

7/13/11

2011-27704

March 14, 2012

Mayor Matti Herrera Bower  
Mayor of City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33138

Dear Mayor:

This letter confirms the agreement made by and among the City of Miami Beach, Florida ("City"), Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company ("Bottler") and Coca-Cola North America, a division of The Coca-Cola Company ("Company", and collectively with Bottler, "Sponsor"), which sets forth certain exclusive rights granted to Bottler by City, as set forth in the Term Sheet and Exhibits attached thereto, all of which are attached hereto as **Attachment A**.

1. Term Sheet and Definitive Agreement

The Term Sheet and Exhibits attached thereto are hereby incorporated herein in their entirety. This letter and the Term Sheet, together with any other attachments referenced in either, will constitute a legally binding agreement (the "Agreement") when this letter is signed by all parties in the spaces provided below. All capitalized terms not defined in this letter shall have the meanings assigned to them in the Term Sheet. This letter shall prevail in the event of any conflict between the provisions of this letter and the Term Sheet.

2. Advertising Rights

(a) City agrees that Bottler's advertising shall be positioned at all times in such a manner that the advertising message is in no way obscured (electronically or otherwise) and is clearly visible to the general public. The Products shall be prominently listed on any menu boards located at the Facilities and all Equipment (as such term is defined herein) dispensing Products shall be prominently identified with the appropriate trademarks/logos.

(b) City further agrees that all Products will be dispensed in Sponsor's Equipment and that no other trademarked, equipment, coolers or containers will be permitted.

3. Product Rights

(a) City shall purchase or shall cause its Concessionaires to purchase, all Products, (and cups, lids and carbon dioxide, if applicable) directly from Bottler.

(b) City hereby grants to Bottler the exclusive Beverage rights at the Facilities, except as may be otherwise provided for in this Agreement and Exhibits.

(c) If City contracts a concessionaire, City will cause concessionaire to purchase from Bottler all requirements for Beverages (and cups, lids and carbon dioxide, if applicable). Such purchases will be made at prices and on terms set forth in Bottler's existing agreement with concessionaire, if any. If no agreement exists between concessionaire and Bottler, such purchases will be made at prices and on terms set forth in this Agreement. City acknowledges that there will be no duplication of allowances, funding or benefits (including pricing) to City or concessionaire if concessionaire has an existing agreement with Bottler.

4. Equipment and Service

(a) Bottler Equipment and Service: During the Term, Bottler will loan to City, pursuant to the terms of Bottler's equipment placement agreements, at no cost, that Beverage vending equipment reasonably required and as mutually agreed upon to dispense Products at the Facilities ("Bottler Equipment"). In addition, Bottler will provide at no charge regular mechanical repair reasonably needed for Bottler Equipment, as further outlined in Exhibit 7 to the Term Sheet. Prior to Bottler's installation of Bottler's Equipment at a particular Facility, the City shall provide Bottler with written confirmation that it has conducted an inspection of the electrical service at such Facility and that, based on such inspection, the City finds that the electrical service at the Facility is proper and adequate for installation of Bottler's Equipment. Notwithstanding the preceding, if at any time following Bottler's installation of Bottler's Equipment at a Facility, Bottler's Equipment is damaged as the direct result of defective electrical service at the Facility, then the City will reimburse Bottler for the cost of repair or replacement, as the case may be, of Bottler's Equipment, pursuant to the filing of a claim with the City's self-insurance fund. Notwithstanding the preceding, the City shall not be responsible nor liable to Bottler under this subsection for any damages to Bottler's Equipment which is not caused as a direct result of defective electrical service at a Facility (including, without limitation, any damage to Bottler's Equipment which is caused due to the negligence or misconduct of Bottler's employees, contractors, and/or agents, or from any other cause or act other than faulty electrical service).

(b) Fountain Equipment and Service: During the Term, Company will loan to City, pursuant to the terms of Company's equipment placement agreement, at no cost, that Fountain Beverage dispensing equipment reasonably required and as mutually agreed upon to dispense a quality fountain Beverages at the Facilities ("Fountain Equipment")(collectively, Bottler Equipment and Fountain Equipment are called "Equipment"). No ice makers or water filters will be provided. All Fountain Equipment provided by Company will at all times remain the property of Company and is subject Company's equipment agreement, but no lease payment will be charged. To the extent that Fountain Equipment loaned from Company under this Agreement is located at Facilities that are owned, controlled or managed by a concessionaire of City or other persons not party to this Agreement, City will include provisions in its agreements with such concessionaires that recognize that the Fountain Equipment is owned by Company and that obligates the concessionaires to honor the terms and conditions such equipment agreement.

Company (or Bottler) will provide at no charge regular mechanical repair reasonably needed for Fountain Equipment. Any removal, remodel, relocation or reinstallation of dispensing equipment, flavor changes, summerize/winterize, line changes, or service necessitated by damage or adjustments to the equipment resulting from misuse, abuse, failure to follow operating instructions, service by unauthorized personnel, unnecessary calls (equipment was not plugged in, CO<sub>2</sub> or fountain syrup container was empty), or calls that are not the result of mechanical failure (collectively "Special Service Calls"), are not considered regular service and will not be provided free of charge. Charges for Special Service Calls will be charged at Company's (or Bottler's) then current rate and will be invoiced on a semi-annual basis. Charges will include labor, travel time, parts, and administrative costs.

5. Competitive Products Prohibited.

(a) City agrees that it will not knowingly permit any Competitive Products to be sold, distributed, served, sampled, marketed, advertised, or promoted in any manner at the Facilities, or in association with City, the Facilities or the City trademarks, during the Term, except as outlined in this Agreement.

(b) City agrees that City will not grant any rights, or enter into any contractual or other relationship, whereby City, the Facilities, and/or the City trademarks will be, or have the potential to be, associated in any manner, with any Competitive Products, except as outlined in this Agreement and the Term Sheet.

(c) If City learns of any Competitive Products being marketed, advertised, or promoted in any manner which implies an association with City, Facilities or City trademarks (hereinafter referred to as "**Ambush Marketing**"), City will promptly notify Bottler in writing of the Ambush Marketing; and also will promptly use its efforts, and cooperate in good faith with Bottler, to prevent or stop such Ambush Marketing in order to protect the exclusive associational rights granted to Bottler under this Agreement.

(d) Special Promotional Events Exception. See Exhibit 8.

(e) The City will provide Bottler with no less than thirty (30) calendar days prior written notice of each event which it intends to designate as a Special Promotional Event.

(f) The private, personal consumption of Competitive Products by athletes, coaching staff, musicians, actors, comedians, or other entertainment personalities appearing and performing at the Facility is allowed and will not be considered a Special Promotional Event. City shall use efforts to ensure such consumption is limited to private areas and may not be permitted in any area of the Facility to which the public or any member of the print or electronic media has legal access.

