

**DISTRIBUTOR AGREEMENT
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DISTRIBUTOR AGREEMENT

This Distributor Agreement ("Agreement") is made effective the _____ day of _____, by and between Flowers Baking Co. of Jamestown, LLC, with its office and principal place of business at _____ ("COMPANY"), and _____ ("DISTRIBUTOR").

WITNESSETH:

COMPANY has developed or acquired a license or franchise for the use of formulae, recipes, trademarks and trade names through which it manufactures and/or markets bread, rolls, and other fresh-baked products, as defined herein; and

Whereas, COMPANY, through the expenditure of time and effort and through its continuing research and marketing programs, has over the years developed a reputation for excellence in quality, value, and superior service which has created strong consumer recognition, approval, and demand for its products; and

Whereas, COMPANY has determined that the divestiture and division of its market area into distribution territories, and the sale of its products to independent franchise distributors for distribution and ultimate retail sale in said territories, will result in a superior distribution system; and

Whereas, DISTRIBUTOR is an independent contractor with the resources, expertise and capability to act as a franchise distributor of COMPANY's products in the Territory; and

Whereas, the parties desire to create a right in DISTRIBUTOR, under which DISTRIBUTOR will be authorized to sell certain defined products within a territory or territories and otherwise operate the distributorship business hereunder.

Now, therefore, in consideration of these premises, and of the covenants and conditions contained in this Agreement, and for other good and valuable consideration given and received, the receipt and the sufficiency of which are hereby specifically agreed to and acknowledged, the parties mutually agree as follows:

I. WARRANTY

- 1.1** The foregoing preambles are incorporated herein by reference and shall constitute warranties, representations, agreements and undertakings by the parties.

II. DEFINITIONS

- 2.1 Outlets:** Shall mean all retail stores (except thrift stores) selling food to the general public and all restaurant, fast food, military and institutional accounts, in each case which allow direct store delivery (DSD) of Products and/or Authorized Products, except those exempt from this Agreement as set forth in Article VII, below.
- 2.2 Products:** Shall mean fresh baked goods, as specifically described in **Exhibit B**, attached hereto and made a part hereof, which are currently produced and/or distributed by COMPANY, provided, however, that the Distribution Rights granted herein shall survive only so long as COMPANY and/or its affiliate(s) has/have the legal right to produce and sell such goods, whether by ownership, license, franchise, or otherwise, and COMPANY produces and/or sells such goods. Products shall not include products other than those specifically described in **Exhibit B** nor products intended to be sold as frozen or refrigerated.
- 2.3 Authorized Products:** Shall mean fresh baked goods, as specifically described in **Exhibit C**, attached hereto and made a part hereof, provided, however, that DISTRIBUTOR does not acquire any proprietary or ownership rights to such Authorized Products, exclusive or non-exclusive. COMPANY may cease selling such Authorized Products to DISTRIBUTOR upon notice, with or without cause. COMPANY may also add Authorized Products to **Exhibit C** upon notice to DISTRIBUTOR. Authorized Products may include products with logos and/or labels, or without.
- 2.4 Distribution Rights:** Except as expressly limited by this Agreement, Distribution Rights shall mean the right to sell and distribute Products to Outlets in the Territory, which right has been purchased by DISTRIBUTOR from COMPANY as evidenced by a Bill of Sale executed by the parties, which is attached hereto as **Exhibit D**, and made a part hereof.
- 2.5 Territory:** Shall mean that geographic area as more specifically described in **Exhibit A** within which DISTRIBUTOR owns the Distribution Rights.
- 2.6 Good Industry Practice:** Shall mean the standards that have developed and are generally accepted and followed in the baking industry, including, but not limited to, maintaining an adequate and fresh supply of Products and Authorized Products in all Outlets in the Territory requesting service, actively soliciting all Outlets in the Territory not being serviced, properly rotating all Products and Authorized Products, promptly removing all stale Products and Authorized Products, maintaining proper service and delivery to all Outlets in the Territory requesting service in accordance with Outlet's requirements, maintaining all equipment in a

sanitary condition and in good safe working order, and operating the distributorship business hereunder in compliance with all applicable federal, state and local laws, rules and regulations, including but not limited to, all motor vehicle, Department of Transportation, food, drug, health, bioterrorism, security, and sanitary laws and regulations. **DISTRIBUTOR specifically acknowledges and agrees that such standards do not reflect control by COMPANY as to the specific details or manner and means of DISTRIBUTOR's business, but reflect only COMPANY's interests in the results achieved by DISTRIBUTOR, protecting the reputation of the brands, and protecting the business reputation of both DISTRIBUTOR and COMPANY.**

- 2.7 Stale:** Shall mean Products and Authorized Products removed from the market on the appropriate color code or designated pick up date.
- 2.8 Out of Code:** Shall mean Products and Authorized Products left in the market beyond the appropriate color code or designated pick up date.
- 2.9 Chain:** Shall mean a person or business entity that operates more than one Outlet and/or which makes centralized decisions regarding the purchase of Products and/or Authorized Products for more than one Outlet.

III. RELATIONSHIP

- 3.1 Extent and Duration:** COMPANY hereby recognizes DISTRIBUTOR's ownership of the Distribution Rights, said ownership to continue until:
- (a) transferred, assigned or sold by DISTRIBUTOR or anyone acting on behalf of DISTRIBUTOR (this includes a sale by COMPANY for the account of DISTRIBUTOR in the event of a termination of this Agreement upon the terms defined below), or
- (b) COMPANY, for legitimate business reasons unrelated to Section 3.1(c) immediately below, ceases to use distributors to distribute Products in the _____ market area. In such event, COMPANY will repurchase the Distribution Rights from DISTRIBUTOR at ten (10) times the average weekly sales volume of Products (not Authorized Products) in the Territory calculated over the six (6) month period preceding the repurchase, or
- (c) either party exercises its right to terminate pursuant to Section 16.1. In such event, COMPANY will repurchase the Distribution Rights from DISTRIBUTOR at fair market value, which in no event shall exceed the purchase price paid by DISTRIBUTOR for the Distribution Rights.
- 3.2 Nature of Rights:** The parties agree that the Distribution Rights sold to DISTRIBUTOR pursuant

to the Bill of Sale can be exercised only pursuant to the terms of this Agreement and that any termination of this Agreement other than in accordance with Section 3.1 (b) or (c) requires DISTRIBUTOR, or anyone acting on behalf of DISTRIBUTOR, to sell such Distribution Rights subject to the terms of this Agreement.

IV. SALE OF PRODUCTS AND AUTHORIZED PRODUCTS

- 4.1** Products and Authorized Products will be sold to DISTRIBUTOR at such terms and prices as established by COMPANY from time to time. Title and risk of loss shall pass to DISTRIBUTOR upon delivery to DISTRIBUTOR as set forth in Section 11.1 below.

V. BEST EFFORTS/DISTRIBUTOR

- 5.1 Obligations of DISTRIBUTOR:** DISTRIBUTOR agrees and covenants to use DISTRIBUTOR's commercially reasonable best efforts to develop and maximize the sale of Products to Outlets within the Territory and service the Territory in accordance with Good Industry Practice as defined above, including servicing all Outlets in accordance with the Outlet's then-established service requirements. DISTRIBUTOR further agrees and covenants to use DISTRIBUTOR's commercially reasonable best efforts to maximize the sale of Authorized Products to those Outlets in the Territory for which such Authorized Products have been produced and to distribute such Authorized Products to such Outlets in accordance with Good Industry Practice as defined above, including servicing all Outlets in accordance with the Outlet's then-established service requirements. DISTRIBUTOR shall cooperate with COMPANY on its marketing and sales efforts and ensure its employee(s) maintain a clean and neat personal appearance consistent with the professional image customers and the public associate with COMPANY, and customer requirements. DISTRIBUTOR may not sell products in the Territory which are competitive with the Products or Authorized Products. DISTRIBUTOR may sell noncompetitive products, as long as this does not interfere with the distribution of the Products or Authorized Products. **DISTRIBUTOR specifically acknowledges and agrees that the obligations herein do not reflect control by COMPANY as to the specific details or manner and means of DISTRIBUTOR's business, but reflect only COMPANY's interests in the results achieved by DISTRIBUTOR, protecting the reputation of the brands, and protecting the business reputation of both DISTRIBUTOR and COMPANY.**
- 5.2 Alternate Distribution:** Should DISTRIBUTOR believe a certain account or accounts is/are

