

1 Q. And tell me why you would use one?

2 A. To secure an end cap to try to  
3 market the -- or to put the product on.

4 Q. And is that because there's limited  
5 space on the shelves themselves or you're better  
6 off with an end loader in order to attract  
7 traffic or a combination of the two or something  
8 else?

9 A. I would say it -- sir, would you  
10 rephrase that?

11 Q. Yes. It was quite a question,  
12 wasn't it?

13 Tell me why it is you would put an  
14 end loader into a grocery store?

15 A. To secure that -- try to get an end  
16 cap, which are precious in stores.

17 Q. And I gather that's because the  
18 consumer is more likely to take something off the  
19 end rack than the normal shelf?

20 A. I would say yes, it would be more  
21 visible to him.

22 Q. And you would get these end racks  
23 from Stewart's?

24 A. No, no, no. That's not -- it's the  
25 store's end I'm securing. It's their gondolas.

1 Q. Oh, they have the -- what you call  
2 a loader?

3 A. Right. When I talk about a loader,  
4 is what the dealer loader was, was to bring in  
5 whatever they might be, the wagon or whatever and  
6 try to --

7 Q. That's what I'm trying to get at,  
8 what are you talking about when you say the  
9 dealer loader?

10 A. Okay. That's what that's about.

11 Q. All right. Well, then you and I  
12 are talking about different things.

13 So this would be the little wagon  
14 or that little -- like a galvanized metal  
15 bucket --

16 A. Yes.

17 Q. -- you're talking about?

18 Well, tell me about those. When  
19 did you use those?

20 A. When did we use those?

21 Q. Yes.

22 A. When we went into the store to try  
23 to secure an end.

24 Q. Oh, as a promotion?

25 A. As a promotion.

1 Q. Now I'm with you.

2 A. Yes.

3 Q. So you got a small grocery store,  
4 let's say, and you'd like to get an end, and you  
5 say, hey, to move things along I got a neat wagon  
6 here in the truck I could put in here, and we'll  
7 put some sodas in there for your customers and  
8 you keep the wagon, is that how it might work?

9 A. Yes.

10 Q. And would you expect them to get  
11 that end after this promotion is over? Explain  
12 it to me.

13 A. No.

14 Q. I don't mean to keep leading you  
15 here. Just tell me how it works.

16 A. You'd go into the store and ask  
17 them for the end for a certain period of time.  
18 We would discount the product down so they could  
19 get a -- a better retail to the consumer; and,  
20 then, for a little added incentive to make them  
21 do that, or to try to secure this end, we would  
22 say, hey, we've got this wagon, okay, this wagon.  
23 You know, if you want to give this away to your  
24 customer at a drawing or whatever you want to do,  
25 you can do this. That's how it works, sir.

1 Q. Fair enough.

2 How many of the wagons and other  
3 types of promotional products did you ultimately  
4 purchase and give away?

5 A. I don't recall the exact number,  
6 but approximately I'm saying it probably was --  
7 it's been so long, but maybe it was like ten of  
8 these wagons and four or five grills, ten of  
9 those -- maybe ten of those steel washtubs. I  
10 don't recall the exact number.

11 Q. Fair enough.

12 MR. KILLION: Let's take a little  
13 break.

14 (Break from 11:13 to 11:23.)

15 BY MR. KILLION:

16 Q. Showing you now what has been  
17 marked as Deposition Exhibit 10, and this is the  
18 report of the expert in this case.

19 Have you ever seen this report  
20 that's attached to the pleading you have before  
21 you?

22 A. Yes.

23 Q. When did you first see it?

24 A. Shortly after they prepared it, I  
25 believe.

1 Q. Go ahead and answer.

2 A. I don't know at this point. I  
3 don't know.

4 Q. All right. DTM, you told me where  
5 that's out of. Refresh me, would you please? Is  
6 that the Cities?

7 A. Correct.

8 Q. And they're, principally, a soda  
9 distributor?

10 A. I'm not sure what all they carry.

11 Q. Have you invested any monies to  
12 position yourself to carry the Stewart's line of  
13 product that you haven't now recouped or  
14 otherwise recovered? Do you understand my  
15 question?

16 A. No.

17 Q. Did you make any particular  
18 investment in order to carry the Stewart's line  
19 of product, i.e., hire special help, build a new  
20 warehouse, sign some sort of a lease?

21 A. No, I never built a new warehouse  
22 or signed a lease, no.

23 Q. Did you make any kind of an  
24 investment to position yourself to carry the  
25 Stewart's line of product?

1           A.       Just -- well, through the racks and  
2       stuff.

3           Q.       Anything else?

4           A.       And their -- through their  
5       promotional -- or their slotting, or whatever you  
6       want to call it.

7           Q.       By slotting, you mean participating  
8       in promotional programs?

9           A.       Yes, slotting, or if they'd have  
10       like buy five get two free or something like  
11       that.

12          Q.       Anything else?

13          A.       No, no.

14          Q.       It sounds to me like the only thing  
15       you purchased by way of a hard asset is the racks  
16       or the other promotional type of materials, the  
17       wagons or the buckets, is that fair to say?

18                   MR. DAHL:  Objection, form.

19       BY MR. KILLION:

20          Q.       Let me try it differently, it's  
21       awkward.

22                   Other than racks, wagons, buckets,  
23       have you purchased any other hard assets in order  
24       to carry the Stewart's line?

25          A.       No.

1 Q. And have you been left holding the  
2 bucket, as it were, with respect to those assets  
3 or were you able to dispose of them along the  
4 way?

5 A. Um, I -- most of them are gone, I  
6 believe are gone, yes.

7 Q. And as it relates to those  
8 promotional products, would you get a catalog  
9 from Stewart's that would identify what  
10 promotional products are available?

11 A. Yes, I believe we did, or we'd get  
12 a -- a flier or something in the mail.

13 Q. And you could order, then, the  
14 products from a flier or the catalog?

15 A. Yes.

16 Q. Did anyone say you had to order  
17 these products?

18 A. Um, no.

19 Q. Stewart's never said you had to  
20 order the products, is that a fair statement?

21 A. Yes.

22 Q. Hold on one second here, I may be  
23 done.

24 I'll mark the termination letter.

25 I'll tell you it's not a signed copy so I'm not

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Day Distributing Co., a Minnesota corporation; Mark VII Distributors, Inc., a Minnesota corporation; Sandstone Distributing Co., Inc., a Minnesota corporation; Needham Distributing Co., Inc., a Minnesota corporation; and Rohlfing of Duluth, Inc., a Minnesota corporation,

Plaintiffs,

vs. Civ. No. 0:07-cv-01132 (PJS/RLE)

Nantucket Allserve, Inc., f/k/a Stewart's Beverages, LLC and d/b/a Cadbury Schweppes Americas Beverages, Inc., a Delaware corporation,

Defendants.

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DEPOSITION

The following is the deposition of  
NICHOLAS BASIL, taken before Sara Jane Wyckoff,  
Court Reporter, Notary Public, pursuant to Notice of  
Taking Deposition, at Faegre & Benson, LLP, 2200  
Wells Fargo Center, 90 South Seventh Street,  
Minneapolis, Minnesota, commencing at approximately  
9:15 a.m., November 8, 2007.

1 Sandstone, the guy in Duluth, they did nowhere near  
2 the volume. They didn't have the promotion, you  
3 know, just because there aren't as many people in  
4 those areas and not those types of stores, so that  
5 kind of stood out as a big difference between the  
6 three metro versus the two out state.

7 Q. Anything else stand out in your mind as  
8 you sit here today that distinguished one  
9 distributor from another?

10 A. Not really. It was a very small  
11 percentage of each one of their business, and we're  
12 talking about beer distributors here, not  
13 nonalcoholic beverage distributors, so . . . It was  
14 a small piece of their business.

15 Q. I think your report indicates roughly 2  
16 percent; is that correct?

17 A. At most 2 percent. Some of them it was  
18 less than 1 percent.

19 Q. With whom did you speak at Sandstone?

20 A. I believe it was, and I forget her  
21 name, it was the wife of the owner.

22 Q. Same thing you asked her for as you had  
23 asked Frank?

24 A. Yes.

25 Q. Who at Needham?



## DISTRIBUTOR AGREEMENT

This Distributor Agreement (the "Agreement") is made this 16th day of December, 2004 (the "Effective Date"), by and between STEWART'S BEVERAGES, LLC (the "COMPANY"), an entity with its principal place of business at 900 King Street, Rye Brook, New York 10573-1226, and SANDSTONE DISTRIBUTING, INC., a \_\_\_\_\_ corporation, with its principal place of business located at 24926 Groningen Road, Sandstone, Minnesota 55072 (the "DISTRIBUTOR").