(g) Product availability at Facilities for private events. A private event at a Facility shall mean the use of a Facility, either through the rental of the Facility or through the issuance of a City-approved Special Event Permit, by a person(s) or business entity (ies) (i.e. such as a corporation) which is not open or accessible to the general public either free or via a purchased ticket. For example purposes only, private events may include, but not be limited, to the following: weddings, bar mitzvah/bat mitzvah and corporate events. Product availability and exclusivity at private events shall be handled as follows: Only Products will be sold, distributed, sampled or otherwise served at Facilities at any time. Notwithstanding the foregoing, Competitive Products may be distributed at no cost by the user of the Facility for private events, provided that Products will continue to be the only Products sold, distributed, sampled, or otherwise served by Facilities concession operations.

(h) Product availability at Facilities as it relates to charitable events (including, events produced by not-for-profit entities with valid tax exemption from the IRS) at Facilities or at City-Permitted Special Events (e.g., Relay for Life, Aids Walk, American Cancer Society), shall be handled as follows: Only Products will be sold, distributed, sampled or otherwise served at Facilities at any time. Notwithstanding the foregoing, Competitive Products may be distributed at no cost by the charitable organization using the Facility provided that Products will continue to be the only Products sold, distributed, sampled, or otherwise served by Facilities concession operations and that Bottler had opportunity to supply Products for the charitable event and declined.

## 6. Consideration.

(a) Pricing. Pricing (including price increases) will be implemented as outlined in the Term Sheet.

(b) Credit Card Readers and Funding. Bottler and City will mutually agree to install credit card readers in select Beverage dispensers, which are identified as high traffic locations. Bottler will pay for the credit card readers in an aggregate amount of not to exceed Ten Thousand Dollars (\$10,000). This funding will be earned over the Term of the Agreement. City shall have no responsibility to fund any overage for payment of the credit card readers should they exceed Ten Thousand Dollars (\$10,000). Bottler shall be responsible for all maintenance and repair of the credit card readers. Upon termination or expiration of the Agreement, City shall return all credit card readers to Bottler.

## 7. Trademarks; Approvals.

(a) City acknowledges that The Coca-Cola Company is the owner of all right and title in the trademarks "Coca-Cola", "Diet Coke", "Sprite", "DASANI", "Minute Maid", "POWERADE", "Fanta" "vitaminwater" "Full Throttle", "NOS" and other trademarks of The Coca-Cola Company, and it acquires no rights whatsoever in these trademarks

by virtue of this Agreement. City agrees to submit all proposed uses of The Coca-Cola Company marks to Sponsor for approval prior to use, but such approval shall not be unreasonably withheld.

(b) Bottler acknowledges that City is the owner of all right and title in the service mark "MiamiBeach" and that Bottler acquires no rights whatsoever in the service mark by virtue of this Agreement. Bottler shall have the right to use the City's service mark during the Term in connection with its marketing activities at the Facilities. Bottler agrees to submit all proposed uses of City's service marks to City for approval prior to use, but such approval shall not be unreasonably withheld.

#### 8. Termination

(a) Notwithstanding the other provisions of this Agreement, if any federal, state or local law, rule, regulation or order prohibits, restricts or in any manner interferes with the sale or advertising of Beverages at any time during the Term of this Agreement, and the City fails to cure such breach within thirty (30) days following written notice of same from Bottler then, at its option, Bottler may terminate this Agreement and City shall (i) return any Equipment, and (ii) pay to Bottler the unearned portion of pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination), if any, as well as any other upfront funding deemed earned over the Term, if any, prorated through the date of termination.

(b) City represents and warrants that it has full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein. In the event of expiration or revocation of such authority, and if the City fails to cure such breach within thirty (30) days following revocation of full right and authority, then at its option, Bottler may terminate this Agreement, and City shall (i) return any Equipment; and (ii) pay to Bottler the unearned portion of pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination), if any, as well as any other upfront funding deemed earned over the Term, if any, pro-rated through the date of termination..

(c) If Bottler breaches any of its material obligations under this Agreement, and fails to cure such breach within thirty (30) days following written notice of same from the City, then City may terminate this Agreement and Bottler shall remove all Equipment from the Facilities, and the City shall be entitled to retain the earned portion of any pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination), if any; other upfront funding deemed earned over the Term, if any, prorated through the date of termination; and any fees or payments due for the Agreement year in which the termination occurs, such as commission fees, if any.

(d) Notwithstanding the above, nothing in this section shall operate to restrict any other remedies that either party may have against the other in the event of a material breach by a defaulting party.

#### 9. Insurance

The Bottler acknowledges that the City is self-insured, as provided in **Attachment B** to this Agreement.

Bottler shall, at its sole cost and expense, obtain, provide and maintain, during the Term, the following types and amounts of insurance, which shall be maintained with insurers licensed to sell insurance in the State of Florida and have a B+ VI or higher rating in the latest edition of AM Best's Insurance Guide:

- 1) Commercial General Liability. A policy including, but not limited to, commercial general liability, including bodily injury, personal injury, property damage, in the amount of \$1,000,000 per occurrence. Coverage shall be provided on an occurrence basis..

- 2) Workers' Compensation per the statutory limits of the State of Florida and Employer's Liability Insurance.
- 3) Automobile Liability - \$1,000,000 combined single limit for all owned/non-owned/hired automobiles.

Said policies of insurance shall be primary for Sponsor/Bottler's negligence only to and contributing with any other insurance maintained by Bottler or City, and all shall name City of Miami Beach, Florida as an additional insured on the commercial general liability and automobile liability policies. Sponsor shall provide thirty (30) days written notice to City prior to policy cancellation.

Bottler shall file and maintain certificates of the above insurance policies with the City's Risk Management Department showing said policies to be in full force and effect at all times during the Term.

10. Notices

Any notice or other communication under this Agreement must be in writing and must be sent by registered mail or by an overnight courier service (such as Federal Express) that provides a confirming receipt. A copy of the notice must be sent by fax when the notice is sent by mail or courier. Notice is considered duly given when it is properly addressed and deposited (postage prepaid) in the mail or delivered to the courier. Unless otherwise designated by the parties, notice must be sent to the following addresses:

**(A) Notice to Sponsor.**

Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company  
3350 Pembroke Road  
Hollywood, Florida 33021  
Attention: V.P. Market Unit, South Florida  
Fax: 954-986-3173  
Ticket Addressee: V.P. Market Unit, South Florida  
Fax: 954-986-3173

With a copy to: Coca-Cola Refreshments USA, Inc.  
2500 Windy Ridge Pkwy  
Atlanta, Georgia 30339  
Attention: General Counsel

**(B) Notice to City.**

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33138  
Attention: Hilda Fernandez  
Fax: 305-673-7782

11. Governing Law

This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to its conflict of law rules.

12. Compliance with Law

Each of the parties hereto agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder.

13. Retention of Rights

No party shall obtain, by this Agreement, any right, title or interest in the trademarks of the other, nor shall this Agreement give any party the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks, service marks or copyrights of the other, except as may be expressly provided and authorized herein.

14. Jury Waiver

**EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.**

15. Entire Agreement

This Agreement and its exhibits contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be assigned without the prior written consent of all parties; provided, however, that Bottler may assign this Agreement in connection with its reorganization or the sale of all or substantially all of its assets. All amendments to or waivers of this Agreement must be in writing signed by all the parties.

