



## **CONCESSION AGREEMENT**

### **FOOD AND BEVERAGE / BAR SERVICE CONCESSION AGREEMENT**

Killeen - Fort Hood Regional Airport  
Killeen, Texas

between

Killeen - Fort Hood Regional Airport  
City of Killeen, Texas

and

CCL Ventures, LLC

## Table of Contents

<b>Article I</b> .....	<b>3</b>
Description of Leased Premises	
<b>Article II</b> .....	<b>3</b>
Description of Concession Granted	
<b>Article III</b> .....	<b>4</b>
Obligations of the Airport	
<b>Article IV</b> .....	<b>6</b>
Obligations of the Tenant	
<b>Article V</b> .....	<b>9</b>
Terms of Agreement	
<b>Article VI</b> .....	<b>10</b>
Rental, Fees, and Accounting Records	
<b>Article VII</b> .....	<b>12</b>
Right of Inspection	
<b>Article VIII</b> .....	<b>13</b>
Non-Discrimination Covenants	
<b>Article IX</b> .....	<b>14</b>
Indemnification and Insurance	
<b>Article X</b> .....	<b>15</b>
General Provisions	
<b>Article XI</b> .....	<b>17</b>
Cancellation	
 <b>Exhibit A</b> .....	 <b>20</b>
Premises	
<b>Exhibit B</b> .....	<b>21</b>
Rents and Fees Schedule	
<b>Exhibit B</b> .....	<b>22</b>
Airport Provided Appliances and Fixtures	

## **FOOD AND BEVERAGE / BAR SERVICE CONCESSION AGREEMENT**

THIS CONCESSION AGREEMENT ("Agreement"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Killeen (the "City"), a municipal corporation and existing under the laws of the State of Texas, whose address is 8101 S. Clear Creek Rd, Box C, Killeen, Texas 76549, (hereinafter referred to as "City") and CCL Ventures, LLC (hereinafter referred to as "Tenant"), a limited liability company with its office and address being 1609 Grand Falls Dr., Cedar Park, Texas 78613, with a mailing address of 1609 Grand Falls Dr., Cedar Park, Texas 78613.

WITNESSETH:

WHEREAS, City controls, owns, operates, and maintains an airport in the City of Killeen, County of Bell, State of Texas, known as Killeen Fort Hood Regional Airport (hereinafter referred to as "Airport"), and has the power to grant rights and privileges with respect thereto, and

WHEREAS, the City has determined it to be in the best interests of the public and the City to enter into this Agreement with Tenant to provide a food and beverage / bar concession services at the Airport pursuant and subject to the terms and conditions hereunder,

NOW, THEREFORE, THE PARTIES AGREE:

### **ARTICLE I** **Description of Leased Premises**

The Airport, in consideration of the rents and covenants herein to be performed by the Tenant, does hereby lease and let unto Tenant the following described property, hereinafter referred to as "Leased Premises", located in the Ted C. Connell Terminal Building at the Killeen-Fort Hood Regional Airport, 8101 S. Clear Creek Rd, Killeen, Texas 76549:

1. Rooms B207 (front counter area), B217 (kitchen), B218 (storage) as depicted in Exhibit "A".
2. Rooms B208 (counter area) and B219 (storage) as depicted in Exhibit "A".
3. Room B206 (food court) is available to the tenant for use by its customers on a non-exclusive basis.

### **ARTICLE II** **Description of Concession Granted**

1. The Airport grants Tenant the right to engage in the activities of a food and beverage / bar service concession.

2. Airport and Tenant agree and understand that the Tenant will have exclusive rights to the sale of food and alcoholic beverages in the Ted C. Connell terminal building. For this agreement, exclusive rights refers to hot and cold sandwiches, deli-style and cold-cut meat sandwiches of any type or kind whatsoever, wraps, salads, gourmet soups, breakfast items, smoothies, coffee items and alcoholic beverages. Tenant agrees and understands that it will not have exclusive rights for the sale of any other items otherwise authorized by this agreement. If the Tenant cannot provide services for the sale of alcoholic beverages, the Airport has the right to seek a vendor for this purpose or, otherwise provide this service.
3. It is expressly provided that the rights and privileges granted hereunder are granted on an exclusive basis, except as provided for in Article VI, Paragraph 7. In the event the Trigger Level is achieved, all rights and privileges granted hereunder shall immediately be non-exclusive, and nothing herein shall preclude the City from entering into an agreement with any other parties during the remaining term of this Agreement for the sale in any part of the Facilities of the same or similar merchandise or service which Tenant is permitted to sell or offer hereunder, whether such agreements are awarded competitively or through negotiations and regardless of whether the terms of such agreements are more or less favorable than the terms of this Agreement, except that Tenant shall have the right of first refusal to develop a similar concept in the contemplated space in the Facilities.