### WITNESSETH:

WHEREAS, COMPANY has been duly appointed as an exclusive licensee of STEWART'S Restaurants, Inc. for the purpose of making and selling soft drinks identified by the trademark STEWART'S® (the "STEWART'S trademark"), as well as for the purpose of sublicensing the use of the Trademark for such goods in strict compliance with the quality standards of STEWART'S Restaurants, Inc. COMPANY is the owner of the trademark FOUNTAIN CLASSICS (the "Fountain Classics trademark"), and collectively with the STEWART'S trademark the "Trademarks") used in connection with the sale and marketing of STEWART'S brand soft drinks; and

WHEREAS, COMPANY wishes to grant to DISTRIBUTOR the right to distribute certain STEWART'S® (the "Trademark Brand(s)") beverages to customers in a defined territory; and

WHEREAS, DISTRIBUTOR is in the business of beverage distribution in such territory, has adequate warehouse facilities, transport equipment and personnel to distribute the Trademark Brand beverages, and wishes to accept the responsibility for distributing Trademark Brand beverages in the manner described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, COMPANY and DISTRIBUTOR, intending legally to be bound, agree as follows:

### AGREEMENT:

#### 1. DEFINED TERMS

A. "Authorized Officer". The term "Authorized Officer" shall mean an officer of the rank of vice-president or above.

B. "Products". The term "Products" shall mean those products set forth on Schedule 1B to this Agreement that COMPANY wishes to sell to DISTRIBUTOR during the term of this Agreement in the Territory under the Trademark Brands. "Products" shall also include those New Products offered to and accepted by DISTRIBUTOR pursuant to Paragraph 3.C.

Territory under the Trademark Brand(s) not set forth on Schedule 1B to this Agreement. A New Product may consist of one or more flavors of an individual product.

D. "Territory". The term "Territory" shall mean the geographic area set forth and described in Schedule 1.D to this Agreement.

## 2. TERM

The initial term of this Agreement shall begin and be effective on the Effective Date until December 31, 2005 (the "Initial Term") and shall be subject to earlier termination in accordance with the provisions hereof. In the event neither party hereto elects to terminate this Agreement at the end of the Initial Term by written notice given at least thirty (30) days prior to the end of such term, which termination or non-renewal may be without cause, this Agreement shall be extended (again subject to earlier termination in accordance with the provisions hereof) for further and consecutive one (1) year renewal terms until terminated or not renewed by notice given as aforesaid. It is understood that any extension or renewal of the Agreement is entirely in the sole discretion of COMPANY. Upon notice of termination or non-renewal, DISTRIBUTOR shall have thirty (30) days to dispose of its remaining Products on hand or to sell its inventory of Products to COMPANY at DISTRIBUTOR's landed cost. COMPANY's obligation to purchase Products shall apply only to Products that are saleable in the normal course of business and are not out of code or damaged. Any unsaleable or non-merchantable inventory of Products must be destroyed by DISTRIBUTOR at DISTRIBUTOR's sole cost and expense with proof of destruction provided to COMPANY. During said thirty (30) day period, COMPANY reserves the right to allow another DISTRIBUTOR(s) to also market and sell Products in the Territory.

## 3. RESALE RIGHTS

A. During the term of this Agreement, COMPANY agrees, subject to the provisions of this Agreement, to sell the Products in the Territory only to DISTRIBUTOR, and DISTRIBUTOR agrees to resell the Products only to customers or subdistributors approved by COMPANY within the Territory. DISTRIBUTOR shall not sell Products to accounts which DISTRIBUTOR knows or has reason to know will sell Products outside the Territory.

B. DISTRIBUTOR shall abide by, and be subject to, COMPANY's current transshipping policy, as in effect from time to time. **COMPANY's current transshipping policy is attached hereto as Schedule 3.B.** DISTRIBUTOR acknowledges and agrees that COMPANY's transshipping policy may be amended directly or indirectly by COMPANY at any time in its discretion. Sale of Products by DISTRIBUTOR outside of the Territory shall, without limiting the above or any other provision, be deemed a material breach of this Agreement. Notwithstanding anything to the contrary in this Agreement and Company's transshipping policy, DISTRIBUTOR acknowledges the existence of the practice of "transshipping" of Products, and of this problem in the beverage industry, and DISTRIBUTOR hereby releases and discharges COMPANY from any and all liabilities, claims, damages, losses, costs or expenses incurred directly or indirectly as a result of this practice in DISTRIBUTOR's territory or to its authorized accounts. It is understood that COMPANY will use efforts to control this practice, but COMPANY shall not be required to bring any action or proceeding or to incur any expenses to remedy this practice.

C. If COMPANY introduces a New Product or line of New Products during the term of this Agreement, COMPANY may or may not, in its sole and absolute discretion, offer such New Product, line of new Products, and/or any single New Product or combination of New

Products (without offering other New Products or the entire New Product line) to DISTRIBUTOR for distribution within the Territory. If DISTRIBUTOR accepts the responsibility for the distribution of such New Product and commences the sale and distribution of such New Product in the Territory within thirty (30) days after notification from COMPANY, then such New Product shall be included within the definition of "Product" in this Agreement.

D. DISTRIBUTOR shall sell the Products in the Territory on a "direct-store-delivery" ("DSD") basis only. DISTRIBUTOR may not, without COMPANY's prior written consent, sell the Products to any other wholesaler or distributor nor to any Warehouse Purchaser, it being the intent of this Agreement that DISTRIBUTOR shall sell the Products only on a DSD basis and only to retail outlets and approved subdistributors. For the purposes of this Agreement, the term "Warehouse Purchaser" means a wholesale business (or division) that is owned or controlled by the retailer or retailers to whom said wholesale business (or division) sells or distributes its products.

E. Notwithstanding anything to the contrary contained herein, COMPANY reserves the right to sell and distribute, directly or indirectly through its agents or representatives, beverages in all packages and in all sizes under or bearing the Trademark, but only if one or more of the following conditions applies: (i) the customer or account was serviced or received its Products through means other than direct store delivery prior to the date hereof; (ii) the customer or account is listed on Schedule 3.D attached hereto; (iii) the customer or account is one which will not accept direct store delivery of the Products; (iv) the customer or account is serviced or receives its Products through internet sales; (v) the customer or account is a commissary and/or central distribution center designated by any of the foregoing kinds of accounts and requires delivery and billing from a single source; or (vi) the customer or account is one which DISTRIBUTOR is unable or unwilling to service. Notwithstanding anything contained herein to the contrary, COMPANY reserves the right to sell Products directly (or indirectly through another wholesaler) to any "Restaurant Chain Customer" located within the Territory. For purposes of this Agreement, the term "Restaurant Chain Customer" shall be defined as a restaurant or food service operator having twenty (20) or more locations in North America.

#### 4. SUPPLY OF PRODUCTS

A. Firm orders for products shall be made by DISTRIBUTOR in accordance with COMPANY's ordering procedures and order lead time policy as in effect from time to time.

B. DISTRIBUTOR shall comply with COMPANY's distributor pallet policies and procedures as in effect from time to time.

C. COMPANY shall replace, at its own expense, all Products which are spoiled or otherwise deficient in quality upon delivery to the shipper (i.e., for delivery to DISTRIBUTOR), or COMPANY shall at its option provide a credit to DISTRIBUTOR's account for the delivered price of such Products, provided, however, that DISTRIBUTOR shall comply at all times with COMPANY's spoiled Product procedures.

D. DISTRIBUTOR shall maintain complete and accurate books and records showing sales of Products. Information as to market penetration, levels of distribution (SKU's) by channel, number of established accounts, results of promotional programs, total account base, and other data shall be provided to COMPANY, upon COMPANY's request, within thirty (30) days of receipt of COMPANY's request to DISTRIBUTOR. DISTRIBUTOR shall allow COMPANY's representatives to work the sales routes with DISTRIBUTOR's salespersons.

E. Within sixty (60) days following COMPANY's written request, DISTRIBUTOR shall implement web-based order entry.

## 5. REPORTS.

During the term of this Agreement and through the calendar month following termination of this Agreement, DISTRIBUTOR shall provide COMPANY, in the form and in the time specified by COMPANY, the following full and complete, periodic reports:

A. Electronic monthly reports of total sales volume within the Territory, by sales reporting location, separated by direct store delivery ("DSD") system, independent contractor/distributor system, and sales to other authorized Distributors of Product. Sales shall be stated by Product, flavor and Authorized Container. Monthly sales to other authorized Distributors shall be separately stated, listing each Distributor and the amount of each Product and Authorized Container purchased thereby.