unprofitable to service, DISTRIBUTOR shall provide COMPANY written notice of such belief and the reasons therefor, including a detailed financial analysis. Within ten (10) business days thereafter, COMPANY representative(s) and DISTRIBUTOR shall meet to discuss DISTRIBUTOR's concerns. DISTRIBUTOR and COMPANY agree to work in good faith to explore opportunities to remedy the unprofitability of such account(s), and DISTRIBUTOR further agrees to give its best effort to remedy the unprofitability of such account(s), including the exercise of any recommendations made by COMPANY. After exhausting all such efforts, if the COMPANY agrees with DISTRIBUTOR's position, DISTRIBUTOR shall be relieved of its contractual obligation to service such account(s) for a period of time determined by COMPANY. During such period, COMPANY may make alternate distribution arrangements for such account(s) and DISTRIBUTOR shall not receive any credit for sales associated with such alternate distribution. At the end of the period specified by COMPANY, COMPANY and DISTRIBUTOR shall meet again to determine future service of such account(s), including DISTRIBUTOR resuming service once such account(s) become profitable.

- 5.3 Non-Compliance:** Failure to comply with Section 5.1 and/or any of the terms, conditions and obligations elsewhere in this Agreement shall be considered a material breach of this Agreement and shall be governed by the provisions of this Agreement dealing with termination.

VI. BEST EFFORTS/COMPANY

- 6.1 Obligations of Company:** COMPANY shall use its commercially reasonable best efforts to manufacture and deliver to DISTRIBUTOR sufficient quantities of Products and Authorized Products to supply Outlets requesting service in the Territory, preserve and develop the quality and marketability of the Products, and cooperate with DISTRIBUTOR on DISTRIBUTOR's sales and marketing efforts. In order to assist DISTRIBUTOR with product sales to Chains, which may require COMPANY and/or its affiliate(s) involvement to obtain authorization to sell Products or Authorized Products, DISTRIBUTOR hereby designates COMPANY and/or its affiliate(s) and COMPANY and/or its affiliate(s) agree(s) to act as DISTRIBUTOR's limited agent to obtain such authorization. This limited agency designation is for the sole purpose of authorization discussions (including space, position and pricing) with regard to Chain accounts. Nothing

herein shall obligate COMPANY and/or its affiliate(s) to seek authorization or otherwise pursue business opportunities with any specific Chain or other account. Additionally, nothing herein shall prevent DISTRIBUTOR from having the right to deal directly with Chain accounts with regard to such terms, although DISTRIBUTOR acknowledges Chains may decide not to deal with either COMPANY or DISTRIBUTOR.

- 6.2 Non-Compliance:** Failure to comply with Section 6.1 shall be considered a material breach of this Agreement and shall be governed by Section 20.2 below (Company Breach). Repeated breaches by COMPANY which threaten to do substantial harm to DISTRIBUTOR'S business shall entitle DISTRIBUTOR to terminate this Agreement.

VII. ACCOUNTS AND/OR TRADEMARKS EXEMPT FROM DISTRIBUTORSHIP

- 7.1 Accounts Exempt From Agreement:** COMPANY reserves the right to solicit and service drop delivery and other non-DSD accounts with Products and Authorized Products, in whole or in part, in DISTRIBUTOR's Territory, so long as it is done for legitimate business reasons and not for the purpose of undermining DISTRIBUTOR's business.
- 7.2 Thrift Stores:** COMPANY reserves the right to continue to sell Products and Authorized Products through its retail thrift store operation, COMPANY-owned and/or independently owned.
- 7.3 Other Trademarks:** The parties hereto stipulate that COMPANY and COMPANY affiliates produce a variety of products marketed under a variety of trademarks distributed through multiple channels of distribution, including warehouse distribution. This Agreement does not restrict any other distribution of products by COMPANY and COMPANY affiliates marketed under trademarks not listed on **Exhibit B** via warehouse distribution or otherwise.

VIII. PAYMENT FOR PRODUCTS

- 8.1 Settlement of Account:** On or before Friday of each week, DISTRIBUTOR will remit to COMPANY a full settlement of all Products and Authorized Products sold to DISTRIBUTOR in the preceding week, in accordance with terms established by COMPANY from time to time. DISTRIBUTOR authorizes COMPANY to make credits and charges to its weekly settlement as set forth on the Settlement Statement Authorization, a sample of which is attached hereto as **Exhibit E**.
- 8.2 Cash Sales:** DISTRIBUTOR is solely responsible for the collection of all cash sales in the

Territory.

- 8.3 Non-Cash Sales:** In cases where Products and/or Authorized Products are sold and distributed to Outlets which have been approved by COMPANY for credit and in its sole discretion, COMPANY will accept electronic data with corresponding proof of delivery, charge slips, Outlet-generated authorizations or other forms of payment authorizations as may be required by the Outlet or COMPANY (including but not limited to, authorizations signed by the Outlet's authorized representative, such as the store manager, or its designee) in lieu of cash, and credit DISTRIBUTOR's account for such sales, provided DISTRIBUTOR fully complies with COMPANY's credit policies as established from time to time. In the event DISTRIBUTOR fails to comply with COMPANY's credit policy, fails to provide complete documentation as required by the Outlet or COMPANY, or falsifies any documentation or credit information, COMPANY shall be entitled to charge DISTRIBUTOR's account for any credit extended to DISTRIBUTOR resulting therefrom without limiting any other remedies available to COMPANY. DISTRIBUTOR is wholly responsible for collection of accounts receivable not authorized by COMPANY. COMPANY is obligated to credit DISTRIBUTOR only for such payments made by the Outlet.
- 8.4 Chain Accounts:** COMPANY and/or its affiliate(s) reserves the right to continue carrying the accounts receivable for all Chain and other major accounts and to promptly credit DISTRIBUTOR for DISTRIBUTOR's sales to all such accounts.
- 8.5 Scan Based Trading:** In the event a Chain account implements Scanned Based Trading (SBT), Pay By Scan (PBS) or other accounting methodologies and/or technology, DISTRIBUTOR agrees to comply with policies and procedures as may be necessary to comply with such Chain accounting and/or technology requirements.
- 8.6 Security Interest:** To secure the prompt payment and timely performance of all indebtedness, obligations and liabilities of DISTRIBUTOR to COMPANY under this Agreement, whether now existing or hereafter arising, DISTRIBUTOR hereby grants and conveys to COMPANY a presently existing and continuing security interest in the Distribution Rights, in this Agreement, in all Products and/or Authorized Products now or hereafter in DISTRIBUTOR's possession, in all accounts now or hereafter arising out of the sale by DISTRIBUTOR of Products and/or Authorized Products, and in all proceeds thereof. DISTRIBUTOR agrees that this security interest attaches immediately upon execution of this Agreement by DISTRIBUTOR and that COMPANY has all of the rights of a secured party under the applicable Uniform Commercial Code, as amended from time

to time. DISTRIBUTOR expressly authorizes COMPANY to file and refile all appropriate Uniform Commercial Code financing statements necessary to perfect the security interests granted hereunder.

- 8.7 Default:** Nothing herein shall be deemed to require COMPANY to fill an order of DISTRIBUTOR during the time when DISTRIBUTOR has failed to make any payment due to COMPANY in a timely fashion.

