

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW NO. 2012-97**

**By-law authorizing the execution of an Agreement with PepsiCo Beverages Canada**

**WHEREAS** under Section 8 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act.

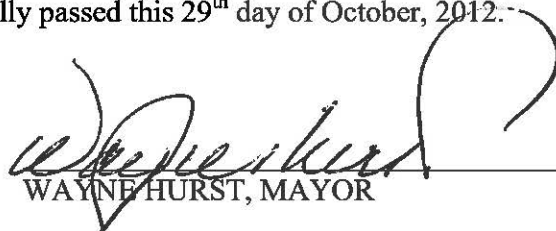
**AND WHEREAS** under Section 9 (1) (a) and (b) of the Municipal Act 2001, S.O., 2001, c. 25, as amended, Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;

**AND WHEREAS** the Council of The Corporation of the Town of Amherstburg deems it expedient to enter into an agreement with PepsiCo Beverages Canada for the sale of beverages at the United Communities Credit Union Complex.

**NOW THEREFORE** the Council of The Corporation of the Town of Amherstburg enacts as follows:

1. That the Council of The Corporation of the Town of Amherstburg agrees to enter into a Beverage Agreement with PepsiCo Beverages Canada for the sale of beverages at the United Communities Credit Union Complex.
2. That the said agreement be attached hereto as Schedule "A" and forms part of this By-law.
3. That the Mayor and Clerk are hereby authorized to sign and seal said agreement on behalf of The Corporation of Town of Amherstburg.
4. This By-law shall come into force and take effect immediately upon the final passing thereof.

Read a first, second and third time and finally passed this 29<sup>th</sup> day of October, 2012.

  
\_\_\_\_\_  
WAYNE HURST, MAYOR

  
\_\_\_\_\_  
BRENDA M. PERCY, CLERK



## Beverage Agreement C

This sets forth the agreement ("Agreement") between PepsiCo Canada ULC, on behalf of itself and its affiliates and/or their respective subsidiaries collectively comprising PepsiCo Beverages Canada ("PBC") and the Customer identified on the front page of this Agreement (the "Customer"), with respect to the purchase of Products.

1. **Definitions.** As used in this Agreement, the following capitalized terms shall have the respective meanings assigned thereto below.
  - a. "Agreement Year" shall mean each twelve-month period beginning with the Agreement Start Date.
  - b. "Beverages" means all carbonated and non-carbonated, non-alcoholic drinks, however dispensed, within the following categories: (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavoured drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks, (vii) bottled or canned water whether carbonated or still (spring, mineral or purified), and (viii) any future categories of nonalcoholic beverage products that may be distributed by PBC.
  - c. "Cases" shall mean the number of cases of bottle & can Products purchased by the Customer from PBC to be delivered in sizes, quantities and types of containers as determined by PBC from time to time.
  - d. "Equipment" shall mean all coolers, fountain and other beverage dispensing equipment (loaned or rented to the Customer by PBC during the Term).
  - e. "Gallons" shall mean the Imperial gallons of Postmix Products purchased by the Customer from PBC.
  - f. "Outlet" shall mean the Customer's outlet located at the address indicated under the Customer Information section, and any expansions thereof.
  - g. "Products" shall mean Beverages manufactured, sold or distributed by PBC which may be amended by PBC from time to time.
  - h. "Term" the term of this Agreement shall be for the period commencing on the Agreement Start Date and expiring on the Agreement End Date as indicated on the front page of this Agreement, unless sooner terminated or extended as provided for herein. The Agreement shall automatically renew for successive one (1) year time periods unless contrary written notice is provided by one party to the other no later than 60 days prior to the end of the initial term or any renewal period thereof. Written notice must be sent to: PepsiCo Beverages Canada, Foodservice, 5205 Satellite Drive, Mississauga, Ontario L4W 5J7. Any renewals shall be under the same terms and conditions, except that Customer shall not be entitled to receive any consideration identified as "one-time" for any renewal periods.