B. Specific sales information by channel, class of trade or by account, as may be reasonably requested by COMPANY from time to time. DISTRIBUTOR agrees to supply such information within ten (10) days of such request.

C. The number of vending machines, glass door merchandisers, their location and volume throughput by package, by Product on a monthly basis.

D. Monthly reports of total sales volume shall be sent on or before the 5th working day of the calendar month following the sales activity, or on such other day as may be reasonably specified by COMPANY, and shall be sent to COMPANY electronically in a format acceptable to COMPANY.

E. All such other reports as may be reasonably requested by COMPANY.

## 6. PRICE AND PAYMENTS

A. COMPANY shall sell Products to DISTRIBUTOR at the delivered price F.O.B. Shipping Point or Product Point of Origin. Pallet charges are also included.

B. The delivered price (including delivery terms) to DISTRIBUTOR may be changed by written notice by COMPANY to DISTRIBUTOR. Any such changes in the delivered price will begin to apply to written orders received by COMPANY fourteen (14) days from the date of DISTRIBUTOR's receipt of such notice.

C. No "franchise fee" or other fee of any kind has been paid to, and none is payable by DISTRIBUTOR to, COMPANY for the right to enter into this Agreement.

## 7. TERMS OF PAYMENT

A. DISTRIBUTOR's payment for the Products purchased shall be due net thirty (30) days from the date of invoice. COMPANY shall have the right to change payment terms and other terms and conditions of sale upon thirty (30) days prior written notice to DISTRIBUTOR. In the event that DISTRIBUTOR fails to make a payment when and as due, then beginning on the date the payment became due until the date that the payment is received: (i) COMPANY

shall not be obligated to process or ship orders of Products to DISTRIBUTOR if DISTRIBUTOR is delinquent in the payment of any such invoice, (ii) DISTRIBUTOR shall owe and pay to COMPANY interest on such overdue payment at the rate of one and one-half percent per month (18% per annum) or at the lesser rate of interest that is equal to the maximum rate of interest permissible pursuant to the law of the Territory, and (iii) the foregoing rights to withhold Product and to earn interest shall be without limitation to, and shall not in any way limit or serve as an election or as a waiver of, any or all of the COMPANY's other remedies, whether under this Agreement, at law or in equity.

B. DISTRIBUTOR shall not make any deductions or offsets from payments due to COMPANY on account of returned Products, warranty, and/or because of or based upon any other claim that DISTRIBUTOR may have against COMPANY.

## 8. TRADEMARKS

A. COMPANY represents and warrants to DISTRIBUTOR that COMPANY has the right to use the trademarks listed on Schedule 8.A, as well as other trademarks that COMPANY owns and may use in connection with the Products in the future (the "Trademarks").

B. The Trademarks listed on Schedule 8.A are used by COMPANY to identify the Products to be sold under this Agreement, and no right is granted to DISTRIBUTOR to use any of the Trademarks in association with DISTRIBUTOR's business. DISTRIBUTOR recognizes that (1) the Trademarks are owned by COMPANY (or COMPANY's licensor, if applicable), and (2) this Agreement shall not operate to convey to DISTRIBUTOR any right, title or interest in any of the Trademarks. All use of the Trademarks as provided herein shall inure to the benefit of COMPANY (and/or COMPANY's licensor, if and as applicable).

C. In order to protect the goodwill associated with the Trademarks, DISTRIBUTOR shall not without the prior written consent of COMPANY acting through an Authorized Officer:

(1) Alter the labeling of any of the Products displaying the Trademarks from the form of labeling supplied by COMPANY;

(2) Use any advertising or promotional materials in association with the Products unless COMPANY has provided the same to DISTRIBUTOR;

(3) Use any Trademark in connection with the Products;

(4) Use any Trademark (i) as a trade or corporate name or in connection with DISTRIBUTOR's business; (ii) in connection with any product or service other than the Products; or (iii) in connection with any other trademark; or

(5) Register any of the Trademarks or any mark similar to the Trademarks.

D. DISTRIBUTOR shall have an affirmative obligation to notify COMPANY of any Trademark infringements or products similar to the Products, as well as any products displaying marks, graphics, logos or trade dress similar to any of the Trademarks.

E. DISTRIBUTOR shall not do or omit to do anything in relation to the Products that DISTRIBUTOR knows or has reason to know may adversely affect the validity of the Trademarks or their enforceability, or the quality, image or reputation of the Products.

F. DISTRIBUTOR hereby acknowledges that STEWART's Restaurants, Inc. is the proprietor and rightful owner of the STEWART'S trademark and that COMPANY has been appointed as its exclusive licensee for purposes of selling the Products. DISTRIBUTOR covenants not to do or permit to be done any act calculated to prejudice, affect, impair, or destroy the title and interest of STEWART's Restaurants, Inc. or of COMPANY as its licensee, in and to the said Trademark. If it shall come to the notice of the DISTRIBUTOR that any person, firm or corporation is infringing said Trademark, DISTRIBUTOR will promptly notify COMPANY.

G. DISTRIBUTOR hereby acknowledges that COMPANY is the proprietor and rightful owner of the Fountain Classics Trademark. DISTRIBUTOR covenants not to do, or permit to be done, any act calculated to prejudice, affect, impair, or destroy the title and interest of COMPANY in and to said Trademark. If it shall come to the notice of the DISTRIBUTOR that any person, firm or corporation is infringing said Trademark, DISTRIBUTOR will promptly notify COMPANY.

#### **9. PRODUCT DISTRIBUTION & DISTRIBUTOR COVENANTS**

A. DISTRIBUTOR shall at all times use its best efforts to promote and expand the sale of Products in the Territory. Without limiting the foregoing, DISTRIBUTOR's right to distribute the Products under this Agreement shall be subject to DISTRIBUTOR meeting and continuing to meet the performance targets mutually agreed between the parties and set forth on Schedule 9.A. If DISTRIBUTOR fails to meet any of the performance targets set forth on Schedule 9.A for any reason other than continued failure of supply by COMPANY, then COMPANY may terminate this Agreement pursuant to Paragraph 10.

B. Nothing contained in Paragraph 9.A above shall limit or affect COMPANY's rights under Paragraph 10 hereof.

C. DISTRIBUTOR shall cooperate in good faith with COMPANY to prepare a mutually agreed upon written sales and distribution annual plan with quarterly and monthly adjustments ("Annual Plan"), the purpose and goal of which shall be to cause DISTRIBUTOR to achieve successful distribution and increased consumption of the Products in the Territory, and such Annual Plan shall be completed prior to the first day of each calendar year. The Annual Plan shall not diminish or affect the requirements of Paragraph 9.A above. As soon as possible but in no event later than one hundred twenty (120) days after the Effective Date, DISTRIBUTOR also shall comply with the COMPANY information reporting program, as in effect from time to time. DISTRIBUTOR shall also provide to COMPANY an electronic sales report on its inventory and sales activities, specified by beverage size, beverage type and distribution channel. DISTRIBUTOR agrees and acknowledges that such reports are necessary to promote and merchandise the Products in the Territory in order to maintain and increase demand for the Products in the Territory. DISTRIBUTOR hereby acknowledges the importance of participating in cooperative merchandising and in promotions that may be reasonably established by COMPANY on a regional and/or national basis.

D. DISTRIBUTOR shall: (i) store, handle and distribute its inventory of Products in clean and sanitary conditions as required to maintain Product quality and traceability; (ii) not alter the Products in any manner; and (iii) comply with all applicable federal, state and local food, health and other relevant laws and regulations within the Territory. Without limiting the foregoing, DISTRIBUTOR shall comply with COMPANY's Product dating and quality requirements as in effect from time to time. DISTRIBUTOR shall also notify COMPANY of any inspection of its facilities by any federal, state or local food or health agency. If COMPANY

determines, in its sole discretion, that COMPANY shall undertake a market withdrawal or recall of any of the Products, DISTRIBUTOR agrees that it shall fully cooperate with COMPANY and take all necessary actions, including but not limited to a notification to accounts and retrieval of Products from retailers at COMPANY's expense (unless the reason for such action was caused by DISTRIBUTOR in which case it shall be at DISTRIBUTOR's expense).

E. DISTRIBUTOR shall carry sufficient inventory (at least a two (2) week aggregate supply on the floor) to assure that there are no breaks in the supply of Products to customers and consumers.