IX. EQUIPMENT AND INSURANCE

- 9.1 Delivery Vehicle(s):** DISTRIBUTOR is responsible for obtaining DISTRIBUTOR's own delivery vehicle(s) and purchasing adequate insurance thereon, as described in Section 9.2 below. Consistent with good industry practice, DISTRIBUTOR agrees to keep the delivery vehicle(s) clean at all times and in a manner consistent with the professional image customers and the public associates with COMPANY, and to maintain the delivery vehicle(s) in such condition as to provide safe, prompt, and regular service to all customers. If legally required, DISTRIBUTOR agrees to have painted in a conspicuous manner on any delivery vehicle owned or leased by it to carry out the terms hereof: "Owned and Operated by (DISTRIBUTOR's name), An Independent Contractor".
- 9.2 Insurance:** DISTRIBUTOR shall maintain at all times throughout the duration of this Agreement insurance policies from insurance companies that maintain a financial strength rating of A- or better and are licensed to do business in the state(s) in which the Territory is located, and naming COMPANY as an additional insured party on all such insurance policies. The required insurance coverages are set forth in **Exhibit F** attached hereto and made a part hereof. DISTRIBUTOR agrees to provide COMPANY with written evidence of insurance and endorsement within three (3) days upon request by COMPANY. COMPANY reserves the right to change the insurance coverage requirements by providing DISTRIBUTOR with thirty (30) calendar days notice.
- 9.3 Other Insurance:** In addition to the insurance coverage required under this Agreement, it is DISTRIBUTOR'S responsibility to carry and maintain any other insurance coverage DISTRIBUTOR may desire.

X. PROPRIETARY SERVICES

- 10.1 Services Provided:** COMPANY shall make available, and DISTRIBUTOR shall use, certain

proprietary administrative services in order to assist DISTRIBUTOR in the conduct of DISTRIBUTOR's business for the following purposes: (i) collection of sales data; (ii) preparation of sales tickets; (iii) accumulation of sales histories; (iv) preparation of daily and weekly settlements; (v) preparation of automated "adds" to and "cuts" from DISTRIBUTOR's daily order of Products and Authorized Products; (vi) direct communication to COMPANY for the purpose of DISTRIBUTOR's ordering of product and receipt of daily load information; (vii) providing automated route book information; (viii) providing automatic product movement information; (ix) providing individual customer sales profiles; and (x) providing suggested orders for each customer. **DISTRIBUTOR specifically acknowledges and agrees that the use of such proprietary administrative services is a necessary component of transacting business with Outlets and maximizing sales and does not reflect control by COMPANY of the specific details or manner and means of DISTRIBUTOR's business.**

- 10.2 Administrative Fee:** COMPANY shall charge, and DISTRIBUTOR shall pay, a fair market, reasonable administrative fee for these services, which shall be established from time to time by COMPANY. By signing below, DISTRIBUTOR specifically authorizes COMPANY to collect the Administrative Fee on a weekly basis via the weekly settlement statement process.
- 10.3 Confidentiality:** DISTRIBUTOR agrees to maintain and hold in confidence any and all information obtained from or derived about COMPANY's proprietary administrative services pursuant to the provisions of Section 20.7.
- 10.4 No Proprietary Rights:** DISTRIBUTOR acknowledges that DISTRIBUTOR cannot and shall not acquire any proprietary rights in COMPANY's proprietary administrative services and no rights shall accrue to DISTRIBUTOR by virtue of the use of the proprietary administrative services. The right to use these proprietary administrative services shall not be assigned by DISTRIBUTOR without the express written consent of COMPANY.
- 10.5 Termination or Amendment of Services:** This provision shall remain in effect for as long as this Agreement is in effect. However, in the event this Agreement is terminated for any reason, so shall DISTRIBUTOR's right to use the proprietary administrative services. COMPANY may, in its sole discretion, alter, amend or terminate the proprietary administrative services herein made available by the giving of fourteen (14) calendar days' notice to DISTRIBUTOR.
- 10.6 Accurate and Truthful Reporting:** DISTRIBUTOR shall at all times utilize the proprietary services in an honest and ethical manner. This specifically includes accurate and truthful

reporting of transactions and related information so as to allow COMPANY to comply with applicable legal disclosure and reporting requirements. COMPANY reserves the right to audit DISTRIBUTOR's transactional records and inventory to ensure accurate and truthful reporting and COMPANY's compliance with applicable legal requirements.

XI. PRODUCT DELIVERY

- 11.1** COMPANY shall deliver Products and Authorized Products to DISTRIBUTOR at the location chosen by DISTRIBUTOR, as reflected on **Exhibit G** attached hereto and made a part hereof. DISTRIBUTOR will be charged a fee for warehouse use. DISTRIBUTOR may request to change the location upon thirty (30) days' notice to COMPANY, provided COMPANY is able to accommodate the requested change, such decision being COMPANY's sole discretion. If COMPANY is not able to accommodate the requested change, it may provide DISTRIBUTOR with other location options. By signing below, DISTRIBUTOR specifically authorizes COMPANY to collect the warehouse fee on a weekly basis via the weekly settlement statement process.

XII. PRODUCT CODE

- 12.1** Maintaining a fresh market is a fundamental tenet of the baking industry. Accordingly, Out of Code Products or Authorized Products left in the market is a material breach of this Agreement. Repeated violations will be grounds for termination of this Agreement. **DISTRIBUTOR specifically acknowledges and agrees that removing Stale Products and Authorized Products from the market on the appropriate color code or designated pick up date is necessary to maintain the reputation of the brands and to protect the business reputation of both DISTRIBUTOR and COMPANY.**
- 12.2** DISTRIBUTOR is not obligated to sell its Stale Products and Authorized Products back to COMPANY. However, to assist DISTRIBUTOR in maintaining a fresh market, COMPANY will repurchase a certain percentage of DISTRIBUTOR's Stale Products or Authorized Products, in accordance with COMPANY's Stale allowance policy as established by COMPANY from time to time.
- 12.3** DISTRIBUTOR may not sell any Out of Code Products or Authorized Products, or those not in a saleable condition for distribution to the general public, but may otherwise sell such products to purchasers for non-human consumption.

XIII. ADVERTISING AND PROMOTIONS

- 13.1** COMPANY will provide all COMPANY initiated advertising material at no cost to DISTRIBUTOR, including, but not limited to, point of sale material and COMPANY scheduled media advertising. Subject to COMPANY's prior approval, which approval will not be unreasonably withheld, DISTRIBUTOR may use other advertising materials.
- 13.2** DISTRIBUTOR will adhere to all promotions and feature pricing with respect to the major and Chain accounts in the Territory. Such promotions and feature pricing are optional with respect to local accounts. When DISTRIBUTOR follows promotions or feature pricing, DISTRIBUTOR will receive a reduction in the purchase price accounting for such promotion or feature pricing, such that DISTRIBUTOR and COMPANY share the price allowance. With respect to local accounts, DISTRIBUTOR shall be required to provide COMPANY with sufficient proof that the promotion or feature pricing was extended to the local accounts(s) in order to obtain a pricing adjustment for such sales. DISTRIBUTOR and COMPANY will each share in any resulting pricing allowance(s).

XIV. SERVICE REQUIREMENTS

- 14.1** DISTRIBUTOR is responsible for providing proper service of the Territory at all times.
- 14.2** If DISTRIBUTOR does not service the Territory, for any reason, COMPANY reserves the right to service the Territory, and DISTRIBUTOR agrees to pay a daily fee as indicated on **Exhibit H**, plus any operating expenses COMPANY incurs, including but not limited to fuel, truck rental and travel costs. COMPANY reserves the right to change its daily fee. Such temporary service by COMPANY does not relieve DISTRIBUTOR of the obligation imposed on it by the AGREEMENT nor act to cure any breach by DISTRIBUTOR.