2. **Consideration.** In consideration of the rights granted in this Agreement, and provided the Customer is not in breach of this Agreement, PBC shall provide the Customer the following - if applicable as indicated on the first two pages of this Agreement:

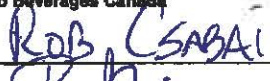
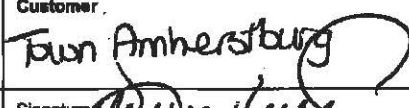


- a. **Equipment.** PBC or one of its affiliates shall retain all right title and interest in the Equipment. PBC will make initial delivery of each piece of Equipment to the Customer's designated location. Prior to the delivery of the Equipment, the Customer shall complete and sign an Equipment Move Order ("EMO") or equivalent with an authorized PBC representative, providing the location name and address where the Equipment will be located. PBC shall install the Equipment at Customer's above address with no additional cost to Customer, provided that Customer shall make available necessary electrical and plumbing facilities as required by city, provincial and Federal regulations. At all times during the Term, Customer shall comply with PBC's Product merchandising standards, and policies and procedures regarding the operation and use of PBC's Equipment, as such standards and policies may be updated or modified by PBC from time to time. Customer agrees not to remove or cause to be removed or otherwise encumber the Equipment from the location above designated without the written consent of PBC. Customer agrees to promptly notify PBC if the Equipment needs to be repaired or serviced. Customer further agrees to fully cooperate with PBC in effecting any necessary repairs or service. Provided the Customer is in compliance with all terms and conditions of this Agreement, PBC agrees to provide free service and repair of the Equipment (except where prohibited by law). Customer shall keep the Equipment free from any liens or encumbrances except those caused by PBC. Customer shall be liable to PBC for careful use and return of the Equipment in good condition, and any Equipment or parts lost or damaged by fire, theft, accident, or for any other reason, shall be paid for, at the time of loss, by Customer. All reasonable expenses incurred by PBC in securing return of the Equipment, including but not limited to hourly charges for PBC's employees, shall be Customer's responsibility. PBC shall have the right, during Customer's usual business hours, to enter the premises where the Equipment is located and shall have free access thereto for purposes of inspecting or removing the Equipment. Failure to comply with this provision shall be deemed a material breach of this Agreement.
- b. **Funding.** As set forth in this Agreement, Funding, as applicable, may consist of: (1) an Upfront Development Fund payment, in the amount indicated in this Agreement, payable based on the schedule specified therein and earned over the duration of the Term; (2) Rebates, payable for applicable Cases or Gallons or Products purchased by Customer from PBC during the applicable funding period; (3) a one-time only Signing Bonus, in the amount indicated in this Agreement, payable within sixty (60) days of the later of installation of Equipment or signing of this Agreement by both parties, and earned over the duration of the Term; and (4) Such other consideration as indicated on the front page of this Agreement, including that based on exclusive/non-exclusive status of the Customer. All Funding, if applicable, shall be paid within sixty (60) days after the end of the applicable funding period, and is payable provided Customer has paid, in full, all invoices for Products delivered to the Customer. Such other consideration as indicated on the front page of this Agreement, including that based on exclusive/non-exclusive status of the Customer has met the applicable performance requirements associated with such funding; and
- c. The Customer acknowledges and agrees that all consideration set forth herein is to be earned by the Customer based on its full compliance with the terms, and requirements of this Agreement and PBC shall provide such consideration provided the Customer (1) has paid in full, without offsets, auto or other deductions, all invoices for Products delivered to the Customer, and (2) is not in breach of its obligations under this Agreement.

