

RESOLUTION NO. 15-11
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Beals ON THE 18th
DAY OF April, 2011.

**A RESOLUTION AUTHORIZING AND DIRECTING THE CITY
MANAGER TO ENTER INTO AN EXCLUSIVE BEVERAGE
MARKETING AGREEMENT WITH BOTTLING GROUP LLC
(PEPSI BEVERAGES COMPANY) AND FINDING THAT
COMPETITIVE BIDDING IS INAPPROPRIATE.**

WHEREAS, this council has determined that the City is in need of a marketing organization to market beverages at The Golf Club at Yankee Trace; and

WHEREAS, proposals were solicited from various beverage marketers; and

WHEREAS, the said process produced only one proposal acceptable to the City; and

WHEREAS, this City as a charter city with full home rule powers as authorized by Section 3, Article XVIII of the Constitution of the State of Ohio which powers would allow the City to waive the requirements of competitive bidding and award said contract if this council determines such a procedure is in the best interests of the citizens of Centerville; and

WHEREAS, this council has determined that it is in the best interests of the City to award said contract without competitive bidding.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is authorized and directed to enter into an exclusive beverage marketing agreement with Bottling Group LLC (Pepsi Beverages Company) on behalf of the City. A copy of said Agreement is attached hereto as Exhibit "A".

Section 2. This resolution becomes effective on the earliest date allowed by law.

PASSED THIS 18th day of April, 2011.

Charles Keizer
Mayor of the City of
Centerville, Ohio

ATTEST:

Debra A. James
Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 15-11, passed by the Council of the City of Centerville, Ohio on the 18th day of April, 2011.

Debra A. James
Clerk of the Council

Approved as to form, consistency
with existing ordinances, the Charter
and Constitutional Provisions.
Department of Law
Scott A. Liberman
Municipal Attorney



PEPSI BEVERAGES COMPANY

The Golf Club at Yankee Trace
Beverage Agreement

This sets forth the agreement ("Agreement") between Bottling Group, LLC, a Delaware limited liability company, and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company with an office located at 526 Milburn Ave, Dayton, Ohio 45404 and The City Of Centerville DBA The Golf Club At Yankee Trace", with offices located at 10000 Yankee St, Centerville, Ohio 45458 (the "Customer").

WHEREAS, Customer and Pepsi each desire that Pepsi, through its Brands (as hereinafter defined), serve as the sole, exclusive and official Beverage (as hereinafter defined) supplier, distributor and advertiser of Customer at each and every location owned and operated, controlled or utilized by the Customer including, but not limited to, each and every location, Beverage fountain and vending location, special events area, concession vending area and any and all other areas and locations that become operational during the term of this Agreement (the "Facilities"), with the only exception being Customer shall be permitted to provide and sell "V8 Fusion" and or "Arnold Palmer Tea's" upon request from a customer.

NOW THEREFORE, in consideration of the mutual covenants Pepsi and Customer hereby agree as follows:

1. Beverages shall be defined as any and all non-alcoholic drinks except hot brewed coffee, hot brewed tea and milk as well as V8 Fusion and Arnold Palmer Tea.
2. Brands shall mean any and all Bottle & Can (No Fountain) Beverages sold and distributed by Pepsi and any and all Beverages Pepsi may sell or distribute in the future including, but not limited to, carbonated soft drinks, non-carbonated soft drinks, juices, juice containing beverages, teas, energy drinks, sports drinks, or isotonic drinks, bottled waters and bottled coffees.
3. Subject to the renewal provisions set forth herein below, the term of this **Four (4)** year Agreement shall commence on **March 15th, 2011** and terminate on **March 14, 2015**, or when Customer has purchased a total of **5000** cases of bottle and can products; and 1,796 non frozen fountain gallons (the "Benchmark Requirement"), whichever comes last ("Term"). All funding provided by Pepsi in Paragraph 5 of this Agreement shall terminate on **March 14th, 2015**; however, Customer shall be required to honor the terms and conditions of the Agreement until the Benchmark Requirement has been met.
4. Customer grants to Pepsi the right of first refusal to serve as the sole, exclusive and official Beverage sponsor, supplier, distributor, advertiser and promoter to Customer and the Facilities for the **one (1)** year period immediately following the expiration of this Agreement

upon such conditions as the parties mutually agree. In a Right of First Refusal, Customer may accept Pepsi's proposal without competitive bidding, or in the alternative, Pepsi will be given the right to match any competitive offer made.