The Coca-Cola Company, acting by and through  
its Coca-Cola North America Division

By: Susanne Geldart  
Print Name: Susanne Geldart  
Title: Sr. VP, Southeast Region Sales  
3/26/12

City of Miami Beach

By: Matti H. Bower  
Print Name: Matti H. Bower  
Title: Mayor  
3/16/12

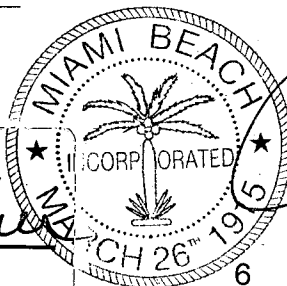
Coca-Cola Refreshments USA, Inc. d/b/a Florida  
Coca-Cola Bottling Company

By: Sally Forsyth  
Print Name: SALLY FORSYTH  
Title: REGION CONTROLLER 3/22/12

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

Robert Parich

ATTEST



[Signature]  
City Attorney

3-15-12  
Date

## Attachment A

### TERM SHEET

#### **EXCLUSIVE NON-ALCOHOLIC BEVERAGE AGREEMENT**

#### **CITY OF MIAMI BEACH AND COCA-COLA REFRESHMENTS USA, INC. and COCA-COLA NORTH AMERICA, A DIVISION OF THE COCA-COLA COMPANY**

<b>1. DEFINITIONS:</b>	<p><u>Bottler:</u> Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company</p> <p><u>Company:</u> Coca-Cola North America, a division of The Coca-Cola Company</p> <p><u>Sponsor:</u> Collectively, "Bottler" and "Company"</p> <p><u>City:</u> City of Miami Beach</p> <p><u>Agreement:</u> Exclusive Non-Alcoholic Beverage Agreement</p> <p><u>Facilities:</u> Includes the following Miami Beach property, including any land, building, structures and/or other facilities thereon: Miami Beach Golf Club; the Normandy Shores Golf Club; The Fillmore Miami Beach at the Jackie Gleason Theater (upon the expiration of the current management agreement); the Miami Beach Convention Center; all currently existing City of Miami Beach owned parks and recreational facilities; all currently existing City of Miami Beach owned public parking garages which are either directly operated by the City, through its Parking System, or by a third party who, pursuant to a management or concession agreement with the City, is contractually authorized to operate and manage such garage on behalf of the City; all currently existing public beachfront concessions which are either directly operated by the City or by a third party who, pursuant to a concession or management agreement with the City, is contractually authorized to operate and manage such concession on behalf of the City; and any additional future Facilities or expansion of existing or future Facilities, including but not limited to, the concession facilities at 21<sup>st</sup> and 46<sup>th</sup> street and at South Pointe Park and the Miami Beach Convention Center facility expansion, except as may be otherwise be excluded in the Agreement.</p> <p><u>Beverage:</u> all non-alcoholic beverages of any kind including but</p>
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	<p>not limited to coffee products; tea products; concentrated energy drinks, including those in small servings; protein-enhanced dairy beverages; frozen drinks (e.g. ICEE) and smoothies made from concentrate; and the pre-mix and/or post-mix syrups used to prepare fountain Beverages. "Beverage" or "Beverages" shall not include dairy products except as noted above (e.g. milk, yogurt, ice cream), water drawn from the public water supply, or unbranded juice squeezed fresh at the Facilities.</p> <p><u>Products:</u> Beverage products purchased directly from Bottler, or with written Bottler approval from, or Bottler's authorized distributor, or sold through vending machines owned and stocked exclusively by Bottler.</p> <p><u>Competitive Products:</u> Beverages which are not Products.</p>
<b>2. AGREEMENT TERM:</b>	The Term shall begin January 1, 2012 and will continue until December 31, 2021 (the "Term"). When used in this Term Sheet, the term "Agreement Year" means each consecutive twelve-month period during the Term, beginning with the first day of the Term.
<b>3. EFFECTIVE DATE:</b>	January 1, 2012
<b>4. EXPIRATION DATE:</b>	December 31, 2021 as to all Facilities
<b>5. SPONSORSHIP FEE:</b>	<p>\$3,725,000 for the Term of the Agreement.</p> <ul style="list-style-type: none"> <li>• First installment of \$800,000 (includes sponsorship fee for Agreement Year One and signing bonus) will be paid within sixty (60) days of execution of the Agreement by all parties. The portion pertaining to the signing bonus (\$475,000) will be deemed earned over the Term and the portion pertaining to the sponsorship fee for the Agreement Year One (\$325,000) shall be deemed earned evenly on a monthly basis during the first Agreement Year.</li> <li>• \$325,000 due each Agreement Year thereafter during the Term of the Agreement, due upon the anniversary date of the Agreement and will be deemed earned over the Agreement Year. (Subject to purchase of a minimum of 22,500 cases of bottles/cans per year.)</li> </ul>
<b>6. COMMISSIONS:</b>	Commissions to be paid quarterly in arrears by Bottler to City based upon cash collected less taxes and as per the Commission Rate Structure according to Bottler's sales records. ( <b>Exhibit 1</b> )
<b>7. COMMUNITY: SUPPORT/</b>	Bottler will provide City with a total of \$17,500 in cash for the



<b>COMPLIMENTARY PRODUCT:</b>	<p>purchase of equipment or other products (mutually agreed upon)</p> <p>Bottler shall provide City, upon City's request, with up to 450 standard physical cases of complimentary Product (12 ounce CSD cans and/or DASANI 12 ounce bottles) per Agreement year for a Product bank to be used by the City. If City does not request complimentary Product by the end of each year, any remaining complimentary Product shall be retained by Bottler with no further obligation to Account. Bottler will provide complimentary Product donation report upon Account's request.</p>
<b>8. ADVERTISING &amp; SPONSORSHIP:</b>	<p>Bottler has the exclusive right to advertise Products (i) at the Facilities and (ii) in connection with the Facilities. No permanent or temporary advertising, signage or trademark visibility for Competitive Products are permitted anywhere at the Facilities, except as permitted pursuant to the Agreement. Advertising rights are further delineated in <b>Exhibit 2</b>. Bottler has the exclusive right to advertise the Products as the "Official" or "Exclusive" soft drink, sports drink, dairy-based protein drink, water, tea, energy drink, and/or juice or juice drink, etc. of the Facilities, of the City of Miami Beach and of South Beach. Bottler will be the exclusive advertiser of Products associated with the Facilities.</p>
<b>9. PRODUCT RIGHTS:</b>	<p>Bottler has the exclusive right to sell or distribute Products at the Facilities. No Competitive Products may be sold, dispensed, sampled or served anywhere at the Facilities, or on the City's public rights-of-ways, except as may otherwise be provided for in this Agreement.</p>
<b>10. EXCEPTIONS:</b>	<p>Except for those Facilities specifically enumerated in Section 1., "Facilities" shall NOT include any City of Miami Beach property (including any City-owned land, buildings, structures, and/or other facilities thereon) which—as of the Effective Date—is used, occupied, controlled, and/or managed and operated by a third party (or parties) pursuant to any of the following agreements between the City and such third party(ies): (i) lease agreement; (ii) concession agreement; (iii) operation and management agreement; (iv) development agreement; (v) easement agreement; (vi) license and/or use agreement; (vii) revocable permit; and/or (viii) any other written instrument between the City and such third party(ies) which establishes a contractual right on behalf of such third party(ies) for the use and/or occupancy of City property. This shall include, but not be limited to, any City property occupied by a tenant through a lease or rental agreement (including, without limitation, leases or rental agreements for office,</p>