XV. TRANSFER OR SALE OF RIGHTS

- 15.1** **Conditions:** The Distribution Rights are owned by the DISTRIBUTOR and may be sold or transferred in whole or in part by DISTRIBUTOR, or anyone acting on behalf of DISTRIBUTOR, subject to the prior written approval of COMPANY, which approval shall not be unreasonably withheld. Any sale or transfer of the Distribution Rights must be bona fide, for legitimate business purposes, and compliant with all applicable laws. Additionally, the prospective purchaser or transferee must be fully qualified to meet all of the obligations under this Agreement. COMPANY's right of approval in this Section shall expire if not exercised within thirty (30) days after the later of (a) receipt by COMPANY of written notice from DISTRIBUTOR of its

intent to sell or transfer to a named bona fide purchaser or transferee on terms and conditions fully set forth in such notice, and (b) an evaluation by COMPANY of the proposed purchaser or transferee. The transfer, whether in one or a series of transactions, of a majority of the ownership or voting interests in the stock of DISTRIBUTOR, whether by operation of law or otherwise, shall constitute a sale, subject to the prior written approval of COMPANY for purposes of this Article. DISTRIBUTOR shall execute and deliver to COMPANY and its affiliates a release of all its interests and claims to and in such Distribution Rights and all of its interests under or arising out of this Agreement, together with a general release of claims against COMPANY and its affiliates, in the event of any transfer or sale of the Distribution Rights. COMPANY will concurrently execute a general release of claims as to DISTRIBUTOR, except for any claim for monies due and owing COMPANY. Except as specifically set forth in Article III hereof, COMPANY has no obligation to repurchase the Distribution Rights.

15.2 Settlement of Account: No transfer or sale of DISTRIBUTOR's rights under this Agreement is to be made unless and until DISTRIBUTOR has settled with COMPANY all outstanding accounts and settled all other outstanding liens and debts related to the distributorship; provided, however, that COMPANY may waive this requirement depending on the circumstances of the particular transaction, including if it is satisfied that under the terms of the sale, the purchaser assumes all such liabilities and is financially capable of such assumption.

15.3 Transfer Fee: In the event of a sale by DISTRIBUTOR, or by anyone other than COMPANY acting on behalf of DISTRIBUTOR of DISTRIBUTOR's Distribution Rights to a third party, DISTRIBUTOR shall be solely responsible for ensuring the purchaser is fully qualified to operate the business hereunder, and shall pay a transfer fee to COMPANY in an amount equal to two percent (2%) of such gross sales price, but not less than \$2,000, in consideration of the administrative activities undertaken by COMPANY in connection with such sale. In the event of a sale of the Distribution Rights to COMPANY, or by COMPANY on behalf of DISTRIBUTOR, DISTRIBUTOR shall pay a transfer fee to COMPANY in an amount equal to five percent (5%) of such gross sales price, but not less than \$3,000, in consideration of the administrative activities undertaken by COMPANY in connection with such sale.

15.4 Taxes and Reporting Requirements: DISTRIBUTOR shall be solely responsible for all taxes and transactional reporting requirements, including but not limited to the nature of the conveyance, related to the transfer or sale of the Distribution Rights.

XVI. INDEPENDENT BUSINESS

- 16.1 Essential Term:** The status of DISTRIBUTOR pursuant to this Agreement is that of independent contractor for all purposes and the parties hereby signify their express intention to this effect. DISTRIBUTOR shall not be controlled by COMPANY as to the specific details or manner and means of DISTRIBUTOR's business, it being understood that the interests of COMPANY are the results achieved by DISTRIBUTOR, protecting the reputation of the brands, and protecting the business reputation of both DISTRIBUTOR and COMPANY. DISTRIBUTOR's business is separate and apart from that of COMPANY and it is of the essence of this Agreement that DISTRIBUTOR is an independent business. Any final determination that DISTRIBUTOR is not an independent contractor shall entitle either party to cancel this Agreement, such determination being contrary to the parties' express intention herein to create an independent contractor relationship. Neither DISTRIBUTOR nor any of DISTRIBUTOR's employees, agents, or servants shall be considered or deemed in any way to be employees, agents or servants of COMPANY and neither party has the right or power, express or implied, to do any act or thing that would bind the other, except as herein specifically provided. The parties do not intend to act as joint employers, parent/subsidiary, joint venturers, or any other legal capacity other than separate and distinct businesses acting pursuant to the terms of this Agreement. There is no fiduciary relationship between the parties. Furthermore, none of the benefits provided by COMPANY to its employees are available from COMPANY to DISTRIBUTOR or to DISTRIBUTOR's employees, agents, or servants. In the event DISTRIBUTOR and/or DISTRIBUTOR's employees, agents or servants hereafter become eligible to participate in any such benefits, DISTRIBUTOR, on behalf of DISTRIBUTOR and DISTRIBUTOR's employees, agents and servants, hereby waives any right to participate in such benefits. Such waiver is not dependent upon DISTRIBUTOR's status as an independent contractor. DISTRIBUTOR will be solely and entirely responsible for DISTRIBUTOR's acts and for the acts of DISTRIBUTOR's employees, agents, and servants during the performance of this Agreement, and will save and hold COMPANY harmless from any and all damages which may arise therefrom, including attorneys' fees.
- 16.2 Non-Personal Service:** This Agreement does not require that DISTRIBUTOR's obligations hereunder be conducted personally, or by any specific individual in DISTRIBUTOR's organization. DISTRIBUTOR shall be free to engage such persons as DISTRIBUTOR deems appropriate to assist in discharging DISTRIBUTOR's responsibilities hereunder. Any breach of

this Agreement by any person engaged by DISTRIBUTOR shall be deemed to be a breach by DISTRIBUTOR.

- 16.3 Professional Services:** DISTRIBUTOR may engage any legal and/or accounting professional services it deems necessary for purposes of legal compliance, meeting its obligations under this Agreement, and otherwise.

XVII. TERMINATION BY COMPANY

- 17.1 Performance:** Except as set forth in Sections 3.1 (b) and (c) and 16.1 above, or this Article, COMPANY shall not terminate or cancel this Agreement, provided DISTRIBUTOR faithfully carries out the terms hereof. In the event DISTRIBUTOR fails to perform DISTRIBUTOR's obligations under this Agreement, COMPANY may terminate this Agreement as set forth below.
- 17.2 Non-Curable Breach:** COMPANY may terminate upon twenty-four (24) hours' written notice and DISTRIBUTOR shall have no right to cure if DISTRIBUTOR's failure of performance involves criminal activity, threatens public or private health or safety, involves violent activity or violations of law, or threatens to do substantial harm to COMPANY's business, trademarks or reputation, including, but not limited to, any action or inaction on DISTRIBUTOR's part that results in DISTRIBUTOR's inability to service any Chain account. COMPANY may also terminate upon twenty-four (24) hours written notice and DISTRIBUTOR shall have no right to cure if DISTRIBUTOR fails to maintain the insurance coverage requirements as set forth in Section 9.2 above and **Exhibit _____**, or if DISTRIBUTOR dissolves its corporate status.
- 17.3 Curable Breach:** In any event of failure of performance by DISTRIBUTOR, COMPANY must give DISTRIBUTOR ten (10) business days written notice within which DISTRIBUTOR may cure DISTRIBUTOR's failure of performance. If DISTRIBUTOR does not cure such failure of performance within this ten (10) day period, COMPANY may thereafter terminate this Agreement and DISTRIBUTOR shall have no further right to cure. Furthermore, the parties agree that repeated violations, even if cured, constitute a chronic failure of performance and threaten substantial harm to COMPANY's business, trademarks or reputation, and in such event COMPANY shall be entitled to terminate this Agreement immediately and DISTRIBUTOR shall have no further right to cure.
- 17.4 Actions Following Termination:** If this Agreement is terminated under either Section 17.2 or 17.3, COMPANY, within the limits of its ability to do so, will operate the business for the

account of DISTRIBUTOR, deducting its reasonable expenses in connection with the operation thereof, and sell DISTRIBUTOR's Distribution Rights to a qualified purchaser(s) at the best price which can reasonably be obtained after proper notice and advertisement. Such sale shall be for the account of the terminated DISTRIBUTOR, and the proceeds of such sale, after deducting therefrom any monies owed by DISTRIBUTOR to COMPANY, the amount of any outstanding liens, any other known liabilities of the distributorship and the reasonable costs incurred in effecting the sale, shall be turned over to DISTRIBUTOR in exchange for the release of DISTRIBUTOR's Distribution Rights and interests under this Agreement, together with a general release of claims as to COMPANY and its affiliates. COMPANY will concurrently execute a general release of claims as to DISTRIBUTOR, except for any claim for monies due and owing COMPANY.