F. DISTRIBUTOR shall grant COMPANY's representatives access during normal business hours on twenty-four (24) hours notice: (i) to inspect DISTRIBUTOR'S facilities, inventory of Product and transport fleet to review compliance with health and safety requirements; (ii) to inspect DISTRIBUTOR's records relating to sale of the Products and placement of vending machines, visi-coolers and other refrigeration units and merchandising equipment; and (iii) to inspect other records related to the terms of this Agreement (including the basis of equipment pursuant to Paragraph 10.D).

G. DISTRIBUTOR shall purchase Product only from COMPANY unless DISTRIBUTOR shall have been authorized in writing by COMPANY acting through an Authorized Officer to purchase Product from a manufacturer or other source designated or authorized by COMPANY.

H. DISTRIBUTOR agrees that, during the term of this Agreement and except as regards the Products set forth herein, it shall not produce, promote, advertise, merchandise, distribute, sell or offer for sale, directly or indirectly, in the Territory without the prior written consent of COMPANY acting through an Authorized Officer, any: (i) product (other than those under the Trademark Brand) of the type as listed for the Products on Schedule 1B (regardless of packaging type or size); (ii) beverages having the same flavor profile as the Products; (iii) beverages of the same category as any Products or any New Product included as Products pursuant to Paragraph 3.C; or (iv) any and all beverages which COMPANY determines in its sole discretion to be imitative of, and/or competitive to, the Products. The provisions of this Paragraph 9.H shall not apply to any beverage products currently distributed by DISTRIBUTOR and set forth on Schedule 9.H.

I. DISTRIBUTOR agrees to carry and sell a representative portion of each line of the Products offered to DISTRIBUTOR by COMPANY. In any event DISTRIBUTOR shall carry and sell a minimum of 6 SKU's of the Products.

J. DISTRIBUTOR shall keep confidential, during the duration of this Agreement and for five (5) years thereafter, all information of COMPANY and all information of DISTRIBUTOR which relates to COMPANY's business and which is not known to the public, including any all product, marketing and sales strategies or plans, as well as the terms and conditions of this Agreement.

K. COMPANY is an indirect subsidiary of Cadbury Schweppes plc, which has published and adopted both a Human Rights and Ethical Trading Policy and an Environmental Policy. These are available on website [www.cadburyschweppes.com](http://www.cadburyschweppes.com). Cadbury Schweppes integrates these standards and commitments into the way it runs its businesses globally to address such concerns. DISTRIBUTOR is expected to review and adhere to these policies. DISTRIBUTOR is required to achieve high ethical and environmental standards and social responsibility in its business practices and production supplies.

## 10. TERMINATION

A. Upon the occurrence of any of events (1) to (7) below, this Agreement shall automatically terminate and DISTRIBUTOR shall have no opportunity to cure. Upon the occurrence of any of the events (8) to (10) below, this Agreement may be terminated upon thirty (30) days written notice by COMPANY if DISTRIBUTOR has not cured the breach set forth in such notice within such period:

(1) the liquidation or dissolution or notice thereof of DISTRIBUTOR's business;

(2) an assignment by DISTRIBUTOR for the benefit of creditors;

(3) the filing of a voluntary or involuntary petition under the provisions of the United States Bankruptcy Code or any similar state statute or the appointment of a receiver or trustee for the property of DISTRIBUTOR, the filing of which remains uncontested and undischarged by DISTRIBUTOR at the end of sixty (60) days after such filing;

(4) the inability of DISTRIBUTOR to pay its obligations when they become due;

(5) a purposeful misuse of the funds of COMPANY by DISTRIBUTOR or any fraudulent act by DISTRIBUTOR with respect to COMPANY (including without limitation those relating to funding and performance reporting);

(6) DISTRIBUTOR shall fail to sell, market and distribute the Products for a period in excess of five (5) consecutive days;

(7) DISTRIBUTOR shall act in bad faith in carrying out the terms of this Agreement. The following acts (among other things and not by way of limitation) shall constitute bad faith by DISTRIBUTOR:

(i) systematic or intentional deviations from the methods, procedures or quality standards specified by COMPANY;

(iii) any repeated and/or deliberate failures to provide COMPANY promptly with information required by this Agreement;

(iv) any disclosure, licensing, sale or other revelation of Product formulae, methods, procedures or other confidential information (including, without limitation, quality standards) furnished to DISTRIBUTOR by COMPANY (excluding, however, the disclosure in confidence of relevant portions of such information to DISTRIBUTOR's employees which is required in order to perform their respective duties);

(v) any breach by DISTRIBUTOR of the provisions of Section 8 hereinabove; and/or

(vi) DISTRIBUTOR consummates or fails to take acts to prevent the sale, transfer, pledge, conveyance, assignment, encumbrance, or other

disposal, by law or otherwise, of this Agreement or any of DISTRIBUTOR's rights, license or interest hereunder.

(8) transshipping by DISTRIBUTOR in breach of COMPANY's transshipping policy pursuant to Paragraph 3.B hereof, where DISTRIBUTOR knows, or reasonably should know, of such transshipping;

(9) if, at the end of each of three (3) consecutive months, DISTRIBUTOR's purchases of Products for the prior twelve (12) month period are less than 1,000 cases; or

(10) DISTRIBUTOR's failure to pay for Product when due pursuant to Paragraph 7.A.

B. Without limiting any other specific termination rights provided in this Agreement which do not provide for a cure period (that is, a period to remedy the breach) and/or which provide for a different cure period than that provided in this Paragraph, COMPANY may terminate this Agreement immediately upon notice to DISTRIBUTOR in the event of breach by DISTRIBUTOR of any provision of this Agreement, provided that DISTRIBUTOR fails to cure such breach within thirty (30) days after DISTRIBUTOR's receipt of written notice from COMPANY specifying the breach by DISTRIBUTOR.

C. Notwithstanding Paragraphs 10.A and 10.B above, the parties acknowledge that COMPANY may in the future have business reasons for reorganizing or otherwise changing its distribution of beverages in the Territory and that COMPANY may wish to terminate this Agreement during its term, as provided in this Paragraph. Accordingly, this Agreement may be terminated by COMPANY, at COMPANY's sole and absolute discretion and at any time, upon thirty (30) days prior written notice to DISTRIBUTOR.

D. In order to effect an orderly termination, within fifteen (15) days of the expiration or termination of this Agreement for any reason hereunder, DISTRIBUTOR must resell to COMPANY all saleable Products and promotional items held or controlled by DISTRIBUTOR. COMPANY will buy back from DISTRIBUTOR all saleable and merchantable inventory of Products and promotional items in the possession or control of DISTRIBUTOR at the time of termination, at DISTRIBUTOR's net cost. Any unsaleable or unmerchantable inventory of Products must be destroyed by DISTRIBUTOR at DISTRIBUTOR's sole cost and expense with proof of destruction provided to COMPANY. COMPANY will also accept return of COMPANY pallets in good condition and reimburse DISTRIBUTOR for the costs of such pallets. Upon termination of this Agreement, DISTRIBUTOR shall deliver to COMPANY copies of customer lists, routing maps, call books, routing schedules, customer sales history and any and all confidential information relating to the Products or the business of COMPANY. In addition, COMPANY and/or the successor DISTRIBUTOR shall have the option to purchase all COMPANY-identified visi-cooler equipment based on a reimbursement of DISTRIBUTOR's portion of the initial cost thereof (not the total cost thereof), as follows:

|                              |   |                                    |
|------------------------------|---|------------------------------------|
| 0-6 months after placement   | = | 100%                               |
| 7-12 months after placement  | = | 80%                                |
| 13-24 months after placement | = | 60%                                |
| 25-36 months after placement | = | 40%                                |
| 36+ months after placement   | = | 20% or \$100, whichever is greater |

The above formula shall be used for all cold drink equipment placements where DISTRIBUTOR is not (with respect to that equipment) participating in another COMPANY equipment placement program with buyback terms.

E. Neither party shall be liable to the other party as a result of termination or non-renewal of this Agreement pursuant to its terms, except in the event of termination for material breach when the party in default shall be liable for damages arising out of such breach. Termination in accordance with this Agreement shall be without prejudice to any of the rights or liabilities of either party accrued at the date of termination. Upon any termination of this Agreement: (i) DISTRIBUTOR shall continue to be obligated to make all payments due; and (ii) DISTRIBUTOR shall immediately cease any use of the Trademarks permitted under this Agreement, if any, and shall deliver all promotional or other materials bearing the Trademarks to COMPANY as reasonably instructed by COMPANY. The provisions of Paragraphs 8, 14, and 17, and Paragraphs 9.J, 10.D, 10.E and 10.F shall survive termination of this Agreement.

