

RESTAURANT/LOUNGE CONCESSION AGREEMENT

BILLINGS LOGAN INTERNATIONAL AIRPORT TERMINAL BUILDING

THIS AGREEMENT, made and entered into this ____ day of _____
20____, by and between the following:

CITY OF BILLINGS, MONTANA, a Montana Municipal
Corporation, hereinafter designated "City"

and

AIR HOST BILLINGS, INC.,
hereinafter designated "Concessionaire"

WITNESSETH:

RECITALS

WHEREAS, City is the owner and operator of the Billings Logan International Airport, Billings, Montana (hereinafter called "Airport"), and is empowered and authorized to grant concessions; and

WHEREAS, Concessionaire is engaged in the business of operating food and beverage establishments; and

WHEREAS, Concessionaire desires to obtain a concession, use certain facilities and obtain certain rights in connection with and on the Airport, including exclusive space within the Terminal Building on said Airport, as defined hereinafter, and City is willing to grant a concession to the Concessionaire upon the terms and conditions hereinafter stated.

NOW, THEREFORE, for and in consideration of the Premises and of the mutual covenants and agreements herein contained and other valuable consideration, City does

hereby grant a concession unto Concessionaire, and Concessionaire does accept from City said concession, certain facilities, rights, services, and privileges in connection with and on the Airport, as follows:

ARTICLE I

TERM

A. Initial Term. The term of this Agreement shall commence on the 1st day of November 2002, and shall terminate on the 31st day of October 2007. The "Contract Year" for purposes of this Agreement shall be November 1 through October 31 of each year of the term herein.

B. Option. Concessionaire shall have an option to extend this Agreement for an additional five (5) year period from and after October 31, 2007, on the terms and conditions as provided for herein, and as from time to time may be amended, provided Concessionaire gives the City notice in writing at least one hundred eighty (180) days prior to October 31, 2007, and further provided that Concessionaire has not failed to cure any default as provided herein. Notwithstanding the above, in order to prevent the inadvertent failure of Concessionaire to exercise the option within the time specified herein, it is agreed that the City may not terminate this Agreement until and unless the City notifies Concessionaire in writing that Concessionaire has not exercised its option to extend and that the option to extend shall expire thirty (30) days after receipt of such notice by the City. If Concessionaire does not send written notice of the exercise of such option to the City within said thirty (30) day period, then Concessionaire's option to extend this Agreement shall terminate. If the City gives Concessionaire such notice and Concessionaire exercises its option to extend, then the effective date of such option shall be retroactive to the

expiration date of the primary term hereof. If Concessionaire gives timely notice of its intent to renew the Agreement pursuant to conditions herein above, then the minimum annual payment, percentage of gross revenue and any other fees during the renewal term of this Agreement must be negotiated and agreed upon in writing by the parties no later than ninety (90) days before the expiration of the original term of this Agreement. If not successfully agreed upon, the Agreement will not be extended or renewed and the Agreement will automatically terminate upon expiration of the initial term of the Agreement.

C. Holding Over. A holding over by the Concessionaire or its assigns, beyond the expiration of the term, shall not be permitted without the written consent of the Director of Aviation and Transit, and then only on a month-to-month basis. Such holdover tenancy shall be governed by the same conditions, restrictions, limitations, and covenants of this Agreement as set forth herein or as subsequently amended.

ARTICLE II

OCCUPANCY AND PREMISES

A. Occupancy. Under this Agreement, occupancy is to commence on the first day of the Agreement's Term set forth herein above.

B. Premises. The City hereby grants the exclusive use to the Concessionaire those certain Premises and facilities in the Airport Terminal Building, which Premises are shown on Exhibit A, attached hereto and incorporated herein by this reference. Said space is herein referred to as the "Premises" and is generally comprised of kitchen area, dining room, cocktail lounge, and future concourse food service area.

C. Acceptance of Conditions. Concessionaire accepts the existing Premises as depicted on Exhibit A, and acknowledges that the condition of the same is satisfactory to Concessionaire as of the date of this Agreement.

D. Temporary Facilities. Concessionaire shall operate a temporary restaurant facility during the period of construction on the dining room and the lounge areas, pursuant to Article IV herein. It is expected that Concessionaire will be faced with inconveniences during the period of construction, as more particularly described in Article IV.

ARTICLE III

CONCESSION FEES AND CHARGES

A. Fees and Charges. For the use of the Premises, facilities, and rights granted hereunder, Concessionaire agrees to pay to the City, the following fees and charges during the term hereof. For the concession privileges granted herein, Concessionaire shall pay the greater of a minimum annual guaranteed fee (MAG), or a percentage of the total gross revenues on all sales revenue generated by the restaurant and lounge operation for a Contract Year.

B. Gross Revenues. Gross Revenues as defined for use herein, shall be construed to mean the aggregate of all revenues, income, and receipts for sales made and services performed, including, but not limited to, all sales of food, beverages, liquor, vending sales, catering, sales for in-flight catering or consumption, gift certificates, all sales to employees of Concessionaire, all telephone orders received and filled at or from the Premises, and other merchandise and services in or from the Premises, performed for cash, on credit or otherwise, regardless of when and whether paid for or not, together with the aggregate amount of all exchanges of goods, wares, merchandise and services for like property, or services, at the selling

price thereof as if the same had been sold for cash or the fair and reasonable value thereof, whichever is greater. Gross Revenues shall exclude revenues from the following:

1) Taxes on Sales. Retail sales taxes, excise taxes, or related direct taxes on the consumer, which are collected by Concessionaire on such sales for remittance to the City, County, State, or Federal Government, provided all such taxes are properly accounted for and recorded.

2) Exchanges and Supplies Refunds. The value of any merchandise, supplies, or equipment exchanged or transferred from or to other business locations of Concessionaire, where such exchanges or transfers are not made for the purpose of avoiding a sale by Concessionaire, which would otherwise be made from or at the concession Premises. Receipt amounts in the form of refunds for the value of merchandise, supplies, or equipment returned to shippers, suppliers, or manufacturers.

3) Refunded Receipts. Receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by Concessionaire, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit.

4) Supplier Discounts. The amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers.

5) Tips. The amount of any gratuity paid or given by patrons or customers to employee of Concessionaire. Said Concessionaire's employee shall not, at any time while on Airport property, solicit tips.

