

RESOLUTION NO. 06-2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH BOTTLING GROUP, LLC, D/B/A THE PEPSI BOTTLING GROUP, FOR SUCH PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes municipalities to establish and provide for the administration of programs that promote economic development and stimulate business and commercial activity in the City of Mesquite (the "City"); and

WHEREAS, the City Council has been presented with a proposed agreement by and between the City and Bottling Group, LLC, d/b/a The Pepsi Bottling Group, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby economic development will be promoted and business and commercial activity will be stimulated in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council finds that the terms of the proposed agreement by and between the City of Mesquite (the "City") and Bottling Group, LLC, d/b/a The Pepsi Bottling Group, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"), will promote economic development and stimulate business and commercial activity in the City and otherwise meet the criteria of Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby the City will make economic development program payments to the Bottling Group, LLC, and take other specified actions, in accordance with the terms outlined in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents in connection therewith on behalf of the City substantially according to the terms and conditions set forth in the Agreement.

SECTION 5. That this resolution shall become effective immediately from and after its passage.

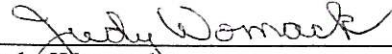
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 22nd day of January, 2008.




John Monaco
Mayor

ATTEST:

APPROVED:



Judy Womack
City Secretary



B. J. Smith
City Attorney

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

(Chapter 380 Agreement)

This Economic Development Program Agreement ("Agreement") is made and entered into by and between the City of Mesquite, Texas (the "City"), and Bottling Group, LLC, d/b/a The Pepsi Bottling Group (the "Company"), for the purposes and considerations stated below:

WITNESSETH:

WHEREAS, on January 22, 2008, the City adopted Resolution No. 06 - 2008 establishing an Economic Development Program pursuant to Section 380.001 of the Texas Local Government Code ("Section 380.001") and authorizing this Agreement as part of the Economic Development Program established by City Council Resolution (the "Program"); and

WHEREAS, the Company desires to participate in the Program by entering into this Agreement; and

WHEREAS, the Company is constructing a 100,000-square-foot warehouse and manufacturing expansion that will add approximately ten million dollars (\$10,000,000.00) in building and land value, and more than \$15 million in business personal property value to the City (the Project"); and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program, and that the Company's construction of the Project and performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

NOW, THEREFORE, in consideration of the mutual benefits and premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Authorization.

The City has concluded that this Agreement is authorized by Section 380.001, and is authorized by Resolution of the City. The City has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to the City as a result of the Company's development and operation of the Project as hereinafter defined. This development will increase the taxable value of the Property and will increase the sales tax generated for the City and the value of the benefits of the Project will outweigh the amount of expenditures required of the City under this Agreement.

2. Definitions. The following definitions shall apply to the terms used in this Agreement:

"City" means the City of Mesquite, Texas.

"Company Affiliate" means any Person directly or indirectly controlling, controlled by, or under common control with the Company. As used in the definition of "Affiliate," the term "Control" means, directly or indirectly, the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Complaining Party" has the meaning set forth in Section 10 of this Agreement.

"Defaulting Party" has the meaning set forth in Section 10 of this Agreement.

"Effective Date" means the date that all parties have executed this Agreement.

"Force Majeure" means any contingency or cause beyond the reasonable control of Owner including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or defacto governmental action (unless caused by acts or omissions of Owner), fire, explosion or flood, and strikes.

"Initial Construction" means any construction of any phase of the Project, upon the Premises for which a building permit is required, but does not include any renovation, remodeling, retrofitting or reconfiguration of any building or structure upon the Premises.

"Owner" means The Pepsi Bottling Group.

"Person" means an individual or a corporation, partnership, trust, estate, unincorporated organization, association or other entity.

"Premises" means that certain tract of real property located at 4532 U.S. Highway 67, Mesquite, Dallas County, Texas, consisting of approximately 18.93 acres, more or less, as more particularly described on Exhibit "A" hereto.

"Project" means 100,000-square-foot warehouse and manufacturing space expansion.

"Program" has the meaning set forth in the recitals to this Agreement.