### **ARTICLE III**

#### **Obligations of the Airport**

1. The Airport shall maintain and repair the non-leased portion of the areas surrounding the Leased Premises.
2. The Airport shall provide adequate access to the Leased Premises so long as Airport, Transportation Security Administration, Federal Aviation Administration, U.S. Army and other pertinent regulations are not violated. This access includes the terminal ingress/egress routes during times when the terminal building is open to the public.
3. The Airport will keep the terminal building open to the public at least one hour before the first scheduled flight of the day until at least 30 minutes after the arrival of the last scheduled flight of the day.
4. Parking will be provided for Tenant's employees in an area designated by the Airport. Parking will be at no additional cost to the employee or the tenant while the employee is on business of the tenant as long as the employee has registered his/her vehicle with the Airport's parking lot management company and possesses the electronic access media issued and controlled by that company. This provision applies only to employees of the tenant whose duty assignment is at the Killeen-Fort Hood Regional Airport. Senior company officials and other employees who have occasional official duties at the airport

may obtain a daily pass from the airport administration office to accommodate their requirements.

5. If the Leased Premises are destroyed, damaged, or otherwise made unavailable by any means which are not fully the fault of the Tenant due to fire, flood, explosion, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority, to the extent that the Tenant will be unable to conduct any substantial portion/s of the business contemplated by this lease, either party may cancel this lease and the Tenant will stand charged only with the rent specified in ARTICLE VI up to the time of such damage, destruction, or other non-availability. If the repair of the damage can be reasonably accomplished by the Airport in less than ninety (90) days, the Airport shall make such repairs with the rental to be abated in proportion to the space usable to the Tenant during the repair period. All repair work shall be done in a good and workmanlike manner, which is in concert with the City of Killeen requirements.
  6. The Airport shall provide heating and air conditioning in all leased areas of the terminal building. The Airport has provided the initial supply of light bulbs for these fixtures; however, subsequent replacement of such bulbs will be made by the Airport with bulb replacement costs passed on to the Tenant as specified in Exhibit "B". Light/sign fixtures used solely for premise enhancement/advertisement shall be maintained by the Tenant.
  7. The Airport will furnish keys, at no initial cost to Tenant, to the Tenant's designated Station Manager who shall be responsible for safekeeping of such keys. These include:
    - A. Access to leased premises and internal storage spaces;
    - B. Post office box (mail delivery).
- Lost keys will be charged to Tenant in accordance with the Rents and Fees Schedule depicted on Exhibit "B".
8. The Airport normally has master keys or coded card access to all passageways in the terminal building, for use in emergencies. The Tenant may not add its own locks or change locks to these areas.
  9. The Airport shall furnish telephone system/service access to the Internet via a T-1. Rates for these services will be in accordance with the Rents and Fees Schedule depicted on Exhibit "B". A letter of agreement or other suitable document will be executed between the Airport's Executive Director of Aviation or his/her designated representative and the local designated representative of the Tenant to document exactly which services are agreed to between the two parties. Tenant shall be prohibited from procuring telephone, data communications, wireless 802.11 data, or Internet access from others.

10. After reasonable notice to Tenant (when practical), the Airport reserves the right to temporarily close the airport or any other facilities thereon for maintenance, improvements, or for the safety of the public only for the period of time reasonable necessary.
11. The Airport will make available the appliances and fixtures indicated at Exhibit "C" to Tenant for use at the Killeen-Fort Hood Regional Airport only. Such appliances and fixtures are provided in as is condition. The Airport makes no guarantee as to their condition or expected life service. On the effective date of this agreement, a designated representative from the Airport and the Tenant will inventory and document the exact appliances and fixtures mutually agreed that will be provided to the Tenant for the term of the concession agreement. Tenant shall maintain these appliances and fixtures in accordance with Article IV, Par. 5, except that said appliances and fixtures that become non-economically repairable through fair-wear-and-tear, may be returned to the Airport with appropriate documentation from a reputable appliance repair company. The Airport is not obligated to provide a replacement for said appliance or fixture. Appliances or fixtures damaged through no fault of the Airport, remain the responsibility of the Tenant to repair to original condition or replace as necessary. Any changes in the inventory of Airport provided equipment during the term of this agreement will be documented in a letter of agreement between the Airport's Executive Director of Aviation and the Tenant's designated representative.

#### **ARTICLE IV**

##### **Obligations of the Tenant**

1. Tenant agrees will not assign this lease or sublet the Leased Premises or any part thereof, without prior written consent of the Killeen City Manager, or designee, which shall not be unreasonably withheld.
2. Tenant agrees to keep the Leased Premises clean and shall provide its own janitorial services. Tenant is also responsible for table cleaning and spill clean-up janitorial services for the Food Court area (Room B206) during the hours the business is open to the public.
3. Tenant shall be responsible for disposal of its own trash accumulations by depositing it in the nearest exterior trash dumpster on a daily basis. Trash shall be contained within appropriate trash bags or containers in such a method as to prevent spillage or leakage while in route to said dumpster. Trash receptacles inside the terminal building are for customer use only. Tenant also agrees to participate in the City of Killeen's recycling program by depositing all recyclable products in the appropriate outside recycling container in lieu of the trash dumpster and not mixing trash with said recycling materials. Tenant shall be responsible for the clean-up of any spilled debris left anywhere within the terminal area as a result of its careless trash handling and transport procedures.
4. Tenant agrees that it shall not engage in any business or activity within the confines of the Killeen-Fort Hood Regional Airport other than those permitted

herein or such other activities as may be expressly authorized in writing by the Airport.

