

## AGREEMENT

**Versa Vend Vending, Inc.**, a Minnesota corporation d/b/a First Choice Food & Beverage Solutions, ("First Choice") and ROCK RIDGE SCHOOL DISTRICT ("Customer") Agreement effective as of January 13th, 2023 ("Effective Date").

### RECITALS

- A. First Choice manufactures, sells and vends various beverage and food products in any such form (i.e. liquid, powder, etc.), including without limitation soft drinks, juices, mineral and other waters, isotonic, teas, nonalcoholic beverages, candies, snacks and other food and beverage products (collectively the "Products").
- B. Customer owns and operates a SECONDARY/HIGH SCHOOL and associated facilities and properties now and later constructed or owned by Customer in the City of EVELETH, in the state of MN ("Properties")
- C. Customer has requested from First Choice a proposal and agreement for exclusive vending, fountain, concession, advertising and marketing rights related to the Products in and around the Properties, as applicable.

### AGREEMENT

In consideration of the parties' mutual promises and covenants in this Agreement and for other good and valuable consideration, the sufficiency of which the parties acknowledge, the parties agree as follows:

- 1. **Term.** This Agreement will become effective when signed by both parties and the Term shall begin on the Effective Date and will continue for a period of fifteen (15) years or until Customer has purchased the Volume Commitment in paragraph 15(I), whichever occurs last. When used in the Agreement, the term "Year" means each consecutive twelve-month period during the Term, beginning with the first day of the Term.
- 2. **Consideration.**
- 3. **Vending Equipment.** Customer gives First Choice the exclusive right to place First Choice's vending, coolers, dispensing equipment and other equipment necessary to vend, sell and dispense the Products ("Vending Equipment") in locations on all of the Properties. Ownership and title to Vending Equipment, merchandise and supplies shall remain at all times with First Choice.
- 4. **Fountain Equipment.** Customer gives First Choice the exclusive right to place First Choice's fountain equipment and other equipment necessary to dispense the Products ("Fountain Equipment") in mutually agreeable locations on all of the Properties. Ownership and title to Fountain Equipment, merchandise and supplies shall remain at all times with First Choice.

5. **Concession Rights.** Customer gives First Choice the exclusive right to supply the "Products" as defined in section A of this Agreement for all concessions at all of the Properties and at all events held on the Properties using concession, Vending Equipment and Fountain Equipment, including but not limited to all coolers, menu boards, premix units, canisters, and other equipment ("Concession Equipment").
6. **Advertising and Marketing Rights.** Customer gives First Choice the exclusive right to advertise and market the Products on the Vending Equipment, Fountain Equipment, Concession Equipment and all of First Choice's other equipment and advertising materials related to the Products in and around all of the Properties and at all events held at the Properties. Customer will not allow any other equipment of a similar nature or any other form of commercial advertising or marketing for goods or products similar to the Products to be placed in or around any of the Properties during this Agreement's term.
7. **Exclusive Agreement.** The parties expressly acknowledge and agree that the vending, fountain, concession, advertising, marketing and other rights related to the Products granted to First Choice pursuant to this Agreement will be exclusive to First Choice, and Customer will not allow any other person or entity to exercise such rights on any of the Properties during this Agreement's term. Customer agrees to not solicit, accept, view or entertain any competitive offers during the Term of the Agreement.
8. **Product Purchase.** Customer agrees to purchase from First Choice all wholesale "Products" as defined in section A of this Agreement used in or around any of the Properties or at any events held at the Properties during this Agreement's term.
9. **Product Pricing.** See Attachment A. First Choice shall be allowed to adjust or charge for taxes, fees, condiments and uncontrollable cost increases including, but not limited to, those imposed by Local, State or Federal Government.
10. **Commission on Vending Products.** See Attachment B. First Choice or an affiliate will pay to Customer, if applicable, a commission based upon the following percentages of net sales (net sales is defined as money collected less applicable taxes, Product spoilage, out of date Product, Product theft and fees) on the Products sold in Vending Equipment on the Properties, if and only if the net sales of Products qualify for a commission.

11. **Utilities.** Customer at its sole cost will provide all proper and current code compliant, electrical and any other service connections (including but not limited to, water, water lines and plumbing) necessary to operate the Vending Equipment, Fountain Equipment, Concession Equipment and all of First Choice's advertising equipment (any such electrical or service connection, a "Utility" and, collectively, the "Utilities"). First Choice is not responsible, in anyway nor at any time, including, but not limited to, for the cost, site plans, permits or anything related to provision of any Utility, including, but not limited to, water lines, plumbing or electrical hook ups to properly operate First Choice's Vending Equipment, Fountain Equipment, Concession Equipment or any of First Choice's other equipment or advertising materials (collectively, the "First Choice Equipment"). Customer will promptly notify First Choice of any service interruptions or problems, including Customer's inability to provide all necessary Utilities at the time any First Choice Equipment is installed or at any time thereafter (any such incident, a "Service Interruption"), and will provide First Choice employees with access to the First Choice Equipment promptly following any such Service Interruption. Notwithstanding any delay by Customer in notifying First Choice, any Service Interruption as and when it occurs shall constitute a Default under paragraph 11 of this Agreement. The area(s) in which the Vending Equipment, Fountain Equipment, Concession Equipment and any of First Choice's other equipment or advertising materials is(are) located will be kept in a clean and sanitary condition by Customer. Customer will not remove or tamper with the Vending Equipment, Fountain Equipment, Concession Equipment or any of First Choice's other equipment or advertising materials without the prior written consent of First Choice.
12. **First Choice's Option to Terminate.** First Choice may renegotiate or terminate this Agreement upon thirty (30) days notice or sooner, if First Choice's annual net sales from Vending Equipment, Fountain Equipment, Concession Equipment or any other equipment in and around the Properties are less than \$14,625.90 or if First Choice's annual sales of wholesale Products at the Properties are less than 304 Units. Upon this Agreement's termination, First Choice may remove the Vending Equipment, Fountain Equipment, Concession Equipment and all of First Choice's other equipment and materials from the Properties.
13. **Default.** If either party fails to comply with or perform any material provision or condition of this Agreement (a "Default"), and the defaulting party has failed to cure the Default within sixty (60) days after written notice has been given to the defaulting party which specifies in reasonable detail the nature of such default (or if such noncompliance cannot be reasonably cured within sixty (60) days, the defaulting party has not provided assurances, reasonably satisfactory to the non-defaulting party, that such noncompliance will be cured as soon as reasonably possible), then the non-defaulting party may terminate this Agreement. Upon this Agreement's termination, First Choice may remove all of its Vending Equipment, Fountain Equipment, Concession Equipment and all of its other equipment and property from the Properties.