"Program Payment" means the payments to be made by the City pursuant to Section 4 of this Agreement.

"Section 380.001" has the meaning set forth in the recitals to this Agreement.

"Term" has the meaning set forth in Section 3 of this Agreement.

"Undocumented Worker" means an individual who, at the time of employment, is not:

- a. Lawfully admitted for permanent residence to the United States; or
- b. Authorized under law to be employed in that manner in the United States.

3. **Term.**

This Agreement shall be effective as of the date of execution by all parties. This Agreement will terminate five years from the date of execution of this Agreement.

4. **City's Development Program Incentives.**

For all Initial Construction or demolition by Company upon the Premises during the term of this Agreement, the City shall grant Company the following incentives:

Property Tax Incentive. Upon completion of the Project and the issuance of a building certificate of occupancy, the City shall reimburse to the Company 50 percent of city property taxes received on the business personal property of the Project described above.

5. **Company Covenants.**

In consideration of the City's incentives under this Agreement (including the payment of monies to the Company), the Company agrees to:

- a. Construct a 100,000-square-foot warehouse and manufacturing facility to include a bottle manufacturing process to be completed by December 31, 2008.
- b. Relocate and maintain at such location all pallet storage and related outdoor storage materials, if possible, from parking areas along the I-30 frontage to a more secluded location on the east side of the facility, shielded by the Project and the current building line. Pallet storage will not be easily visible from I-30 corridor or frontage road, and Company will meet or exceed fire code requirements for such storage. If a development occurs on adjacent property to pallet storage area, Company agrees to construct screening wall between new development and pallet storage area. If pallets aren't moved when Project comes on line, or if they are moved back to I-30 frontage areas, Company is subject to repaying some or all of rebated taxes paid as an incentive pursuant to Section 10 of this Agreement.
- c. Comply with all applicable federal, state and local laws in the operation of the Project, including but not limited to, the statutory requirements relating to undocumented workers as set forth in Section 6 of this Agreement.
- d. Occupy, maintain and operate the Project and premises from the time of completion until the expiration of the term of this Agreement.

6. **Restrictions on Use of Incentives to Employ Undocumented Workers.**

The Company certifies that it does not and will not knowingly employ an undocumented worker and that if, after receiving any incentive set forth in Section 4 of this Agreement, it is convicted of a violation of the Immigration Laws found under 8 U.S.C. Section 1324a(f), the Company shall be required to notify the City of such conviction. Upon notification of conviction by Company, or if City should discover such conviction on its own and notifies Company of same, the Company shall repay an amount equal to the total amount of incentives received hereunder with interest, at the rate and according to the terms provided in Section 10(b) of this Agreement not later than the 120th day after the date of such notification.

7. Mutual Assistance.

The City and the Company shall take all reasonable measures, which are necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

8. Covenants Running with the Land.

The Company's rights, covenants, restrictions, burdens, privileges and charges, set forth in this Agreement shall exist at all times as long as this Agreement is in effect, among all parties having any right, title or interest in any portion of all the Property, but which covenants shall absolutely expire without further action by any person upon termination of this Agreement as provided herein.

9. Representations and Warranties.

The City represents and warrants to the Company that the Program and this Agreement are within the scope of its authority and the provisions of its charter and that it is duly authorized and empowered to establish the Program and enter into this Agreement. The Company represents and warrants to the City that it has the requisite authority to enter into this Agreement.

10. Default.

- a. If either party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within 30 days after delivery of written notice of such default from the other party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its damages for such default. Notwithstanding anything to the contrary contained herein, any Program Payments from the City which are not timely paid by the City shall not incur interest at the highest rate per annum allowed by applicable law from the date such Program Payment is due until paid.
- b. The Company agrees, that upon an event of default of Section 5 hereunder, and upon receipt of notice from the City, to remit to the City a sum equal to the total of all

incentives granted by the City to the Company pursuant to this Agreement, plus interest at the highest rate per annum allowed by applicable law from the date payments were made, until paid.

