RESOLUTION NUMBER 06-008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A VOLUNTARY SALES AND USE TAX COLLECTION AGREEMENT BETWEEN THE CITY OF KETCHUM AND BING HAN (USA) ENTERPRISES, LTD., A WASHINGTON CORPORATION, FOR THE COLLECTION OF CITY SALES TAX.

WHEREAS, Bing Han (USA) Enterprises, Ltd., an out of state wholesaler that supplies products to local independent retailers ("Bing") desires to enter into an agreement with the City of Ketchum ("Ketchum") pursuant to which Bing will collect the City Sales Tax (LOT) on behalf of its independent retailers and remit such tax proceeds to Ketchum thereby simplifying the administration and collection of the City Sales Tax; and

WHEREAS, pursuant to Idaho Code §§ 50-301 and 50-302, Ketchum has the authority to enter into contracts and to take such steps as are reasonably necessary to maintain the peace, good government, and welfare of the City and its trade, commerce, and industry; and

WHEREAS, pursuant to Ordinance 712 of the Ketchum City Council, the City of Ketchum may collect a one percent (1%) tax on the sales price of all property subject to taxation under Idaho Code § 63-3601, *et seq.*

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho that the City Council hereby authorizes and instructs the Mayor to execute a Voluntary Sales Tax and Use Tax Collection Agreement between the City of Ketchum and Bing Han (USA) Enterprises, Ltd., a Washington Corporation for the collection of City Sales Tax.

This Resolution will be in full force and effect upon its adoption this sixth (6th) day of February 2006.

ATTEST:

Sandra E. Cady, CMC
City Treasurer/Clerk

CITY OF KETCHUM

Randall Hall, Mayor

APPROVED AS TO FORM
AND CONTENT:

Benjamin W. Worst, City Attorney

Voluntary Sales And Use Tax Collection Agreement

Recitals

This Agreement is made between Bing Han (USA) Enterprises Limited, of Blaine, Washington hereinafter referred to as "Bing Han" and the City of Ketchum, Idaho, hereinafter referred to as the "Taxing Jurisdiction".

WHEREAS, Bing Han is a corporation organized under the laws of a state other than the Taxing Jurisdiction; and

WHEREAS, Bing Han maintains its headquarters outside of the Taxing Jurisdiction; and

WHEREAS, Bing Han is a wholesaler of various consumer products. Bing Han engages in interstate commerce by selling its products to Independent Business Owners, hereinafter referred to as "distributors" on a sale for resale basis at wholesale prices; and

WHEREAS, the distributors are independent businesses and not employees, agents, managers, legal representatives, franchisees, order takers or joint venturers of Bing Han; and

WHEREAS, the distributors retail the products to the general public at a price determined by them; and

WHEREAS, Bing Han provides a suggested retail price to the distributors, but the distributors are free to charge the price each distributor deems suitable; and

WHEREAS, all sales made by distributors result in personal profits or losses because they are independent business owners; and

WHEREAS, Bing Han delivers all its products by a common carrier or United States mail from its inventory which is not located in the Taxing Jurisdiction; and

WHEREAS, Bing Han does not have any employees or inventory, nor does it own, lease or rent any real, personal or intangible property in the Taxing Jurisdiction; and

WHEREAS, in no instance is Bing Han required or obligated to install, supervise, repair or maintain service of any nature in the Taxing Jurisdiction; and

WHEREAS, the parties recognize that this Agreement will be mutually beneficial to the Taxing Jurisdiction, Bing Han and the distributors;

NOW, THEREFORE, in order to simplify and make more efficient the administration and collection procedures of the sales and use tax imposed by the Taxing Jurisdiction, and to eliminate the individual licensing of distributors for the purpose of sales and use taxes in the jurisdiction, it is agreed that:

1. The distributors shall be recognized by the Taxing Jurisdiction as "independent businesses" and not employees, agents, managers, legal representatives, franchisees, order takers or joint venturers of Bing Han.

2. Bing Han shall assume the responsibility for the collection of sales and/or use taxes only on the products sold to distributors, and shall not assume responsibility for the collection of sales and/or use tax on any other products sold by the distributors. The collection will be based on the suggested retail price (or actual sales price if known) and ship-to-address, as determined by the zip code designation. Bing Han shall maintain records of such transactions at its headquarters.

