

## AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_ day of February, 2000, by and between the CITY OF GRAND JUNCTION, a municipal corporation, hereinafter referred to as "City," and Debonair Fun, Food and Concession, hereinafter referred to as "Lessee."

The City and Lessee agree that, for consideration as provided for herein, the parties shall have certain rights and obligations. Those rights and obligations are set out as follows.

1. That for the consideration to be paid by the Lessee to the City and in further consideration of the covenants and agreements to be kept and performed by the Lessee, and for so long as, and conditioned upon, Lessee's compliance with all provisions hereof and applicable law, the City hereby grants to the Lessee the exclusive concession rights for the sale of snacks and snack food, candies, ice cream, soft drinks, popcorn, peanuts, confections of all kinds (except chewing gum, beer, wine, tobacco products and intoxicating liquors), all known hereinafter collectively as "Concessions." No Concessions shall be dispensed in glass or metal containers, at and/or within the municipally owned or operated facilities within the City of Grand Junction, known as Lincoln Park-Moyer Pool, Ralph Stocker Memorial Stadium, Sam Suplizio Baseball Field, Columbine and Kronkright Softball Parks and Canyon View Park, hereinafter referred to collectively as "the Premises," or individually as a "Premise," or as the context requires by the following names: Lincoln Park-Moyer Pool Complex shall be referred to as "Pool"; Stocker Stadium and Suplizio Baseball Field shall be referred to as "Stadium"; Columbine and Kronkright Softball Parks shall be referred to as "Softball parks"; Canyon View Park shall be referred to as "Park."
2. Lessee shall have the use of the Premises solely and exclusively for the sale, purveying, and providing of Concessions. The City shall have reasonable access to the Premises as provided hereunder in order to determine compliance with this Agreement and applicable law, and in emergency situations, acknowledging and recognizing Lessee's right to keep the Premises secure and to be free from unreasonable interference. Lessee shall be required, as a material term of this Agreement, to serve and/or otherwise provide soft drinks manufactured exclusively by Pepsi-Cola Inc. in or at the Stadium. This term shall be governed by and construed in accordance with Exhibit A attached hereto and incorporated by this reference. The Lessee may provide soft drinks of other manufacturers, in its sole discretion, in or at the Pool or Softball parks or Park facilities. Throughout the term hereof, the City reserves the right in its sole and absolute discretion to make or enter into exclusive product marketing agreements, which agreements shall be binding on the Lessee.
3. The Lessee shall allow organizations approved by the Parks and Recreation Director to sell novelties (non-food items) on the Premises. The Lessee shall cooperate with

the following non-profit organizations: Special Olympics, Dolphin Swim Team and the Shrine Circus, and others as approved by the Parks and Recreation Department, to sell food items to benefit their organizations. Any and all food service/sales must comply with applicable state and local health and licensing laws.

4. The Lessee may, in satisfaction of its obligations under this Agreement, per individual Premise provide at least one soft drink vending machine and one snack food vending machine when said vending machines will adequately serve patrons of the Premise. Additional vending machines may be added at Lessee's sole discretion. The Lessee shall bear all costs of transportation, maintenance and stocking of the machine(s) and shall bear all risk and cost of loss or damage to the machine(s), including but not limited to replacement, repair, lost profit, lost advantage or lost opportunity. City shall provide a location or locations for vending machine placement.
5. The Lessee shall perform through December 31, 2002, unless this Agreement is sooner terminated by mutual consent of the parties or by default or failure of the Lessee to pay consideration, keep its covenants and agreements or otherwise faithfully to perform as required. This Agreement may be extended until December 31, 2004, if by September 31, 2002, the parties both agree in writing to an extension.
6. In the event that School District #51, Mesa State College and the JUCO Tournament collectively reduce their usage, as measured by a reduction in the usage of the Stadium, collectively by 20% of confirmed, reserved bookings from year to year over the term of this Agreement, the Lessee shall have the option to renegotiate compensation paid to the City in accordance with this Agreement. In the event the City deems the Stadium facilities unplayable/unusable for the purposes set out in this Agreement, for seven (7) days or more, Lessee shall have the option to renegotiate compensation paid to the City in accordance with this Agreement. Notwithstanding the foregoing, Lessee shall not be penalized for failure to perform any duty hereunder, during any time when it is impossible to conduct business due to an Act of God, invasion or natural disaster rendering performance wholly impossible.
7. The Lessee agrees to pay to the City as compensation for the concession rights and for the use of the Premises for the sale of Concessions the following minimum sums: \$34,772 for 2000 plus a 4% annual compounded adjustment for the years 2001-2004.

2000 - \$34,772  
2001 - 36,163  
2002 - 37,610  
2003 - 39,114  
2004 - 40,679

The annual payment shall be paid in three equal installments in accordance with the following schedule:

<u>Period Covered</u>	<u>Payment Due Date</u>
January through June	July 15
July through September	October 15
October through December	December 31

If total gross sales, as reported by the Lessee or determined by audit of the Lessee performed by the City, within a given year exceed \$149,000 collectively at all Premises, Lessee agrees to remit 25% of all gross sales over \$149,000 to the City, in addition to the sums as stated above.