C. Payment of Fees and Charges. By November 1, of each contract year, Concessionaire will pay to the City a fee of \$1,400.00. Concessionaire will then pay by the twentieth of each month, 8% of the Gross Revenues generated in the previous month for the gross annual revenues up to \$800,000.00. For all revenues generated over \$800,000.00 the Concessionaire will pay by the twentieth of each month, 9% of the Gross Revenues generated in the previous month. Said payment will be accompanied with a detailed report, signed and certified by Concessionaire as being true and correct, setting forth the amount of the Concessionaire's Gross Revenues for the previous month and shall provide a report reflecting the amount of revenue generated in the following revenue generating areas for each of the Terminal locations (main floor dining, lounge, concourse):

- 1) Food
- 2) Liquor
- 3) Vending
- 4) In-Flight Catering
- 5) Other Miscellaneous Revenues

Within thirty (30) days after the end of each Contract Year during the term of the Agreement, and within the thirty (30) day period succeeding the expiration or earlier termination of the Agreement, Concessionaire shall deliver to the City a written statement, signed and certified by a certified public accountant or an officer of Concessionaire to be true and correct,

setting forth the total amount of Concessionaire's annual Gross Revenues generated during the immediately preceding Contract Year. Upon receipt of the certified statement of Gross Revenues for the Contract Year, the City will evaluate whether the percentage of Gross Revenues paid during the Contract Year corroborates with said Gross Revenue statement. If in any month during a Contract Year, Concessionaire shall have paid to City percentage of gross revenue in excess of the amount due for such month, the overpayment shall be adjusted between the City and the Concessionaire promptly after the end of the Contract Year in which the overpayment was made. If there is an underpayment in the percentage of Gross Revenue, such underpayment shall be payable immediately to the City, with interest at the rate of eighteen percent (18%) per annum from the date it was originally due until paid. Annual statements by Concessionaire under these provisions shall be accurate and satisfactory in scope to the City, and shall be in such form and style and shall contain such detail and breakdowns as the City may reasonably require. If the total annual percentage of Gross Revenue payments for a Contract Year do not exceed the MAG for that year, Concessionaire will remit the difference between the amount of the MAG and the percentage of Gross Revenues remitted, which payment shall be due with the submittal of the Concessionaire provided statement of Gross Revenues.

D. Credit for Construction Against Rental. The City will provide the Concessionaire a \$70,000.00 credit against the monthly payment of fees and charges to be paid to offset construction costs that Concessionaire will incur to remodel and update the Premise areas generally known as the dining room and the lounge as set forth on Exhibit B as Area Y. The City will require that the remodel include the removal and replacement of the flooring, wall coverings, ceiling tiles, and lighting. During the remodel, should unanticipated or unexpected repairs,

preparations, or modifications need to be made in connection with the removal and replacement of, any or all, of the flooring, wall coverings, ceiling tiles or lighting, City will be notified and the appropriate remedy determined. Associated costs of said unanticipated or unexpected repairs, preparations, or modifications in connection with the removal and replacement of the required items identified herein above, will be the responsibility of the City. Concessionaire may expand the remodel to include other items subject to the City's prior written approval. Concessionaire may exceed the construction cost of \$70,000.00 to make the required improvements at Concessionaire's own expense. Concessionaire will deduct the \$70,000.00 credit for construction from the payment of the monthly fees and charges until said credit has been completely offset against the monthly fees and charges. Concessionaire will reflect the use of the credit for construction to offset monthly payments in the required monthly detailed report. Concessionaire will also provide the City with a detailed cost accounting and copies of invoices for the total of the construction costs incurred to perform the remodel of said Premise. Should Concessionaire complete the required Premise remodel, to the satisfaction of the City, for less than \$70,000.00, Concessionaire will not offset the monthly payment of fees and charges with the credit for construction beyond the amount actually paid in construction costs for the remodel of said Premise. In the event Concessionaire has applied the credit for construction to the monthly payment of fees and charges at an amount greater than the amount of the total construction costs, Concessionaire will reimburse to the City the difference between the total credit for construction used to offset the monthly payment of fees and charges and the actual total construction costs.

E. Minimum Annual Guarantee (MAG). The MAG for each Contract Year will be \$50,000.00, except if annual Enplaned Passenger numbers drop below 250,000 in a

given Contract Year, then there shall be no MAG for that Contract Year. Enplaned Passenger numbers refer to the aggregate number of passengers departing by air travel from the Billings Logan International Airport Terminal Building as reported by the airlines and published by the City in its monthly activity report.

F. Cash Registers. Concessionaire shall install a cash register or registers of a type acceptable to and approved by the City. All such cash registers shall be equipped with a tamper-proof cumulative totaling device, which has been approved in advance by the City, and on which all gross sales shall be recorded and imprinted and shall indicate total restaurant gross sales for a given period. Concessionaire may record in-flight and other catering revenues, gambling revenues, vending revenues, and other miscellaneous revenues in a different manner, if said recording manner has been approved by the City.

G. Books, Records, and Audits. Concessionaire agrees to keep true and accurate accounts, records, books, and data which will show the income, including taxes, surcharges, and Gross Revenues as herein defined, as separate line items of said business operated at the Airport. The books and records shall identify and keep track of separately, for each location, Gross Revenues generated from the sale of food and non-alcoholic beverages, the sale of liquor, vending machine sales, in-flight catering, and miscellaneous sales. The books and records shall be kept and maintained in accordance with generally accepted accounting principles and procedures and shall be open for inspection by authorized representatives or agents of the City at all reasonable times during normal business hours. The City reserves the right, either directly, or through an agent, to make necessary detailed audits as required at any time during the term of this Agreement and for thirty-six (36) months after the termination of the Agreement. Books and

records shall be maintained and retained by Concessionaire for a period of thirty-six (36) months from the end of each Contract Year. If, as a result of such audit, it is established that Concessionaire has understated the Gross Revenues received from all its operations at the Airport by two percent (2%) or more, the entire expense of said audit shall be borne by Concessionaire. Any additional percentage fee due shall forthwith be paid by Concessionaire to the City with interest thereon at eighteen percent (18%) per annum from the date such additional percentage fee became due. In addition, Concessionaire agrees to furnish to the City, annually, a certified copy of an audit thereof by Concessionaire's certified public accountant based on Concessionaire's fiscal year. Such audit shall be in a form acceptable to the City and shall be due to the City at the office of the Director of Aviation and Transit no later than one hundred twenty (120) days after the end of Concessionaire's fiscal year.

H. Interest. Any sums payable to the City by Concessionaire under this Agreement, which are not paid when due, shall bear interest at the rate of eighteen percent (18%) per annum from the due date thereof until paid.

ARTICLE IV

USE OF AIRPORT FACILITIES

A. General Privileges, Rights, and Uses of Airport and Facilities. The City hereby grants to Concessionaire the following general privileges, rights, and uses, all of which shall be subject to the terms, conditions, and covenants herein set forth.

1) The nonexclusive right to use with others, the areas of the Airport and appurtenances thereto, including additions to the Airport, which may be designated by the City for nonexclusive use, together with all

facilities, equipment, improvements, and services, which have been or may hereafter be provided at or in connection with the Airport from time to time for nonexclusive use.

2) The right to utilize reasonable adequate vehicular parking facilities in common with other tenant employees. Such facilities shall be located in an area designated by the City. The City reserves the right to assess a reasonable charge to such Concessionaire employees for such employee parking facilities at a rate not more than that being charged to other tenants' employees for use of the same facilities.