5. In exchange for Customer's 4 year commitment and other valuable consideration and upon full execution of this Agreement, the parties agree as follows:

a. Pepsi agrees to pay Customer an annual payment of \$4,000 during the term. The first such payment will be made within forty five (45) days after full execution of this Agreement and thereafter, within forty five (45) days after each anniversary date of this Agreement during the Term.

b. Pepsi will pay a annual rebate to Customer per the rebate structure below:

- \$2.00 per case on all cases of 24 pack 20oz bottles or and or 24 pack energy.
- \$1.00 per case on all 12 pack 20oz bottles and or energy.
- \$1.00 rebate on all "non frozen" gallons.

"Rebates to be paid annually within forty five (45) day's of the anniversary date to which the agreement was signed on all cases purchased from Pepsi Beverages Company on the immediately prior year's purchases".

c. Service – parts and labor at no charge., this agreement is a local agreement as customer is not a "National Customer" and is not a member of the National PepsiCo "PGA" program.

d. Equipment at no charge.

e. Pepsi will provide Yankee Trace with 2 annual "preventive maintenance "service calls in regards to all Pepsi fountain equipment, not limited and including flushing lines and if needed any replacement parts. A Service call will need to be initiated by the customer for its bi annual preventive maintenance call.

f. Customer agrees to annually provide Pepsi Beverages Company with:

- 40 greens fees with cart for its use in customer relations available for use anytime Monday-Friday and on Saturday, Sunday & Holidays after 11:00 am. Tee Times must be made at least 24 hours in advance through the Head Golf Professional or Assistant Golf Professional.

g. Pepsi agrees to sell its Bottle & Can beverages to the Customer at the following prices for the 2011 year, and subject to an increase *not to exceed 3% annually*, with exception being fountain, fountain price increase shall mirror "Pepsi National" fountain pricing.

- 12oz. cans 24/case = \$9.34
- 20oz plastic pop/juices/teas 24/case = \$19.14
- 20oz Gatorade = \$21.05

- 20oz Aquafina = \$11.70
- 20oz SoBe = \$14.47
- 20oz SoBe Lifewater = \$14.47
- 5 gallon BIB = \$57.40 or \$11.48/gallon
- 3 gallon BIB = \$35.61 or \$11.87/gallon

6. All payments, including the value of donations, made by Pepsi to Customer under Paragraph 5 of this Agreement shall be deemed earned at an equal prorated rate per month for the purposes of this Agreement, notwithstanding the date of actual payment.

7. Customer hereby licenses and appoints Pepsi, through its Brands, as the sole, exclusive and official Beverage supplier, distributor and advertiser of Customer and the Facilities. Customer shall cause the Brands to be exclusively available at the Facilities and no Beverages or Beverage related items including, but not limited to, cups or premium items, that compete with or are the same as or similar to the Brands shall be made available, advertised and/or promoted at the Facilities or by Customer.

8. Customer recognizes that Pepsi has paid valuable consideration to ensure an exclusive Beverage associational relationship with Customer with respect to an exclusive Beverage supply and distribution program and that any dilution or diminution of such exclusivity seriously impairs Pepsi's valuable rights. Accordingly, in the event another person or entity attempts, without Pepsi's explicit consent, to associate Beverages that compete with or are the same as or similar to the Brands ("Competitive Products") with Customer or to suggest that Competitive Products are endorsed by or associated with Customer by referring directly or indirectly to Customer (all of which actions described herein are sometimes referred to as "Ambush Marketing"), Customer will promptly oppose such actions and cooperate with Pepsi's efforts to stop the Ambush Marketing and to protect the exclusive associational rights granted to Pepsi in this Agreement. In the event any such Ambush Marketing occurs during the Term or any renewal thereof, immediately upon learning thereof, each party shall notify the other party hereto.