F. Notwithstanding any contrary provisions in this Agreement, COMPANY shall have the unlimited right to set off and apply any and all amounts owed to it by DISTRIBUTOR against any of COMPANY's obligations to DISTRIBUTOR upon termination or expiration of this Agreement.

#### **11. SUB-DISTRIBUTORS**

Upon COMPANY's prior written consent and approval only, DISTRIBUTOR may appoint by agreement SUB-DISTRIBUTORS in furtherance of its obligations under this Agreement to service the Territory. Such approval shall not be unreasonably withheld. DISTRIBUTOR shall, upon request, supply COMPANY with a copy of any written agreement with any SUB-DISTRIBUTOR within three (3) days of such request. Notwithstanding any such appointment, DISTRIBUTOR's obligations under the terms of this Agreement will not be thereby altered or otherwise affected, and DISTRIBUTOR shall be directly responsible for the performance and conduct of any and all of its SUB-DISTRIBUTORS. In the event this Agreement is terminated, any and all SUB-DISTRIBUTOR agreements shall be automatically and concurrently terminated unless COMPANY notifies DISTRIBUTOR in writing otherwise. No SUB-DISTRIBUTOR shall be or is intended as a third-party beneficiary of this Agreement. DISTRIBUTOR agrees to indemnify and hold harmless COMPANY from and against any and all claims asserted by any of DISTRIBUTOR's SUB-DISTRIBUTORS, including attorney fees and all other expenses and costs incidental thereto.

DISTRIBUTOR shall provide to each of its SUB-DISTRIBUTORS adequate supervision and support to promote the Products, including but not limited to providing information regarding New Products, promotional program participation, periodic sales meetings, and point of sale materials.

It is understood by DISTRIBUTOR that distribution and promotion of the Products and the rendering of first-class service to retail accounts by DISTRIBUTOR is of paramount importance to COMPANY. In the event that COMPANY is dissatisfied for any reason whatsoever with the performance of any of DISTRIBUTOR's SUB-DISTRIBUTORS, COMPANY may notify DISTRIBUTOR of such dissatisfaction and it shall be the obligation of DISTRIBUTOR to terminate the SUB-DISTRIBUTOR within sixty (60) days of said notification from COMPANY, without any disruption of service to the accounts being serviced by said SUB-DISTRIBUTOR.

Any SUB-DISTRIBUTOR agreement with DISTRIBUTOR as to any Product shall be subject to and shall incorporate by reference all of the obligations of DISTRIBUTOR and all of the rights of COMPANY under this Agreement. DISTRIBUTOR shall not grant to any SUB-DISTRIBUTOR rights that are greater than DISTRIBUTOR's rights under this Agreement, such as a longer term than DISTRIBUTOR's term hereunder, and shall also not grant the right to appoint sub-sub-distributors without the prior written consent of COMPANY.

## 12. NOTICES

Whenever notice is required to be given under the terms of this Agreement to either party, it shall be given to the other party by personal delivery, or by registered or certified mail, return receipt requested, or by overnight courier, or by telecopier confirmed by machine confirmation at the addresses and/or telecopier numbers designated below:

A. If to COMPANY, addressed as follows:

STEWART'S BEVERAGES, LLC  
5301 Legacy Drive  
Plano, TX 75024  
Attention: James C. Epley, Vice President  
Phone: (972) 673-6976  
Fax: (972) 673-8013

With a copy to:  
General Counsel  
STEWART'S BEVERAGES, LLC  
5301 Legacy Drive  
Plano, TX 75024  
Phone: (972) 673-7000  
Fax: (972) 673-7981

B. If to DISTRIBUTOR, addressed as follows:

SANDSTONE DISTRIBUTING, INC.  
24926 Groningen Road  
Sandston, MN 55072  
Attention: Dave Watrin  
President  
Tel: 320-3245-5439  
Fax: 320-245-5524

or to such other or further address as either party may specify to the other, by notice in accordance with the provisions of this Paragraph.

## 13. ASSIGNMENT AND CHANGE OF CONTROL

A. This Agreement is personal to DISTRIBUTOR and therefore may not be sold, transferred, assigned, or otherwise conveyed by DISTRIBUTOR, in whole or in part, whether to an affiliate or to any other person or entity, except upon COMPANY's prior written consent (acting through an Authorized Officer), which consent may or may not be granted at COMPANY's sole and absolute discretion. This restriction includes but is not limited to: (i) any

sale, transfer, assignment or other disposal of DISTRIBUTOR's business, including (a) any transfer by operation of law, (b) any sale, transfer or disposition of all or substantially all of the assets of DISTRIBUTOR's business other than sales of assets in the ordinary course of business; and (ii) any other change of control (which shall mean a change in the ability to elect a majority of the directors or vote in excess of 10% of the stock or other ownership interests of DISTRIBUTOR).

B. In the event that COMPANY agrees to any transfer or assignment of this Agreement pursuant to Paragraph 13.A, the new DISTRIBUTOR shall enter into the then current form of distribution agreement.

**14. GOVERNING LAW AND JURISDICTION**

This Agreement and any disputes relating to it shall be governed by and interpreted in accordance with the substantive laws of the State of New York that apply to contracts entered into and performed entirely within such State without regard to principles of conflicts of law. The parties have explicitly negotiated and agreed that any suits or actions by either party shall be brought only in the United States District Court for the Southern District of New York at White Plains, New York, or the New York State Court sitting in such city. The parties to this Agreement hereby irrevocably and exclusively submit to the jurisdiction and venue of such courts. The parties to this Agreement irrevocably waive trial by jury in all suits or actions brought under or with respect to any provision of this Agreement or otherwise relating to it. The parties to this Agreement irrevocably waive all causes of action not filed in the appropriate court within one (1) year after the termination of this Agreement.

**15. FORCE MAJEURE**

Whenever performance by COMPANY or DISTRIBUTOR of any of its obligations is substantially prevented due to circumstances beyond the control of that party, including but not limited to any act of God, law, regulation or ordinance, war or war conditions, or failure of transport or supply, then such performance (except for the payment of money) shall be excused, and this Agreement shall be deemed suspended during the continuation of such circumstances.

**16. PRODUCT QUALITY**

COMPANY represents and warrants to DISTRIBUTOR that the Products sold by COMPANY at the time and place of delivery to DISTRIBUTOR shall comply with applicable legal requirements.

**17. INDEMNIFICATION; INSURANCE**

A. COMPANY shall defend, indemnify and hold DISTRIBUTOR harmless from and against any claim that a Product fails to comply with COMPANY's warranties provided in Paragraphs 8.A and 16. DISTRIBUTOR shall defend, indemnify and hold COMPANY harmless from and against any claim arising out of DISTRIBUTOR's failure to perform its obligations under this Agreement, including but not limited to those relating to Trademarks and Product handling and quality control, and any other form of action or inactions by DISTRIBUTOR or any other person or entity acting on its behalf.

B. Neither party shall have any obligation for indemnity under this Paragraph 17 unless the party seeking indemnification: (i) notifies the other party of such claim as soon as practicable after the party seeking indemnification first obtains knowledge of such claim (provided that failure to give such notice shall not affect the indemnifying party's obligations except to the extent it can show actual prejudice); (ii) gives control of the defense of such claim to the other party; and (iii) provides the other party with all reasonable cooperation in the defense of such claim. In addition, neither party shall have any obligation to indemnify if the indemnified party makes any settlement without prior written consent of the other party acting through an Authorized Officer of such party. Each indemnified party shall have the right (but not the obligation) to participate in the defense of a claim by the indemnifying party, in which event such party shall pay for its respective attorneys fees.

C. DISTRIBUTOR shall secure and pay for vehicle liability, public liability, products liability and commercial general liability insurance policies protecting COMPANY, DISTRIBUTOR, and all of DISTRIBUTOR's Affiliates under which or through which DISTRIBUTOR does business in connection with this Agreement. All such policies shall be in form and substance, and with insurance companies carrying an A. M. Best rating of "A -" (A minus) or better with a financial rating of "7" or higher, as shall be satisfactory to COMPANY, and shall name COMPANY as an additional insured. The vehicle liability, public liability, products liability and commercial general liability limits under such policies shall be written in such amounts as COMPANY may designate from time to time, but in no event shall such limits be less than the following:

- a. For commercial general liability, including contractual liability: \$5,000,000 per occurrence;
- b. For product liability: \$2,000,000 per occurrence;
- c. For vehicle liability: in the combined single limit of \$1,000,000 per occurrence for bodily injury and property damage; and
- d. For employer's liability: \$100,000 per occurrence.