The Lessee shall maintain accurate and complete accounting records and submit a monthly summary of gross sales, excluding collected sales tax, to the Parks and Recreation Director. Sales tax shall be reported to the Parks and Recreation Director by providing photocopies of tax returns filed with the City in accordance with Chapter 34 of the Grand Junction Code of Ordinances. Monthly summaries shall be by individual Premise and in total. The City shall have the right to audit, examine and copy Lessee's records related to performance of or under this Agreement. Lessee shall retain records for three years after completion of each year of this Agreement. The Lessee shall deliver to the Director each monthly summary on or before the 16<sup>th</sup> day of each month for the financial activity and receipts of each preceding month.

8. If Lessee does not deliver Payment on or before the date specified, Lessee shall add 10% of the lease, plus simple interest on the amount of the payment due from the date the payment was due until the date delivered to the Director at the rate of 1.5% per month.
9. The City shall furnish to the Lessee, without charge, water, electricity and gas necessary to be used reasonably by Lessee on the City's premises for the purposes of this Agreement. It shall be the obligation of the City to provide any and all piping, wiring and plumbing installations necessary or convenient for the sale of concessions, with the approval of the Parks and Recreation Director, which approval shall not be unreasonably withheld. Any installation construction, extension or expansion of utilities or utility service shall be done in accordance with the adopted plumbing, fire, building and/or electrical codes. Any such installation shall become the property of the City.

The City shall in no way be obligated to pay for any plumbing, electrical or mechanical repairs made to the Premises without the prior written authorization of the Parks and Recreation Director or his designee. Written authorization shall not be unreasonably withheld.

10. The Lessee shall pay for all repairs and upkeep on any and all equipment owned, leased, rented or controlled by it and used by it in the sale or provision of Concessions. The Lessee accepts the Concession Premises in the condition that the same now are in, and shall maintain the same in as good condition as the same now are in, during the continuance of this Agreement. The City shall not be obligated to

supply storage facilities or other facilities or equipment other than those available within the concession premises. Lessee shall not be obligated to provide additional concession outlets outside the existing concession premises. Lessee may at its sole discretion provide portable concession facilities to which the City, at its sole discretion, may provide electricity and water.

11. The Lessee may, upon termination of this Agreement by expiration thereof or otherwise, remove from the Premises all equipment belonging to and installed by Lessee except as provided in paragraph 10, so long as such removal does not cause damage. The Lessee shall leave the Premises, following such removal, in at least as good condition as the same now are in. The Lessee shall post a good and sufficient surety bond in the amount of \$2,000, payable to the City of Grand Junction, conditioned to so provide that the Lessee shall be liable for any and all damage caused by the removal of equipment.
12. This Agreement requires that the Lessee shall sell Concessions within and upon the Premises. In the event any new, enlarged or changed recreation or concession facilities are constructed by the City at any of these locations or at any other locations, the Lessee shall have opportunity to review and comment on such plans, drawings or designs as may be prepared in support of such project. The Lessee may serve as an advisor to the City on construction of concession facilities, but such service, if any, shall be at no cost to the City. Comments or suggestions made by the Lessee are not binding on the City. The Lessee may be chosen by the City to provide concession sales for a new park, parks, or recreation center facilities, but the terms of this Agreement do not and shall not include such services by Lessee.

If the City is selected as the home site for a professional baseball team, the City reserves the right to renegotiate or terminate this Agreement, without cause and without liability to either party, except for accrued, but unpaid payments by the Lessee. The City intends that if the need to renegotiate this Agreement arises, that this Agreement shall continue for the purposes and Premises stated above and no others.

13. Quarterly, the Lessee shall provide a price list to the Parks and Recreation Director. Lessee shall not change any merchandise price without first obtaining the approval of the Parks and Recreation Director. The City retains the right to finally determine the pricing of concessions. If the City does not accept the pricing, the Lessee may not sell the item or may appeal the Director's decision to the Parks and Recreation Board. The decision of the Parks and Recreation Board shall be final.
14. The City expressly reserves the right to reasonably require that concession services be made available at all scheduled events, during public swim hours and during private pool parties when requested. The City shall provide a schedule to the Lessee for the activities scheduled for the Premises. Said schedule shall be provided two weeks prior to the first event at which Lessee shall offer Concessions. The City shall

forward changes to the scheduled events (additions or deletions) to the Lessee as soon as available. Twenty-four hour notice shall be deemed reasonable.