retail, and/or commercial uses(s) in City-owned buildings); any City property managed and operated, and/or otherwise used, by a third party(ies) pursuant to a management agreement or concession agreement; private upland owner beachfront concessions which are issued a permit by the City (and which are neither operated directly by the City, nor by a third party on behalf of and pursuant to a contract with the City); sidewalk cafes which are issued a permit to operated pursuant to the City's Sidewalk Café Ordinance, as may be amended from time to time; "public-private" projects developed and constructed pursuant to a Development Agreement (pursuant to the requirements of the Florida Local Government Development Agreement Act under Chapter 163, Florida Statutes); any hotel or retail development related to the expansion of the Miami Beach Convention Center that is not managed as part of the Convention Center operations (e.g. adjacent commercial retail, hotel, etc.); public bus shelter advertising managed by a third party under contract with the City; and advertising permitted pursuant to the City's current agreement for the public bike-share concession. Notwithstanding the preceding, the City will: i) make reasonable good faith efforts to meet with the bike-share concessionaire and negotiate an amendment to the existing bike-share concession agreement, which must also be subject to agreement by the bike-share concessionaire, to prohibit the bike-share concessionaire from advertising Competitive Products; ii) if City renews the bike-share concession agreement with the bike-share concessionaire, then, as a condition to such renewal, the City Manager will recommend that such renewal be conditioned that such renewal include a term prohibiting the bike-share concessionaire from advertising Competitive Products; and iii) no advertising of Competitive Products shall be permitted on bike-share station kiosks during the Term should the City, after the Effective Date, approve advertising for placement on bike-share kiosks. Should the City enter into any new bike-share agreements during the Term, no advertising of Competitive Products shall be permitted on the bicycles used for that bike-share agreement(s).

Further, for the following locations which are under a pre-existing concession and/or use agreement (i.e. in effect prior to the Effective Date of the Agreement) with a Competitive Products supplier, those Facilities will come under this Agreement after such Competitive Products agreement is terminated or expires, or until such time as the concession or use agreement with the City for those Facilities is terminated, expires or is subject to any renewal provisions. The current

list of such facilities, and their expiration dates, are as follows:

- 1) 21<sup>st</sup> Street/46<sup>th</sup> Street Beachfront Concession/Tim Wilcox, Inc. – 11/30/2012
- 2) South Pointe Park Concession/Blissberry – 11/30/2012
- 3) Normandy Isle Pool Concession Stand/E. Gomez – 11/09/2011

City agrees that it will not knowingly permit any Competitive Products to be sold, distributed, served, sampled, marketed, advertised or promoted at the Facilities, or in association with City, except, and as further explained, in Exhibit 8:

- Third party exhibitor set ups at Facilities or during City-Permitted Special Events in accordance with the City's Special Event Permit Guidelines, as same may be amended from time to time.
- Charitable events at Facilities or at City-Permitted Special Events where Competitive Product are donated to the charitable event;
- Availability at City-Permitted Special Events only within Special Event Permit Area (as such term is defined in the City's Special Event Permit Guidelines, as same may be amended from time to time).
- Up to four (4) sponsorship events at the Miami Beach Golf Club, and up to four (4) sponsorship events at the Normandy Shores Golf Club each Agreement year;
- up to three (3) sponsorship events at the Miami Beach Convention Center each Agreement Year (the number limitation for the sponsorship events at the Miami Beach Convention Center is subject to a review after three (3) Agreement Years);
- a mutually agreed upon number of sponsorship events at the Fillmore Miami Beach at the Jackie Gleason Theater (upon expiration of the existing management agreement); and
- up to four (4) City-issued Special Event Permits for a "City Approved Major Sponsorship Public Event", each Agreement Year, which includes an event sponsored by a manufacturer, distributor, or marketer of Competitive Products under a master sponsorship agreement with the owner or operator of the sponsorship event; an event conducted on a national or regional multi-market basis; and/or an event where a competitor is the presenting, title or other primary sponsor of the event. The number limitation for City-Issued Special Events is subject to a review after three (3) Agreement Years.

	<p>Whenever possible, City will make reasonable good faith efforts to encourage third party users of the Golf Courses and Convention Center, and Special Event organizers, to use Bottler's Products for their non-alcoholic beverage needs. Since third party organizers who apply for Special Event Permits will be permitted to sell only Bottler's Products, City will amend City's Special Events Permit Application and City will provide Sponsor contact information through the City's Special Events Permit Application process.</p>
<b>11. MARKETING PROGRAM:</b>	<p>Bottler agrees to provide Account with annual in-kind marketing support fund with an approximate retail value of Two Hundred Thousand Five Hundred Dollars (\$200,500) as further delineated in <b>Exhibit 3</b>.</p>
<b>12. RECYCLING PARTNER:</b>	<p>Bottler shall be designated the official "Recycling Partner" of Account. In consideration of this designation, Bottler shall provide, at their cost, the services/products delineated in <b>Exhibit 4</b>, with a minimum total value of \$15,000, and up to \$25,000 over the entire Term</p>
<b>13. VENDING PROGRAM/OTHER EQUIPMENT</b>	<p>City agrees that Bottler shall place a minimum of sixty-five (65) Product vending machines in mutually agreed upon locations at the Facilities, and Bottler will loan to City at no cost, Beverage dispensing equipment as reasonably required and as mutually agreed upon to dispense Products at the Facilities, and in accordance with <b>Exhibit 5</b>.</p>
<b>14. CITY SUPPORT:</b>	<p>In consideration of the partnership, City grants to Bottler: Twenty-six (26) rounds of golf each Agreement Year (max of eight during peak season; no more than twelve at Miami Beach Golf Course; benefit does not roll over); a minimum of four (4) free tickets to at least six (6) ticketed events at Facilities each Agreement Year, subject to availability (e.g. Art Basel Miami Beach, Auto Show, South Beach Comedy Festival at the Fillmore, etc.). Additional tickets will be provided as available. Benefit does not roll over.</p>
<b>15. PRICING:</b>	<p><b>Bottle/Can Pricing:</b> City is entitled to purchase bottle/can Products from Bottler in accordance with the price schedule set forth in <b>Exhibit 6</b>; prices shall remain in effect until July 31, 2012. Thereafter, such prices will be subject to an annual increase of no more than four percent (4%) over the previous Agreement Year's price.</p> <p><b>Fountain Products or Georgia Coffee Pricing:</b> Bottler will sell fountain Products to City at the National Account prices, as</p>