3. This method shall be acceptable for the collection of the sales and /or use taxes by Bing Han. The parties agree that Bing Han may subsequently improve its method of determining the applicable Taxing Jurisdiction and prior written consent of such change will not be required by the Taxing Jurisdiction.

4. Bing Han shall remit the sales and/or use taxes to the Taxing Jurisdiction in lieu of payment of said taxes by, and individual licensing of, distributors. The following adjustments shall be allowed in computing the sales and/or use tax due the Taxing Jurisdiction:

    a. In the event a distributor makes a sale at a retail price higher than the suggested retail price and subsequently remits the additional tax, Bing Han shall adjust the next payment of sales and/or use tax to the Taxing Jurisdiction by an amount equal to the additional tax.

    b. In the event a distributor makes a sale at a price lower than the suggested retail price and subsequently seeks a partial reimbursement of the tax previously paid, Bing Han shall reimburse the distributor and adjust the next payment to the Taxing Jurisdiction by an amount equal to the partial reimbursement. The partial reimbursement described in this subparagraph is the difference between the tax imposed on the suggested retail price and the distributor's actual sales price.

    c. In the event a distributor makes a sale and delivers or has delivered products to another distributor or retail customer located outside the Taxing Jurisdiction where the sales and/or use tax was originally imposed and paid and subsequently

notifies Bing Han, Bing Han shall make the appropriate adjustment with the distributor and the Tax Jurisdiction(s) involved. The distributor will be required to collect and remit the applicable sales and/or use tax for the location where the products were delivered and will be reimbursed for the tax originally imposed and paid.

d. In the event a distributor uses the product(s) personally, for demonstration purposes or as a gift and subsequently seeks a partial reimbursement of the tax previously paid; Bing Han shall reimburse the distributor and adjust the next payment to the Taxing Jurisdiction by an amount equal to the partial reimbursement. The partial reimbursement described in this subparagraph is the difference between the tax imposed on the suggested retail price and the distributor's cost of the product(s).

e. In the event a distributor makes a sale to a person or entity that is not required to pay sales and/or use taxes and subsequently requests a full reimbursement of the tax previously paid, Bing Han shall reimburse the distributor and adjust the next payment to the Taxing Jurisdiction by an amount equal to the reimbursement. Bing Han shall require that there be a signed exemption certificate on file with Bing Han for each person or entity to whom a distributor makes a tax exempt sale, as described in this subparagraph.

f. In the event a distributor is erroneously charged sales and/or use tax and subsequently seeks reimbursement of the erroneous amount; Bing Han shall reimburse the distributor and adjust the next payment to the Taxing Jurisdiction by an amount equal to the reimbursement.

g. In the event product(s) are returned and there is a refund of all or a portion of the price paid and the applicable tax previously paid, Bing Han will adjust the next payment to the Taxing Jurisdiction by an amount equal to the tax refunded.

h. In the event Bing Han has accrued and paid any sales and/or use taxes to the Taxing Jurisdiction which are subsequently not collectable after Bing Han has exhausted reasonable means to collect, Bing Han will be allowed to adjust the next payment to the Taxing Jurisdiction for this amount, if this deduction is allowed by the Taxing Jurisdiction's sales and/or use tax law.

For the adjustments described in subparagraphs 4a. through 4g., Bing Han will require a distributor to complete and submit a sales and/or use tax adjustment form (copy of proposed form is attached as Exhibit A). Taxing

Jurisdiction agrees that this form is acceptable and may be modified by Bing Han without the prior written consent of the Taxing Jurisdiction. Taxing Jurisdiction further agrees that this form has the same validity, force and effect as an exemption certificate.

For the adjustment described in subparagraph 4h., Bing Han will maintain sufficient documentation to support the adjustment.

5. The Taxing Jurisdiction shall notify Bing Han of any change(s), substantive, administrative or procedural, affecting Bing Han's responsibility for the collection and remittance of the sales and/or use taxes, including but not limited to rates, collection fees, exemptions, filing dates, payments, prepayments and, credits.