5. Tenant shall operate the Leased Premises without cost to the City of Killeen, and will maintain all of the included equipment, appliances and furnishings. The appliances and fixtures listed at Exhibit "C" are included in this requirement.
6. Tenant agrees to keep clean, maintain and repair all Tenant owned furnishings utilized in the public areas to include cabinets, display cases, signage, etc. Failed enhancement lighting and sign fixtures visible to the public areas must be replaced/repared to fully operational condition within seven (7) calendar days.
7. Tenant shall be responsible to clean, maintain, and/or service exhaust ventilator filters, sewage grease traps, and fire extinguisher systems that exclusively service the food service area. The mandated frequency of said cleaning, maintain, and/or servicing will be no less than that prescribed by the applicable code, ordinance, or law that is applicable to the tenant's use of the leased premises. Components of these systems may be located beyond the specified boundaries of the leased premises. Access to these areas will be coordinated with the designated representative of the Airport.
8. Tenant agrees that its employees, while performing the duties associated with the concession granted in ARTICLE II, will be neatly groomed and attired in a designated company uniform, and will conduct themselves in a courteous, professional, and businesslike manner while providing responsible and reliable service to the public.
9. Tenant shall provide and maintain an adequate staff of employees with skills, licenses, and certificates appropriate to the activities conducted.
10. Tenant shall obtain and maintain, at no cost to the Airport, appropriate business permits, licenses, and certifications as required by Federal, State, and local laws for the services and activities to be provided.
11. Tenant shall insure that required periodic health/sanitation inspections are conducted by appropriate authority and that such inspection reports meet the satisfactory requirements of the agency conducting the inspections.
12. Upon vacating, Tenant shall leave the Leased Premises in the same condition as they were before removal, ordinary wear and tear excepted. Tenant shall make no structural changes, additions or improvements to the Leased Premises without prior written consent of the Executive Director of Aviation, and appropriate building permits obtained from the City of Killeen Building and Developments Services Department. Any such structural changes / improvements become property of the Airport, unless otherwise agreed upon in writing before such work begins. The foregoing notwithstanding, Tenant shall not be liable for damage caused by other tenants and other users, or their

employees, representatives or invitees, and shall be liable only for its proportionate share of wear and tear in the leased premises.

13. Tenant's employees shall observe and comply with all posted restrictions on parking or standing vehicles, speed limits, and traffic rules on the airport properties.
14. Tenant shall, not later than ten (10) days after the end of each month, provide a report reflecting the following for the completed month: (a) a Gross Receipts statement reporting the amount of total gross revenue received; (b) a listing of the amount of excluded receipts in accordance with Article VI, paragraph 2.b; and (c) amounts previously paid to the Airport or included with the report for that month. Such report will be signed by the Tenant's designated manager or other representative designated by the Tenant.
15. Tenant is responsible to ensure every employee that has regular duty at the airport is submitted for airport credentials appropriate for that employee and that all employee data remains current. The tenant will notify the Airport Operations Center by telephone or other appropriate means as soon as possible following the termination of any employee, but will do so in writing no later than 24 hours after the effective time of the termination. The Tenant is further responsible for returning the employee's credentials to the Operations Center no later than the next calendar day after the last day of employment. Any lost electronic access cards must be reported in writing to the airport's representative as soon as possible, but no later than 24 hours after the loss is discovered. Tenant is responsible for any charges or damages incurred by the use of credentials issued to its employees unless more than one business day has from the time the Tenant provides written notification to the Airport's Operation Center to cancel any access these credentials allow. A monthly fee will be charged for active employee credentials and for lost cards as indicated in Exhibit "B". Employees are subject to a ten (10) year fingerprint based FBI background check prior to the issue of airport credentials and will be required to complete regular security training.
16. Tenant may advertise only within the leased premises of the terminal building. Installation and operation of appropriate identifying signs will be allowed within the leased premises and above the exterior window of the leased premises, subject to the approval of the Executive Director of Aviation, or his designated representative. The Tenant may coordinate with the Airport's advertisement concession, as appropriate, for advertising/promotional material in other areas of the building.
17. As a minimum, Tenant shall provide the service described in Article II and continuously remain open to the public from an opening and closing time mutually agreeable to the Tenant and the Executive Director. These times may be adjusted from time-to-time based upon airline schedules, holidays, or other reasonable occasions. Tenant may remain open to the public for the duration of the time the terminal building is open to the public (Art. III, Par. 3.) and may



extend its operating hours to meet public demand, (e.g., late flights, flight diversions, or other occurrences. Normal hours of operation will be posted in a visible location within the leased premises. If Tenant remains open to the public beyond the later of the posted closing time of the terminal building or the extended actual closing time as a result of late flight arrivals, Tenant agrees to reimburse the Airport for hourly overtime rates as specified in Exhibit "B".

