

## AMENDMENT

**THIS AMENDMENT** (this "**Amendment**") made effective July 10, 2003 (its "**Effective Date**") is by and between, on the one hand, Pepsi-Cola Sales and Distribution as successor to Pepsi-Cola Company, a division of PepsiCo, Inc., a North Carolina corporation with its principal place of business at 700 Anderson Hill Road, Purchase, New York 10577 ("**Pepsi-Cola**"), on its own behalf, on behalf of the Pepsi/Lipton Tea Partnership ("**Partnership**"), and on behalf of local bottlers licensed by PepsiCo ("**Bottlers**"), and on the other hand, **The Coffee Beanery, Ltd.**, a Michigan corporation with its principal place of business at 3429 Pierson Place, Flushing, Michigan 48433, on its own behalf and on behalf of its franchisees ("**Customer**").

**WHEREAS**, Pepsi-Cola and Customer are parties to an existing agreement, executed on or about October 29, 1999 ("**Agreement**"); and

**WHEREAS**, Pepsi-Cola and Customer now wish to amend the Agreement as hereinafter provided in this Amendment;

**NOW, THEREFORE**, in consideration of these premises and the covenants herein contained, it is hereby agreed that, as of the Effective Date above, the Agreement is hereby amended as follows. As used in this Amendment, capitalized terms defined in the Agreement and not otherwise defined in this Amendment shall have the respective meanings assigned thereto in the Agreement.

1. Term. The Section entitled Term shall be amended in pertinent part to read as follows:

"... and expire, upon the later of seven Years following the above Effective Date, or at such time as the Advanced Amount hereunder is fully earned ("**Term**"). As used in this Agreement, "**Cases**" shall mean cases of the Packaged Products purchased by Customer from Bottlers."

2. Scope. The Section entitled Scope shall be amended in pertinent part to read as follows.

"During the Term, Customer shall - (i) exclusively purchase postmix products ("**Postmix Products**") from Pepsi-Cola and the Partnership for use in preparing fountain beverage products sold under the trademarks of PepsiCo and the Partnership ("**Fountain Products**"), and (ii) exclusively purchase ready-to-drink packaged beverage products (i.e., bottles and cans) sold under the trademarks of PepsiCo and the Partnership (including carbonated soft drink, teas, waters, isotonic, juices, juice drinks and/or ~~coffee based beverages~~) ("**Packaged Products**") from individual local licensed Bottlers under authority from Pepsi-Cola and the Partnership - to be sold in the Customer's existing corporate-owned and franchise-owned outlets operated under The Coffee Beanery, Ltd. trademark and corporate-owned and franchise-owned outlets that may be opened or acquired during the Term (collectively, "**Outlets**"). *Notwithstanding the foregoing, Customer shall be permitted to continue to offer and sell its proprietary branded coffees and teas in packaged product form on a nonexclusive basis, so long as: (i) such proprietary branded packaged products are not dispensed through equipment provided by Pepsi-Cola and its bottlers at the Outlets, and (ii) such proprietary branded packaged products are not sourced from The Coca-Cola Company, its affiliates, bottlers, distributors, joint ventures and subsidiaries.*"

3. Exclusivity. The Section entitled Exclusivity shall be amended in its entirety to read as follows.

"Except as otherwise permitted in Section 2 above, Pepsi-Cola will be the exclusive fountain beverage supplier and Bottlers will be the exclusive packaged beverage products supplier to the Customer during the Term. Accordingly, the Fountain Products and the Packaged Products will be the exclusive beverages of their respective types and categories sold, dispensed or otherwise made available, or in any way advertised, displayed, or promoted at or in connection with the Outlets by any method or through any medium whatsoever (including, without limitation, print, television, radio, internet, coupons, in-store displays and signage). In the event that Customer determines to offer fountain beverages in the Outlets beyond those listed in paragraph 7.1, such further fountain beverages will be Fountain Products set forth on Exhibit A or such other Fountain Products as Pepsi-Cola or the Partnership may offer for sale during the Term."

4. Funding. The Funding Sections 4.1 through 4.5 shall be deleted and replaced in their entirety with the following:

"As of the Effective Date of this Amendment, it is acknowledged and agreed by Customer that the sum of **\$114,139** reflects the aggregate any and all unearned amounts of funding advanced to Customer under the Agreement ("**Advanced Amount**"), and that commencing upon the Effective Date above and thereafter for the remainder of the Term, the foregoing amount shall be earned by Customer at the rate of **\$0.25** per Case and/or **\$0.35** per Gallon."

5. Equipment and Service. The Equipment and Service sections shall be amended to reflect that as of the Effective Date hereof, only those Outlets deemed by Pepsi-Cola as "café-types" serving food products will be provided with Equipment and service thereto.

6. Remedies. Subsection (2) to Section 8.2 - Remedies shall be deleted and replaced in its entirety with the following:

" A payment reflecting reimbursement to Pepsi-Cola for the unearned portion of the Advanced Amount existing upon termination of this Agreement."

7. Notwithstanding anything to the contrary under the Agreement, if at any time Pepsi-Cola verifies that five percent (5%) or more of the total number of Outlets then operating and in existence are serving competitively branded fountain products and/or packaged products contrary to the Scope of this Agreement, then, at Pepsi-Cola's election, either: (1) Pepsi-Cola may immediately terminate this Agreement without further opportunity by Customer to cure, and Customer will immediately pay to Pepsi-Cola all Remedies set forth under this Agreement; or (2) Pepsi-Cola may allow the Agreement to remain in effect, subject to Customer's immediate repayment to Pepsi-Cola of the entire unearned portion of the Advanced Amount within thirty (30) days following receipt of Pepsi-Cola's written demand therefore.

8. Following the end of the first full month after the Effective Date, Pepsi-Cola will begin to provide Customer, on a regular monthly basis and for each Outlet, with a monthly volume report, setting forth the monthly volume of Postmix Products/Packaged Products purchased by Customer and delivered to the respective Outlet(s).

IN WITNESS WHEREOF, Pepsi-Cola and Customer have caused this Amendment to be executed by the authorized persons set forth below.

**PEPSI-COLA SALES AND DISTRIBUTION, INC.**

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THE COFFEE BEANERY, LTD.**

By *Kevin A. [Signature]*

Title: *Chief Operating Officer*

Date: *8/4/03*