	<p>announced by the Bottler in January of each year. Georgia Coffee pricing shall be provided quarterly based on commodity markets.</p> <p>Purchasing: All Product shall be purchased directly from Bottler, except for those Products that Bottler identifies can be purchased from an authorized Coca-Cola distributor.</p>
<b>16.TERMINATION:</b>	<p>If City breaches any of its material obligations set forth in this Agreement, and fails to cure such breach within thirty (30) days following written notice of same from Bottler, then, Bottler may terminate this Agreement, and City shall (i) return any Equipment, and (ii) pay to Bottler the unearned portion of any pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination).</p> <p>If Bottler breaches any of its material obligations set forth in this Agreement, and fails to cure such breach within thirty (30) days following written notice of same from City, then, City may terminate this Agreement, and Bottler shall (i) remove any Equipment, and (ii) pay to City the earned portion of any pre-paid Sponsorship Fees or other fees or payments due for the Agreement year in which the termination occurs (pro-rated through the date of termination).</p> <p>City shall not be in default in the event of any claim filed in relation to City's restriction on Competitive Product sampling; provided, however, the Bottler shall have the following remedies: 1) ability to renegotiate financial terms, as appropriate, within a specified time (e.g. 90 days); or, 2) failing to negotiate terms acceptable to both parties within specified time, Bottler may terminate the Agreement, and City shall (i) return any Equipment, and (ii) pay to Bottler the unearned portion of any pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination). Nothing in this section shall operate to restrict either party's other remedies in the event of a material breach by the other.</p>
<b>17.MAINTENANCE &amp; SERVICE:</b>	<p>Bottler agrees to provide reasonable service and maintenance for the equipment during the Term. City shall allow Bottler to enter its premises for the purpose of inspection or performance of such maintenance and repair, or necessary replacement or return of the equipment. Bottler and City will establish a mutually agreed upon refund bank and customer service program, as delineated in <b>Exhibit 7</b>.</p>
<b>18.REPORTS/AUDITING:</b>	<p>Bottler will provide an annual business review report within 90</p>

	days following each Agreement Year during the Term; Commission reports will be provided monthly. The format of such reports shall be mutually agreed upon. City has the right to audit/inspect account statements with reasonable prior notice to Bottler and during normal business hours. If City requests an audit, City agrees to pay for such audit. Account records must be retained for a minimum of two (2) Agreement Years after the payment of the annual Sponsorship Fee is paid, in addition to the current Agreement Year of the Term, and for two (2) Agreement Years following expiration or termination of the Agreement.
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## Exhibit 1 to Term Sheet

### COMMISSIONS

#### Workplace Facilities (City Hall, Police Station, and other City Facilities):

<u>Product</u>	<u>Vend Price</u>	<u>Commission Rate</u>
20 oz. PET carbonated/NESTEA®	\$1.25	30%
20 oz. PET Minute Maid®	\$1.25	30%
20 oz. PET DASANI®	\$1.25	30%
300 ml PET DASANI®	\$0.75	30%
20 oz. PET POWERADE®	\$1.50	30%
20 oz. PET vitaminwater®	\$1.75	15%
16 oz. cans Energy Beverages	\$2.00	30%
16.5 oz. PET FUZE ®	\$2.00	15%
15.2 oz. PET Minute Maid® Juices to Go	\$1.50	15%

#### All other public locations (such as South Beach):

<u>Product</u>	<u>Vend Price</u>	<u>Commission Rate</u>
20 oz. PET carbonated/NESTEA®	\$1.50	30%
20 oz. PET Minute Maid®	\$1.50	30%
20 oz. PET DASANI®	\$1.50	30%
300 ml PET DASANI®	\$1.00	30%
20 oz. PET POWERADE®	\$1.75	30%
20 oz. PET vitaminwater®	\$2.00	15%
16 oz. cans Energy Beverages	\$2.25	30%
16.5 oz. PET FUZE®	\$2.25	15%
15.2 oz. PET Minute Maid® Juices to Go	\$1.75	15%

In Agreement Years Four and Seven, the Vend Prices will increase by twenty-five cents for each Product listed above. For example, in Agreement Year Four, 300ml. DASANI will increase to \$1.00 Vend Price and then in Agreement Year Seven, 300ml. DASANI will increase an additional twenty-five cents to \$1.25. The Commission Rates will not change during the Term of this Agreement. There are two vend rates (one for workplace and one for public locations) that will be outlined in the final formal agreement between the parties, but note that commission rates will remain the same.

Commissions are paid based upon cash collected after deducting taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any. Commissions shall not be payable on any sales from vending machines not filled or serviced exclusively by Bottler. Bottler may adjust the vend prices and/or commission rates as necessary to reflect changes in its costs, including cost of goods, upon prior written notice and approval by City. Commissions will be paid each month following the month in which they are earned, with an accounting of all sales and monies in a form reasonably satisfactory to the City, and shall become immediate property of City.

## Exhibit 2 to Term Sheet

### ADVERTISING RIGHTS

(Except as otherwise noted, the following rights may not be transferred or assigned by Bottler)

1. Recognition of Bottler as the "Official Non-Alcoholic Beverage Sponsor" of City. Official status will include Official Status Recognition for City across all non-alcoholic beverage categories i.e. "Coca-Cola Official Soft Drink of Miami Beach" and Official Status Recognition for South Beach across all non alcoholic beverage categories (i.e. "POWERADE Official Sports Drink for South Beach")
2. Official Sponsor Status (for Products) of all City-produced citywide Special Events, whether now existing or as may exist in the future (i.e. including, without limitation, and for example purposes only Sleepless Nights); Bottler to have highest sponsorship level and benefits available other than presenting or title sponsorship. In addition, Bottler will be recognized as the "Title Sponsor" of City's "Fire on the 4<sup>th</sup> Annual Independence Day Celebration" each Agreement Year during the Term.
3. Recognition of Bottler as the "Official Recycling Partner" for the City of Miami Beach & South Beach
4. Joint Bottler/City Logo placement on City and City-related websites (e.g. Miami Beach Convention Center, Miami Beach Golf Club, Normandy Shores Golf Club, Miami Beach Culture web site (MBCulture.com); and any other City websites, whether now existing or as may exist in the future, to such extent as permitted by any federal or state regulations on .gov domains. City will use reasonable commercial efforts to include joint Bottler/City Logo on all printed convention and tourism materials, as appropriate and available.
5. Waiver of any Special Event Permit and/or Permit Application Fees for Bottler's use of certain Account Facilities for up to two (2) mutually agreed upon events per Agreement Year, based on availability. For purposes of the Special Event Permit and/or Permit Application Fee waiver, these Facilities shall include public beachfront areas and Parks and Recreation facilities where Special Events are permitted. All other fees and costs of production, including but not limited to, taxes, security, sanitation, etc., shall be the responsibility of Bottler. Right may not be transferred or assigned.
6. Waiver of any rental or use fees for Bottler's use of certain City Facilities for up to (two) 2 mutually agreed upon events per Agreement Year, based on availability. For purposes of the rental or use fee waiver, these Facilities shall include the use of meeting room space or ballroom space at the Miami Beach Convention Center. All other fees and costs of production, including but not limited to taxes, security, audio/visual, decoration, etc., shall be the responsibility of the Bottler. Right may not be transferred or assigned.
7. Unlimited, royalty-free Product sampling at City produced and/or sponsored events; Royalty-free Product sampling permits per Agreement Year, as follows: 48 permits each Agreement Year, but permits will be limited to not more than six (6) permits in any one month period. Right may not be transferred or assigned. If Sponsor does not use all 48 permits by the end of each Agreement Year, any remaining permits will not roll-over to the following Agreement Year, but will be forfeited.
8. Mutual agreement on the development and use of a joint logo between Bottler and Account.
9. Right to use mutually agreed upon joint logo on any point-of-sale, marketing materials, and/or signage that may be mutually agreed upon.
10. Royalty-free advertisement in City's magazine (i.e. MB Magazine); minimum of a quarter page each issue; larger ad size as may be available. Right may be transferred or assigned.
11. Royalty-free prominent advertisement in any Special Promotional Event programs or collaterals produced for City-produced citywide Special Promotional Events (i.e. including, without limitation, July 4<sup>th</sup> and Sleepless Nights). City shall use best efforts to provide a full page ad.



