pepsi bottling ventures

4-4-14

East Montgomery High School
157 Eagle Ln
Biscoe, NC 27209

SCHOOL SPONSORSHIP AGREEMENT (PUBLIC SCHOOL)

This letter sets forth the agreement (the "Agreement") between Pepsi Bottling Ventures LLC ("PBV") and East Montgomery High School, a body politic and corporate with its principal place of business at 157 Eagle Ln. Biscoe, NC 27209 (the "School"), relating to the sale of PBV's beverage products throughout all the facilities at East Montgomery High School, and at any other facility now or hereafter maintained by School (the "Premises"). Throughout this Agreement, PBV and the School may be referred to individually as a "Party" or collectively as the "Parties." In consideration of the mutual promises and covenants sets forth herein, the Parties hereto agree as follows:

1. **Term.** The term of this Agreement will be for a period of five (5) year(s), commencing April 14, 2014, and expiring April 13, 2019 (the "Term"). This Agreement shall thereafter automatically renew for successive additional terms of one (1) year each (a "Renewal Term") and upon its stated terms and conditions, unless contrary written notice is given by either party to the other at least sixty (60) days prior to the expiration of the Term or Renewal Term. As used in this Agreement, the capitalized term "Year" shall mean each 12-month period during the Term or any Renewal Term, commencing on the first day of the Term, an anniversary thereof or any Renewal Term.

2. **Scope and Exclusivity.** During the Term and any Renewal Term of this Agreement, School agrees that all postmix or premix fountain, bottled, and canned beverage products served, or otherwise made available, on the Premises will be purchased exclusively from PBV (the "Products", or "Product"). The Products may include, without limitation, Pepsi-Cola Company branded soft drinks and non-carbonated beverages, Lipton branded non-carbonated beverages, Aquafina branded products, and such other soft drink, tea, juice, bottled water, and isotonic product as PBV may offer for sale to School. The Products provided by PBV and the time periods during which such Products will be made available for sale will be subject to the guidelines imposed by the American Beverage Association (the "ABA") regarding the sale of beverages in schools (the "ABA Guidelines"). A list of PBV's Products that comply with the ABA Guidelines as of the date hereof are attached as **Exhibit A**. The School acknowledges and agrees that PBV shall not be required to sell any products to the School or on the Premises that do not appear on **Exhibit A** or that otherwise do not comply with the ABA Guidelines then in effect. The School agrees that no beverages other than the Products shall be in any way

advertised, displayed, represented or promoted at or in connection with the School by any method or through any medium whatsoever (including, without limitation, print, broadcast, direct mail, coupons, displays and signage). PBV shall work directly with the School to promote Product sales through appropriate point-of-sale materials and other advertising materials bearing the trademarks of the Products.

3. **Equipment and Service Support.**

A. **Vending Equipment.** During the Term and any Renewal Term of this Agreement, PBV will install and maintain, at no charge to the School, no less than two vending machines on the Premises, plus additional vending machines as mutually agreed to by School and PBV (the "Vending Equipment").

B. **Fountain Equipment.** During the Term and any Renewal Term of this Agreement, (i) PBV will install and maintain, at no charge to the School, fountain beverage dispensing units and coolers on the Premises, plus additional units and coolers as mutually agreed to by School and PBV (the "Fountain Equipment"; collectively with the Vending Equipment, the "Equipment"), and (ii) School agrees to purchase all necessary fountain Product, CO2, cups, lids, and straws for use in connection with the Fountain Equipment or any other Products from PBV throughout the Term and any Renewal Term of this Agreement at then-current, competitive prices. School further agrees not to resell the fountain Product to non-affiliated third parties or to consumers in any form other than as finished fountain Products. Further, School agrees to prepare the fountain Products (a) only in accordance with PBV's procedures and standards and (b) only for immediate or imminent consumption.