9. All art work and logo sheets to be used in any advertisements, signage and press releases promoting the Brands are subject to the prior mutual approval of Pepsi and Customer, with neither party unreasonably withholding such approval.

10. Except as may otherwise be required by this Agreement, law or legal process, no party shall disclose to any third party the terms and conditions of this Agreement.

11. Except if prohibited by law, during the entire Term, Pepsi shall provide and supply Customer with all necessary equipment to dispense the Brands at the Facilities without charge; provided that all Beverages are supplied to Customer and the Facilities by Pepsi as set forth above and that the only products dispensed from such equipment are the Brands. Pepsi will provide service on all equipment without charge to Customer. All rights, title and interest in all Pepsi equipment supplied to Customer shall at all times remain with Pepsi.

12. Customer represents and warrants to Pepsi that all appropriate approvals required to enter into this Agreement have been granted and the individual executing this Agreement on behalf of Customer has been duly authorized by any and all persons or entities of which authorization is required to enter into this Agreement on behalf of Customer. Customer also agrees that at no time will it challenge, contest, disclaim or deny the authority of the individual signing this Agreement on behalf of Customer or use as a basis to void, cancel or nullify this Agreement a claim that the individual signing below was not authorized to sign this Agreement on behalf of Customer. Further, Customer guarantees and warrants that the execution, delivery and performance of this Agreement by Customer will not and does not violate any agreements with or the rights of third parties.

13. In the event any of the covenants, agreements, terms or provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms and provisions contained herein shall not in any way be affected, prejudiced or disturbed thereby.

14. If Customer fails to perform any of the promises set forth in this Agreement, then as an option but not as its sole remedy, Pepsi may terminate this Agreement. If this Agreement is terminated for any reason, Customer agrees to return to Pepsi a pro rata portion of all monetary payments, including the value of donations, made to but not earned by Customer under Paragraphs 5 of this Agreement. Further, any such breach by Customer shall be deemed as authorization to Pepsi to allow Pepsi immediate access to the Facilities to take possession of each and every piece of Pepsi's equipment without any claim of trespass.

15. Any failure by either party hereto to enforce at any time or for any period of time any one or more of the terms or conditions of this Agreement, shall not be a waiver of such terms or conditions or of either party's right thereafter to enforce each and every term and condition of this Agreement.

16. It is mutually understood and agreed, and it is the intent of Pepsi and Customer that an independent contractor relationship be established and is hereby established under the terms and conditions of this Agreement: that employees of Customer are not, nor shall they be deemed to be, employees of Pepsi; and, that employees of Pepsi are not nor shall they be deemed to be employees of Customer.

17. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by either party in whole or in part, whether voluntarily or by operation of law, except by way of sale of assets, merger or consolidation, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

18. The Customer shall have the option to grant a sponsor, of a major event, the right to utilize the beverage with which the sponsor is affiliated. An example would be a national customer who utilizes a competitive beverage company, e.g. (McDonalds and Coke). The

Customer may exercise this option three (3) times per year. The competitive beverages may only be utilized for the particular event and the Customer may not sell left over product after the event has ended. If for any reason Pepsi Beverages Company volume decreases due to this option, remedies will have to be discussed, e.g. (contract extension)

19. This Agreement fully expresses the entire understanding of Pepsi and Customer. Any and all prior understandings are hereby canceled. No future changes in the terms of this Agreement shall be valid, except when and if reduced to writing and signed by both Pepsi and Customer, by legally authorized officials thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

The City Of Centerville
The Golf Club at Yankee Trace

Bottling Group, LLC dba Pepsi Beverages
Company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____