3) The right of ingress to and egress from the Premises over and across public roadways serving the Airport for Concessionaire, its agents and servants, patrons and invitees, suppliers of service, and furnishers of material. Said right shall be subject to such Federal, State, or Local ordinances, rules and regulations as now or may hereafter have application at the Airport.

B. Use of Premises.

1) Concessionaire shall have, during the term hereof, the exclusive right to operate the restaurant, lounge, the new concourse food service area within its Premises, as identified herein.

2) The Premises shall be used only for the purpose of conducting a restaurant/lounge business to include the preparation and sale of food and nonalcoholic beverages, for the sale of alcoholic beverages, the operation of electronic gaming machines as allowed by the State of Montana, and the

preparation and sale of in-flight meals and beverages for consumption aboard aircraft, and for no other purpose without the City's prior written consent, which may be denied or conditioned at the City's sole discretion. Nothing herein, however, shall be deemed to grant to Concessionaire an exclusive right to sell food, nonalcoholic beverages, or alcoholic beverages in the Terminal Building, or otherwise at the Airport; provided, however, that the City shall not offer to another concessionaire the right, during the term of this Agreement, to sell food or beverages in an operation similar to the Restaurant/Lounge on Minimum Rent or Percentage Rent terms that are more favorable than those provided for herein unless the City is willing to adjust the Minimum Annual Guarantee and the Percentage of Gross Revenue Rent under this Agreement to match that offered to the other concessionaire.

3) In the public areas of the Terminal Building only, the Concessionaire has the right to install and operate vending machines for non-alcoholic beverages. The number, type, location, and contents of such machines shall be subject to the prior review and written approval of the City. The Concessionaire shall not operate vending machines for prepackaged food items.

C. Liquor Licenses. It is understood and agreed by and between the parties hereto that operation of the cocktail lounge and the sale of alcoholic beverages by Concessionaire will require a Public Airport All-Beverage Liquor License issued by the State of Montana. The City agrees to provide said license at its sole cost and to lease, sublease, or assign the same, as the

City may determine in the best interest of the Airport, to Concessionaire during the original term hereof, together with any renewals or extensions. Concessionaire agrees to release or reassign the same to the City upon expiration of this Agreement or any other termination thereof, and to execute the necessary reassignment or release forms as required by the State of Montana and the Montana Department of Revenue and the City of Billings. It is specifically understood and agreed that the release or reassignment of the liquor license by Concessionaire to the City upon expiration or termination of this Agreement, shall not require any payment by the City in consideration of said release or reassignment. Concessionaire further agrees not to assign, transfer, mortgage, pledge, or otherwise encumber or hypothecate the Public Airport All-Beverage Liquor License, and in the event liens or encumbrances are created on said license through any act, failure, or omission of Concessionaire, the City may, in addition to any rights provided in Article VIII hereof, immediately take such steps as it deems necessary to remove said liens and charge the entire cost thereof to Concessionaire. Any act, failure, or omission of Concessionaire that results in a violation of the Montana liquor laws may be an act amounting to default of this Agreement.

D. Gambling Operator's License and Permit. It is understood and agreed by and between the parties hereto that operation and maintenance of video gambling machines on the Premises of the cocktail lounge be allowed and will require Concessionaire to obtain the operator's license and gambling permits required by the provisions of Title 23, Chapter 5, Montana Code Annotated. It is further understood and agreed by all parties hereto that the obtaining of an operator's license and a gambling permit by Concessionaire is contingent on the Concessionaire's status as a licensee or co-licensee on the Public Airport All-Beverage Liquor License as determined by the rules and regulations adopted by the Liquor Division of the Department of Revenue, State

of Montana. If Concessionaire is deemed a licensee of the Public Airport All-Beverage Liquor License, as determined by the Montana Department of Revenue and the Montana Department of Justice, Concessionaire agrees to obtain an operator's license and the necessary permits for the operation of the video gambling machines on the Premises, according to the procedures and requirements of the Department of Justice and applicable rules promulgated by said Department. The location and the number of video gambling machines will require the written approval of the Airport's Director of Aviation and Transit.

Concessionaire shall operate and maintain the video machines in accordance with the provisions and procedures of Title 23, Chapter 5 of the Montana Code Annotated and all rules adopted thereunder by the Montana Department of Justice. Concessionaire expressly agrees that all accounting, record-keeping, quarterly reports, and payments of fees and taxes associated with the operation of any and all video gambling machines on the Premises shall be the responsibility solely of the Concessionaire, and such responsibility shall be undertaken by Concessionaire at all times required by the Department of Justice, in the manner prescribed by said Department, and at the sole expense of Concessionaire. Concessionaire shall provide the City with timely documentation of compliance with the requirements of Title 23, Chapter 5, and all regulations adapted and administered thereunder by the Department of Justice.

Any act, failure, or omission of Concessionaire that results in a violation of the Montana gambling laws may be an act amounting to default of this Agreement.

E. Inspection. Concessionaire shall allow the City's authorized representatives access to the Premises at all reasonable hours, for the purpose of examining and inspecting the same to determine Concessionaire's compliance with its obligations under this

Agreement and for purposes necessary, incidental to or connected with the performance of the City's obligations hereunder, or in the exercise of the City's governmental functions.

F. Improvements to Existing Premises. That portion of the Premises that consists of the existing restaurant, dining room, and the lounge area, as set forth in Exhibit B as Area Y, will be remodeled during the first seven (7) months of this Agreement. The provisions herein shall govern said remodel work, relocation, and Concessionaire input.

1) The Concessionaire will begin the remodel of the restaurant's existing dining area and lounge within five (5) months of this Agreement's effective date. The Concessionaire will be required to provide food service per the terms of this Agreement during the construction period, which is estimated to not exceed eight (8) weeks once construction is started.

2) The City will provide Concessionaire with temporary space in the old coffee shop area (Exhibit A) to be utilized for serving Concessionaire's customers until the remodel work is completed. Concessionaire will be responsible for the set up and operation of the temporary space per the Food Service Transition Plan provided by the Concessionaire and approved by the City, and by this reference made a part of this Agreement.

3) The remodel work will be the responsibility of the Concessionaire and includes the refurbishment of the ceiling, lights, and the wall and floor coverings to the City's satisfaction. The City reserves the right to make the final determination on all items concerning the remodel work.

4) Concessionaire shall have the right to add-on to, enhance, or make additional improvements to the Premises during said remodel at Concessionaire's sole cost. Concessionaire agrees to first obtain the City's written approval for said additional remodeling, equipping, furnishing, or decorating plans prior to commencement thereof. The City reserves the right to make the final determination on all items concerning the remodel work.

5) Upon the completion of the remodel work, the Concessionaire will provide the City written notice that the Premises are ready for occupancy and use. It will be the sole responsibility of the Concessionaire to provide and install all equipment, fixtures, décor, and all other items needed to operate the remodeled restaurant and lounge facilities, at no cost to the City. Concessionaire shall vacate the temporary space and begin service from the remodeled Premises within thirty (30) days of notification that remodeled Premises are ready for use.