11. Indemnification.

THE COMPANY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PREMISES OR IMPROVEMENTS. THE COMPANY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS AND ATTORNEYS' FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF USE OF OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES, PROVIDED HOWEVER THAT THIS INDEMNIFICATION SHALL NOT APPLY IF A COURT OF COMPETENT JURISDICTION FINDS THAT THE DAMAGE OR LIABILITY ARISES FROM THE SOLE NEGLIGENCE OF THE CITY, ITS OFFICERS OR EMPLOYEES.

12. Miscellaneous Matters.

- a. Section or Other Headings. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- b. Attorneys' Fees. In the event any legal action or proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorneys' fees and expenses incurred by reason of such action.
- c. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated herein.
- d. Amendment. This Agreement may only be amended, altered or revoked by written instrument signed by the Company and the City.
- e. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. The Company may assign all or part of its rights and obligations hereunder (1) to any Affiliate effective

upon written notice to the City, or (2) to any Person other than an Affiliate with the prior written approval of the City, which approval shall not be unreasonably withheld.

- f. Notice. Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

Company: Cynthia M. Poggiogalle
Bottling Group, LLC
1 Pepsi Way
Somers, New York 10589

Copy to: Bottling Group, LLC
1 Pepsi Way
Somers, New York 10589
Attn: General Counsel

City: City Manager
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

- g. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.
- h. Applicable Law. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Dallas County, Texas.
- i. Severability. In the event any provision of this Agreement is illegal, invalid or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid or unenforceable a provision be added to this Agreement which is legal, valid and enforceable, and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- j. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

THE CITY OF MESQUITE:

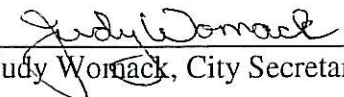
By: 

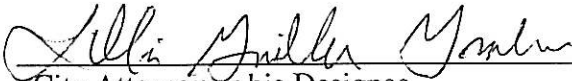
Ted Barron
Printed Name

City Manager
Title

ATTEST:

APPROVED AS TO FORM AND
LEGALITY


Judy Wornack, City Secretary


City Attorney or his Designee

COMPANY:

BOTTLING GROUP, LLC
d/b/a THE PEPSI BOTTLING GROUP

By: 

Cynthia M. Poggiogalle
Printed Name

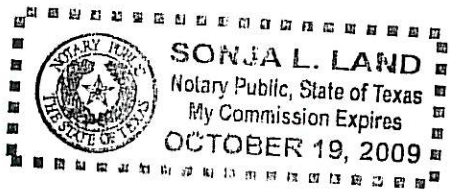
Sr. Mgr. Worldude Kecaloziti
Title

Date: 2/4/08

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Ted Barron, City Manager of the CITY OF MESQUITE, a municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he was duly authorized to perform the same by appropriate resolution of the City Council of the City of Mesquite and that he executed the same as the act of the said City for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29 day of January, 2008.



Sonja L. Land
Notary Public in and for the State of Texas
Sonja L. Land
Notary's Printed Name