12. The right to brand City's public beach concession area(s) with approved Bottler and City joint branding graphics (e.g. concession stands, storage shed, umbrellas, etc.), subject to proposed branding meeting all necessary administrative and regulatory approvals. Implementation of any approved branding shall be at the Bottler's expense. All trademark usage must be pre-approved prior to usage. The erection of any other signage other than vending machine display shall be subject to approval by the City.
13. One Royalty-free joint City/Bottler message PSA advertising panel at the 5<sup>th</sup> and Alton bus shelter; production/installation costs paid by Bottler. Minimum of full use of one PSA ad panel for the entire term of the Agreement.
14. Minimum of one (1) Royalty-free advertising panel at the 5<sup>th</sup> and Alton bus shelter, on a space availability (remnant) basis; production/installation costs paid by Bottler. Right may be transferred or assigned.
15. Minimum of one (1) one-month Royalty-free electronic joint City/Bottler message PSA run on Atlantic Broadband and Welcome Channel; Additional months based on ongoing availability;
16. Minimum of one (1) unlimited run on MBTV of City/Bottler message PSA;
17. Royalty-free POF ticket ad based on space availability; production costs paid by Bottler. Right may be transferred or assigned.

The parties agree to perform such additional marketing activities, as the parties may mutually agree upon to drive traffic to the Facilities and to increase Product sales.

### **Exhibit 3 to Term Sheet**

#### **MARKETING PROGRAM**

Bottler shall provide City for approval with the proposed annual marketing plan for promotion of the partnership no later than ninety (90) days prior to the beginning of each Agreement Year, except for the first Agreement Year when the marketing plan shall be provided to the City within ninety (90) days after execution of Agreement. The annual value of the marketing plan shall be no less than \$200,500, as determined in good faith by Bottler and based on generally accepted marketing values. Some examples of activation may include the following; however, actual marketing programs will depend on availability of these programs.

- Inclusion of the City in the My Coke Rewards program, or other customer reward program offered by Bottler, through an annual promotional program (e.g. sweepstakes); estimated value \$100,000, or equivalent value. Activation based on availability
- Truck-back promotions program - value: \$24,000/year based on availability
- Box Topper program or other similar high-visibility promotional program; value: \$25,000/year
- Neck Ringer program: a Neck Ringer program shall be available with a minimum distribution of neck ringers
- Touring Program: Bottler will bring the Open Happiness Tour, or such other promotional touring program offered by Bottler, to the City based on availability.
- Bottler to develop and implement at least five (5) strategic marketing partnerships with the Account and the Bottler's other sponsorship partners during the Term of the Agreement. Such strategic marketing partnerships may include, but are not limited to, cross promotion, product, tickets, etc., with other brands or products currently under a sponsorship or other promotional/marketing agreement with the Bottler.
- LeBron James Event/celebrity event; value: \$45,000 based on availability, or equivalent value

City acknowledges the intent of the Bottler to develop a joint marketing logo incorporating the Bottler's mark and the City's mark. Bottler shall obtain approval from the City, in writing, of the joint logo for use in promotion of the Agreement, including, but not limited to, its use in all commercial, marketing, media advertisements, web sites and promotional products.

A party's use of the other party's marks in promotions, on products and signage, shall be first approved by the other party in writing, and all uses of a party's marks shall be acknowledged as that party's intellectual property and include appropriate trademark notices.

The parties agree to perform those additional marketing activities, as the parties may mutually agree upon to drive traffic to the Facilities and to increase Product sales. City agrees to provide Bottler with reasonable marketing assets inventory (e.g., to be used with a My Coke Rewards national consumer sweepstakes, or other such similar sweepstakes) for mutually agreed upon promotions each year during the Term to promote Bottler Products and City.

## **Exhibit 4 to Term Sheet**

### **RECYCLING PARTNERSHIP**

Bottler shall be designated the official "Recycling Partner" of City.

Bottler shall provide, at its cost, the following services/products (value of \$15,000-\$25,000):

- Assess, consult and offer a Recycling Program Plan for bottle/can recycling initiatives
- Propose messaging strategy for the City's bottle/can recycling initiatives (within 90 days after execution of Agreement)
- Provide Temporary recycling bins for special events (minimum of 30) to City at Bottler's cost;
- Provide Recycling bins for placement in Facilities or agreed upon public areas (minimum of 15) to City at Bottler's cost; design subject to review and approval of City;
- Place reverse vending machines (crushers) in vending banks in the Facilities; minimum of five (5) crushers placed during the first five Agreement Years of the Term, at Bottler's cost.
- Use of Recycling Educational Vehicle (REV.) or other Education Recycling material, at City events; scheduled at least one time every 18 months during the Term.

## **Exhibit 5 to Term Sheet**

### **VENDING PROGRAM**

Bottler shall place, at their cost, all vending machines in agreed upon locations pursuant to the following:

- 1) Bottler shall provide to City within 90 days after execution of Agreement the proposed equipment plan for the Agreement Term; to include the machine allocation plan by type (e.g. interactive vending machines, glass front etc.) and location; equipment replacement schedule; and vend front replacement and schedule for existing vending machines that need the vend front replaced. All equipment shall be UL energy star rated.
- 2) Bottler shall install vending machines within 180 days after the proposed equipment plan has been approved by all parties. Both parties agree that the installation of vending machines shall be completed within 180 days after the proposed equipment plan has been approved by all parties. Agreement execution. The already approved beach thematic vend fronts will be used unless other mutually agreed upon vend fronts have been selected and approved, and if beach thematic vend fronts are available. The vend fronts shall include advertising panels for use by the City, as approved by Bottler, provided that the vending machines are equipped with advertising panel(s). Bottler shall pay all costs for the production and installation of the City vend front advertising panels. A minimum of two (2) and a maximum of four (4) City vend panel ads shall be produced/installed each Agreement Year.
- 3) Bottler shall provide within 90 days after execution of Agreement the proposed credit card reader installation plan and schedule. All credit card reader installation shall be completed within Agreement Year One.
- 4) City shall provide all electrical power necessary to operate the vending machines, and City shall pay up to \$200 for the cost of any electrical modifications or connections necessary to accommodate any new vending machine placement, upon mutual agreement of the proposed location for the placement of the vending machine.
- 5) All vending machines remain the property of the Bottler.
- 6) Bottler shall provide a product list to the City to be included in the vending program. Any changes to the Product list shall be provided to the Account prior to Product placement in a vending machine. Bottler shall work with the City's Parks and Recreation Department to identify the appropriate vending products for inclusion in vending machines located in any City park. The City's Park and Recreation Department shall provide approval, in writing, of the Products to be sold in the vending machines placed in City parks.
- 7) Bottler shall maintain vending machines reasonably well-stocked with Products.