XVIII. DISPUTE RESOLUTION

18.1 Negotiation: DISTRIBUTOR and COMPANY shall attempt in good faith and employ their best efforts to resolve and terminate any controversy, claim or dispute arising out of or relating to this Agreement promptly by negotiations. Such negotiations shall take place between representatives of COMPANY and DISTRIBUTOR who have the authority to settle and resolve the dispute. Such negotiations shall begin upon written notice from one party to the other describing any dispute or claim which has not been resolved in the ordinary course of business and suggesting a location for a meeting between the parties to conduct such negotiations within ten (10) business days after delivery of such notice. Representatives of DISTRIBUTOR and COMPANY shall meet at a mutually acceptable time and place within ten (10) calendar days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. Any such meeting may be attended by one or more representatives of each party. No such meeting shall be attended by an attorney representing either party unless such party shall have first given the other party at least three (3) calendar days' notice that it will be accompanied by an attorney at the next scheduled meeting, and at such meeting the other party may also be accompanied by an attorney.

18.2 Mediation: If the dispute has not been resolved within thirty (30) calendar days of the initial notice, or if the party receiving such notice has failed to meet within fifteen (15) calendar days,

either party may initiate mediation by a request therefore in writing to the other party. Upon receipt of such notice, DISTRIBUTOR or COMPANY shall be obligated to engage in mediation. If the parties fail to agree within fifteen (15) calendar days of the date of such request for mediation on the selection of a mediator, then the Center for Public Resources shall appoint a mediator in accordance with its Mediation Procedure and the parties shall continue efforts through mediation to resolve the controversy and dispute between them until mediation is terminated by the occurrence of any of the following events:

- (i) A written resolution in settlement of the dispute is reached, or
- (ii) The mediator informs the parties in writing that further efforts would not be productive or useful, or
- (iii) The parties agree in writing that further efforts would not be productive, or
- (iv) Sixty (60) calendar days elapse from the commencement of the mediation without resolution.

Neither COMPANY nor DISTRIBUTOR may withdraw from mediation before such a termination of the process.

18.3 Mandatory and Binding Arbitration: In addition to and/or instead of utilizing the negotiation and mediation procedures described in this Article, either DISTRIBUTOR or COMPANY may request binding arbitration to resolve any dispute between them. Both DISTRIBUTOR and COMPANY agree that all claims, disputes, and controversies arising out of or in any manner relating to: (i) this Agreement or any other agreement executed in connection with this Agreement, (ii) the performance, interpretation, application or enforcement hereof, including, but not limited to breach hereof and/or termination hereof, (iii) the services provided to COMPANY by DISTRIBUTOR or by DISTRIBUTOR to COMPANY, or (iv) any other dealings between DISTRIBUTOR and COMPANY, which has not been resolved pursuant to the negotiation and mediation provisions herein, shall be submitted to binding arbitration in accordance with the terms and conditions set forth in the Arbitration Agreement attached hereto as **Exhibit I**, excepting only such claims, disputes, and controversies as specifically excluded therein.

18.4 Confidentiality: All negotiations and mediations pursuant to this Article of the Agreement are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any similar state rules of evidence.

- 18.5 Tolling:** All applicable statutes of limitation and defenses based upon the passage of time shall be tolled during the negotiation and mediation procedures specified in this Article. All deadlines specified in such procedures may be extended by mutual agreement of the parties.

XIX. TRADEMARKS, TRADE NAMES, AND PROPRIETARY MATERIALS

- 19.1 Permission for Use:** Subject to the terms and conditions of this Article and to the Distribution Rights granted herein, for the Duration of this Agreement, COMPANY authorizes DISTRIBUTOR to use, on a non-exclusive basis, the trade names and trademarks (collectively, "Trademarks"), trade dress, package designs, logos, artwork, advertising materials and other works protected by copyright, and other intellectual property of or associated with the Products (collectively, including the Trademarks, the "Proprietary Materials") solely in connection with DISTRIBUTOR's advertising, promoting, marketing, sale, and distribution of Products in the Territory. DISTRIBUTOR may not assign or transfer this authorization except in the context of a sale or transfer of all or a portion of the Distribution Rights as provided in this Agreement. DISTRIBUTOR will not use any of the Proprietary Materials in any manner different from how they are used generally by COMPANY.
- 19.2 Conditions of Use:** DISTRIBUTOR shall make no use of the Trademarks or Proprietary Materials, nor engage in any program or activity which makes use of or contains any reference to COMPANY, its products, Trademarks or Proprietary Materials, other than as specifically provided herein, except with the prior written consent of COMPANY. Should DISTRIBUTOR advertise other services or products on its delivery vehicle, such advertising shall not dilute or negatively affect the reputation and goodwill of COMPANY, the Trademarks or the Proprietary Materials. DISTRIBUTOR will not (i) do anything that would or might be inconsistent with, impair, or conflict with ownership of the Proprietary Materials by COMPANY or, if licensed, franchised, or otherwise, the owner thereof; (ii) use any of the Proprietary Materials in any manner likely to (a) deceive or mislead the public, (b) endanger the validity or enforceability of any of the Proprietary Materials, or (c) damage or impair the reputation or value of COMPANY, any of the Proprietary Materials, or any Product; (iii) attack, contest, oppose, or interfere with the right, title, or interest in or to any Proprietary Materials of COMPANY or the owner thereof in any jurisdiction; or (iv) adopt or use any work confusingly or substantially similar to any of the Proprietary Materials. DISTRIBUTOR will not use any of the Trademarks or Proprietary Materials in

either its legal or fictitious trade name without the prior written consent of COMPANY. DISTRIBUTOR will not use any of the Trademarks, Proprietary Materials, or any variation thereof as a business and/or corporate name or d/b/a of DISTRIBUTOR, an Internet domain name or a mnemonic, cipher, or “vanity” telephone number without COMPANY’s prior written approval.

19.3 Monitoring and Cooperation: To insure the uniform quality of the goods in connection with which the Proprietary Materials are used, COMPANY will have the right to require DISTRIBUTOR to immediately discontinue any non-approved use of any Proprietary Materials or any other activity that COMPANY in its sole judgment considers likely to impair the value or validity of the Proprietary Materials. DISTRIBUTOR will immediately observe and require that other persons under its control observe any and all instructions of the COMPANY limiting or halting the use of the Proprietary Materials. DISTRIBUTOR will notify COMPANY, in writing, as soon as DISTRIBUTOR becomes aware of any infringement, imitation, impairment, counterfeiting, or other unlawful or improper use of any of the Proprietary Materials or any of the Products. DISTRIBUTOR will cooperate with and provide testimony and other evidence to COMPANY in and in connection with any application for, registration and protection of, or enforcement of the Proprietary Materials in the Territory as and when requested by COMPANY.

19.4 Acknowledgment: DISTRIBUTOR acknowledges and agrees that (i) all the rights concerning the Proprietary Materials are owned by COMPANY or the owner thereof, (ii) DISTRIBUTOR does not have, and will not as a result of this Agreement or performance hereunder acquire, any ownership or legal rights in any of the Proprietary Materials used in connection with the Products, and (iii) DISTRIBUTOR’s sole rights with respect to the Proprietary Materials are set forth in this Article.

19.5 Return Upon Termination: Upon termination of this Agreement, DISTRIBUTOR shall cease use of COMPANY’s Proprietary Materials and shall deliver to COMPANY any advertising, promotional or merchandising material.

XX. MISCELLANEOUS

20.1 Notice: Any notice required or permitted under this Agreement shall be deemed properly given and received on the date received if hand delivered; on the next business day after deposit with a nationally recognized overnight courier service for overnight delivery; or three (3) days after deposited in the mails, return receipt requested, registered or certified mail postage pre-paid,

addressed to the parties at the addresses first referenced above, or at such other address as either party may designate by written notice given pursuant to this section.