Upon execution of this Agreement, DISTRIBUTOR shall furnish COMPANY with certificates from each insurance company issuing any of such insurance policies, which certificates shall indicate that COMPANY is an additional insured under such policies, and that such policies shall remain in full force and effect and will not be canceled except upon thirty (30) days' prior written notice to COMPANY. In addition, DISTRIBUTOR and its Affiliates shall secure and pay for all such other insurance coverage as it may be required by law to secure. DISTRIBUTOR and its Affiliates shall maintain Worker's Compensation coverage in the statutorily mandated values.

#### **18. INDEPENDENT RELATIONSHIP**

DISTRIBUTOR and COMPANY understand and agree that each is an independent principal and not an agent, employee, partner, joint venturer, or franchiser or franchisee of the other in the performance of this Agreement, and that each party retains the right to conduct its business as it shall determine, including without limitation the manner in which it shall fulfill its obligations under this Agreement. Neither party, nor its agents, shall in any way act, or undertake to act, on behalf of, or hold itself out as, the agent of the other party without the express prior written consent of such other party acting through an Authorized Officer of such party.

**19. MISCELLANEOUS**

A. COMPANY and DISTRIBUTOR each represent to the other that each has the lawful right to enter into and perform this Agreement without violating the rights of any third parties.

B. This Agreement, together with its attached and incorporated Schedules, collectively contain the entire understanding of the parties and supersede, revoke and cancel, without any other consideration being due, any and all other inducements, arrangements, understandings, agreements, representations and warranties, whether oral or written, between the parties hereto or their predecessors, relating to the subject matter of this Agreement. The existence and terms of this Agreement shall remain confidential, except as needed to comply with state or federal law or as agreed upon by the parties. COMPANY expressly reserves all rights relating to its products not expressly granted in this Agreement. DISTRIBUTOR acknowledges that it has not and will not pay any "franchise fee" or any other fee to COMPANY, directly or indirectly, in connection with this Agreement, or any prior agreement, and DISTRIBUTOR shall not be considered or deemed a "franchisee" of COMPANY for any purpose whatsoever. This Agreement does not contemplate and does not require DISTRIBUTOR to establish or maintain a fixed place of business for the sale of COMPANY's Product.

C. The parties agree that the obligations of the parties under this Agreement may be modified or amended only by a written agreement signed by Authorized Officers of both parties. Without limitation, no term contained on any purchase order shall amend or modify this Agreement.

D. Should any provision of this Agreement be illegal, invalid or unenforceable, all other terms and conditions of this Agreement shall remain in full force and effect. The parties shall negotiate in good faith to attempt to modify provisions of this Agreement to implement the original business intent of the parties, and in the absence of agreement on revised terms within sixty (60) days of commencing such negotiations, either party may terminate this Agreement by written notice to the other party.

E. The failure of any party, in any one or more instances, to insist upon full performance of any of the terms, covenants and conditions of this Agreement, or to exercise any right to terminate this Agreement, shall not be deemed a waiver of such provisions or right or any other provision or right. No waiver by any party at any time with respect to any right or provision contained in this Agreement shall be valid unless in writing and signed by Authorized Officers of COMPANY and DISTRIBUTOR.

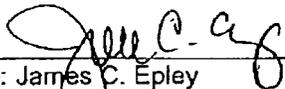
F. DISTRIBUTOR has complied with and will fulfill its obligations under this Agreement in compliance with all United States and non-United States federal, state, provincial, municipal, and local laws, statutes, legislation, regulations, rules and codes, including the United States Occupational Safety and Health Act, Toxic Substance Control Act, Hazardous Material Transportation Act, Motor Carrier Act, Environmental Protection Act, Fair Labor Standards Act, child labor laws, Food Drug & Cosmetic Act, Executive Order 11246, Consumer Product Safety Act, Robinson-Patman Act, Americans with Disabilities Act, Foreign Corrupt Practices Act, Bioterrorism Preparedness and Response Act, Homeland Security Act, and the Maritime Transportation Security Act.

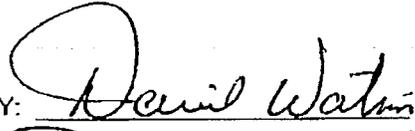
G. This Agreement is subject to COMPANY's approval and shall not be effective until so approved and until a copy signed by an Authorized Officer of COMPANY has been received by DISTRIBUTOR. Delivery of any draft of this Agreement by COMPANY shall not constitute an offer but shall be understood to be for discussion purposes only.

IN WITNESS WHEREOF, the parties to this Agreement have duly executed this Agreement by their duly authorized officers as of the day, month and year noted below.

STEWART'S BEVERAGES, LLC

SANDSTONE DISTRIBUTING, INC.

BY:   
Name: James C. Epley  
Title: Vice President, Licensing  
Date: 4/1/05

BY:   
Name: David WARRIN  
(Please Print)  
Title: President  
Date: 4-25-05

**Schedule 1.B**

**PRODUCTS**

All of the following Products under the Trademark Brand(s) in bottles and/or cans:

All flavors of ready-to-drink regular and diet beverages  
(specifically excluding STEWART'S post-mix syrup or premix beverages for fountain soft drinks)

Schedule 1.D

TERRITORY

In the State of Minnesota, the following Counties in their entirety:

Isanti                      Kanabec

Pine County:              Southern Half

\*\*\*

In the event of a dispute with respect to territorial boundaries between two or more adjacent DISTRIBUTORS, COMPANY shall have the right to resolve such dispute in its sole reasonable discretion, and any such decision shall be final and binding upon each of the parties.

Schedule 3.B  
**Cadbury Schweppes Americas Beverages**  
**Premium Brands Transshipment Control Program**  
**(SN, NN, MS and ST)**

**Effective January 1, 2005**

**Overview**

Cadbury Schweppes Americas Beverages ("CSAB"), with the support of its CSAB distributors, maintains its commitment to the soft drink licensing system and exclusive territorial boundaries.

The transshipment of any amount of bottled and/or canned CSAB Premium Brands products, by any CSAB distributor, is a violation of its applicable CSAB License or Distribution Agreements.

The CSAB Premium Brands Transshipment Control Program was developed as a voluntary service by CSAB for the benefit of all CSAB distributors. Although the Program relies in the first instance on each CSAB distributor's self-governance as it relates to limiting its sales and distribution activities to within its authorized geographic territory, the Program is designed to further encourage compliance in that regard and to discourage distributors from engaging in any transshipment activity.

This CSAB Premium Brands Transshipment Control Program shall be effective January 1, 2005, and shall supersede any and all existing transshipment control policies and programs for each of the Premium Brands. As used herein, the term "Premium Brands" (plural) shall mean and refer to Snapple, Mystic, Nantucket Nectars, and Stewart's, unless otherwise provided.

**Objective**

In keeping with the original concept described above, this Program is intended to assist all CSAB distributors in the preservation of their territorial integrity by imposing transshipment fines that are designed to restrain the transshipment of significant quantities of CSAB Premium Brands products.

**Definition**

A transshipment, or transshipped product, for the purposes of the administration of the CSAB Premium Brands Transshipment Control Program, will mean the following:

A minimum quantity of 10 cases per trademark in one location of bottled and/or canned CSAB Premium Brands product(s), all of which product is verified (by an independent agency) for resale outside the original distributor's authorized territory.

## Brands Covered

All Brands and flavors under any or all of the following trademarks:

- Snapple
- Mystic
- Nantucket Nectars
- Stewart's

### 1. Investigation Requirements

- a. CSAB requires a minimum of 10 cases per trademark of transshipped bottled and/or canned CSAB Premium Brands product in one location to initiate an investigation. Different CSAB Premium Brand products may not be combined to meet the minimum requirement.
- b. CSAB will not authorize a transshipment investigation unless and until a Transshipment Complaint Form has been submitted to CSAB's Territory Control Coordinator. Only the Territory Control Coordinator at CSAB can authorize a transshipment investigation.
- c. CSAB sales representatives will refer all investigation requirement inquiries to the Territory Control Coordinator at 914-612-4477.