G. Construction of Concourse Food Service Area. The City will begin construction on a new concourse food service area sometime during the first twelve (12) months of the Agreement. The provisions herein shall govern the construction of the concourse area.

1) Once the remodel of the existing dining room and lounge is completed, and Concessionaire has vacated the temporary facility, the City will construct for Concessionaire's use the new concourse food service area as set forth on Exhibit C. The City will provide the construction and funding to construct the floors, walls, ceilings, lighting, utility hookups, entrance

opening, and a locking gate to secure the area when closed. The City will also provide for the finish coverings to the floors, walls, and ceiling so that the new concourse food service area is ready for Concessionaire to install its décor, fixtures, furniture, and equipment as set forth herein below. The City will ask Concessionaire for their input on the location of utility hookups and outlets, and Concessionaire's preference on the final coverings for the walls and floor. The City reserves the right to make the final determination on all items concerning the construction work, including the discussed items above.

2) It will be the Concessionaire's responsibility to install in a professional and workmanlike manner all items set forth in the detailed plans and specifications provided by Concessionaire and approved by the City for the concourse space. Installation will include, but is not limited to, the following items:

- a) Cabinets, lunch counters, preparation counters.
- b) Storage and refrigeration equipment.
- c) Special plumbing fixtures necessary for Concessionaire's operation.
- d) Special electrical equipment necessary for Concessionaire's operation beyond normal and customary electrical outlets and switches.

e) Special heating, air conditioning, ventilation, or other air handling or treatment equipment necessary for Concessionaire's operation.

f) Any built in equipment or items specific to Concessionaire's operation that are necessary to comply with building or fire codes, including automatic, independent kitchen fire suppression equipment or systems.

g) Any necessary restaurant equipment, including tables and chairs.

h) Any other work or furnishings necessary to complete the concourse space not specifically the responsibility of the City under this Agreement.

3) Concessionaire shall make no changes or alterations to the approved plans and specifications without prior written approval of the City.

4) Concessionaire must complete any and all work contemplated in this Agreement that is needed to obtain the necessary certificates of occupancy and/or use, with the completion of the construction work, including any necessary inspections, licenses, or permits required for the operation of a public restaurant.

5) Upon completion of the construction work, Concessionaire shall provide the City with documentation establishing the final cost to Concessionaire of the improvements installed by Concessionaire.

6) Concessionaire will pay, when due, all of its suppliers, contractors and sub-contractors. Upon request, Concessionaire will provide the City with documentation evidencing timely payment to suppliers, contractors, and sub-contractors.

7) Once the construction work has commenced, Concessionaire will promptly and diligently prosecute the work to final completion without undue delay.

H. Mid-Term Refurbishment. So long as Concessionaire has exercised its option to extend the term of this Agreement, before the end of the fifth Contract Year of the term hereof, Concessionaire shall be required to refurbish the facilities. Said refurbishing shall include, but shall not be limited to, all refinishing, repair, replacement, redecorating and painting necessary to keep said areas in first class condition. Concessionaire shall not expend less than \$50,000 for the required mid-term refurbishment. Concessionaire shall provide the City with receipts and other suitable documentation of the aforementioned required expenditure. Concessionaire shall pay to the City an amount equal to the shortfall, if any, between said required refurbishment amount and its actual investment as of the last day of the tenth Contract Year hereof. The amount spent for mid-term refurbishment shall be exclusive of any amount spent for normal repair and maintenance. The mid-term refurbishment would include, as needed, such items as replacement of carpet or other flooring, window treatments, re-upholstery of furniture, as well as the repainting of the interior of the public areas of Concessionaire's facilities. Said payment shall be made on or before the last day of the tenth Contract Year hereof. Should the

costs to make the referenced improvements exceed the minimum required for mid-term refurbishment as stated above, said costs shall be the sole responsibility of the Concessionaire.

I. Future Concessionaire Improvements. All improvements to Premises, including remodeling, the mid-term refurbishments established herein above, equipping, furnishing, or decorating that Concessionaire may undertake during the term hereof shall be at Concessionaire's sole cost and expense, and shall be subject to the City's prior written approval, which the City may grant, withhold, or condition at its sole discretion.

J. Contractor's Insurance. Concessionaire shall ensure that the contractor hired to construct any of its improvements shall secure and provide documentation of the insurance required by the City prior to the commencement of construction. Concessionaire shall further ensure that its contractor maintains the required insurance throughout construction.

ARTICLE V

OPERATIONAL STANDARDS AND CONCESSIONAIRE'S OBLIGATIONS

A. Concession Personnel. Concessionaire shall, at its cost, furnish prompt, courteous and efficient service, and shall ensure polite and inoffensive conduct and demeanor on the part of its representatives, agents, and employees, collectively referred to herein as "personnel." Concessionaire shall employ or permit the employment of only such personnel as will assure a high standard of service to the public. All such personnel, while on or about the Airport Premises, shall be clean, neat in appearance, and courteous at all times, and shall be appropriately attired in uniform, with badges or other suitable means of identification, in such instances as are appropriate. No personnel, while on or about the Airport Premises, shall use

improper language, act in a loud, boisterous, or otherwise improper way, or be permitted to solicit business in an inappropriate manner.

B. Manager. Concessionaire shall select and appoint, subject to approval by the Director of Aviation and Transit, a Manager of Concessionaire's operations at the Airport. Such person must be an outstanding, highly qualified, and experienced manager or supervisor of comparable food and beverage operations. Said Manager shall be assigned to a duty station or office at the Airport, where he or she shall ordinarily be available during regular business hours, and where, at all times during the Manager's or other absences, a responsible subordinate shall be in charge and available.

C. Hours of Operation. Concessionaire shall operate all locations, seven (7) days per week, including holidays, to adequately serve the public demand. Concessionaire shall be obligated to operate the facilities on the concourse and groundside for the hours that are defined in this paragraph, until such time as the Concessionaire and the City mutually agree that the hours be altered. Until otherwise agreed to, the hours each day for all restaurant locations shall be as follows:

1) Facilities shall be open at the time designated by the Director of Aviation and Transit based on potentially changing advanced check-in times, and will remain open until the departure of the last scheduled flight of the day departs or 8:00 p.m., whichever is earlier.

2) The lounge area shall open by 11:00 a.m., and will remain open until the last scheduled flight of the day departs or 8:00 p.m., whichever is earlier.

The main dining room of Concessionaire's groundside restaurant facility shall provide hot, freshly prepared food from the time the restaurant facilities open until at least 6:00 p.m. local time. For the remaining duration of the hours that the facility is open, Concessionaire may serve the public with previously prepared, chilled items. Concessionaire shall provide, for approval by the Director of Aviation and Transit, a menu listing the chilled items.