18. Tenant acknowledges the entire terminal building is a no smoking facility and will ensure patrons and employees do not smoke in the leased premises. Failure to enforce this no smoking policy will be grounds for default of the lease agreement.
19. Tenant agrees that it will not allow any music, sounds, or noise generated from the leased premises to interfere with the normal atmosphere in the terminal building. The Tenant may not produce noise audible outside the bar area without specific approval of the Airport's Executive Director of Aviation.

## **ARTICLE V**

### **Terms of Agreement**

1. The Airport hereby grants unto the Tenant, beginning January 1, 2019 and ending January 1, 2024, the right to operate the food and beverage / bar service concessions, as previously described in Article II of this Lease, at the Killeen Fort Hood Regional Airport.
2. If Tenant is not in default of the terms hereunder, Tenant will have the option to enter into an additional five (5) year lease agreement under terms and fees as mutually agreed to between the Tenant and Airport, providing it gives notice of its option in writing at least one hundred and eighty (180) days prior to the termination date hereof.
3. At the expiration of the term of this lease, the Tenant will immediately vacate the leased premises unless the Tenant has executed a subsequent lease renewal agreement for the premises prior to its expiration. Alternatively, the Tenant may submit a written request to the Executive Director of Aviation to remain in the premises on a month-to-month basis beyond that expiration date. If the Executive Director provides written approval of such a request, the Tenant will be considered to be in a "hold over status". Any such holding over by the Tenant on the expiration of the term of this lease shall not constitute a renewal thereof but shall constitute only a tenancy on a month-to-month basis. All provisions of this lease will remain in full force and effect for the duration of the period that the Tenant remains in hold over status except that rental rates will be increased in accordance with ARTICLE VI, Par 6.
4. As consideration for this lease, Tenant promises to pay to the Airport the fees and rent prescribed in ARTICLE VI and Exhibit "B". The remittance shall be to: City of Killeen, Finance Department, PO Box 1329, Killeen, TX 76540. Airport may designate other locations and/or methods of payment during the term of this

concession lease agreement. Tenant will be notified in writing of any such change.

## **ARTICLE VI**

### **Rentals, Fees, and Accounting Records**

1. Tenant shall pay to the Airport \$1,000 per month as described in Exhibit "B" as Basic Rents and Fees. Basic Rents and Fees include a \$500 minimum concession fee, and a \$500 utility fee. Basic Rents and Fees are payable without demand in monthly installments in advance on or before the first day of each and every month during the term of this lease.

On January 1 of each year of the initial or renewal term, commencing January 1, 2020, the total of the Basic Rents and Fees, shall be adjusted in accordance with the Consumer Price Index – National Index for All Urban Consumers (CPI) for the previous calendar year. Said adjustment shall be computed as follows:

Most recent year's rate x (CPI for November of most recent year / CPI for November of the next most recent year) = New Rate

2. In addition to Basic Rents and Fees, Tenant shall pay percentage concession fees as follows. Tenant shall pay the Airport eight percent (8%) of its monthly gross receipts collected in excess of \$30,000, up to \$40,000; and ten percent (10%) of its monthly gross receipts in excess of \$40,000. These payments shall be made no later than the first day of the second month following the month of its collection.
  - A. "Gross Receipts" shall include all receipts, whether by coin or currency, on account, by check or credit card, collected or uncollected, whether conducted on or off airport, derived by the Tenant as a result of its operation of the concession rights herein granted, without exclusion, except those expressly permitted in paragraph 2.b. Gross receipts shall include the total amount actually charged to the customer by the Tenant for, or in connection with, products sold, or delivered from the Tenant's Leased Premises at the Killeen-Fort Hood Regional Airport, regardless of where or by whom the payment is made.
  - B. Gross Receipts shall exclude receipts from the following:
    - (1) Federal, State, City or municipal sales taxes now in effect or hereinafter levied which are separately stated and collected from customers of the Tenant.
    - (2) The value of any goods exchanged or transferred from or to other business locations of the Tenant, where such exchanges or transfers are not made for the purpose of avoiding a sale or service fee by the Tenant that would otherwise be made from or at the Killeen-Fort Hood Regional Airport.

