pay Customer rebates for Products purchased from an Authorized Distributor (**"Authorized Distributor Delivered Products"**) solely if and to the extent set forth in **Exhibit A**;

(c) In no event will CCBCC pay rebates with respect to any (i) Authorized Distributor Delivered Products other than Products marketed under trademarks or brand names owned or controlled by or licensed for the use of The Coca-Cola Company (**"TCCC Products"**) or (ii) Bag-in-Box fountain (**"BIB"**) Products purchased through The Coca-Cola Company's national fountain program, including Coca-Cola, Sprite, Fanta, Seagrams, Pibb, Minute Maid, Barq's, Mello Yello, Hi-C, Powerade, Gold Peak, vitaminwater, Fuze, Fresca and any line extensions of those brands;

(d) Purchases by Customer of Authorized Distributor Delivered Products that are TCCC Products will be credited toward any minimum Total Purchase Requirements set forth in **Exhibit B**, but purchases of Authorized Distributor Delivered Products that are not TCCC Products will not be credited; and

(e) All rebates on Authorized Distributor Delivered Products set forth in **Exhibit A** will be paid based solely on sales records reported by the Authorized Distributor, and CCBCC is not obligated to pay rebates on sales not properly reported by the Authorized Distributor.

**23. Miscellaneous.** This Agreement shall not be assigned or transferred (including, without limitation, by merger or operation of law) by Customer without the prior written consent of CCBCC, and any such attempt to assign or transfer this Agreement without the prior written consent of CCBCC will be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. To be effective, any waiver of any term or condition in this Agreement must be in writing and signed by the waiving party. No waiver by any party of any breach by another party of any provision hereof shall be deemed to be a waiver of any other breach thereof or as a waiver of any such or other provision of this Agreement. This Agreement is made and executed with the intention that the construction, interpretation and validity hereof shall be determined in accordance with and governed by the laws of the State of North Carolina. This Agreement constitutes the entire contract between the parties with respect to the subject matter hereof and supersedes and cancels all prior or contemporaneous oral or written contracts and understandings with respect to the subject matter hereof. All Exhibits attached hereto are hereby incorporated herein by reference. The headings in this Agreement are solely for convenience of reference and shall not affect in any way the interpretation of this Agreement or limit the generality of any of its provisions. This Agreement may not be changed or modified orally, but only by an instrument in writing, signed by the parties hereto, which instrument states that it is an

amendment to this Agreement. All rights and remedies specified in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether under this Agreement or at law or in equity. Except as equity may require, should any provision of this Agreement or any part thereof be held to be invalid or unenforceable, the same shall not affect or impair any other provision of this Agreement or any part thereof, and the invalidity or unenforceability of any provision of this Agreement shall not have any effect on or impair the obligations of a party with respect to the remaining provisions of this Agreement. This Agreement may be executed in multiple counterparts (including by signatures in pdf format transmitted by email or by other electronic means agreed by the parties), each of which shall be deemed an original and all of which shall constitute one Agreement

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 16th day of September, 2025.

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PAUL W. MONTGOMERY, MAYOR

ATTEST:

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ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

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RODNEY B. ROWLETT, III, CITY ATTORNEY