### 2. Reporting Procedure

- a. Any distributor observing a minimum of 10 cases of transshipped bottled and/or canned CSAB Premium Brand products in one location in its licensed territory should immediately fax a Transshipment Complaint Form (attached) to the Territory Control Coordinator at 914-612-6314, or obtain an E-mail Transshipment Complaint Form by contacting the Territory Control Coordinator at 914-612-4477.
1. The reporting distributor must provide complete and accurate data on the Transshipment Complaint Form. The following information will be required:
    2. Name and address of the account where transshipped CSAB Premium Brand products were located.
    3. Estimated quantity of transshipped CSAB Premium Brand product by package and brand (e.g., 100 cases of 16 oz. Glass Snapple Peach Tea).
    4. Code numbers on packages, trays, and pallets.
    5. Suspected transshipper (if known).
    6. Any other pertinent information such as the selling price of product, sales tickets, delivery vehicles observed, etc.
    7. Name and telephone number of reporting distributor representative for contact by the investigative agency.
  8. Please use the attached Transshipment Complaint Form and make copies for future use as required.

### 9. Investigation Procedure

- a. CSAB will review the Transshipment Complaint Form to ensure sufficient information is reported and, if the information submitted warrants an investigation, will contact the appropriate investigative agency within 24 hours. Failure to provide sufficient information may, at CSAB's sole discretion, result in no investigation or a delay of the investigation.
- b. After receiving authorization from CSAB, the investigative agency will contact the reporting distributor. The reporting distributor must then advise the investigative agency if it is its intent to accompany the investigator on the investigation.
- c. *Every reasonable attempt will be made by the investigative agency to determine pallet, tray and package codes. If pallet, tray, and package codes cannot be verified, it may prevent CSAB from identifying the transshipping distributor and levying transshipment fines.*
- d. Following the investigation, the investigator will file a report with the Territory Control Coordinator.
- e. After review for duplicate product, accuracy, etc., the Territory Control Coordinator will communicate the findings of the investigation to the reporting distributor. For the purposes of this Program, "duplicate product" means product that has the same tray and/or package codes as product that was reported in a prior investigation.
  1. CSAB will not levy transshipment fines based wholly or in part on duplicate product.
  2. CSAB will be the sole determiner as to whether transshipped product is considered duplicate product.
  3. In the event of any tray and/or package code discrepancies, CSAB will be the sole determiner as to whether or not transshipment fine(s) will be levied.

10. If transshipped CSAB Premium Brands product is verified as being less than 10 cases per location, a warning letter will be sent to the transshipping distributor(s) requiring cooperation in stopping further transshipment(s).

#### **11. Identification Requirements**

12. *All authorized producers and co-packers of CSAB Premium Brand products are responsible for providing tray and pallet codes for all CSAB Premium Brand products manufactured by their respective plants.*

- b. *It is recommended that all producers include tray and pallet codes on all billings. It is also recommended that all CSAB distributors track tray and pallet codes on all shipments received and all product transfers between distributors.*

#### **13. Transshipment Fine**

14. The fine for all transshipped CSAB Premium Brand products verified to the satisfaction of CSAB will be \$10.00 per hard case plus an administrative fee of \$2.00 per hard case, plus the total actual cost of the investigation, for a total transshipment fine of \$12.00 per hard case plus the costs of investigation (i.e., Fine + Administrative Fee + Actual Cost of Investigation = Total Transshipment Fine).

- 
15. If the investigation does not result in the verification of a minimum of 10 cases of transshipped bottled and/or canned CSAB Premium Brands product in any one location as reported, the reporting distributor will be invoiced for the full or prorated cost of the investigation. For example, if 3 locations were investigated and the minimum requirement was not met in 2 of the 3 locations, the reporting distributor would be invoiced for 2/3rds of the total cost of the investigation.

**16. Collection / Reimbursement Process**

- a. The transshipping distributor will have thirty (30) days from the receipt of the invoice to make payment to CSAB.
  1. Failure to pay a transshipment invoice within thirty (30) days will result in the deduction of the transshipment fine(s) from marketing fund reimbursements within the following fifteen (15) days.
- b. If marketing fund reimbursements are not available, failure to pay a transshipment fine within 45 days will result in one or more of the following: (i) the loss of local marketing funds, (ii) the cut-off of shipments of any and all Premium Products, (iii) the termination of License or Distribution Agreements for cause, and (iv) the use of any and all other legal or equitable remedies available to CSAB.
- c. The fine collected from the transshipping distributor will be paid to the reporting distributor in the form of a credit approximately forty-five (45) days from the date the transshipping distributor was invoiced.

**17. Reservation of Rights**

- a. CSAB reserves the right, in its sole and final discretion, to determine whether a transshipment complaint merits an investigation. In the event that CSAB authorizes an investigation and the investigation verifies transshipment of CSAB Premium Brands products, CSAB may impose transshipment fine(s) and the cost of the investigation. CSAB shall determine the total amount of the transshipment fine in its reasonable and final discretion. Furthermore, CSAB reserves the right to change or modify this Program at any time, with or without prior written notice, including but not limited to changing or modifying the amount of fine(s) for any repetitive transshipment.
- b. The CSAB Premium Brands Transshipment Control Program as described herein is not intended to conflict or contravene the terms or conditions of any License or Distribution Agreements or amendments thereto between any of the CSAB affiliated entities and any CSAB distributor. To the extent that any provision(s) in this Program conflicts with or is not permitted by any such applicable CSAB License or Distribution Agreement, the terms and conditions of the License or Distribution Agreement shall govern and control.
- c. In addition to the reservations set forth above, Cadbury Schweppes Americas Beverages reserves its rights and remedies under the applicable CSAB License or Distribution Agreement, and under all applicable laws.

**Please direct any inquiries regarding Transshipment Control to:**

*Cadbury Schweppes Americas Beverages* Call: 914-612-4477  
900 King Street Fax: 914-612-6314  
Rye Brook, NY 10573  
Attn: Territory Control Coordinator

Review the attached Transshipment Complaint Form and make additional copies as needed.



Schedule 3.D

COMPANY DIRECT ACCOUNTS

Cracker Barrel

SCHEDULE 8.A

TRADEMARKS

Stewart's  
Fountain Classics  
S™

**Schedule 9.A**

**Performance Requirements**

To be mutually agreed upon in writing on annual basis.

**Schedule 9.H**

Set forth below is a listing of all soft drink beverage products (carbonated and non-carbonated) sold and distributed by DISTRIBUTOR within the Territory immediately prior to signing this Agreement:

CSAB Products

Snapple

Other Products



## DISTRIBUTOR AGREEMENT

This Distributor Agreement (the "Agreement") is made this 30<sup>th</sup> day of JULY, 2004 (the "Effective Date"), by and between STEWART'S BEVERAGES, LLC. (the "COMPANY"), an entity with its principal place of business at 900 King Street, Rye Brook, New York 10573-1226, and ROHLFING OF DULUTH, a \_\_\_\_\_ corporation, with its principal place of business located at 1 South 24<sup>th</sup> Avenue West, Duluth, Minnesota 55806 (the "DISTRIBUTOR").

### WITNESSETH:

WHEREAS, COMPANY has been duly appointed as an exclusive licensee of STEWART'S Restaurants, Inc. for the purpose of making and selling soft drinks identified by the trademark STEWART'S® (the "STEWART'S trademark"), as well as for the purpose of sublicensing the use of the Trademark for such goods in strict compliance with the quality standards of STEWART'S Restaurants, Inc. COMPANY is the owner of the trademark FOUNTAIN CLASSICS (the "Fountain Classics trademark"), and collectively with the STEWART'S trademark the "Trademarks") used in connection with the sale and marketing of STEWART'S brand soft drinks; and

WHEREAS, COMPANY wishes to grant to DISTRIBUTOR the right to distribute certain STEWART'S (the "Trademark Brand(s)") beverages to customers in a defined territory; and

WHEREAS, DISTRIBUTOR is in the business of beverage distribution in such territory, has adequate facilities, transport equipment and personnel to distribute the Trademark Brand beverages, and wishes to accept the responsibility for distributing such beverages in the manner described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, COMPANY and DISTRIBUTOR, intending legally to be bound, agree as follows:

### AGREEMENT:

#### 1. DEFINED TERMS

A. "Authorized Officer". The term "Authorized Officer" shall mean an officer of the rank of vice-president or president.

B. "Products". The term "Products" shall mean those products set forth on Schedule 1B to this Agreement that COMPANY wishes to sell during the term of this Agreement in the Territory under the Trademark Brands. "Products" shall also include those New Products offered to and accepted by DISTRIBUTOR pursuant to Paragraph 3.C.

C. "New Products". The term "New Products" shall mean all flavors of any category of beverages that COMPANY wishes to sell during the term of this Agreement in the Territory

under the Trademark Brand(s) not set forth on Schedule 1B to this Agreement. A New Product may consist of one flavor of an individual product.

