STATE OF MINNESOTA

MINNESOTA STATE COLLEGES AND UNIVERSITIES

ST. CLOUD STATE UNIVERSITY

INCOME CONTRACT

This contract is by and between Bernick's Management Company (hereinafter "PEPSI"); The ST. CLOUD STATE UNIVERSITY FOUNDATION, INC. (hereinafter the "FOUNDATION"); and the State of Minnesota acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of ST. CLOUD STATE UNIVERSITY (hereinafter "STATE").

WHEREAS, subject to the provisions of Minnesota Statutes 248.07, subd. 7, the STATE has the legal right to control beverage vending and/or service at locations on the Campus and that the STATE desires to improve the STATE's beverage services and net revenues; and

WHEREAS, the STATE, issued a Request for Proposal dated March 1, 1999, soliciting requests for long-range beverage partnership proposals to improve beverage service and maximize the benefit to the STATE and the successful proposer; and

WHEREAS, the FOUNDATION is willing to provide administration for programs outlined in this contract; and

WHEREAS, the STATE has determined that the best and final offer by PEPSI was the most advantageous to the STATE; and

WHEREAS, PEPSI desires to enter into a long-range beverage partnership with the STATE, and

WHEREAS, the STATE is empowered to enter into income contracts pursuant to Minnesota Statutes, Chapter 136F;

NOW, THEREFORE, it is agreed

I. DUTIES OF STATE. The STATE agrees to provide all support called for in the Request for Proposal (Attachment A) and Addendum 1 (Attachment B).

II. DUTIES OF THE FOUNDATION. The FOUNDATION agrees to perform all duties with respect to the Request for Proposal (Attachment A) and Addendum 1 (Attachment B) and this Income Contract in accordance with Attachment E.

III. DUTIES OF PEPSI. PEPSI agrees to provide the following:

PEPSI agrees to provide the support and consideration outlined in Attachment A, Attachment B, the Commissions and Payments Schedule (Attachment C), and the Bernick Contract (Attachment D). In the event of language conflict between documents the order of precedence will be the main contract, Attachment A, Attachment B, Attachment C, Attachment D.

IV. CONSIDERATION AND TERMS OF PAYMENT.

A. Consideration for all services performed and goods or materials supplied by the STATE pursuant to this contract shall be paid by the GRANTEE as follows:

Consideration shall be paid yearly in accordance with the schedule outlined in Attachment C to this contract.

B. Terms of Payment. Yearly payments shall be made by PEPSI for the previous year no later than the 23rd day following the last day of the year being billed for. Monthly amounts due are also specified in Attachment C.

V. TERM OF CONTRACT. This contract shall be effective on September 1, 1999, or upon the date that the final required signature is obtained by the STATE, whichever occurs later, and shall remain in effect until the 10th anniversary of the effective date, or until all obligations set forth in this contract have been satisfactorily fulfilled, or August 15, 2009, whichever occurs first.
VI. CANCELLATION. This contract may be canceled by PEPSI or the STATE, with or without cause, upon six months written notice to the other parties, upon the following conditions:

A. No such cancellation may be effective before sixty (60) months have elapsed since the effective date of this contract, and

B. In the event of a cancellation by the STATE, the cancellation shall only be effective upon the payment by the STATE to PEPSI of One Hundred Fifty Thousand Dollars ($150,000.00), and

C. Upon cancellation by either PEPSI or the STATE, PEPSI shall remove its personal property from the University property immediately after the effective date of the cancellation, except this requirement shall not be construed or interpreted to affect in any manner the rights and entitlements of the State Services for the Blind under any contract or agreement, and

D. All commission and other payments due from PEPSI to the STATE pursuant to the terms of this contract shall continue to be payable up to the effective date of the termination, and

E. Upon cancellation by the STATE, no payment other than the $150,000 shall be due to PEPSI from the STATE for any reason. Upon cancellation by PEPSI, no payment by the STATE shall be due.

VII. AUTHORIZED REPRESENTATIVES. PEPSI’s Authorized Representative for the purposes of administration of this contract is Dean Bernick, President, Bernick’s Management Company. The STATE’s Authorized Representative for the purposes of administration of this contract is Eugene Gilchrist, Vice-President, Administrative Affairs. Each authorized representative shall have final authority for acceptance of services of the other party and shall have responsibility to ensure that all payments due to the other party are paid pursuant to the terms of this contract.

VIII. ASSIGNMENT. Neither PEPSI nor the STATE shall assign or transfer any rights or obligations under this contract without the prior written approval of the other party.

IX. LIABILITY. PEPSI shall indemnify, save, and hold the STATE, its agents and employees harmless from any and all claims or causes of action arising from the performance of this contract by PEPSI or PEPSI’s agents or employees. This clause shall not be construed to bar any legal remedies PEPSI may have for the STATE’s failure to fulfill its obligations pursuant to this contract.