C. **Maintenance.** All Equipment shall at all times remain the sole property of PBV or its affiliate. PBV shall have the exclusive right to repair, replace, move or remove any and all Equipment. At no charge to the School, PBV will repair and maintain the Equipment, and agrees to keep the Equipment in good working order and condition at all times. School agrees to promptly notify PBV of any need for repair or service, and to fully cooperate with PBV in effecting such necessary repairs or service. Notwithstanding the foregoing, School agrees to use reasonable efforts to keep the Equipment in clean and sanitary condition, wholly free of all School or third party materials or advertising, at all times.

4. **Support Funds.** PBV shall provide School the following support funds (the "Support Funds"):

A. **Commissions.** PBV shall pay to the School commissions based on sales of bottle and can Product through the Vending Equipment. So long as the Product is sold at the selling price set forth in the schedule below, commissions shall be paid to the School at the commission rate set forth in the schedule below. The selling price for the Products sold through the Vending Equipment may increase upon the mutual consent of the Parties. PBV shall pay commissions to the School every month based on a monthly cycle. In addition, in connection with payment of the commissions PBV will provide to School an activity report for each unit of Vending Equipment located on the Premises.

Products	*Vending Price Per Case*	*Commission Rate Per Case Sold*
12 oz bottles Aquafina (24 per case)	$15.60	$3.90
12 oz bottles Gatorade (24 per case)	$24.00	$6.00
12 oz cans Tropicana Light soft drinks (24 per case)	$15.60	$3.90
12 oz cans diet carbonated soft drinks (24 per case)	$15.60	$3.90
12 oz cans carbonated soft drinks (24 per case)	$15.60	$3.90
20 oz bottles Aquafina (24 per case)	$24.00	$6.00
20 oz bottles Aquafina Flavor Splash (24 per case)	$24.00	$6.00
20 oz bottles Brisk soft drinks (24 per case)	$24.00	$6.00
20 oz bottles Lipton Tea (24 per case)	$24.00	$6.00
20 oz bottles diet carbonated soft drinks (24 per case)	$24.00	$6.00
20 oz bottles carbonated soft drinks (24 per case)	$24.00	$6.00

B. Annual Support Fund. Following the execution of this Agreement, PBV will fund the Customer $1250 per Year (the "Annual Support Fund"), provided, however, that each Year's Annual Support Fund shall be funded only if the Customer is continuing to purchase fountain, bottle and can Product pursuant to the terms of this Agreement. In the initial Year, PBV shall pay to the Customer the Annual Support Fund within sixty (60) days of execution of this Agreement, and each Year thereafter PBV shall pay to the Customer the Annual Support Fund within forty-five (45) days of the anniversary date of the Agreement. PBV shall have no obligation to pay Customer the Annual Support Fund after termination of this Agreement. Regardless of when paid, any Annual Support Fund will be deemed to be earned over the entire Term or Renewal Term, as applicable, and if this Agreement is terminated for any reason prior to the end of the Term or Renewal Term, as applicable, Customer shall repay a portion of the Annual Support Fund according to the terms set forth in Section 9.

C. Other Support Funds. Pepsi will also provide the following:

Pepsi will also provide two (2) 5-gallon coolers with Gatorade powder, 24 sports towels and bottles. Thirty (30) cases of product per school year [(12oz cans, or .5L bottled water, or 2 liters).

The school can also receive up to 1000 comeback cards as requested and have opportunities for Pepsi fundraising.

D. Signage Replacement

Pepsi will replace existing Coke signage at no charge to the school. This will include signage on 2 football time clocks, 1 football scoreboard, and 1 basketball scoreboard.

5. **Product Pricing.** The price of Product (the "Price") will be PBV's then-current, competitive prices at the time this Agreement is executed. PBV will use commercially reasonable efforts to maintain its costs and the Price throughout the Term and any Renewal Term

of this Agreement. However, the Price is subject to change throughout the Term and any Renewal Term of this Agreement, but in any event shall remain competitive with current average market prices.