### 3. Product Price and Payment.

- a. The prices for Products (the "Prices"), as of the Agreement Start Date, are listed in Schedule A, and are exclusive of any and all current and future taxes, deposits and environmental levies. Increases or decreases due to taxes or duties (including, without limitation, goods and services tax, and any new government imposed taxes) shall be added to or deducted from the Prices. PBC reserves the right, at its sole discretion, to change Prices at any time during the Agreement upon 30 days written notice to Customer. Payment of PBC invoices shall be in accordance with their stated terms which, if credit is granted, are currently net 30 days from the date of invoice. Interest on overdue accounts shall be calculated at a rate of 18% per annum or such other rate established by PBC in its invoices. All payments to PBC shall be rendered without deduction or set off. Customer shall complete a PBC credit application prior to delivery of any Product and Customer shall be subject to PBC's credit policies. PBC shall extend credit payment terms, if any, in accordance with PBC's credit policies, acting reasonably. All PBC invoices shall be issued to Customer's delivery location for payment. Post audit claims must be submitted by Customer in writing, with supporting documentation, within 12 months from the date of the applicable invoice. PBC requires 60 days to review any such claim prior to authorizing any Customer deduction. There are no representations, warranties or conditions in respect of sale of the Products other than those expressly set out herein. Title and risk of loss to/of ordered Products shall pass to Customer immediately upon delivery of same.
- b. Price increases may be made by PBC, in PBC's sole discretion, as a result of extraordinary increases in the price of commodities used in the production of the Products. Without limitation, such commodities may include sweeteners, sugar, resin, aluminum, packaging containers and other packaging materials, and fuel.

### 4. General Terms

- a. **Breach and Termination.** In the event either party breaches a provision of this Agreement, the non-breaching party shall give the other party written notice of such breach. Upon receipt of such written notice, the breaching party shall have thirty (30) days to cure such breach. If such breach is not cured within the specified time period, the non-breaching party may terminate this Agreement upon the expiration of such cure period upon written notice to the breaching party. Either party may terminate this Agreement forthwith upon written notice if the other party takes any action with respect to its liquidation or winding-up, or makes an assignment for the benefit of creditors or any proposal under the *Bankruptcy and Insolvency Act* or any comparable statute, or if a bankruptcy petition is filed or presented by such party or if a court of competent jurisdiction enters a judgment or order approving any such petition, or if a custodian or receiver or manager or similar official is appointed for such party or its assets. Customer notice must be mailed to: PBC Foodservice 5205 Satellite Dr, Mississauga, ON L4W 5J7. Customer shall not receive any consideration pursuant to this Agreement which has not been fully earned or redeemed (including Pepsi Rewards points) by Customer as of the date of such breach.
- b. **Remedies.** The exercise of any remedies available hereunder shall not limit the remedies available to either party, whether in law or in equity. In the event of early termination of this Agreement, termination of this Agreement by either party shall not operate as a cancellation of any indebtedness owing at the time of termination or affect any other accrued rights or remedies of the parties.
- c. **Failure to meet Minimum Throughput Requirement.** At the end of each Agreement Year, or at any time upon thirty (30) days notice, if Customer fails to, or if Customer purchase trends indicate that Customer will fail to, purchase the average Cases/Gallons as indicated on the front page of this Agreement, then PBC shall have the right to remove Equipment completely and terminate this Agreement pursuant to Section 4(a), or substitute/adjust Equipment placement as necessary such that the average Cases/Gallons is achieved. The Customer shall return the Equipment within 20 days after written notice from PBC.
- d. **Equipment upon Expiration or Termination of this Agreement.** If this Agreement is terminated or expires and the parties do not enter into a subsequent agreement, then the Customer shall fully cooperate with PBC to ensure that PBC is able to pick up its Equipment. Within 15 days after the expiration or termination the Customer shall coordinate with PBC so that PBC may pick up its Equipment at the Customer's locations. Once PBC has picked up and inspected the Equipment, PBC shall notify the Customer of any damage to or missing Equipment/parts (excluding reasonable wear and tear). Customer shall immediately pay to PBC all applicable costs, expenses, and fees associated with the repair/replacement of the Equipment or associated parts. Failure to make such payment shall be deemed a material breach of this Agreement.
- e. **Right of Offset.** PBC reserves the right to withhold payments due hereunder as an additional remedy for breach, or as an offset (partial or whole) against any amounts not paid by Customer to PBC pursuant to this Agreement, including the payments set forth in Sections 4(b) and 4(c), above.
- f. **Customer Representation.** Customer represents and warrants to PBC that Customer has right, power, authority and capacity to enter into this Agreement and perform its obligations hereunder and that the execution, delivery and performance of this Agreement by Customer will not violate any agreements with, or rights of, third parties.
- g. **Non-Disclosure.** Except as may otherwise be required by law or legal process, Customer shall not disclose to unrelated third parties the terms and conditions of this Agreement without the written consent of PBC.
- h. **Assignment/Acquisition.** The Customer shall not sell, assign, transfer or otherwise encumber any interest in the Agreement without prior written consent of PBC. In the event that the Customer sells, assigns or transfers its assets to a third party or there is a change in control of the Customer, the Customer shall cause the transferee to assume all of the Customer's obligations under this Agreement prior to such sale, assignment or transfer. In the event the transferee has an existing local agreement with PBC or national agreement with PepsiCo (which agreement covers the purchase of Products), the agreement with the transferee shall continue and PBC's obligations under this agreement shall terminate. PBC may assign this Agreement at any time to an affiliate without any prior consent.
- i. **Unauthorized Reselling and/or Transshipment.** PBC reserves the right to limit quantities, deduct/withhold funding, charge transshipment fines, or terminate this Agreement immediately (i.e., without notice/cure period as set forth in Section 4(a), above) if the Customer: (i) resells Products in a manner not authorized by this Agreement, including to other resellers/distributors; (ii) sells Products directly or indirectly for resale outside of the PBC Location's exclusive territory; or (iii) purchases same-branded products as the PBC Products outside PBC Location's exclusive territory and resells such products within such exclusive territory. PBC will have the right to inspect Customer's warehouse for the purpose of verifying product production codes.
- j. **Trademarks.** All displays of PBC, PepsiCo Canada ULC and/or PepsiCo, Inc. trademarks, trade names, slogans and/or logos (whether owned or licensed) shall be subject to PBC's prior approval. Customer has no right, title or interest in or to any such trademark, trade name, slogan or logo.
- k. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- l. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto regarding the subject matter hereof and supersedes all other agreements between the parties, including prior funding commitments relating to the purchase of the Products by Customer. This Agreement may be amended or modified only by a writing signed by each of the parties.