X. AMERICANS WITH DISABILITIES ACT COMPLIANCE (hereinafter “ADA”). PEPSI is responsible for complying with the Americans with Disabilities Act, 42 U.S.C. 12101, et. seq. and regulations promulgated pursuant to it. The STATE IS NOT responsible for issues or challenges related to compliance with the ADA beyond its own routine use of facilities, services, or other areas covered by the ADA.

XI. AMENDMENTS. Any amendments to this contract shall be in writing and shall be executed by the same parties who executed the original contract or their successors in office.

XII. GOVERNMENT DATA PRACTICES ACT. PEPSI must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the STATE in accordance with this contract, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by PEPSI in accordance with this contract. The civil remedies of Minnesota Statutes Section 13.08, apply to the release of the data referred to in this Article by either PEPSI or the STATE. In the event PEPSI receives a request to release the data referred to in this Article, the CONTRACTOR must immediately notify the STATE. The STATE will give PEPSI instructions concerning the release of the data to the requesting party before the data is released.

XIII. JURISDICTION AND VENUE. This contract shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this contract, or the breach thereof, shall be located only in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

XIV. STATE AUDITS. The books, records, documents, and accounting procedures and practices of PEPSI relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor.

XX. OTHER PROVISIONS. (Attach additional page(s) if necessary):
IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

APPROVED:

1. MINNESOTA STATE COLLEGES AND UNIVERSITIES

ST. CLOUD STATE UNIVERSITY

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<tr>
<th>By (authorized signature)</th>
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<tbody>
<tr>
<td>Title</td>
<td>Vice President</td>
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<td>Date</td>
<td>March 6, 2000</td>
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2. ST CLOUD STATE UNIVERSITY FOUNDATION

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<tr>
<td>Title</td>
<td>Vice President</td>
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<td>Date</td>
<td>March 7, 2000</td>
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3. PEPSI:

PEPSI certifies that the appropriate person(s) have executed the contract on behalf of PEPSI as required by applicable articles, by-laws, resolutions, or ordinances.

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<tr>
<td>Title</td>
<td>President</td>
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<td>3-9-2000</td>
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<tr>
<td>Title</td>
<td>VP Sales &amp; Marketing</td>
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<td>Date</td>
<td>7-9-00</td>
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4. AS TO FORM AND EXECUTION:

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<tr>
<td>Title</td>
<td>Director, Business</td>
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<tr>
<td>Date</td>
<td>3/9/00</td>
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STATE OF MINNESOTA
MINNESOTA STATE COLLEGES AND UNIVERSITIES
ST CLOUD STATE UNIVERSITY
AMENDMENT OF INCOME CONTRACT

THIS AGREEMENT is made this 19th day of April, 2005, by and between Bernick's Management Company hereinafter ("PURCHASER") and the State of Minnesota acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of St. Cloud State University (hereinafter "STATE"), shall be considered as an amendment and addition to the Cold Beverage Income Contract.

WITNESSETH:

WHEREAS, the PURCHASER and STATE entered into a Cold Beverages Income Contract dated September 1, 1999, and

WHEREAS, the parties to this Income Contract deem certain additional terms and conditions necessary for the effective continuation of said Income Contract,

NOW, THEREFORE; PURCHASER and STATE agree to the substitution and/or addition of the following terms and conditions which shall become a part of this Cold Beverages Income Contract effective as of the date set forth hereinafter.

1. PURCHASER and STATE hereby agree that this Income Contract shall be revised to provide pricing increases commencing on July 1, 2005 and continuing through June 30, 2006, at the same terms and conditions as set forth in the Income Contract and Amendments No. 1 and No. 2, except as provided for herein.

2. PURCHASER to supply beverages to STATE at the following rates per case:

- 20 oz $16.01
- Cans $6.56
- 2 liters $8.40
- 1 liters $11.55
- Club Soda $11.55
- Aquafina $16.01
- Klarbrunn .5 liter $9.98
- Klarbrunn 1 liters $11.55
- Klarbrunn Sparkling $12.66
- Frappuccino $22.58
- SoBe 12 pack $12.66
- Lipton 12 pack $9.98
- Dole 12 pack $9.98
- Gatorade 20oz/24 pack $19.20

3. Except as modified by the provisions of Amendment No. 3, said Income Contract is ratified and confirmed as originally written.
IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

APPROVED:

1. MINNESOTA STATE COLLEGES AND UNIVERSITIES

   **ST CLOUD STATE UNIVERSITY**

   By (authorized signature)  
   [Signature]  
   Title: Vice President for Administrative Affairs  
   Date: 4.7.05

2. PURCHASER: **BERNICK'S MANAGEMENT COMPANY**  
   PURCHASER certifies that the appropriate person(s) have executed the control on behalf of PURCHASER as required by applicable articles, by-laws, resolutions, or ordinances.

   By (authorized signature)  
   [Signature]  
   Title: CEO  
   Date: 4.7.05

   By (authorized signature)  
   [Signature]  
   Title: VP - Corporate Affairs  
   Date: 4.7.05

3. AS TO FORM AND EXECUTION:

   By (authorized college/university/system office signature)  
   [Signature]  
   Title:  
   Date: 6/28/05

MnSCU008A  
6-6-02