6. **Payment Terms.** Throughout the Term and any Renewal Term of this Agreement, School agrees that payment for Product purchased by School will be received by PBV within thirty (30) days of invoice (if School pays by invoice) or within fifteen (15) days of statement (if School pays by statement), or in accordance with such other reasonable payment terms as PBV may establish from time to time.

7. **Pricing Discrepancy Claim.** If School wishes to make a price discrepancy claim, School must submit a written request specifying the particular promotion, Product, amount in dispute and reason for the dispute. Such request must be received by PBV within ninety (90) days of the invoice date. In order to make a price discrepancy claim after ninety (90) days from the date on the invoice, in addition to the written request as specified above, the School must submit to PBV a copy of the invoice in question, copies of any check remittances pursuant to the invoice in question, and a copy of the deal sheet in question. Requests should be addressed to: Accounts Receivable, Pepsi Bottling Ventures LLC, 1900 Pepsi Way, Garner, North Carolina 27529. In no event will PBV accept a price discrepancy claim more than one (1) year after the date of the invoice in question. PBV shall refund to School any amounts it determines were overcharged. In no event shall School withhold or deduct payment of an amount that it claims is discrepant.

8. **Default and Termination.** A breach of any of the terms or conditions of this Agreement not cured within sixty (60) days after the non-breaching Party provides written notice of the breach to the breaching Party shall conclusively be a material breach (a "Material Breach"). Notwithstanding the foregoing, the sale of any competitive beverages or any products which PBV may offer for sale which are purchased or otherwise received from any supplier other than PBV, or any other failure to serve exclusively Product provided by PBV pursuant to the terms of this Agreement, shall constitute a Material Breach of this Agreement by School without lapse of time and not subject to cure. For the avoidance of doubt, the preceding sentence is not intended to be and should not be construed as a competitive buyout clause, as this Agreement is an exclusive relationship pursuant to which School has agreed to serve exclusively Product provided by PBV.

Either Party to this Agreement shall have the right to immediately terminate this Agreement upon the occurrence of a Material Breach by the other Party. Notwithstanding the foregoing, either Party may terminate this Agreement immediately upon written notice to the other Party in the event the other Party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such Party and such proceeding shall continue without dismissal or stay for a period of thirty (30) consecutive days, or an order granting the relief requested in such proceeding shall be entered. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights available to either Party in law or in equity.

IF THIS AGREEMENT IS TERMINATED FOR ANY REASON PRIOR TO THE END OF THE TERM OR PRIOR TO THE END OF A RENEWAL TERM, THEN IN ADDITION TO ANY OTHER REMEDIES TO WHICH PBV MAY BE ENTITLED, SCHOOL SHALL IMMEDIATELY REMIT TO PBV AN AMOUNT EQUAL TO A PRORATED PORTION OF ANY SUPPORT FUNDS DESCRIBED IN SECTION 4 AND PROVIDED BY PBV TO CUSTOMER DURING THE TERM (IF THE AGREEMENT IS TERMINATED BEFORE THE END OF THE TERM) OR THE RENEWAL TERM (IF THE AGREEMENT IS TERMINATED BEFORE THE END OF THE RENEWAL TERM) THROUGH THE DATE OF TERMINATION BASED ON THE NUMBER OF MONTHS REMAINING IN THE TERM OR RENEWAL TERM, AS APPLICABLE. CUSTOMER SHALL ALSO REIMBURSE PBV FOR THE COST OF THE INITIAL INSTALLATION AND DE-INSTALLATION OF THE EQUIPMENT.

9. Rights upon Termination. Upon termination of this Agreement by either Party, School shall permit PBV reasonable access to the Premises for thirty (30) days, free from any claims of trespass, for purpose of removing any Equipment. Until such time as all Equipment is removed or for thirty days, whichever comes first, School's obligations shall continue under the terms of this Agreement. PBV shall use commercially reasonable efforts to leave each Equipment site in the condition in which it existed prior to installation, excepting reasonable wear and tear, and excepting any damage that occurred beyond PBV's control or anticipation. Upon removal of all Equipment, PBV shall promptly issue payment to School for any commissions School has earned under Section 4.