PepsiCo Canada ULC o/a PepsiCo Beverages Canada		Customer	
 Signature: <i>Rob Csabai</i>		 Signature: <i>Dawn Amherstburg</i>	
 Signature: <i>K. Bl.</i>		 Signature: <i>Dawn Amherstburg</i>	
Date: Nov 21/12		Date: Nov 21, 2012	



**Beverage Agreement C**

**Customer Information**

Name of Business: UNITED COMMUNITIES CREDIT UNION COM

Primary Contact: Dean Colver

Address: 3295 MELOCHE DRIVE

City: AMHERSTBURG

State: ON

Zip: N0V 2V7

Customer E-mail: \_\_\_\_\_ (Required)

COF Number(s): \_\_\_\_\_

(Include all numbers) 9628842, 8110430

Fed Tax Id #: \_\_\_\_\_

State Tax Id #: \_\_\_\_\_

Business Phone: (519) 736-5712 Cell #: \_\_\_\_\_

Business Owner: \_\_\_\_\_

**PBC Information**

**Agreement Term**

PBC Location(s): ESSEX ON C\$

PBC Sales Rep: ROBERT CSABAI Route #: 14085

PBC Market Unit: ONTARIO MU C\$ Phone #: \_\_\_\_\_


Sales Method: (check one)  Pepsi Direct  Pre-Sell (Route # )

Agreement Start Date: 11/1/2012

Agreement End Date: 10/31/2017

(Check Boxes and Specify, as applicable)