D. Promotion of Business. Concessionaire agrees to use its best efforts to maintain and develop the business operations to be conducted by it under this Agreement, and to further use its best efforts to avoid diversion of business from the Airport. In connection with such undertaking, Concessionaire agrees to maintain a full operation over the entire leased Premises for the concession operations contemplated in this Agreement. At a minimum, Concessionaire agrees to provide monthly advertising/promotional items to Airport's tenants to keep customers current on specials, deals, and promotional events in effect at the restaurant or lounge facility.

E. Type of Operation. Concessionaire shall provide excellent customer service, and shall maintain and operate the concession in a first class manner, and shall keep the Premises in a safe, sanitary, orderly, and inviting condition at all times, as determined by the City. The City may notify the Concessionaire if the service given by the Concessionaire to the general public is not reasonably adequate, and the Concessionaire shall provide such service as may be reasonably required immediately after receipt of notice by the City.

F. Quality of Food and Beverage Items. All food, drinks, beverages, confections, and other items sold or kept for sale under the concession shall be of first class

quality, wholesome and pure, and must conform in all respects to Federal, State, County, and Municipal food laws, ordinances, and regulations.

G. Pricing. Concessionaire shall maintain a menu price range for goods, foods, and services offered for sale in the concession areas similar to such prices for like products and goods sold or offered at airports of a similar size. Menu and pricing shall be submitted to the City for review prior to implementation.

H. Parking Validation. Concessionaire shall provide for free parking for a reasonable period of time for concession customers. Concessionaire shall pay the following special parking rates for tickets validated for Concessionaire's customers:

0 – 1 Hour Ticket Validation	\$0.75
1 – 2 Hour Ticket Validation	\$1.00
2 – 8 Hour Special Event Ticket Validation	\$1.75

Special events are intended to be for receptions, formal dinners, and other catered events by Concessionaire that are held on the Premises. Each special event will require the written approval of the Director of Aviation and Transit to qualify for the special event validation. The validation rates hereinabove remain in effect until the contract with the parking lot management company managing the Airport parking lot expires on September 6, 2004. Concessionaire may request a change of the ticket validation rates at least 180 days prior to the parking lot contract expiration date. Said request to change the ticket validation rate shall include statistical and analytical arguments to support Concessionaire's request for changing the ticket validation rate. In the interim period prior to September 6, 2004, Concessionaire shall be allowed to place limits on the purchase amount of goods that qualify for ticket validation. The plan for

said purchase limits shall be subject to prior written approval of the Director of Aviation and Transit.

I. Credit Cards. Customers shall be permitted to utilize, at a minimum, the following credit cards in payment for the purchase of all retail or food and beverage items: Visa, MasterCard, and American Express.

J. Operating Expenses. The Concessionaire shall bear, at its own expense, all costs of operating the concession, and shall pay, in addition to rent, all other costs connected with the use of the Premises, facilities, rights, and privileges granted, including, but not limited to, Concessionaire's maintenance and repair obligations under Article VI, insurance, any and all taxes, janitor service and supplies, and shall pay for all permits and licenses required by law. Concessionaire further agrees to provide, at its cost and expense, all expendable items, such as glasses, dishes, silverware, supplies, linen, kitchen utensils, and the like.

K. Condition of Facilities and Equipment. Concessionaire shall maintain all furniture, fixtures, equipment, and other tangible personal property necessary for its operations in accordance with this Agreement. All such personal property shall be of high grade and quality, and shall be replaced and/or refurbished as necessary to maintain that quality that is consistent with a first class restaurant operation.

L. Utilities. Concessionaire agrees to pay for all electric, gas, water, and sewer utilities used in the Premises, which are separately metered. The City agrees, at its expense, to furnish heat and air conditioning to the Premises. Any utility which cannot be separately metered, shall be borne by the City.

M. Removal of Garbage and Refuse. Concessionaire shall arrange and provide for, at its expense, complete, proper, and adequate sanitary handling and disposal, away from Airport, of all trash, garbage, refuse, and grease caused or generated by Concessionaire's operation in the Premises. Concessionaire shall remove the accumulation of all garbage and refuse, at frequent intervals, to the garbage and refuse disposal area. Accumulation of garbage, trash, boxes, cartons, barrels, or other similar items shall not be permitted in any public area of the Airport. Concessionaire shall not remove garbage, refuse, or trash through the public or common areas, to include concourses, baggage claim area, and sidewalks, in an unsightly manner. Concessionaire shall specifically arrange for the storage and pickup of grease and oils used and generated in its operation. Said grease, oils, and similar refuse are strictly prohibited from being disposed of in the Airport's trash compactor and dumpsters.

N. Pest Control. Concessionaire shall be solely responsible for a pest free environment within its exclusive use area by maintaining its own pest control services, in accordance with the most modern and effective control procedures. All materials used in pest control shall conform to Federal, State, and Local laws and ordinances. All control substances utilized shall be used with all precautions to obviate the possibility of accidents to humans, domestic animals, and pets. Pests referenced above include, but are not limited to, cockroaches, ants, rodents, silverfish, earwigs, spiders, weevils, and crickets. Whenever the City deems that pest control services must be provided to a building or area that includes Premises under this Agreement, Concessionaire shall pay for the costs of services provided for its Premises under this Agreement.

O. Signs, Advertising, and Displays. Concessionaire shall not erect, construct, or place any sign, advertisement, or display upon any portion of the Terminal Building without first obtaining the prior written approval of the Director of Aviation and Transit. Concessionaire shall not erect, construct, or place any sign, advertisement, or display outside the Terminal Building. Upon the termination, cancellation, or expiration of this Agreement, Concessionaire shall remove, obliterate, or paint out, any and all of its signs, advertising, and displays as the City may direct. If Concessionaire fails to do so, the City may cause said work to be done at the expense of Concessionaire.

P. Prohibited Acts. Concessionaire shall not do or permit to be done anything specified herein. Specifically, it shall not:

1) Interfere with Access. Concessionaire or its employees, agents, or representatives shall not do anything which may interfere with free access and passage in the concession Premises or the areas adjacent thereto, or in the elevators, escalators, streets, or sidewalks of the Airport, or hinder police, fire fighting, or other emergency personnel in the discharge of their duties, or hinder access to utility, heating, ventilating, or air conditioning systems, or portions thereof, on or adjoining the concession Premises.

2) Interfere with Systems. Concessionaire or its employees, agents, or representatives shall not do anything which may interfere with the effectiveness of utility, heating, ventilating, or air conditioning systems or portions thereof on or adjoining the concession Premises (including lines, pipes, wires, conduits, and equipment connected with or appurtenant thereto),

or interfere with the effectiveness of elevators or escalators in or adjoining the concession Premises, or overload any floor in the concession Premises.

3) Permit Smoking. City Ordinance requires that all City owned facilities be smoke free environments, to include the Concessionaire's Premises. Concessionaire or its employees, agents, representatives, or customers shall not do anything contrary to the City Ordinance prohibiting smoking.