- (3) Refunds to customers. Receipts with respect to any refunds made to Tenant's customers, to the extent of any refund actually granted or adjustment actually made, either in the form of cash or credit, providing the refund and reason therefore is documented along with the name and address of the person receiving the refund.
  - (4) Documented discounts and rebates to customers, to include discount cards and coupons.
  - (5) Gratuities and tips collected, recorded and remitted to employees.
3. Tenant shall pay the sundry charges and other variable fees based upon activity to the Airport as described in Exhibit "B", no later than thirty (30) days after the invoice for that period is provided to the Tenant. Sundry charges are subject to change on an annual basis. Airport will provide a revised Rents and Fees Schedule to Tenant at least sixty (60) days before the effective date of any changes to sundry charges. For purposes of this provision, Tenant may designate either its local representative or a corporate office to receive the official copy of this invoice.
4. A late fee of five percent (5%) of the total amount due will be assessed to the Tenant if payments prescribed in Paragraphs 1, 2, or 3 above are not received in the administrative offices of the Director of Aviation within 5 days of the dates prescribed therein. An additional five percent (5%) of the outstanding amount will be assessed each month that all or a portion of the Tenant's obligations remain unpaid. Obligations unpaid more than sixty days after the prescribed due dates will be cause of considering the payment(s) in default of the lease agreement.
5. If Tenant defaults in the payment of rent, fees, or any part thereof, and such default shall continue for thirty (30) days after written notice by the City of Killeen to the Tenant to pay, the Airport shall, without further notice, have the right to re-enter the Leased Premises to remove the Tenant and all persons holding over it and to terminate this lease and repossess the premises. Such repossession shall not constitute a waiver by the Airport for any other rights it may have to enforce collection of rents for the balance of the term or to recover damages from the Tenant for default in payment of rents.
6. If the Tenant holds over beyond the term of the lease on a month-to-month basis, basic rents and concession fees, as listed in Exhibit "B", will increase by 15%. Beginning with the fourth month in a hold over status, the above described rents and fees will increase by 20%. Beginning with the seventh month in a hold over status, the above described rents and fees will increase by 25%. The additional 15%, 20%, or 25%, as applicable, will also be added to the total concession percentage of gross receipts formula. Other fees and/or charges will be at the current rates in effect for that month as approved by the City Council.
7. In the event the Airport records, for any consecutive 12-month period, in excess of 250,000 passenger enplanements (the "Trigger Level") and gives Tenant

notice that Trigger Level has been achieved, then the conditions of Article II, Paragraph 3 shall be enacted.

8. Tenant shall maintain a performance bond, cash deposit, or other financial assurance acceptable to the Airport in the amount of \$2,000 for the full initial term and any renewal term of this retail concession lease agreement. Tenant shall forfeit said assurance if it fails to perform all the terms and conditions of this agreement.

## **ARTICLE VII**

### **Rights of Inspection**

1. The Airport reserves the right to inspect the Leased Premises, equipment, and services at any reasonable time and with reasonable notice for the purpose of assuring compliance with this lease, public safety or welfare, or the Airport's general rights and duties as lessor. The Airport also reserves the right to inspect and audit any records and computer software necessary to verify the correct reporting of data used to compute fees described in Exhibit "B".
2. Upon at least fifteen (15) days written notice, Airport auditors or other authorized representatives shall, at any time during the term of this lease agreement, within two years after the end of this agreement, or within two years of any extension to it, have access to, and the right to audit, examine, or reproduce any and all records of the Tenant related to the most recent thirty six (36) months performance under this lease agreement. Tenant shall retain all records associated with transactions at the Killeen-Fort Hood Regional Airport within the Leased Premises or at another a mutually acceptable location in Killeen, Texas for the longer of the most recent thirty six (36) months or until completion of any pending audit or litigation action between the parties.
3. If the audit reveals that additional fees are due the Airport, Tenant shall, upon written notice by the Airport pay such additional fees, plus interest and penalties, within thirty (30) days of written notice. Interest will be calculated at one and one-half percent (1 ½%) per month for each month after the day the additional amount should have originally been paid. The penalty will be twenty percent (20%) of the total of the additional fees due (not including interest). If the audit reveals that the Tenant has overpaid the fees due the Airport, such overpayment shall be credited to the Tenant's account, or refunded if the term of the lease agreement has expired and all other obligations by the Tenant have been satisfied. If the audit reveals an underpayment of more than five percent (5%), the cost of the audit shall be borne by the Tenant.
4. In addition to the interest and penalty payments as stated in paragraph 3 above, any deliberate attempts to misrepresent gross receipt amounts, attempts to divert airport earned revenue to an off-airport site will be cause for default of the lease agreement.

**ARTICLE VIII**  
**Non-Discrimination Covenants**

1. The Tenant for itself, its personal and legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agrees as a covenant running with the land that:
  - A. No persons on the grounds of race, color, religion, sex, age, disability, or national origin shall be unlawfully excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities and the privileges provided herein.
  - B. That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, age, disability, or national origin shall be unlawfully excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
  - C. That the Tenant shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Department of Transportation, Subtitle A, Office of the Secretary, 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.
2. Tenant assures it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, disability, or sex be unlawfully excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Tenant assures that no person shall be unlawfully excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by the subpart. The Tenant assures that it will require that its covered sub-organizations provide assurances to the Airport that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required, by 14 CFR Part 152, Subpart E, to the same effect.
3. That in the event of breach of any of the preceding nondiscrimination covenants, the Airport shall have the right to terminate this lease and the privileges herein, and hold the same as if said lease had never been made or issued.
4. Tenant in the conduct of its authorized business activities on said Leased Premises and on said Airport shall furnish good, prompt, and efficient service adequate to meet the demands for its services at the airport and shall furnish such services on a fair, equal, and non-discriminatory price for each service.
5. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Tenant agrees that it will not

discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, purchase or lease agreement, or other agreement covered by CFR Part 23.