6. The effective date of this Agreement shall be September 1, 2004.

7. Any modifications, amendments and, changes to this Agreement are binding only if in writing and signed by an authorized distributor of the Taxing Jurisdiction and Bing Han.

8. The Taxing Jurisdiction or Bing Han may cancel this Agreement at the end of any month with no less than sixty-(60) days prior written notice to the other party.

9. This Agreement to collect and remit the sales and/or use taxes to the Taxing Jurisdiction is made voluntarily by Bing Han as a convenience to and in a spirit of cooperation with the Taxing Jurisdiction, provided, however, that this Agreement is made subject to the condition that the distributors' liability for sales and/or use taxes, to the extent collected by Bing Han pursuant to this Agreement, shall cease upon its effective date.

10. Execution of this Agreement by the Taxing Jurisdiction shall under no circumstances be construed as a waiver of its right to prosecute any distributor under the criminal provisions of its sales and/or use tax laws nor relieve any distributor of their civil liability for any such taxes to the extent not remitted to Bing Han for payment to the Taxing Jurisdiction in accordance with the terms of this Agreement.

11. By executing this Agreement, Bing Han is not admitting nor is the Taxing Jurisdiction assuming that Bing Han has sufficient contacts in the Taxing Jurisdiction to create nexus such that it could require Bing Han to collect its sales and/or use taxes. The Taxing Jurisdiction agrees that it shall not impute or otherwise attribute the distributors' contacts, activities, agents, distributors and property within the Taxing Jurisdiction to Bing Han to create nexus requiring payment or collection of any tax, fee or assessment, including but not limited to corporate income, business license, excise, single business, franchise, net worth, gross receipts, business and

occupational and ad valorem taxes. Taxing Jurisdiction also agrees that Bing Han will have no reporting or other obligations for reporting payments in the course of its business as described and set forth in Section 6041 of the Internal Revenue Code.

12. This Agreement shall be binding upon and shall inure to the benefit of the Taxing Jurisdiction and Bing Han, their respective successors and assigns.

13. All notices necessary or proper under this Agreement shall be in writing, delivered personally, or sent by certified mail to the following address for the Taxing Jurisdiction and the address set forth on the signature page for Bing Han.

Taxing Jurisdiction Address:

CITY OF KETCHUM
P. O. BOX 2315
480 EAST AVE NORTH
KETCHUM, ID 83340

14. This Agreement regarding the collection and remittance of taxes by Bing Han will include all sales and/or use taxes administered by the Taxing Jurisdiction or its Agent.

15. Bing Han shall be entitled to the collection allowance provided by the Taxing Jurisdiction. If the Taxing Jurisdiction modifies/changes its collection allowance for entities that voluntarily collect its sales and /or use tax, Bing Han will be entitled to the new allowance.

16. By executing this Agreement, both Bing Han and the Taxing Jurisdiction represent and warrant that they have full power and authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Date: 1-9-06

By: _____

Date: 12/22/05

By: May Liew
Its: Secretary and Treasurer

Bing Han (USA) Enterprises Limited
435 Martin Street, Suite 2000
Blaine, WA 98230

Exhibit A

Sales Tax Adjustment Form

SALES TAX ADJUSTMENT FORM

Mail to:

NAME

EMAIL ADDRESS

ADDRESS

CITY | COUNTY | STATE | ZIP

PHONE ( )

Purchased from another Distributor o
Lived here at time of purchase o

State and Local Sales Taxes You Were Charged	CITY	COUNTY	STATE	ZIP	TAX RATE %

THIS FORM COVERS THE PERIOD FROM (M/D/Y) _____ THRU (M/D/Y) _____

1. **SALES IN OTHER STATES** *(Do not include drop shipments)*
(When reporting sales to more than one state or locality use Part 1 on the reverse side to itemize.)
   a. Total suggested retail value of taxable products you purchased. $ _____
   b. Amount of tax you originally paid. *(Amount to be refunded to you)* $ _____
   c. TOTAL by STATE where sold and amount of tax collected.
   City _____ County _____ State ___ Zip Code _____
   Were the products sold 1.) outside the city limits? o Yes o No 2.) outside the police jurisdiction? o Yes o No
   Taxable retail value in state where sold (see note 1)$* _____ Total Tax Rate___% Tax Collected (see note 2)**$_____
   (Your check will not be deposited until fourteen days after your refund is mailed.) *(Remit this Tax)*