4) Install Unauthorized Locks and Security. Concessionaire or its employees, agents, or representatives shall not place any additional lock of any kind upon any window or interior or exterior door in the concession Premises, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the concession Premises, nor refuse, upon the expiration or sooner termination of this Agreement, to surrender to the City any and all keys to the interior or exterior doors on the concession Premises, whether said keys were furnished to or otherwise procured by Concessionaire, and in the event of the loss of any keys furnished by the City, Concessionaire shall pay the City, on demand, the cost for replacement thereof, and the cost of re-keying City locks. The City shall maintain, and appropriately secure, keys that afford access to the Premises assigned under this Agreement. Concessionaire shall be fully responsible for fully complying with any law, rule, regulation, or order regarding Airport security.

5) Increase Liability. Concessionaire or its employees, agents, or representatives shall not do any act or thing upon the concession Premises, which are not appropriate or customary for similar type food and beverage concessions, which will invalidate, suspend, or increase the rate of any fire insurance policy required under this Agreement, or carried by the City, covering the concession Premises or the buildings in which the same are located or which, in the opinion of the City, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement.

6) No Loitering or Lodging. Concessionaire or its employees, agents, or representatives shall not permit undue loitering on or about the concession Premises, or use the concession Premises, or any part thereof, for lodging or sleeping purposes.

Q. Federal, State, and Local Regulations. Concessionaire acknowledges that the right to use said Airport facilities in common with others authorized to do so shall be exercised subject to and in accordance with the laws of the United States of America, the State of Montana, and the City of Billings; all rules and regulations and ordinances now in force or hereafter prescribed or promulgated by authority or by law shall be closely observed during the full term of this Agreement.

R. Hazardous Substances. Concessionaire assumes full responsibility for the proper and legal use, handling, storage, and disposal of any hazardous substances used or consumed in the conduct of its business. "Hazardous substance" shall be interpreted broadly to

mean any substance or toxic material, hazardous or toxic or radioactive substance, or other similar term by any Federal, State or Local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Concessionaire will hold the City harmless from and indemnify the City against and from any damage, loss, expenses, or liability resulting from any breach of this representations and warranty including all attorneys' fees and costs incurred as a result thereof.

ARTICLE VI

REPAIRS AND MAINTENANCE

A. Maintenance by the City. The City shall maintain in good condition and repair, at the City's cost and expense, the exterior of the Premises, including the roof of the Terminal Building, the structural components of the Terminal Building, the heating and air conditioning system in the Terminal Building, and utilities to the point of entry to the Premises or to the meter, as the case may be.

B. Maintenance by Concessionaire. Following the completion of construction to the Premises and new concourse facility, Concessionaire shall provide all ongoing maintenance and repair to and in the Premises including, but not limited to, the following:

- 1) Repair and maintenance of interior walls, ceilings, doors and windows and related hardware, electrical fixtures and outlets, and floor coverings.

2) Repair, maintenance, and cleaning of all plumbing and plumbing fixtures, including removal of obstructions in plumbing outside the point of entry to the Premises caused by debris from Concessionaire's operations.

3) Repair and maintenance of Premises improvements.

4) All interior finishes.

5) Any repairs or alterations required because of Concessionaire's obligation to comply with laws and regulations applicable to the Premises and its other obligations under this Agreement.

6) All repairs and maintenance of all furniture, fixtures, and other personal property located upon or used in connection with its business at the Airport. Concessionaire shall also be responsible for the maintenance and repair of all equipment used in the Premises. However, the City shall be responsible for all repair and/or replacement costs to the following existing items, provided repair and/or replacement is not the direct result of neglect, failure to maintain, or damage caused by Concessionaire:

a) Food cooking equipment (stoves, grills, and ovens).

b) Large walk in coolers and freezers.

c) Exhaust hood over grill area.

d) Failure of plumbing infrastructure or grease traps.

e) Tile flooring in food preparation area.

In the event replacement or substantial repairs are made by the City to any of the existing items listed herein above, Concessionaire shall then become wholly responsible for the subsequent maintenance and repair for that new or repaired item for the remainder of the term of the Agreement.

7. All other repairs and maintenance that are not the responsibility of the City.

C. Reimbursement for Repairs Assumed. If Concessionaire fails or refuses to make repairs, or maintain the Premises as required, the City, at its option, may make the repairs or maintenance. Such repair or maintenance expenditures by the City shall be reimbursed by the Concessionaire on demand at cost plus twenty-five percent (25%) for overhead expense. Except in an emergency creating an immediate risk of personal injury or property damage, the City may not perform repairs or maintenance that are the obligation of Concessionaire and charge Concessionaire for the resulting expense, unless at least ten (10) calendar days before work is commenced Concessionaire is given notice in writing outlining with reasonable particularity the repairs or maintenance required, and Concessionaire fails within that time to initiate such repairs or maintenance in good faith.

D. Right to Enter Premises. The City shall have the right to enter upon the concession facilities at all reasonable times to make such repairs, alterations, and replacements as may, in the opinion of the Director of Aviation and Transit, be deemed necessary or advisable and, from time to time, to construct or install over, in, under, or through the concession facilities new lines, pipes, mains, wires, conduits, and equipment; provided, however, that such repair, alteration, replacement, or construction shall not unreasonably interfere with the use of the

concession facility by Concessionaire, and provided further, that nothing herein shall be so construed as relieving Concessionaire of any obligation imposed upon it herein to maintain the concession areas and the improvements and utilities therein. The City shall have the right to enter the Premises at any time to maintain or repair emergency systems when loss of life or damage to property may result.

ARTICLE VII

DAMAGE OR DESTRUCTION OF PREMISES

A. Damage or Destruction. If the Premises space so occupied by Concessionaire shall be partially damaged by fire, flood, lightning, windstorm, or other force of the elements, or by a public enemy, or other casualty, so as to adversely affect the Concessionaire's use of its exclusive space therein, even though not rendering such space untenable, such damage shall be promptly repaired with due diligence by the City at its own cost and expense. If damage caused in any manner hereinabove recited shall be so extensive as to render the Premises untenable, but nevertheless is covered by insurance and is capable of being repaired and made tenantable, the City shall repair the damage with due diligence at its own cost and expense, and the rent payable hereunder with respect to the Premises in such building shall be proportionately paid up to the time of such damage, but shall thenceforth cease until such time as such building and space shall be restored. If Premises is completely destroyed in the manner aforesaid, or is so damaged that it will and does remain untenable, and if within twelve (12) months after the time of such damage or destruction the building shall not have been repaired or reconstructed for Concessionaire's use, then Concessionaire may give the City written notice of its intention to then cancel this Agreement. Notwithstanding the above, to the extent that

Concessionaire receives insurance proceeds as a result of the damage, Concessionaire shall bear the cost and expense of the repair of such damage to said building not covered by the City's property and fire coverage insurance, if any such damage was caused by the actions, negligence, or wrongful act of the Concessionaire.