14. **Prevailing Party Attorneys' Fees.** If a party to this Agreement shall bring any action, suit, counterclaim or appeal against any other party, declaratory or otherwise, to enforce the terms hereof or to declare rights hereunder (an "Action"), the non-prevailing party in such Action shall pay to the prevailing party in such Action the prevailing party's reasonable attorney's fees and third-party expenses actually incurred in prosecuting or defending such Action and/or enforcing any judgment, order, ruling or award, including on consent of the parties or otherwise in final settlement of such Action (a "Decision"), granted therein, including such fees and expenses incurred prior to commencement of such Action from and after the non-prevailing party's breach of the Agreement, all of which shall be deemed to have accrued from the commencement of such Action. Any Decision entered into in such Action shall contain a specific provision providing for the recovery of attorneys' fees and third-party expenses actually incurred in obtaining and enforcing such Decision. The court may fix the amount of reasonable attorneys' fees and third-party expenses upon the request of any party. For purposes of this paragraph 14, attorneys' fees shall include, without limitation, fees incurred in connection with (i) post-judgment motions and collection actions, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third-party examination, (iv) discovery and (v) bankruptcy litigation. The terms of this paragraph 14 shall survive expiration of the Term of this Agreement as set forth in paragraph 1 or any earlier termination of this Agreement.

15. **Miscellaneous**

- A. **Entire Agreement.** This Agreement is the parties' entire agreement regarding its subject matter. The parties may not amend this Agreement except in writing signed by both parties.
- B. **Binding Effect.** This Agreement will bind upon and benefit the parties' respective heirs, representatives, successors and assignees.
- C. **Governing Law.** Minnesota law will govern this Agreement.
- D. **Survival.** The invalidity or unenforceability of any provision of this Agreement will not affect or impair the validity of any other provision.
- E. **Counterparts.** The parties may execute this Agreement in any number of counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- F. **Renewal.** This Agreement shall be automatically renewed at the end of the original term or any subsequent renewal term for a renewal term of three years or the original term length, whichever is greater, unless either party gives written notice to the other of its intention to terminate this Agreement provided such notice is given thirty (30) days prior to the termination date.

- G. **Non-Disclosure.** Neither party shall disclose to any third party without the prior written consent of the other party, any information concerning this Agreement or the transactions contemplated hereby, except for disclosure to any employees, attorneys, accountants and consultants involved in assisting with the negotiation and closing of the contemplated transactions, or unless such disclosure is required by law. A party that makes a permitted disclosure must obtain assurances from the party to whom disclosure is made that such party will keep confidential the information disclosed.
- H. **Titles and Severability.** The titles and headings used herein are merely for convenience and shall not be considered part of the Agreement. If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.
- I. **Volume Commitment.** Customer agrees that it will purchase 5065 Units during the Term. A "Unit" is defined as a 24-count case of bottles or cans, one premix tank, one gallon of syrup or one box of coffee.

**Attachment A**

ITEM	VEND PRICE
12 oz Cans	\$1.00
20 oz Sparkling	\$2.50
NonCoke Cans	\$1.50
Still Beverages	\$2.25
Still Beverages	\$2.50
Still Beverages	\$3.00
Still Beverages	\$3.00
Still Beverages	\$3.00
Still Beverages	\$2.00
Still Beverages	\$2.50
Still Beverages	\$2.50
Still Beverages	\$2.50
Still Beverages	\$2.50

**Attachment B**

ITEM	COMISSION RATE
12 oz Cans	10.00%
20 oz Sparkling	10.00%
NonCoke Cans	10.00%
Still Beverages	10.00%
Still Beverages	10.00%
Still Beverages	10.00%
Still Beverages	10.00%
Still Beverages	10.00%
Still Beverages	10.00%
Still Beverages	10.00%
Still Beverages	10.00%
Still Beverages	10.00%
Still Beverages	10.00%

The parties have executed this Agreement as of the Effective Date.

**FIRST CHOICE:**

**First Choice Food & Beverage Solutions**



By \_\_\_\_\_  
Michael J. Faber, CEO

On \_\_\_\_\_  
January 13th, 2023  
(Date)

**BUSINESS:**

**Legal Business Name: ROCK RIDGE SCHOOL DISTRICT**

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

Its \_\_\_\_\_  
(Title)

On \_\_\_\_\_  
(Date)

**\*\*This contract is valid if signed by the Customer before February 14th, 2023.\*\***