15. Lessee agrees to be an active sponsor and contributor to the JUCO Tournament, subject to annual review by the Parks and Recreation Advisory Board.
16. The Lessee shall use its best efforts to satisfy the reasonable demands of the patrons of the Premises and shall cooperate fully with scheduling of various Park and Recreation programs by adjusting hours to make Concessions readily available to scheduled events. The City and its employees agree to reasonably cooperate with the Lessee to schedule events at which Concessions are to be provided.
17. The Lessee agrees to conduct concession sales in a clean, healthful and orderly manner and shall have responsible adult supervision on duty at all times. The Lessee shall comply with all federal, state, county and city laws, rules and regulations relating to the physical condition of the Premises, food service sanitation, licensure and operation of Lessee's activities hereunder. In addition, the Lessee shall comply with all City ordinances and/or rules and state statutes pertaining to the collection, accounting and remittance of sales and use tax.
18. The Lessee shall remove or secure all equipment, supplies, materials, and trash from the immediate areas around the concession buildings or vending machine(s) and adjacent premises. Trash shall be picked up and containerized following the day's event(s) at any and all Premises.
19. (a) Lessee shall indemnify the City, its officers, officials and employees, and save them harmless from any and all claims, demands, damages, actions, costs and expenses of any nature and in any manner arising or resulting from any operations of Lessee hereunder. The provisions of this section 19 shall survive any termination or expiration of this Agreement.  
  
(b) Lessee shall provide and maintain throughout the term of this Agreement, public liability and products liability insurance in the name of the City and Lessee in minimum limits of \$1 million for any one accident or occurrence, and property damage insurance for each accident in the amount of \$50,000. Such insurance shall be with a company or companies and under policies approved by the City Risk Manager. Lessee shall pay the premium thereof in advance. All such insurance policies shall provide that thirty (30) days advance notice shall be given to the City Risk Manager prior to cancellation of any policy required hereby. Before Lessee takes possession of the premises, evidence of existence of such policies shall be sent to the City's Risk Manager, with a copy to the City's Director of Parks and Recreation.  
  
(c) Lessee shall provide and maintain throughout the term of this Agreement, worker's compensation coverage as provided by law. Lessee shall pay the premium thereof in advance. All such insurance policies shall provide that thirty (30) days

advance notice shall be given to the City Risk Manager prior to cancellation of any policy required hereby. Before Lessee takes possession of the premises, evidence of existence of such policies shall be sent to the City's Risk Manager, with a copy to the City's Director of Parks and Recreation.

20. The rights granted hereunder are not assignable without the written consent of the Director.
21. Either party may notify the other party in writing prior to September 1 of any year during the term of this Agreement of its desire to terminate the Agreement for succeeding years, however, the Agreement shall be terminated under this paragraph effective December 31 of the year in which notice is provided only if both parties agree and, if they do, termination shall be effective for all succeeding years of the Agreement and the Agreement may not be revived.

Failing agreement of both parties to terminate, Lessee shall be committed to the provision of concession sales for the next year beginning the next January 1 and ending December 31.

Only if both parties agree to terminate as provided in this paragraph, shall the Agreement be of no further force and effect; and only then shall Lessee be relieved of its obligations, except that the following shall survive and be enforceable: any claims then existing against the said Lessee; any obligation or agreement to pay any monies, plus late fees and interest to the City under the terms of this Agreement; continuing obligations and duties pursuant to paragraph 19.

Upon termination or expiration of this Agreement, the Lessee shall remove all of its equipment from the concession premises, except as provided in paragraph 10, within fifteen (15) calendar days, or said equipment shall become the property of the City.

22. In the event of breach of this Agreement or violation of any law by Lessee, the City may terminate this Agreement by giving the Lessee thirty (30) days notice in writing, specifying the matter(s) in which the Lessee is in default or has violated the law. In the event such matter(s) are not remedied within the 30 day period, the Agreement shall be ended and be of no further force and effect except as provided in paragraph 12. The Lessee shall be given an additional fifteen (15) days to remove its equipment, except as provided in paragraph 10, or said equipment shall become the property of the City.
23. It is understood and agreed that the Lessee is in all respects an independent contractor in its relationship with the City under this Agreement. It is not intended nor shall it be construed that the Lessee, any subcontractor of Lessee or its employees are partners, employees, officers or agents of the City for any purpose whatsoever. Lessee shall hold the City harmless from and indemnify it with respect to such matters as is provided in paragraph 19.

24. If either party is in default hereunder and such default injures the other party or subjects the other party to the payment of any money or damages, the defaulting party shall reimburse the other party for all such amounts, reasonable costs of collection, including a reasonable sum for attorney fees.
25. Parties' duties hereunder shall be either abated or suspended, along with the payment of money due hereunder, to the extent rendered impossible to perform because of an Act of God, invasion or natural disaster, in addition to the provisions described in paragraph 6 above.
26. The City shall be entitled to and may avail itself of any and all immunity and protection afforded by the Colorado Governmental Immunity Act, 24-10-101 *et seq.* C.R.S., and similar laws protecting governments, for any and all claims or causes of action brought or arising out of or under this Agreement or as otherwise provided by law.
27. Venue for any action occurring under or arising out of this Agreement shall be in Mesa County, Colorado.

This Agreement shall be binding upon the heirs, legal representatives, successors, and duly authorized assigns of the parties hereto.

CITY OF GRAND JUNCTION

By: \_\_\_\_\_  
Parks and Recreation Director

DEBONAIR FUN, FOOD AND CONCESSION

\_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Attached to this Agreement is an addendum, marked as Exhibit B, which shall remain confidential at the request of the Lessee, on which the owners of Lessee shall identify: their individual names, personal addresses, dates of birth, and social security numbers, as well as the tax identification number of the Lessee.