ARTICLE VIII

CANCELLATION OF AGREEMENT

A. Cancellation by Concessionaire. This Agreement shall be subject to termination by the Concessionaire in the event any one or more of the following events should occur:

- 1) The permanent abandonment of Billings Logan International Airport as an air terminal.
- 2) The Terminal Building or Airport is damaged beyond use or destroyed by Acts of God or through enemy attack or for any other reason that the Airport cannot be operated as an airport.
- 3) Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport as an air terminal, and the remaining in force of such an injunction for a period of at least ninety (90) days.
- 4) The lawful assumption by the United States Government or any authorized agency thereof of the operation, control, or use of the Airport, or any substantial part or parts thereof, in such a manner as substantially to

restrict Concessionaire for a period of at least ninety (90) days from operating thereon.

5) Default by the City in the performance of any covenant or agreement herein required to be performed by the City and the failure of the City to remedy such default within a period of thirty (30) days after receipt from Concessionaire of written notice to remedy and of Concessionaire's intention to declare this Agreement canceled.

B. Cancellation by City. The City may cancel this Agreement without forfeiture, waiver, or release of City's rights to any sum of money due or to become due under the provisions of this Agreement, by giving Concessionaire ten (10) days advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events (Event of Default):

1) The filing by Concessionaire of a voluntary petition in bankruptcy.

2) The institution of proceedings in bankruptcy against Concessionaire which are not dismissed within one hundred twenty (120) days.

3) The taking of any of Concessionaire's assets by a court pursuant to proceedings brought under the provisions of any Federal reorganization act.

4) The appointment of a receiver of Concessionaire's assets.

5) The divestiture of Concessionaire's estate herein by other operation of law.

6) The abandonment by Concessionaire of its conduct of its business at the Airport for a period of at least thirty (30) days.

7) The failure of the Concessionaire to cure any of the following defaults within ten (10) days of written notice from the City:

a) To pay any part of the fees and charges due under this Agreement.

b) To provide and keep in force, performance bond requirements under this Agreement.

c) To provide and keep in force insurance coverage required under this Agreement.

8) The default by Concessionaire, except for an event of default governed by another paragraph of this Article, in the performance or nonperformance of any covenant or agreement herein required to be performed by or required not to be performed by Concessionaire, which covenant or agreement substantially affects the essence of this Agreement, and the failure of Concessionaire to remedy such default for a period of thirty (30) days after receipt from the City of written notice to remedy the same; provided, however, that no notice of cancellation as above provided, shall be of any force or effect if Concessionaire shall have remedied the default within the thirty (30) day cure period, or while Concessionaire is diligently

proceeding to remedy any default which could not reasonably be cured within said thirty (30) day period.

9) The assumption by the United States Government or by any authorized agency thereof of the operation, control, or use of the Airport and its facilities, or of any substantial part or parts thereof, in such manner as substantially to exclude the Concessionaire from the Airport or to prevent it from operating its business at the Airport for a period of at least ninety (90) days.

ARTICLE IX

INSURANCE AND INDEMNIFICATION

A. Indemnification. The City shall stand indemnified by Concessionaire as herein provided. It is expressly understood and agreed that Concessionaire is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that the City shall in no way be responsible therefore. It is further agreed that in the use of the Airport, in the construction, alteration, or maintenance of any improvements thereon, and in the exercise or enjoyment of the privileges herein granted, Concessionaire shall indemnify, save harmless and defend the City from any and all claims asserted against or losses suffered by the City because of any negligent act or omission on the part of the Concessionaire, and Concessionaire shall indemnify the City against any and all mechanic's and materialmen's liens or any other types of liens imposed upon the Premises.

Concessionaire expressly agrees that the City shall not be liable to Concessionaire, for personal injury, bodily injury, or for any loss or damage to real or personal

property occasioned by any cause of loss including earthquake and flood, unless caused by the fault or negligence of the City, its officers, agents or employees.

B. Insurance. Concessionaire shall provide and keep in force for the term of the Agreement a commercial general liability policy (occurrence form only), providing coverage for personal injury, bodily injury, death, property damage, product liability, and liquor liability, in amounts not less than \$1,500,000 per occurrence.

The commercial general liability policy shall name the CITY OF BILLINGS as a **PRIMARY ADDITIONAL INSURED**. The City of Billings general liability policy will be excess and non-contributory. In addition, Concessionaire shall procure and maintain in force during the term of this Agreement, liability insurance applicable to the ownership, maintenance, use, or operation of any automobile, mobile equipment, or other ground vehicle at the Airport (including owned, non-owned, or hired) in an amount not less than \$1,500,000 per occurrence and naming the City of Billings as additional primary insured; statutory Worker's Compensation insurance; and, other policies of insurance reasonably required by the City. At the time of execution of this Agreement, and annually thereafter, Concessionaire shall furnish a Certificate of Insurance showing that the required insurance is in force. Concessionaire shall also provide and keep in force fire and extended coverage insurance upon all Concessionaire's leasehold improvements, furniture, furnishings, fixtures, and equipment utilized in connection with its operations, and shall furnish the City with evidence that such coverage has been procured and is being maintained in full force and effect during the term hereof. The issuer(s) of the policy or policies shall provide thirty (30) day advance written notification to the City of any reductions in the policy coverage, cancellations, or other adverse amendments to the

policy or policies impacting the risks covered. Insurance coverage shall be maintained with insurance underwriters authorized to do business in the State of Montana and that are satisfactory to the City.

Notwithstanding any provisions contained in this Agreement to the contrary or by law, Concessionaire shall not be liable to the City for any physical damages sustained to the Airport, the Terminal Building, Concessionaire's exclusive use space, or to the City's property as a result of fire or other casualty, except to the extent of the insurance proceeds actually received in connection with Concessionaire's insurance carried pursuant to this Agreement (or otherwise), regardless of the fault of Concessionaire, its agents, affiliates, officers, representatives, and/or employees.

If, in the City's opinion, the minimum limits of the insurance coverage herein required become inadequate during the term of this Agreement, Concessionaire agrees that it will increase such minimum limits by reasonable amounts on request of the City.

C. Performance Bond Requirements. Prior to the execution of this document by the City, the Concessionaire shall furnish to the City a performance bond in the amount of \$50,000 for each year of the Agreement. Not less than thirty (30) days prior to each contract anniversary, a performance bond will be furnished for the succeeding year in an amount equal to \$50,000. Said bond is to be provided by a surety company qualified to do business in the State of Montana, acceptable and satisfactory to the City; and said bond shall be conditioned to ensure faithful and full observance and performance by the Concessionaire of all the terms, conditions, covenants, and agreements set forth in this Agreement.