## Exhibit 6 to Term Sheet

### INITIAL PRICE SCHEDULE\*

<u>Package</u>	<u>Price per case</u>
20 oz. CSD	\$17.85
12 oz. CSD	\$9.46
15.2 oz. MMJTG	\$23.36
12 oz. DASANI®	\$8.88
1 liter CSD	\$16.29
20 oz. DASANI®	\$10.82
20 oz. vitaminwater®	\$27.00
8 oz. CSD	\$16.00
20 oz. NESTEA®/ Minute Maid® Refreshment	\$17.85
20 oz. POWERADE®	\$19.00
16 oz. Monster®	\$34.00
2 liter CSD	\$12.35
16.9 Honest Tea®	\$12.60
500 ml Gold Peak®	\$13.99
8 oz. aluminum bottle	\$16.48

<u>Post-Mix</u>	<u>Price per gallon</u>
5 gallon BIB CSD and NCB	\$12.24
2.5 gallon BIB CSD and NCB	\$12.78
5 gallon BIB Unsweet NESTEA®	\$11.82
2.5 gallon BIB Unsweet NESTEA®	\$12.40
5 gallon BIB Premium NCB	\$12.75
2.5 gallon BIB Premium NCB	\$13.30
5 gallon BIB Frozen Dispensed	\$13.88
2.5 gallon BIB Frozen Dispensed	\$14.26

<u>Cups</u>	
24 ounce	\$52.89 per 1,200

<u>Lids</u>	
24 ounce	\$34.55 per 2,000

<u>CO2</u>	
20 lb. cylinder	\$25.00 per cylinder (plus \$75.00 deposit)

\*All prices are per standard physical case and exclusive of taxes, deposits, handling fees, and recycling fees.

**Georgia 64 Oz Brew; Price per Case and package size:** (Prices effective for the period: 1/1/2012-3/31/2012) (All coffee is priced FOB to Distributor, prices do not include any distributor markup.)

<u>Product</u>	<u>Package</u> <u>(Frac)</u>	<u>Small Filters</u>	<u>Large Filters</u>
Dark Roast	100, 2.75 oz	\$110.38	\$110.38
Light Roast	128, 2.25 oz	\$117.87	\$117.87
Decaf	75, 2.00 oz	\$67.95	\$67.95
Organic	75, 2.75 oz	\$110.10	\$110.10

## **Exhibit 7 to Term Sheet**

### **MAINTENANCE & SERVICE**

During the Term, Bottler will loan to Account, pursuant to the terms of Bottler's equipment placement agreements, at no cost, that Beverage equipment reasonably required and as mutually agreed upon to dispense Beverages at the Facilities.

Bottler agrees that all equipment shall be new or in "like new" condition and that it shall operate and manage the equipment, services and facilities offered in a first-class manner. Bottler shall provide City with the Maintenance Plan and Schedule for all Bottler equipment within 90 days of execution of Agreement, to include the Bottler's plan and schedule for servicing the City.

Bottler shall provide throughout the Term of this Agreement, at Bottler's expense, all repairs, replacements and technical services necessary to maintain and preserve the Bottler's equipment in a decent, safe, healthy and sanitary condition satisfactory to City and in compliance with applicable laws.

Bottler warrants that it shall correct all mechanical problems with vending machines no later than four (4) business days after notice and no later than twenty-four (24) hours after notice for all other dispensing equipment.

Acts of vandalism to Bottler's equipment will be reported to Bottler immediately and addressed within four (4) business days. If the vending machine is repairable, the vending machine will be repaired within four (4) business days. If the vending machine is not repairable, vending machine will be condemned and swapped within seven (7) business days.

Bottler is the only party allowed to make repairs on Bottler-owned equipment.

All vending machines shall display a "service hotline" sticker to expedite calls. A toll free ("1-800") number shall be provided and a 24-hour per day, seven days a week continuously operating telephone answering service shall be provided.

A reimbursement fund in the amount adequate to handle all necessary refunds between service calls shall be made available to City at designated location(s) mutually agreed upon by City and Bottler. Each person requesting a refund shall complete a form which shall be maintained by the City and provided to the Bottler as required. The reimbursement fund shall be checked by the Bottler no less than once a month and replenished as needed. Information on refunds shall be provided on each machine.

## Exhibit 8

The term "Special Promotional Events" ("Event") shall mean and is limited to the following: concerts; theatrical or comedic performances; conventions; trade shows; religious events; athletic events; or other special events occurring at a Facility that meet the following requirements: (i) they are sponsored by a manufacturer, distributor, or marketer of Competitive Products under a master sponsorship agreement with the owner or operator of the subject Event (including, without limitation, a concert or theatrical production company, or a trade show or convention production company, but NOT including in any instance the City or its affiliates or agents); (ii) they are conducted on a national or regional multi-market basis; (iii) they are NCAA collegiate championship athletic events; and, (iv) the event sponsorship agreement referred to in subsection (i) above requires on-site temporary signage for Competitive Products.

The term "Special Promotional Events Exceptions" shall refer to those exceptions granted under the Agreement, for each Agreement year, to permit the following fifteen (15) Special Promotional Events at the following Facilities: (i) four (4) events at the Miami Beach Golf Club; (ii) four (4) events at the Normandy Shores Golf Club (The Miami Beach Golf Club and Normandy Shores Golf Club may also be referred to collectively herein as "Golf Courses"); (iii) three (3) events at the Miami Beach Convention Center ("Convention Center"); and (iv) four (4) City Approved major Sponsorship Public Special Events (as defined below); provided, however, that the number limitation for City Approved Major Sponsorship Public Special Events shall be revisited and reviewed by the parties, in good faith, at the conclusion of the third Agreement Year.

- a. Golf Courses and Convention Center/Special Promotional Events Exception. In any Agreement Year, temporary signage (such as, but not limited to, banners) for Competitive Products may be displayed at each of the Golf Courses during up to four (4) Special Promotional Events, and during up to three (3) Special Promotional Events at the Convention Center ; PROVIDED, HOWEVER, that: (i) Sponsor's Beverage availability, marketing, advertising, promotional, and other rights under this Agreement will not otherwise be affected during any such Event; (ii) Competitive Products may be distributed at no cost, but no Competitive Products will be sold or otherwise made available during the Event(except as permitted in this exception); (iii) no blockage of any signage or other trademark/service mark display Sponsor may have at the Facility will occur during the Event, except for incidental blockage due to the construction and/or placement of a person, stage or other structure necessary to and actually used during the Event; or, in the case of NCAA championship events , religious events or political conventions where no advertising is allowed and all advertisers are treated equal with all signage covered in the seated area of the Facility; (iv) all temporary signage for Competitive Products will be promptly removed from the Facility upon the conclusion of the Event; and (v) at no time will the Competitive Products make any statements, or use any temporary signage, that uses the trademarks/service marks of the City of Miami Beach, South Beach, Golf Courses or the Convention Center, nor in any way associate these Competitive Products with the City of Miami Beach, "South Beach," the Golf Courses, or the Convention Center. The Special Promotional Events at the Golf Clubs and the Convention Center must occur over a period of no more than twenty-four (24) hours. The twenty-four hours does not include set up or tear down time required, or NCAA Championship events or political conventions which may exceed the aforesaid time limitation. The Convention Center may use the three one day

(one day = twenty-four hours) in the aggregate in each Agreement Year during the Term. Aggregate, as used in this paragraph, shall mean the total of twenty-four hours multiplied by the total number of Special Promotional Events permitted, as provided for herein. For example purposes only, the Miami Beach Convention Center are provided three Special Promotional Event Exceptions per Agreement Year. As such, the three Special Promotional Events may occur in the Miami Beach Convention Center for a total of 72 hours in an Agreement year (24 hours x 3 events = 72 hours/year).