- 20.2 Company Breach:** If DISTRIBUTOR maintains that COMPANY is in breach of this Agreement, DISTRIBUTOR should notify COMPANY President in writing, by certified mail, return receipt requested. Such written notice must include the specific section of this Agreement DISTRIBUTOR maintains has been breached and sufficient facts to provide reasonable notice to COMPANY of the action or failure to act which DISTRIBUTOR maintains is a breach of this Agreement. Upon receipt of the DISTRIBUTOR's notice of breach, COMPANY shall have a reasonable period of time to investigate and cure any breach. Any failure to comply with this provision shall not affect DISTRIBUTOR's right to submit a claim to mandatory and binding arbitration.
- 20.3 Survival:** This agreement shall be binding upon the heirs, personal representatives, successors or assigns of the parties to this Agreement. Notwithstanding any termination of this Agreement, all provisions hereof that, by their terms or reasonable interpretation thereof, set forth obligations that extend beyond the termination of this Agreement, shall survive and remain in full force and effect.
- 20.4 Incorporation of Bill of Sale:** This Agreement is subject to and affected by a Bill of Sale simultaneously executed by the parties, such Bill of Sale being fully incorporated in this Agreement by reference.
- 20.5 Entire Agreement:** This Agreement, together with all Exhibits incorporated herein by reference, as amended from time to time in accordance with the Agreement, sets forth the entire agreement between the parties and supersedes all prior agreements, discussions, negotiations, understandings, representations, conditions, warranties and covenants between them with respect to this subject matter. Unless set forth in this Agreement, no party shall be liable for any representation made to any other. Except as otherwise expressly authorized herein, this Agreement may be amended or modified only by a writing signed by all parties.
- 20.6 Indemnification:** DISTRIBUTOR agrees to indemnify and hold harmless COMPANY from and against any and all claims, actions, liabilities, expenses, losses or demands, including reasonable attorneys' fees, growing out of or based upon this Agreement or any acts or omissions of DISTRIBUTOR arising in the normal course of the conduct of business by DISTRIBUTOR pursuant to this Agreement. DISTRIBUTOR shall also indemnify COMPANY

against all liability and loss in connection with, and shall assume full responsibility for, payment of all federal, state and local taxes and/or contributions imposed or required under unemployment insurance, workers' compensation insurance, and income tax laws with respect to DISTRIBUTOR or DISTRIBUTOR's employees engaged in performance of this Agreement.

20.7 Trade Secrets/Confidential Business Information: DISTRIBUTOR recognizes and acknowledges that COMPANY and its affiliated entities have, through the expenditure of substantial time, effort and money, developed and acquired certain trade secrets and confidential business information ("Confidential Information") which are of great value to COMPANY. DISTRIBUTOR further acknowledges and understands that through the distributor relationship with COMPANY, DISTRIBUTOR will have access to Confidential Information of COMPANY and its affiliated entities. Accordingly, except as and to the extent required by law, DISTRIBUTOR covenants that DISTRIBUTOR will make no disclosure, or any use, in any manner whatsoever, of any of the Confidential Information of COMPANY and/or any of its affiliated entities while this Agreement is in effect and thereafter, except as specifically authorized by COMPANY. Upon termination of this Agreement, DISTRIBUTOR shall return to COMPANY all embodiments of such Confidential Information that are in DISTRIBUTOR's possession, custody or control. As used herein the term Confidential Information includes (a) sales data, financial statements and information, marketing arrangements and plans, trade secrets, pricing information and strategies, business development plans, and any other business methods, processes and techniques of COMPANY and/or its related entities to the extent all of which are not generally known to the trade or industry and/or (b) confidential or proprietary information or trade secrets of third parties, including retail customers, with which COMPANY and/or its related entities conducts business and which is supplied to DISTRIBUTOR for purposes of this Agreement. Notwithstanding the foregoing, Confidential Information shall not include information that: (i) is or becomes generally known to the public not as a result of a disclosure by DISTRIBUTOR; (ii) is received by DISTRIBUTOR in good faith and without restriction from a third party having the right to make such disclosure; and/or (iii) is known to DISTRIBUTOR at the time of COMPANY's disclosure thereof to DISTRIBUTOR or DISTRIBUTOR's becoming aware thereof in the course of and as a result of DISTRIBUTOR's business relationship with COMPANY. DISTRIBUTOR's obligations in this paragraph shall be in addition to, and not in lieu of, any and all obligations imposed upon DISTRIBUTOR by applicable law.

20.8 Injunctive Relief: DISTRIBUTOR agrees and acknowledges that a violation of Section 20.7 will cause irreparable harm to COMPANY and that there will be no adequate remedy at law to redress the resulting harm that will be suffered by COMPANY. Therefore, DISTRIBUTOR further agrees that in the event of any violation or threatened violation of this Section, COMPANY shall be entitled as a matter of course to an immediate injunction out of any court of competent jurisdiction restraining such violation or threatened violation by DISTRIBUTOR, such right to be cumulative and in addition to whatever other remedies, at law or in equity, that COMPANY may have.

20.9 Savings Provision/Non-Waiver: Should any portion, word, clause, sentence or paragraph of this Agreement be declared void or unenforceable, including the Arbitration Agreement attached hereto, such portions shall be modified or deleted in such a manner as to make this Agreement as modified legal and enforceable to the fullest extent permitted under applicable law. Except as expressly provided herein, no waiver by either party of any default in the performance of any part of this Agreement by the other party shall be deemed a waiver of any other default hereunder.

20.10 Legal Counsel: DISTRIBUTOR acknowledges that it has been given a reasonable opportunity to discuss this Agreement with an attorney of its choosing; that it has carefully read and fully understands the provisions of this Agreement, and that it is entering into this Agreement knowingly, voluntarily, and with the intention of being legally bound by all of the terms of this Agreement.

20.11 Governing Law: This Agreement and the construction thereof shall be governed by the laws of the State of North Carolina, without regard to the conflict-of-law rules.

IN WITNESS WHEREOF, COMPANY and DISTRIBUTOR have executed this Agreement this _____ day of _____, and each signatory hereto represents that he or she has the authority to execute this Agreement and legally bind the respective party.

DISTRIBUTOR

COMPANY

By: _____

By: _____

Its: _____

Its: _____

WITNESSES:

ATTEST:

EXHIBIT "A" – TERRITORY

Acknowledged and Agreed:

DISTRIBUTOR

COMPANY

EXHIBIT "B" – PRODUCTS

Except as expressly limited by the Distributor Agreement, DISTRIBUTOR shall have the exclusive right to sell and distribute the following Products in the Territory specifically described in **Exhibit A**.

- 1.
- 2.
- 3.
- 4.
- 5.

EXHIBIT "C" – AUTHORIZED PRODUCTS

Except as expressly limited by the Distributor Agreement, DISTRIBUTOR is authorized to distribute the following products. Authorized Products may include products with logos and/or labels, or without. DISTRIBUTOR does not acquire any proprietary or ownership rights to such Authorized Products, exclusive or non-exclusive, and COMPANY may cease selling such Authorized Products to DISTRIBUTOR upon notice. COMPANY may also add Authorized Products to this Exhibit upon notice to DISTRIBUTOR.

- 1.
- 2.
- 3.
- 4.
- 5.

EXHIBIT "D" – BILL OF SALE

_____, ("COMPANY"), subject to the consideration set forth below, effective the _____ day of _____, hereby conveys, sells, transfers and delivers to _____, ("DISTRIBUTOR"), the Distribution Rights specifically described in the Distributor Agreement executed simultaneously with this Bill of Sale. Both the Distributor Agreement and all appendices (Exhibits) thereto are specifically incorporated into and made a part of this Bill of Sale.

The terms of this sale are as follows:

Purchase price shall be \$ _____. A minimum five percent (5%) down payment shall be required at or before the effective date of the Distributor Agreement.

DISTRIBUTOR shall own all Distribution Rights in the Territory consistent with the terms and conditions contained in the Distributor Agreement.

COMPANY has lawful title to the Distribution Rights in the Territory free from all encumbrances. COMPANY warrants and will defend the rights conveyed herein against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, COMPANY and DISTRIBUTOR execute this Bill of Sale this _____ day of _____.