6. Tenant agrees to include the statement in Paragraph 5 above in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those business to similarly include the statements in further agreements.

## **ARTICLE IX**

### **Indemnification and Insurance**

1. Without limiting Tenant's obligation to indemnify the Airport, Tenant shall provide, pay for, and maintain in full force at all times during the term of the agreement insurance coverage from an insurance carrier admitted to do business in the State of Texas that has at least an "A" rating with AM Best Company in the types and amounts as listed below:

TYPE	MINIMUM AMOUNTS
WORKERS COMPENSATION	Statutory
COMMERCIAL GENERAL LIABILITY	
Each Occurrence	\$1,000,000
Damage to rented premises	\$300,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$1,000,000
Products-Comp/Op Agg	\$1,000,000
LIQUOR LIABILITY	\$300,000

The "City of Killeen" shall be named as additional insured and shall be furnished with Certificate of Insurance coverage in the above minimum amounts with the signed lease and at any time during the lease period that the Tenant may change or extend coverage. Current period proof of coverage must be on file with the Airport at all times.

The Airport reserves the right to increase the minimum required insurance in an amount and type not to exceed coverage required at comparable airports to be effective thirty (30) days after notice is sent to the address provided herein.

The Airport and the Tenant shall be liable for their own acts of negligence, and each agrees to indemnify the other to the fullest extent allowed by law for any losses, damages, costs or expenses, including attorney fees and litigation expenses, paid or sustained by reason of the sole negligence of the indemnifying party.

2. The Tenant shall hold the Executive Director of Aviation and all other Department of Aviation personnel, and the officers, elected officials and employees of the city harmless from and against all suits, claims, demands, damages, actions, and/or causes of action of any kind or nature in any way arising out of, or resulting from its tenancy and activities, and shall pay all expenses in defending any such claims against the City. Similarly, the City shall hold Tenant harmless from and against all suits, claims, demands, damages, actions, and/or causes of action of any kind or nature in any way arising out of the City's activities under this lease, and shall pay all expenses in defending any such claims against the Tenant. The indemnification provided for in this agreement shall not apply to the extent of the indemnified party's gross negligence or willful misconduct.
3. The Tenant shall be solely liable and responsible for civil penalties imposed upon the Airport as a result of negligent acts and/or violations of Federal, State or Local Regulations or laws by the Tenant, especially when the Airport has made good faith efforts to establish rules and procedures for compliance with such regulations. Similarly, the City shall be solely liable and responsible for civil penalties imposed upon the Tenant as a result of negligent acts and/or violations of Federal, State or Local Regulations or laws by the City which do not result from any violation of said regulations by the Tenant.

## **ARTICLE X**

### **General Provisions**

1. Neither the failure of the Airport to strictly enforce all of the terms of this lease nor the acceptance of rent by the Airport after any breach by the Tenant nor any delay on the part of the City to strictly enforce the provisions hereof shall operate or be deemed a waiver of any rights or remedies accruing to the Airport by reasons of any subsequent breach. In any legal proceedings under this lease, the successful party shall be reimbursed by the other party for costs, expenses and reasonable attorney's fees, which shall be incurred in such proceedings.
2. NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; or b) if sent by registered mail, postage paid, addressed by name and to the party or person intended as follows:

To the City: Executive Director of Aviation  
Killeen Fort Hood Regional Airport  
8101 S. Clear Creek Rd, Box C  
Killeen, Texas 76549

To the Concessionaire: CCL Ventures, LLC  
1609 Grand Falls Dr.  
Cedar Park, Texas 78613

The parties may designate other addresses from time-to-time in writing. Tenant must provide a valid new address for notices to Tenant within ten (10) days if the above address becomes invalid.

3. The Airport reserves the right to further develop or improve the airport as it sees fit, regardless of the desires or views of Tenant and without interference or hindrance by Tenant; however, all developments and improvements of the airport will be coordinated with Tenant.
4. This lease agreement shall be subordinate to the current or future reasonable airport rules, regulations and standards, and City Ordinances, as well as all applicable State and Federal regulations and laws. It is herein agreed between the Airport and the Tenant that the Airport Rules and Regulations now in effect and hereafter adopted or amended by the City of Killeen shall not be altered or impaired in any respect by this lease agreement, but said rules and regulations shall remain in effect and be applicable to the Tenant during the term of this lease.

It is expressly understood and agreed that this lease is subject to and subordinate to and controlled by provisions, stipulations, covenants, and agreements contained in those certain contracts, agreements, resolutions, and actions of the City of Killeen, Texas, constituting agreements between the City and the United States of America and its agents including, but not limited to, the United States Army, the Federal Aviation Administration (FAA), the Transportation Security Administration (TSA), and all regulations now and hereafter imposed upon the City and that the Airport shall not be liable to Tenant on account of any of the foregoing matters and all of such contracts, agreements, resolutions, laws, and regulations are incorporated herein by reference, and if any provision of this lease is determined to be at variance with same, such provision is unilaterally reformable at the Airport's option.