In lieu of a performance bond, the Concessionaire, at Concessionaire's option, may deposit with the City of Billings, a cash amount, certificate of deposit, or an irrevocable letter of credit equal to the amount of the required bond. In the event the Concessionaire chooses to provide a letter of credit as security, the letter of credit shall be irrevocable for the period of performance, shall be drawn on a bank approved by the City, and shall be payable on demand by the City. Said deposit will be held as security and refunded in full at the end of the term of the Agreement unless used to satisfy the Concessionaire's financial obligations herein.

ARTICLE X

SURRENDER OF POSSESSION

A. Surrender of Facilities. Upon the expiration or other termination of this Agreement, Concessionaire's authority to use space, rights, and facilities herein granted shall cease and Concessionaire shall surrender the same to the City promptly and in good condition, ordinary wear and tear and damage by fire or other casualty excepted, unless as otherwise called for in this Agreement. In the event Concessionaire does not surrender possession, all fees and charges under Article III hereof shall be doubled during the holdover period.

B. Improvements. Except as otherwise provided herein, all improvements and other property bought, installed, erected, or placed by Concessionaire in, or about the Airport and the exclusive use space under this Agreement during the term hereof or during any prior occupancy shall be deemed to be personal property and shall remain the property of Concessionaire and Concessionaire shall have the right at any time during the term of this Agreement, and for an additional period of seven (7) days after the expiration or other termination

of this Agreement, to remove any or all of its property from the Airport; provided, Concessionaire is not in default in its payment to the City hereunder and subject further to Concessionaire's obligation to repair all damage, if any, resulting from such removal. Any and all property not removed by Concessionaire prior to the expiration of the aforesaid seven (7) day period shall thereupon become a part of the land upon which it is located and title thereto shall thereupon vest in the City.

C. Transition to New Concessionaire. Upon the expiration or earlier termination of this Agreement, Concessionaire agrees to cooperate fully with the City and with all successor food and beverage concessionaires and to provide continuity of first class food and beverage services.

D. Purchase of Equipment. Upon termination for any reason of this Agreement or expiration of the term thereof, the City shall have an option to purchase from Concessionaire all of the furniture and equipment then owned by Concessionaire and used in its operation of the food and beverage concession under the terms hereof at the same price offered and acceptable to Concessionaire by any third party for such furniture, furnishings, and equipment. Said option must be exercised by the City within fifteen (15) days after notification to it in writing of the price offered by such third party together with the name and address of said third party.

ARTICLE XI

ASSIGNMENT, TRANSFER, AND SUBLETTING

A. Assignment, Transfer, and Subletting. Concessionaire shall not assign, transfer, or sublease the whole or any part of the Agreement or the Premises or rights and privileges granted herein without the prior written consent of the City, which consent shall be at

the sole discretion of the City. As a condition of said consent, the City may amend this Agreement in any manner deemed necessary by the City. Any sublease, assignment, or transfer shall be subject to the same conditions, obligations, and terms as set forth herein and as may be subsequently amended. Concessionaire shall be responsible for the observance by its tenants and sublessees for the terms and covenants of this Agreement.

B. Successors and Assigns. All the terms, covenants, and agreements herein contained and as may subsequently be amended, shall be binding upon and shall inure to the benefit of successors, assignees, and sublessees of the respective parties hereto.

ARTICLE XII

GENERAL PROVISIONS

A. Attorney's Fees. Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

B. Taxes. Concessionaire shall pay any taxes or assessments which may be lawfully levied against Concessionaire's occupancy or use of the Premises, or any improvements placed thereon as a result of Concessionaire's occupancy.

C. Subordination of Agreement.

1) This Agreement shall be subordinate to the provisions of any existing or future agreements between the City and the United States relative to

the administration, operation, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

2) Any mortgagee or beneficiary shall have the right to cure any default on the part of Concessionaire in the payment of rent hereunder and, in the event of default, to assume the Concessionaire's position under this Agreement. The City in no event shall be liable for the payment of the sum secured by such mortgage or trust indenture, nor for any expenses in connection with the same. Furthermore, such mortgage or trust indenture shall expressly provide that the mortgagor or beneficiary will seek no money judgment against the City. The mortgage or trust indenture shall also contain provisions requiring the holder of the indebtedness secured by such mortgage or trust indenture to mail to the City, by certified mail, a copy of each notice of breach of covenant, default or foreclosure given by the holder or the trustee under such mortgage or deed of trust.

D. Non-Discrimination. Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree:

1) That no person, on the grounds of race, color, creed, political ideas, sex, age, or physical or mental handicap, shall be excluded from participation, denied the benefits of, or be otherwise subjected to

discrimination in the use of Airport facilities, or the exercise of its rights and privileges under this Agreement.

2) That, in the construction of any improvements on behalf of Concessionaire and the furnishing of services, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, creed, political ideas, sex, age, or physical or mental handicap.

3) That Concessionaire shall use the Airport facilities in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

E. Modification and Amendments. Changes or modifications to this Agreement will be done in the form of an amendment to be agreed upon and signed by both parties.

F. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Agreement or the particular paragraphs.

G. Notices. Notices to the City provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

Director of Aviation
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings, MT 59105

and notices to Concessionaire, if sent by certified mail, postage prepaid, addressed to:

Air Host Billings, Inc.
Attn: David C. Shelton
1355 Lynnfield Road, Suite 205
Memphis, TN 38119-5883

With copy to:

Mark Grai, Esq.
6060 Poplar, Suite 295
Memphis, TN 38119

or to such other addresses as the parties may designate to each other in writing from time to time.

H. Quiet Enjoyment. With Concessionaire's performance of the covenants and terms of the Agreement herein, Concessionaire shall have peaceful possession and quiet enjoyment of the Premises during the term hereof.

I. Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto.

J. Effect of Invalid Provision. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

K. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue in any proceedings held hereunder shall be in Yellowstone County, Montana.

L. Entire Agreement. This Agreement constitutes the entire Agreement and understanding of the parties with respect to matters referenced herein. Time is expressly declared to be of the essence in connection with the obligations and undertakings of the parties to this Agreement.

M. Force Majeure. Neither party hereto shall be liable to the other party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to riot, war, hostilities between nations, threatened or actual terrorist acts of any kind or nature, weather conditions, floods, rebellion, sabotage, acts of God, fire, accident, strike, lockout, labor dispute (whether of a general or widespread nature or limited to the Concessionaire's own employees), lack of or failure to obtain sufficient electric power, or, without limiting any of the foregoing causes, due to any other contingencies of a similar or dissimilar nature beyond the reasonable control of such party.

IN WITNESS WHEREOF, the parties have hereunto set their hands this

_____ day of _____, 20____.

ATTEST:

CITY OF BILLINGS

BY _____
CITY CLERK

BY _____
MAYOR

APPROVED AS TO FORM

AIR HOST BILLINGS, INC.

BY _____
CITY ATTORNEY

BY _____

State of _____

County of _____

On this _____ day of _____ 2002; personally appeared _____

_____ before me a Notary Public for the State of
Montana.

(SEAL)

Notary Public for the State of Montana
Residing at _____
My Commission Expires: _____