DISTRIBUTOR

COMPANY

By: _____

Its: _____

By: _____

Its: _____

WITNESSES:

ATTEST:

EXHIBIT “E” - SETTLEMENT STATEMENT AUTHORIZATION

I understand that on a weekly basis I will receive a settlement statement from the Company in the format of the sample attached on the next page. I also understand that this statement reflects an ongoing accounting between the Company and me (or the business entity pursuant to which my distributorship is operated) for product purchases, adjustment to product purchases, various credits, and business expenses. I (personally or on behalf of my business entity) hereby authorize the Company to make the adjustments noted on the settlement statement, both charges and credits, on a weekly basis. I understand that my portion of customer price allowances is included in the standard discount.

I (personally or on behalf of my business entity) also authorize the Company to collect from me (or the business entity pursuant to which my distributorship is operated), via the weekly settlement statement, business expenses such as those shown on the attached page on a weekly basis. I understand that the amount for certain business expenses I may incur, as applicable, including, for example, territory payment, truck lease, health/disability, life insurance, truck/business insurance, administrative fee, warehouse rent, and uniforms (as applicable) will remain the same each week and authorize the Company to deduct charges for these expenses from my settlement each week in exact amount show below.

I also understand that certain other business expenses, such as stale adjustment, truck rental, truck repair, truck tax, tag and license fees, sales and use tax, open route expense, supplies/equipment, apparel, temporary services fees, SBT shrink charges and miscellaneous expense listed below may vary weekly. By signing below, I also authorize deduction of any of these expenses, as applicable, each week. I understand that I will receive a document outlining the exact amount of these deductions, if any, at least three (3) calendar days before any adjustment is made.

With respect to all business expenses shown below, whether fixed or variable, I understand that I have the right to withdraw this authorization by giving written notice of withdrawal to the Company within three calendar days from receiving notice of the amount to be deducted. If I do withdraw this authorization, however, I understand I will remain responsible for all such expenses directly.

Finally, I understand and agree that should I dispute any of the credits or charges on a weekly statement that I must bring such dispute to the Company’s attention in writing within ten (10) calendar days of receipt of the statement with the disputed credit or charge. If I do not, I understand that my failure to do so indicates my agreement that all charges and credits on the statement are proper.

Date

Signed By:

Name: [REDACTED]
Distributor Number: [REDACTED]
Route: [REDACTED]
Warehouse: [REDACTED]
Date: Week # 52 (12/27/2015 to 01/02/2016)
Company Code: [REDACTED]

VP of Sales: [REDACTED]
Director RSM: [REDACTED]
Branch: [REDACTED]

Beginning Balance Owed 14,626.30
Funds Paid To Distributor 781.41
Funds Received From Distributor 0.00

	Accountability	Margin / Discounts	
Total Product Charged	19,038.76		
Relay Adjustment	0.00		
Load Adjustment	0.00		
Damaged	0.00		
Short Code	0.00		
Product Transfers	191.69-		
Cust Price Allwns/Overrides	4,495.16-		
Stales	1,866.04-		
Standard Discount		2,628.53-	
Additional Discount		0.00	
Contest Earnings		0.00	
Other Earnings		0.00	
Authorized Charges	4,032.40-		
AR Ticket Chargebacks	0.00		
Scan Based Trading Adj. (12/20/2015 to 12/26/2015):			
Point of Sale Data	7,282.12-		
Revaluation Variance	67.39-		
Shrink	0.00		
New Distributor Balance	1,103.96	2,628.53-	1,524.57-
Business Expenses:			
Stale Adjustment	0.00	Administrative Fee	26.00
Territory Payment	239.73	Warehouse Fee	36.00
Truck Purchase	0.00	FICA Tax-Current Wk	143.31
Truck Lease	182.69	FICA Tax-Adjustment	0.00
Truck Rental	0.00	Sales and Use Tax	0.00
Truck Repair	0.00	Open Route Expense	0.00
Truck Tax,Tag,Licence,Fees	0.00	Supplies / Equipment	0.00
Truck/Bus Insurance	73.79	Apparel	0.00
Health / Disability	24.56	Temp Svcs Fee	0.00
Health License	0.00	SBT Shrink Charges	0.00
Life Insurance	0.00	Miscellaneous Expense	0.00
Total Business Expense			726.08

Total Distributor Balance	14,609.22
Scan Based Trading Credits	
Less Prior Week Scan Based Trading Inventory (12/26/2015):	8,058.20-
Less Current Week SBT Delivery Tickets (12/27/2015 to 01/02/2016):	7,576.56-
Weekly Distributor Balance	1,025.54-

To be paid via Direct Deposit to bank account on record this Friday

EXHIBIT "F" – DISTRIBUTOR INSURANCE COVERAGES

- (i) Automobile liability insurance, including hired auto and non-owned auto, on all vehicles used in the business, in such amounts as may reasonably be established by COMPANY from time to time, which as of the date of this Agreement will include combined single limit coverage of at least \$1,000,000; and collision and comprehensive loss coverage for the actual cash or replacement cost value of any and all delivery vehicles operated by DISTRIBUTOR that are financed or leased, with no more than a \$500 deductible. Such coverage shall be primary and not contributory to any other coverage available to COMPANY;
- (ii) Comprehensive general liability coverage, in such amounts as may reasonably be established by COMPANY from time to time, which as of the date of this Agreement will include an occurrence and aggregate limit of at least \$1,000,000. Such coverage shall be primary and not contributory to any other coverage available to COMPANY;
- (iii) Workers compensation coverage for any and all employees of DISTRIBUTOR in compliance with all requirements and laws of the state or states in which DISTRIBUTOR operates.

EXHIBIT "G" – DISTRIBUTOR CHOICE OF DELIVERY LOCATION

As set forth in Section 11.1, COMPANY will deliver Products and Authorized Products to DISTRIBUTOR at the location selected below by DISTRIBUTOR.

Please select choice below by initialing the appropriate selection:

_____ 1. Location #1 _____

_____ 2. Location #2 _____

_____ 3. Location #3 _____

EXHIBIT "H" – DISTRIBUTOR CHOICE OF COMPANY FEE FOR SERVICE

As set forth in Section 14.2, if COMPANY services DISTRIBUTOR's Territory, DISTRIBUTOR agrees to pay a daily fee to COMPANY as selected below by DISTRIBUTOR. By signing the Distributor Agreement, DISTRIBUTOR specifically authorizes COMPANY to collect the fee for service via the weekly settlement statement process.

Please select choice below by initialing the appropriate selection:

Option 1: \$___ per day.

Option 2: ___% of average daily net sales.

EXHIBIT "I" – ARBITRATION AGREEMENT

The parties agree that any claim, dispute, and/or controversy except as specifically excluded herein, that either DISTRIBUTOR (including its owner or owners) may have against COMPANY (and/or its affiliated companies and its and/or their directors, officers, managers, employees, and agents and their successors and assigns) or that COMPANY may have against DISTRIBUTOR (or its owners, directors, officers, managers, employees, and agents), arising from, related to, or having any relationship or connection whatsoever with the Distributor Agreement between DISTRIBUTOR and COMPANY ("Agreement"), including the termination of the Agreement, services provided to COMPANY by DISTRIBUTOR, or any other association that DISTRIBUTOR may have with COMPANY ("Covered Claims") shall be submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act (9 U.S.C. §§ 1, et seq.) ("FAA") in conformity with the Commercial Arbitration Rules of the American Arbitration Association ("AAA" or "AAA Rules"), or any successor rules, except as otherwise agreed to by the parties and/or specified herein. Such arbitration shall be conducted before a single arbitrator unless all parties to the arbitration agree otherwise in writing. Copies of AAA's Rules are available on AAA's website (www.adr.org).