10. Right of Set Off. In the event School is delinquent in payment for Product hereunder or is required to indemnify PBV pursuant to Section 13 hereof, PBV reserves the right to withhold Support Funds payments otherwise due hereunder as an offset against amounts owed to PBV.

11. School Representations and Warranties. The School represents and warrants to PBV that:

A. it has full right, power and authority to enter into this Agreement and to grant, transfer and sell to PBV all of the rights, privileges, terms and conditions set forth herein; and

B. the granting of such rights and privileges to PBV shall not violate, interfere with nor infringe upon the rights of any third parties pursuant to written agreements or otherwise.

12. Use of Trademarks. School agrees that all uses of the Product brand names, logos, and trademarks (collectively "Product Trademarks") during the Term and any Renewal Term, including, but not limited to, press releases, statements or other announcements, shall be subject to PBV's prior approval or scripting, which approval shall not be unreasonably withheld or delayed. Except as set forth in the proceeding sentence, School shall have no right or license to use the Product Trademarks. Nothing herein, nor any act or failure to act by PBV or the

School, shall give the School any proprietary or ownership interest of any kind in the Product Trademarks or in the goodwill associated therewith.

13. Indemnification.

A. PBV. PBV will indemnify and hold the School harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; and/or (ii) claims for personal injury resulting from the use or consumption of the Products.

B. The School. To the extent permitted by law, School will indemnify and hold PBV harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any representation, warranty, term or condition of this Agreement; and/or (ii) any claims for property damage, personal injury or death by any person injured through the negligence or misconduct of the School.

14. Insurance. PBV may request that the School name PBV as an additional insured on its public liability insurance policy, which policy shall have at least a one million-dollar combined single limit coverage and shall be issued by a financially sound insurer. Upon request, the School shall deliver a certificate of insurance evidencing such policy.

15. Relationship of the Parties. The Parties are independent contractors with respect to each other; nothing contained in the Agreement will be deemed or construed as creating a joint venture or partnership between the Parties.

16. Assignment. This Agreement shall not be assigned by either Party hereto without the prior written consent of the other Party, which consent shall not be unreasonably withheld and which consent shall not be required with respect to the successor or purchaser of substantially all of the business of PBV, or with respect to any such assignment by PBV to any affiliate of PBV.

17. Confidentiality. Except as may otherwise be required by law or legal process, neither Party hereto shall disclose to any third party the terms and conditions of this Agreement.

18. Notices. Any notice or communication which either Party is required or permitted to give hereunder shall be given in writing and when received if delivered in person, when receipt is acknowledged if sent by facsimile, on the next business day if timely delivered by a nationally recognized courier service that guarantees overnight delivery or two business days after deposit if mailed by first-class mail, postage prepaid, addressed as follows:

A. If to PBV:

Pepsi Bottling Ventures
390 Business Park Dr
Winston Salem, NC 27107
(T) 336-813-2251
(O) 336-464-9227
Attn: Ronnie Shupe

B. If to School:

East Montgomery High School
157 Eagle Ln
Biscoe, NC 27209
Telephone: 910-428-9641
Attention: Heather Seawell

19. **Entire Agreement.** This Agreement contains the entire understanding and agreement between the Parties hereto regarding the subject matter herein and supersedes all other agreements between the Parties respecting such. This Agreement may be amended or modified only by written statement, signed by each of the Parties.