7. The Tenant, its successors, and assigns will not make or permit any use of the property which would interfere with landing or taking off of aircraft at the airport, or otherwise constitute an airport hazard. This includes such items as electrical or electronic equipment, creation of smoke or dust, or glaring or misleading lights.
8. Airport warrants and represents that it has the right to Lease the Premises, and covenants and agrees that while performing its obligations hereunder, Tenant shall enjoy, and Airport will defend and uphold its right to quiet and peaceful possession of the Premises, and all rights and privileges granted herein.
9. Tenant may establish and utilize other d/b/a (doing business as) names as appropriate as long as those names are provided in writing to the Executive Director of Aviation prior to the use of such names in signage or advertising applicable to this business location.



10. Tenant hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this lease agreement. Boycotting Israel is defined in Texas Government Code section 808.001 to mean refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
11. This agreement is governed by the laws of the State of Texas, and venue shall be in Bell County.

### **Article XI** **Cancellation**

1. Cancellation by Tenant. Tenant may cancel this Agreement and terminate all its obligations hereunder upon or after the happening of one or more of the following events and provided that Tenant is not in default in the payment of any fees or charges to City:
  - A. The abandonment of the Airport as an airline terminal or the removal of all certificated passenger airline service from the Airport for a period of no less than thirty (30) consecutive days;
  - B. The inability of Tenant to use the Airport for a period of longer than ninety (90) days, because of the issuance of any order, rule, or regulation by any competent governmental authority or court having jurisdiction over Tenant or City, preventing Tenant from operating its business; provided, however, that such inability or such order, rule, or regulation is not primarily due to any fault of Tenant;
  - C. The material breach by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such breach for a period of sixty (60) days after receipt from Tenant of written notice to remedy the same;
  - D. If, within thirty-six (36) months of full concession operations, Tenant fails to attain a threshold of \$30,000 in monthly concession sales for any consecutive four (4) month period. Full concession operations shall mean operation of the food court area with concessions that fully occupy the area. For example, that would include the sandwich concession, a coffee concession, and an alcohol sales venue.
2. Cancellation by City. City may cancel this Agreement and terminate all of its obligations hereunder at any time, upon or after the happening of any of the following events:
  - A. Tenant shall file a voluntary petition in bankruptcy; or

- B. Proceedings in bankruptcy shall be instituted against Tenant and Tenant is thereafter adjudicated bankrupt pursuant to such proceedings; or
  - C. A court shall take jurisdiction of Tenant and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or
  - D. A receiver of Tenant's assets shall be appointed; or
  - E. Tenant voluntarily abandons its conduct of its business at the Airport for a period of thirty (30) days, except if such is due to a labor strike or labor dispute in which Tenant is involved; or
  - F. Any assignment is made by Tenant for the benefit of its creditors; or
  - G. The material breach by Tenant of any of the covenants or agreements hereincontained and the failure of Tenant to remedy such breach as hereinafter provided. In this regard it is understood that nonpayment of fees or charges hereunder is a material breach. In the event of such material breach, City shall give to Tenant notice in writing to correct such breach and if such breach shall continue for fifteen (15) days after the receipt of such notice by Tenant, City may, after the lapse of said fifteen (15) day period, 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.
  - H. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such manner as to substantially restrict Tenant, for a period of at least thirty (30) days, from its Airport operation.
3. Remedies. Should an early termination of this Agreement occur pursuant to the terms of Article XI, Par. 2 hereof, then Airport may, at its option, exercise any one or more of the following remedies:
- A. Airport may terminate, cancel or rescind this agreement;
  - B. Airport may exercise any other right, remedy or privilege which may be available to Airport under applicable law or, by appropriate court action at law or in equity, Airport may enforce any of Tenant's obligations under this agreement;
  - C. Airport may require Tenant to pay (and Tenant agrees that it shall pay) all out-of-pocket costs and expenses incurred by Airport as a result (directly or indirectly) of the Event of Default and/or of Tenant's actions under this section, including, without limitation, any attorney fees and expenses and any costs related to the repossession, repair, reconditioning or disposition of the leased premises and any equipment associated with such agreement;

D. Airport may re-enter the Leased Premises to remove the Tenant and all persons holding over it and to terminate this lease and repossess the premises. Such repossession shall not constitute a waiver by the Airport for any other rights it may have to enforce collection of rents for the balance of the term or to recover damages from the Tenant for default in payment of rents.

None of the above remedies is exclusive, but each is cumulative and in addition to any other remedy available to Airport. Airport's exercise of one or more remedies shall not preclude its exercise of any other remedy. No delay or failure on the part of Airport to exercise any remedy under any agreement shall operate as a waiver thereof, nor as acquiescence in any default, nor shall any single or partial exercise of any remedy preclude any other exercise thereof or the exercise of any other remedy.

4. Notice of Termination. If any of the events enumerated in Article XI Paragraphs 1 or 2 shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by notice in writing, such cancellation and termination to be effective upon the date specified in such notice.