D. "Territory". The term "Territory" shall mean the geographic areas set out in Schedule 1.D to this Agreement.

## 2. TERM

The initial term of this Agreement shall be effective on the Effective Date until December 31, 2005 (the "Initial Term") and shall be subject to earlier termination in accordance with the provisions hereof. In the event neither party hereto elects to terminate this Agreement at the end of the Initial Term by written notice given at least thirty (30) days prior to the end of such term, which termination or non-renewal may be without cause, this Agreement shall be extended (again subject to earlier termination in accordance with the provisions hereof) for further and consecutive one (1) year renewal terms until terminated or not renewed by notice given as aforesaid. It is understood that renewal of the Agreement is entirely in the sole discretion of COMPANY. Upon notice of termination or non-renewal, DISTRIBUTOR shall have thirty (30) days to dispose of its remaining Products on hand or to sell its inventory of Products to COMPANY at DISTRIBUTOR's landed cost. COMPANY's obligation to purchase Products shall apply only to Products that are saleable in the normal course of business and are not out of code or damaged. Any unsaleable or non-merchantable inventory of Products must be destroyed by DISTRIBUTOR at DISTRIBUTOR's sole cost and expense with proof of destruction provided to COMPANY. During said thirty (30) day period, COMPANY reserves the right to allow another DISTRIBUTOR(s) to also market and sell Products in the Territory.

## 3. RESALE RIGHTS

A. During the term of this Agreement, COMPANY agrees, subject to the provisions of this Agreement, to sell the Products in the Territory only to DISTRIBUTOR, and DISTRIBUTOR agrees to resell the Products only to customers or approved subdistributors within the Territory. DISTRIBUTOR shall not sell Products to accounts which it knows or has reason to know will sell Products outside the Territory.

B. DISTRIBUTOR shall abide by, and be subject to, COMPANY's current transshipping policy, as in effect from time to time. DISTRIBUTOR acknowledges and agrees that COMPANY's transshipping policy may be amended by COMPANY in its discretion. Sale of Products by DISTRIBUTOR outside of the Territory shall, without limiting the above or any other provision, be deemed a material breach of this Agreement. Notwithstanding anything to the contrary in this Agreement and Company's transshipping policy, DISTRIBUTOR acknowledges the existence of the practice of "transshipping" of Products, and of this problem in the beverage industry, and DISTRIBUTOR hereby releases and discharges COMPANY from any and all liabilities, claims, damages, losses, costs or expenses incurred directly or indirectly as a result of this practice in DISTRIBUTOR's territory or to its authorized accounts. It is understood that COMPANY will use efforts to control this practice, but COMPANY shall not be required to bring any action or proceeding or to incur any expenses to remedy this practice.

C. If COMPANY introduces a New Product or line of New Products during the term of this Agreement, COMPANY may or may not, in its sole and absolute discretion, offer such New Product, line of new Products, and/or any single New Product or combination of New Products (without offering other New Products or the entire New Product line) to DISTRIBUTOR for distribution within the Territory. If DISTRIBUTOR accepts distribution of such New Product and commences the sale and distribution of such New Product within thirty (30) days after

notification from COMPANY, then such New Product shall be included within the definition of "Product" in this Agreement.

D. DISTRIBUTOR shall sell the Products in the Territory on a "direct-store-delivery" ("DSD") basis only. DISTRIBUTOR may not, without COMPANY's prior written consent, sell the Products to any other wholesaler or distributor nor to any Warehouse Purchaser, it being the intent of this Agreement that DISTRIBUTOR shall sell the Products only on a DSD basis and only to retail outlets and approved subdistributors. For the purposes of this Agreement, the term "Warehouse Purchaser" means a wholesale business (or division) that is owned or controlled by the retailer or retailers to whom said wholesale business (or division) sells its products.

E. Notwithstanding anything to the contrary contained herein, COMPANY reserves the right to sell directly, or through its agents or representatives, beverages in packages other than bottles and cans, (including but not limited to shelf stable packages such as "tetra pak"), beverages in any package size larger than 32 oz. and beverages not sold under the Trademark Brands. COMPANY similarly reserves the right to sell to those accounts (i) which were serviced through means other than direct store delivery prior to the date hereof; (ii) which are listed on Schedule 3.D; (iii) which will not accept direct store delivery of the Products; (iv) serviced through internet sales; (v) any commissary and/or central distribution center designated by those accounts requiring delivery and billing from a single source; or (vi) which DISTRIBUTOR is unable or unwilling to service. Notwithstanding anything contained herein to the contrary, COMPANY reserves the right to sell Products directly (or indirectly through another wholesaler) to any "Restaurant Chain Customer" located within the Territory. For purposes of this Agreement, the term "Restaurant Chain Customer" shall be defined as a restaurant or food service operator having twenty (20) or more locations in North America.

#### 4. SUPPLY OF PRODUCTS

A. Firm orders for products shall be made by DISTRIBUTOR in accordance with COMPANY's ordering procedures and order lead time policy as in effect from time to time.

B. DISTRIBUTOR shall comply with COMPANY's distributor pallet policies and procedures as in effect from time to time.

C. COMPANY shall replace, at its own expense, all Products which are spoiled or otherwise deficient in quality upon delivery to the shipper (i.e., for delivery to DISTRIBUTOR), or COMPANY shall at its option provide a credit to DISTRIBUTOR's account for the delivered price of such Products, provided, however, that DISTRIBUTOR shall comply at all times with COMPANY's spoiled Product procedures.

D. DISTRIBUTOR shall maintain complete and accurate books and records showing sales of Products. Information as to market penetration, levels of distribution (SKU's) by channel, number of established accounts, results of promotional programs, total account base, and other data shall be provided to COMPANY, upon COMPANY's request, within thirty (30) days of receipt of COMPANY's request to DISTRIBUTOR. DISTRIBUTOR shall allow COMPANY's representatives to work the sales routes with DISTRIBUTOR's salespersons.

E. Within sixty (60) days following COMPANY's written request, DISTRIBUTOR shall implement web-based order entry.

5. **REPORTS.**

During the term of this Agreement and through the calendar month following termination of this Agreement, DISTRIBUTOR shall provide COMPANY, in the forms specified by COMPANY, with the following full and complete, periodic reports:

A. Monthly reports of total sales volume within the Territory, by sales reporting location, separated by direct store delivery ("DSD") system, independent contractor/distributor system, and sales to other Distributors. Sales shall be stated by Product, flavor and Authorized Container. Monthly sales to other Distributors shall be separately stated, listing each Distributor and the amount of each Product and Authorized Container purchased thereby.

B. Specific sales information by channel, class of trade or by account, as may be reasonably requested by COMPANY from time to time. DISTRIBUTOR agrees to supply such information within ten (10) days of such request.

C. The number of vending machines, glass door merchandisers, their location and volume throughput by package, by Product on a monthly basis.

D. Monthly reports of total sales volume shall be sent on or before the 5th working day of the calendar month following the sales activity, or on such other day as may be reasonably specified by COMPANY, and shall be sent to COMPANY electronically in a format acceptable to COMPANY.

E. All such other reports as may be reasonably requested by COMPANY.

6. **PRICE AND PAYMENTS**

A. COMPANY shall sell Products to DISTRIBUTOR at the delivered price F.O.B. DISTRIBUTOR's facility. Pallet charges are also included.

B. The delivered price (including delivery terms) to DISTRIBUTOR may be changed by written notice by COMPANY to DISTRIBUTOR. Any such changes in the delivered price will begin to apply to written orders received by COMPANY fourteen (14) days from the date of DISTRIBUTOR's receipt of such notice.

C. No "franchise fee" or other fee of any kind has been paid to, and none is payable by DISTRIBUTOR to, COMPANY for the right to enter into this Agreement.

7. **TERMS OF PAYMENT**

A. DISTRIBUTOR's payment for the Products purchased shall be due net 20 days from the date of invoice. COMPANY shall have the right to change payment terms and other terms and conditions of sale upon thirty (30) days prior written notice to DISTRIBUTOR. In the event that DISTRIBUTOR fails to make a payment when and as due, then beginning on the date the payment became due until the date that the payment is received, DISTRIBUTOR shall owe and pay to COMPANY interest on such overdue payment at the rate of one and one-half percent per month (18% per annum) or at the lesser rate of interest that is equal to the maximum rate of interest permissible pursuant to the law of the Territory. This right of interest shall be without any limitation of or to any of the COMPANY's other remedies, whether at law or in equity.