20. **Force Majeure.** Any delay in the performance of any of the duties or obligations of either Party hereto (except the payment of money) caused by an event outside the affected Party's reasonable control which it could not have avoided by the exercise of reasonable diligence shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay. Such events shall include, without limitation: acts of God; acts of a public enemy; insurrections; riots; injunctions; embargoes; fires; explosions; floods; or domestic acts of terrorism. The Party so affected shall give prompt notice to the other Party of such cause, and shall take whatever reasonable steps are appropriate in that Party's discretion to relieve the effect of such cause as rapidly as possible.

21. **Choice of Law.** This agreement will be governed by the laws of the State of North Carolina, without regard to conflicts of laws principles.

22. **No Waiver.** The failure of either Party to object to a breach of any representation, warranty, term or condition of this Agreement will not be deemed a waiver of any right or remedy the non-breaching Party may have arising out of the breach, nor will it be deemed a waiver of its right to subsequently enforce the representation, warranty, term or condition.

23. **Right of First Refusal.** At the conclusion of this Agreement, PBV will have the right of first refusal to match offers made by other vendors offering similar or competitive products and services as those addressed by this Agreement.

[Signature Page to Sponsorship Agreement]

If the foregoing correctly sets forth our agreement, please so indicate by executing below, whereupon this Agreement shall constitute a binding contract between us.

Pepsi Bottling Ventures LLC

By:_____

Name:_____

Title:_____

Date:_____

East Montgomery High School

By: HSeawell

Name: Heather Seawell

Title: Principal

Date: 5/5/14

Exhibit A

Pepsi Bottling Ventures Product Availability
Child Nutrition and School Vending

As of 7/8/2009

Elementary School Students

Brand	Package	Ounces Per Serving	Flavors
Aquafina	Bottle	12oz, 16.9oz, 20oz	* Purified

Middle School Students

Brand	Package	Ounces Per Serving	Flavors
Aquafina	Bottle	12oz, 16.9oz, 20oz	* Purified
Dole Plus 100% Juice	Bottle	10oz	* Orange * Apple * Fruit Punch

High School Students

Brand	Package	Ounces Per Serving	Flavors
Aquafina	Bottle	12oz, 16.9oz, 20oz	* Purified
Dole Plus 100% Juice	Bottle	10oz	* Orange * Apple * Fruit Punch
Aquafina Flavor Splash	Bottle	20oz	* Grape * Wild Berry * Kiwi Strawberry * Raspberry
Gatorade	Bottle	12oz	* Fruit Punch * Berry * Ice Punch * Lemon-Lime * G2-Grape
Propel	Bottle	20oz	* Berry * Grape * Strawberry-Kiwi * Blue-Pomegrante
SOBE Lifewater w/ PuraVia - (0 Calories)	Bottle	20oz	* Mango-Melon * Acai Fruit Punch * Fugi Apple * Blackberry-Blueberry * Yumberry-Pomegrante
Tropicana Light Drinks	Bottle/Can	20 Btl. and 12oz Can	* Sugar Free - Orangeade * Sugar Free - Lemonade
Diet Lipton Ice Teas	Bottle	20oz	* Green Tea with Citrus
Diet Sparkling Lipton Ice Tea (Not Available in Child Nutrition)	Bottle	16.9oz	* Kiwi-Strawberry
Diet Carbonated Soft Drinks (Not Available in Child Nutrition)	Bottle/Can	20 Btl. and 12oz Can 20 Btl. and 12oz Can 20 Btl. and 12oz Can 20 Btl. and 12oz Can 20 Btl. and 12oz Can 20 Btl. and 12oz Can 12oz Can Only 20 Btl. and 12oz Can 20 Btl. and 12oz Can 20 Btl. and 12oz Can 20 Btl. and 12oz Can	* Diet Pepsi * CF Diet Pepsi * Diet Mt Dew * CF Diet Mt Dew * Diet Sierra Mist * Diet Wild Cherry Pepsi ** CF Diet Dr Pepper ** Diet Dr Pepper ** Diet Dr Pepper Cherry ** Diet Orange Crush ** Diet Sunkist Orange

** Only in Applicable markets