My Commission Expires: 10/19/09

THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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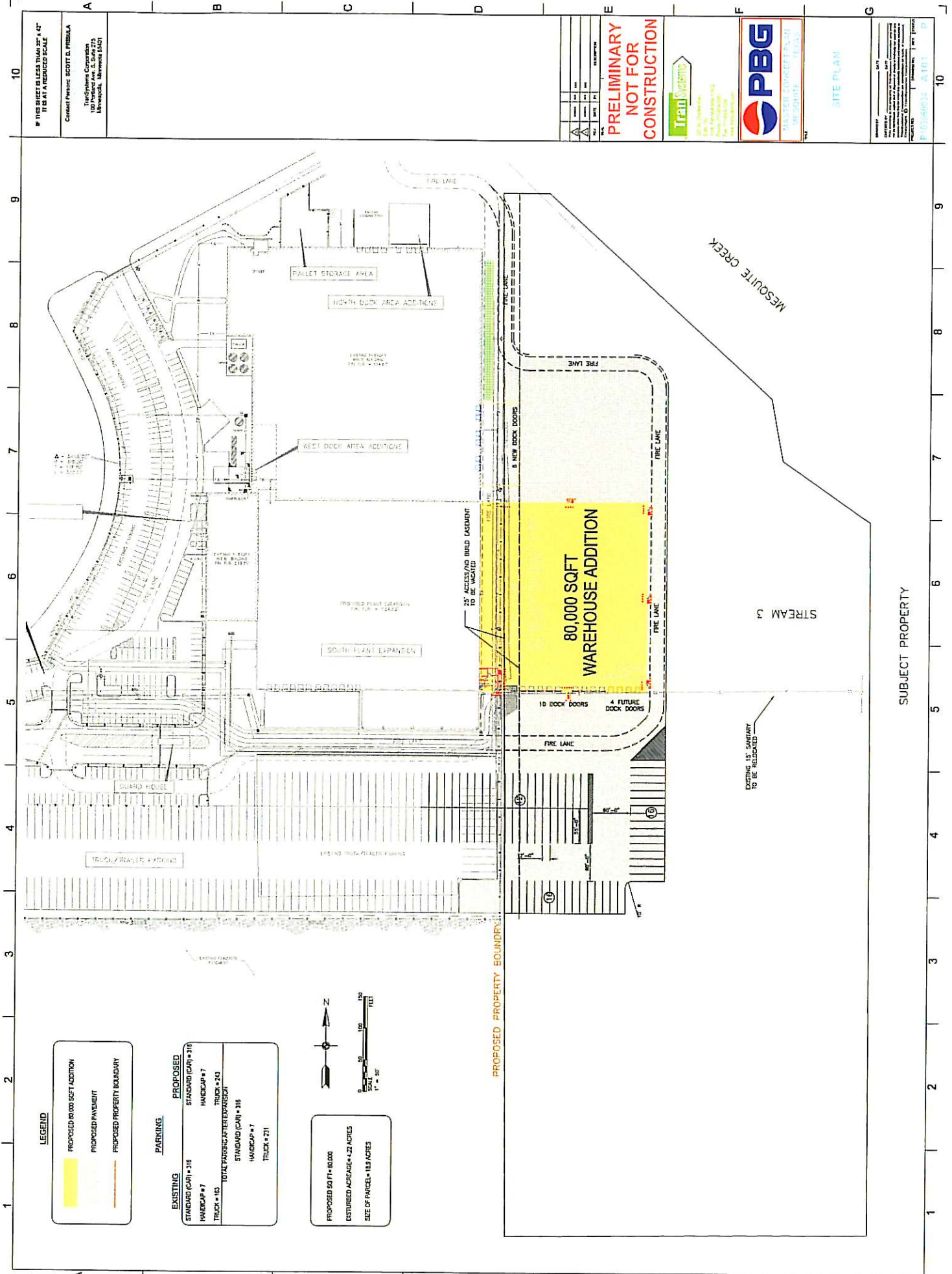
BEFORE ME, the undersigned authority, on this day personally appeared Cynthia M. Poggiogalle, Sr. Mgr. worldwide Real Estate of the Bottling Group, LLC, d/b/a The Pepsi Bottling Group, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that said instrument was signed on behalf of said corporation and for the purposes stated therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE in said County and State this 5th day of February, 2008.

DEBORAH MILL
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01M6144560
QUALIFIED IN DUTCHESS COUNTY
MY COMMISSION EXPIRES APRIL 24, 2010

Deborah Mill
Notary Public in and for the State of New York
Deborah Mill
Notary's Printed Name

My Commission Expires: 4.24.10



IF THIS SHEET IS LESS THAN 24" x 42" IT IS AT A REDUCED SCALE

Contact Persons: SCOTT D. PIRELLA
Pirellas Corporation
10000 Highway 100
Minnetonka, Minnesota 55342

PRELIMINARY NOT FOR CONSTRUCTION



SITE PLAN

PROJECT: []
DATE: []
DRAWN BY: []
CHECKED BY: []
APPROVED BY: []