**PBC Agrees To:**

<input checked="" type="checkbox"/>	Loan at no charge (except where prohibited by law - in which event PBC shall charge the minimum legal rental fee allowed), where and as necessary coolers, fountain or other equipment to the Customer, to be placed and operated pursuant to the terms and conditions of this Agreement (as specified on reverse side).
<input checked="" type="checkbox"/>	Initial Equipment Placement shall be as follows (fill out as applicable): Coolers: One-Door Two-Door Three-Door Counter-top Energy Fountain: 6 Valve 8 Valve Bar guns ( button) Other (Specify):
<input checked="" type="checkbox"/>	PBC shall provide, at no charge to the Customer (except where prohibited by law), periodic maintenance, necessary service and repairs to all Equipment loaned to Customer pursuant to this Agreement.
<input checked="" type="checkbox"/>	PBC shall make available for purchase by Customer Pepsi branded cups and CO <sub>2</sub> ("Ancillary Products") at prices as determined by PBC. (Based on availability)
<input checked="" type="checkbox"/>	Provide Customer with the opportunity to participate as a member of  <b>Pepsi Rewards Plus</b> www.pepsirewardsplus.com
	For additional local PBC Field input:

**Customer Agrees To:**

<input checked="" type="checkbox"/>	<b>EXCLUSIVE</b> - Customer agrees to exclusively serve the Products indicated below at the Customer's Outlet. The Products shall be the only beverages of their respective types sold, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted at or in connection with the Customer's Outlet.
<input checked="" type="checkbox"/>	<b>NON-EXCLUSIVE</b> - Customer agrees to grant PBC the right to have its Products sold, dispensed or otherwise made available, and advertised, displayed, represented or promoted at or in connection with the Customer's Outlet. Notwithstanding the foregoing, if PBC has provided Customer with fountain Equipment, Customer agrees to serve PBC's postmix Products exclusively at its Outlet.
<input checked="" type="checkbox"/>	<b>DSD</b> - Customer agrees to purchase all Products directly from the PBC Location(s) indicated above, and sell only those Products purchased from PBC from the Equipment provided to the Customer by PBC. Customer shall not stock any non-PBC Products (food or beverages) in Equipment (whether coolers or fountain equipment).
<input checked="" type="checkbox"/>	<b>MINIMUM THRUPUT</b> - In order to qualify for applicable Equipment, Customer shall purchase a minimum annual average of ___ Cases per door for each cooler and ___ Gallons per each fountain dispensing unit (minimum requirement may exclude bar guns at PBC's discretion) at the Outlet.
<input checked="" type="checkbox"/>	<b>REQUIRED PRODUCTS</b> . Purchase, stock and distribute at least each of the Products (as specified below) at all times during the Term.

**Required Packages for this Agreement:**

Fountain Postmix/BIB  591 ml 2 Liter  Cans

Fountain Premix/Tanks (Limited Market Availability) Cups CO<sub>2</sub>

Other: \_\_\_\_\_

**FOUNTAIN/POSTMIX SKU REQUIREMENTS: (Must carry minimum of 60)**

Pepsi Dt Pepsi 7UP Mountain Dew Brisk Tea  
Mug Dr Pepper Crush Lemonade Cups Co2  
Ciamato Orange Juice Cranberry Juice

**BOTTLE SKU REQUIREMENTS: Must Check One Level**

(All shall be 591ml bottles unless otherwise indicated)

**Platinum:** Must Purchase Pepsi, Dt Pepsi, 7UP, Brisk Tea, Aquafina plus any three additional skus from brands below:

**Gold:** Must Purchase FIVE skus from brands below:

**Silver:** Must Purchase THREE skus from brands below:

Pepsi Dt Pepsi Brisk Tea 7UP  
Gatorade G2 Lipton Aquafina  
Dole AMP Energy Rockstar Dr Pepper Crush

Comply with the Terms of this Agreement

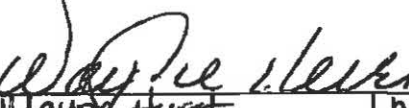
**AGREED TO AND ACCEPTED BY:**

For PepsiCo Beverages Canada



Print Name Rob Csabai Title ESR

For Customer

  
Print Name Wayne Hurst Title Mayor





***Beverage Agreement C***