COMPANY shall pay for all arbitration filing fees and costs that are customarily associated with AAA arbitration, subject to the Arbitrator's authority to award fees and costs to COMPANY as the prevailing party. Each party may be represented by legal counsel of their own choosing. Each party shall pay its own attorneys' fees, provided that an Arbitrator may award attorney's fees and costs to the prevailing party under any applicable statute or written agreement to the same extent that attorney's fees and costs could be awarded in court. The arbitration shall be subject to the same burdens of proof and statutes of limitations as if the Covered Claims were being heard in court. The Arbitrator shall issue a written decision within forty-five (45) days of the later of: (1) the arbitration hearing; or (2) submission of the parties' post-arbitration briefs. The Arbitrator's written decision shall include findings of fact and conclusions of law. The Arbitrator shall have the authority to award the same damages and other relief that would have been available in court pursuant to applicable law had the Covered Claim been brought on an individual basis in such forum, including attorneys' fees and costs. Subject to the parties' right to appeal, the decision of the arbitrator will be final and binding. The Arbitrator shall not have the authority to add to, amend, or modify, existing law. No arbitration award or decision will have any preclusive effect as to any issues or claims in any dispute, arbitration, or court proceeding where any party was not a named party in the arbitration.

All Covered Claims against COMPANY must be brought by DISTRIBUTOR on an individual basis only and not as a plaintiff or class member in any purported class, collective, representative, or multi-plaintiff action. DISTRIBUTOR further agrees that if it is within any such class, collective, representative, or multi-plaintiff action, it will take all steps necessary to opt-out of the action or refrain from opting in or joining, as the case may be, and DISTRIBUTOR expressly waives any right to recover any relief from any such class, collective, representative, or multi-plaintiff action. Similarly, all Covered Claims by COMPANY against DISTRIBUTOR may not be brought as a plaintiff or class member in any purported class, collective, representative, or multi-plaintiff action. The parties understand that there is no right or authority for any Covered Claim to be heard or arbitrated on a multi-plaintiff, collective, or class action basis, as a private attorney general, or any other representative basis. The parties understand that there are no bench or jury trials and no class, collective, representative, or multi-plaintiff actions are permitted under this Arbitration Agreement. The Arbitrator shall not consolidate claims of different distributors into one proceeding, nor shall the Arbitrator have the power or authority to hear arbitration as a class, collective, representative, or multi-plaintiff action. The Arbitrator may award damages on an individual basis only.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, BOTH PARTIES EXPLICITLY WAIVE ANY RIGHT TO: (1) INITIATE OR MAINTAIN ANY COVERED CLAIM ON A CLASS, COLLECTIVE, REPRESENTATIVE, OR MULTI-PLAINTIFF BASIS EITHER IN COURT OR ARBITRATION; (2) SERVE OR PARTICIPATE AS A REPRESENTATIVE OF ANY SUCH CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION; (3) SERVE OR PARTICIPATE AS A MEMBER OF ANY SUCH CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION; OR (4) RECOVER ANY RELIEF FROM ANY SUCH CLASS, COLLECTIVE, REPRESENTATIVE, OR MULTI-PLAINTIFF ACTION.

Any dispute concerning the validity or enforceability of this prohibition against class, collective, representative, or multi-plaintiff action arbitration shall be decided by a court of competent jurisdiction, and no arbitrator shall have any authority to consider or decide any issue concerning the validity or enforceability of such prohibition. Any issues concerning arbitrability of a particular issue or claim under this Arbitration Agreement (except for those concerning the validity or enforceability of the prohibition against class, collective, representative, or multi-plaintiff action arbitration and/or applicability of the FAA) shall be resolved by the arbitrator, not a court.

The Arbitrator shall have the authority to consider and rule on dispositive motions, such as motions to dismiss, or motions for summary judgment, in accordance with the standards and burdens generally applicable to such motions in federal district court, except that the Arbitrator may establish appropriate and less formal procedures for such motions at the Arbitrator's discretion consistent with the expedited nature of arbitration proceedings. The Arbitrator will allow the parties to conduct adequate discovery including, but not limited to, issuing subpoenas to compel the attendance of witnesses at the arbitration hearing; serving written discovery; conducting depositions; and compelling the production of documents during discovery.

Covered Claims covered under this Arbitration Agreement include, but are not limited to: breach of contract, any claims challenging the independent contractor status of DISTRIBUTOR, claims alleging that DISTRIBUTOR was misclassified as an independent contractor, any other claims premised upon DISTRIBUTOR's alleged status as anything other than an independent contractor, tort claims, discrimination claims, retaliation claims, and claims for alleged unpaid compensation, civil penalties, or statutory penalties under either federal or state law.

This Arbitration Agreement does not cover claims relating to whistleblowers and/or unlawful retaliation arising under the Sarbanes-Oxley Act or disputes involving any ERISA-based benefit plans that provide for arbitration. This Arbitration Agreement also does not preclude either DISTRIBUTOR or COMPANY from seeking provisional remedies such as temporary restraining orders or preliminary injunctions in accordance with applicable law. A party's seeking or obtaining such provisional remedies shall not be considered a waiver of that party's right to arbitration under this Arbitration Agreement.

Nothing in this Arbitration Agreement is intended to affect or limit DISTRIBUTOR's right to file an administrative charge or otherwise seek relief from any administrative or federal or state government agencies (although if DISTRIBUTOR chooses to pursue a claim following the exhaustion of such administrative remedies, that claim would be subject to the provisions of this Arbitration Agreement).

The parties agree that arbitration proceedings are to be treated as confidential, and that the parties will act to protect the confidentiality of the proceedings. The parties agree that neither they nor their counsel will reveal or disclose the substance of the arbitration proceedings, or the result, except as required by subpoena, court order, other legal process, or as otherwise required by law. If disclosure is compelled of one party by subpoena, court order or other legal process, or as otherwise required by law, the party agrees to notify the other party as soon as notice of such process is received and before disclosure takes place. The parties may, however, disclose such information to their legal representatives, accountants or tax advisors as necessary so long as they agree to maintain such information in strict confidence. COMPANY may also disclose such information to individuals in affiliated companies for legal reporting purposes and other legitimate business reasons.

Any request for arbitration must be in writing and provided to the other party and to AAA by certified or registered mail, return receipt requested, within the time period provided for by the statute(s) of limitations applicable to the claim(s) asserted. The request must set forth a statement of the nature of the dispute, including the alleged act or omission at issue; the names of all persons involved in the dispute; the amount in controversy, if any; and the remedy sought.

DISTRIBUTOR acknowledges that this is an important document that affects its legal rights and that the DISTRIBUTOR has been given the opportunity to discuss this Arbitration Agreement with private legal counsel. If

any provision of AAA's Rules or of this Arbitration Agreement are determined to be unlawful, invalid, or unenforceable, such provisions shall be enforced to the greatest extent permissible under the law, or, if necessary, severed, and all remaining terms and provisions shall continue in full force and effect. This Arbitration Agreement may be modified or terminated by COMPANY after thirty (30) days written notice to DISTRIBUTOR. Any modifications or terminations shall be prospective only and shall not apply to any claims or disputes that are pending in arbitration or that have been initiated by either party pursuant to the AAA Rules. The parties also agree that nothing herein is intended to, or does, affect or otherwise change the independent contractor relationship between them and that adequate and sufficient consideration has been provided for in this Arbitration Agreement, including but not limited to the additional monetary consideration and various other amendments to the Distributor Agreement as set forth in the Amendment executed concurrently herewith, and each party's promise to resolve their claims by arbitration. Finally, this Arbitration Agreement is the complete agreement of the parties on the subject of arbitration of disputes and supersedes any prior or contemporaneous oral or written agreement or understanding on the subject. Any agreement contrary to the foregoing must be in writing signed by the President of COMPANY.

This Arbitration Agreement shall be governed by the FAA and _____ law to the extent _____ law is not inconsistent with the FAA.

DISTRIBUTOR acknowledges that it has received and read and specifically agrees to be bound by this Arbitration Agreement. DISTRIBUTOR understands that this Arbitration Agreement requires that disputes that involve matters subject to the Agreement be submitted to arbitration pursuant to the Arbitration Agreement rather than to a judge or jury in court and that such disputes must be brought on an individual basis only.

Date: _____
(Accepted)

DISTRIBUTOR

COMPANY

By: _____

By: _____

Its: _____

Its: _____

OWNER

ATTEST:

Signature

Print Owner's Name

WITNESS: _____

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