2. **SALES MADE TO ANOTHER COUNTY OR CITY WITHIN YOUR STATE** ***(Pertains only to states with local taxes.)***
   a. Total suggested retail value of taxable products. (see note 3)* $ _____
   b. Tax rate _____ % and amount of tax you originally paid. $ _____
   c. Tax rate _____ % and amount of tax collected. (see note 4)** $ _____
   City _____ County _____ Zip Code _____
   d. **DIFFERENCE** *(PAYMENT IS ONLY NEEDED IF LINE "C" IS GREATER THAN LINE "B")* _____ $ _____
   Were the products sold 1.) outside the city limits? o Yes o No 2.) outside the police jurisdiction? o Yes o No
   (When reporting sales to more than one locality use Part 2 on the reverse side to itemize.)

3. **SALES MADE TO TAX-EXEMPT CUSTOMERS**
(When reporting sales to more than one customer use Part 3 on the reverse side.)
   a. Name of each tax-exempt customer _____.
   b. Reason for exemption (Hospital, School, etc.)_____.
   c. Product(s) Sold _____.
   o Signed exemption certificate attached per government regulation. (retained on file for 3 years)
   o Certificate already on file for customer with the company. (filed within the last 3 years)
   d. Total suggested retail value of taxable products. *(Do not include tax in this figure.)* $ _____
   e. Amount of tax you originally paid. *(Amount to be refunded to you)* $ _____

4. **PRODUCTS USED FOR PERSONAL OR DEMONSTRATION USE** ***or***
SALES TO A RETAIL CUSTOMER AT OTHER THAN SUGGESTED RETAIL PRICE.
   Do you live outside the city limits? o Yes o No *(Do not include sales to other Distributors)*
   Were products sold to a customer? o Yes o No
   a. Total suggested retail value of taxable products. (Do not round figures) $ _____
   b. Total sales tax on suggested retail you originally paid. $ _____
   c. Wholesale cost of taxable products used or selling price (see note 5) $ _____
   d. Total sales tax due on wholesale cost or tax collected on actual sale price. $ _____
   e. Total amount of difference due you. *(Amount to be refunded to you)* $ _____
   f. **OR**, total amount of difference due, if you collected more than you originally paid.
   (Enclose check payable to Sales Tax Dept.) $ _____

TOTAL AMOUNT REFUNDED TO YOU (Lines 1b,2d,3e, & 4e)	$ _____

I HEREBY CERTIFY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Distributor Number _____ Date _____ Signature _____

This form can be duplicated for additional copies. Please keep a copy for your records.

Section 1–SALES IN OTHER STATES

State/County or Parish/City/Zip Code	Sold Outside City Limits Y or N	Taxable Retail Amount (taxable where sold)	Tax Rate–%	Tax Collected
		Total Line 1C on front* $	**Total Line 1C on front** $**	

***(note 1)**This total taxable retail amount should appear on line c. of Section 1. If the taxable amount in the state of purchase is different than the state you sold in, the total on line a. will be different than the total on line c.
****(note 2)**This total is the tax collected in other states and should appear on line c. of Section 1 by the $ on the far right. Your check for this tax collected must accompany your claim form. Make your check payable to Sales Tax Dept.

SECTION 2–SALES MADETO ANOTHER CITY OR COUNTY WITHIN YOUR STATE

State/County or Parish/City/Zip Code	Sold Outside City Limits Y or N	Taxable Retail Amount (taxable where sold)	Tax Rate–%	Tax Collected
		Total Line 2A on front* $	**Total Line 2C on front** $**	

***(note 3)**This total retail amount should appear on line a. of Section 2.
****(note 4)**This total collected amount should appear on line c. of Section 2.

SECTION 3–SALES MADE TO TAX-EXEMPT CUSTOMERS

Name	Reason for Exemption	Product or Products Sold

(note 5) – THE WHOLESALE PRICE INCLUDES THE COST OF THE PRODUCTS PLUS SHIPPING AND HANDLING