- b. City Approved Major Sponsorship Public Special Events/Special Promotional Events Exception. In any Agreement Year, temporary signage (such as, but not limited to, banners) for Competitive Products may be displayed during up to four (4) Special Promotional Events for City Approved Major Sponsorship Public Special Events. The term "City Approved Major Sponsorship Public Special Event" shall refer to a City-approved public event (i.e. where public access is allowed either via no cost or via pre-purchased ticket) held on City property, and permitted pursuant to the City's approved Special Event Permit process, as same may be amended from time to time during the Term of this Agreement (for example purposes only, this may include, but not be limited to events such as Super Bowl Pepsi Jam and Red Bull Illume); and may also include an event sponsored by a manufacturer, distributor or marketer of Competitive Products pursuant to a sponsorship agreement with the owner, operator or promoter of the event; an event conducted on a national or regional multi-market basis; and/or an event where a Competitive Product is the naming, presenting, title, brought to you by, or other primary sponsor of the Event. Temporary signage for Competitive Products at City Approved Major Sponsorship Public Events may be displayed as an Event "naming sponsor", Event "presented by" sponsor, Event "brought to you by" sponsor, or as a sponsor represented as a "Gold" or "Platinum" (or such other equivalent) sponsor of the Event; PROVIDED, HOWEVER, that: (i) Sponsor's Beverage availability, marketing, advertising, promotional, and other rights under this Agreement will not otherwise be affected during any such Event; (ii) no blockage of any signage or other trademark/service mark display Sponsor may have at the Facility will occur during the Event, except for incidental blockage due to the construction and/or placement of a person, stage or other structure necessary to and actually used during the Event; or, in the case of NCAA championship events, religious events or political conventions where no advertising is allowed and all advertisers are treated equal with all signage covered in the seated area of the Facility; and (iii) all temporary signage for Competitive Products will be promptly removed from the Facility upon the conclusion of the Event. At no time will the Competitive Products make any statements or use any temporary signage that uses the trademarks/service marks of the City of Miami Beach, "South Beach," or the Facilities, or in any way associate these Competitive Products with the City of Miami Beach Facilities. Notwithstanding the above, Competitive Products may be distributed, sampled or made available during a City Approved Major Sponsorship Public Special Event for which there is a Special Promotional Events Exception. Such distribution, sampling or availability shall occur ONLY within the approved site plan for the event. However, should concession service (sales) for any non-alcoholic beverage other than Products be required or necessary for the event, and there are no existing concessions at the location of the City Approved Major Sponsorship Public Special Event for which there is a Special Promotional Events Exception, the City Manager shall submit a letter to Sponsor requesting that Sponsor grant a waiver to permit such sale at the Event; outlining the details of the exception and the business reasons for the request and such request shall require Sponsor's prior written approval. Sponsor reserves the right to not approve the limited waiver for this purpose. Sponsor will notify the City Manager of whether the request for waiver will be approved within twenty (20) business days of Sponsor receiving the City Manager's letter. -



The Special Promotional Event Exception for a City Approved Major Sponsorship Public Special Event must occur over a period of no more than seventy-two (72) hours. The seventy-two hours does not include set up or tear down time required, or NCAA Championship events or political conventions which may exceed the aforesaid time limitation. The seventy-two hours may be used in the aggregate in each Agreement Year during the Term. Aggregate, as used in this paragraph, shall mean the total of seventy-two hours multiplied by the total number of Special Promotional Events Exceptions, as provided for herein. As such, the four Special Promotional Events may occur on public property for a total of 288 hours in an Agreement year (72 hours x 4 events = 288 hours/year).

- c. Other permitted Exceptions. Exhibitors at Conventions or trade shows, or third party exhibitor set ups at Facilities shall have the right to serve Competitive Products within their booth provided that same is limited to the duration of the corresponding event and, provided further, that the Competitive Products are not marketed, advertised or promoted in association with the City of Miami Beach and/or the Facilities, and their respective trademarks. For example purposes only, a Cadillac booth at the Auto Show in the Convention Center would be allowed to give away bottled water with the Cadillac Logo. Notwithstanding, Sponsor's Products would continue to be the only Products allowed to be sold, distributed or sampled at the Facility's concession operations.
- d. Competitive Beverages may also be permitted to be distributed, at no cost, at third party events that are not affiliated with the City, but where the City has permitted the event through the issuance of a City of Miami Beach Special Events Permit, subject to the City's notification to Sponsor prior to the event; and, provided further, that the third party event operator is not a manufacturer, distributor or seller of a Competitive Product; that the Competitive Products are not marketed, advertised or promoted in association with the City of Miami Beach or the Facilities, and their respective trademarks; that no Competitive Products will be sold during such event; and that the distribution of the Competitive Product is limited to Special Event Permit Area (as such term is defined in the City's Special Event Permit Guidelines, as same may be amended from time to time through the Term of this Agreement). For example purposes only, a third party event contemplated under this paragraph might include, but not be limited to, a walkathon or marathon where one of the event sponsors might request to be permitted to distribute free bottled water to the event participants. Notwithstanding the above, Sponsor shall have first right of refusal to provide donated Beverages through a sponsorship agreement to the non-profit events, permitted by the City through the issuance of a City of Miami Beach Special Events Permit, known as the White Party, Winter Party and Miami Beach Pride (based on the level of non-alcoholic Beverages provided for the White Party, Winter Party and Miami Beach Pride events in 2012.) for the sale of these Beverages by these three (3) events as part of their annual charity fundraisers. If Sponsor elects to participate, Sponsor will notify the organizer six (6) months prior to start date of White Party, Winter Party and Miami Beach Pride events. If at any time during the Term the Sponsor cannot or does not provide donated non-alcoholic Beverages through a sponsorship agreement to these three (3) non-profit events for this purpose, these three (3) events shall be permitted to secure Competitive Products for use and sale consistent with the use and sale of non-alcoholic Beverages in the 2012 White Party, Winter Party and Miami Beach Pride events.

Per Section 9 of Term Sheet, No Competitive Products may be sold, dispensed, sampled or served anywhere at the Facilities, or on the City's public rights-of-ways, unless otherwise expressly spelled out in the Agreement.