IN WITNESS WHEREOF, the parties have executed this lease on this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

ATTEST:

CITY OF KILLEEN:

\_\_\_\_\_  
Lucy C. Aldrich  
City Secretary

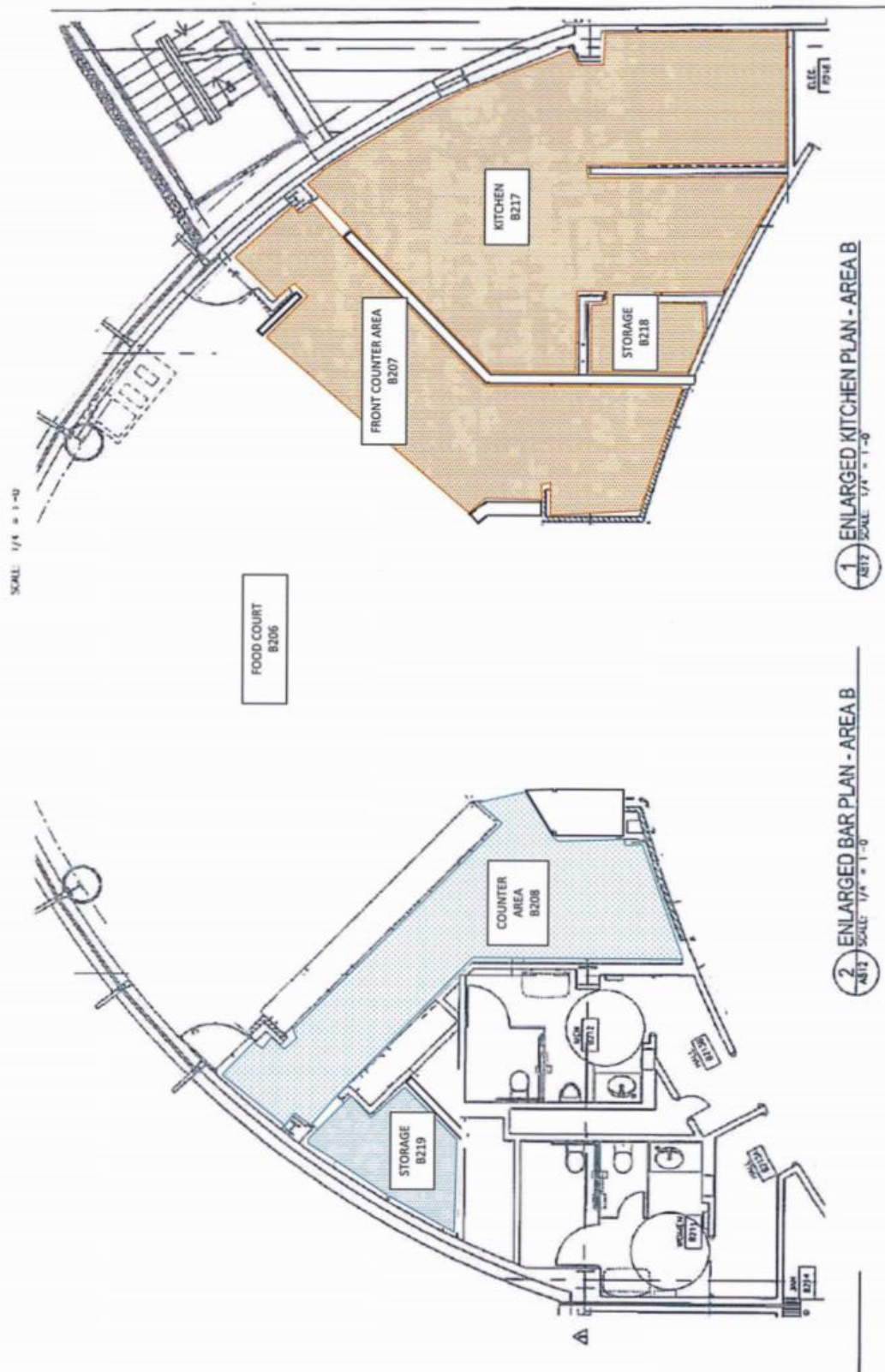
\_\_\_\_\_  
Ronald L. Olson  
City Manager

ATTEST:

CCL VENTURES, LLC

\_\_\_\_\_  
Cindy Allen  
Owner

# EXHIBIT "A"



## **EXHIBIT "B"**

**City of Killeen and \_\_\_\_\_, Inc.**

### **Rents and Fees Schedule**

#### **Basic Rent and Fees**

Minimum Concession Fee                      \$500 per month

Utility Fee    \$500 per month

**Percentage Concession Fees**                      8% of monthly gross receipts over \$30,000  
   10% of monthly gross receipts over \$40,000

**TOTAL RENT AND FEES**                              \$\_\_\_\_\_ per month

#### **Sundry Charges**

Employee credentials                              \$7.00 per month per employee

Replacement of lost credentials or keys                      \$40.00 each

Light bulb replacement                              \$10.00 each

Hourly overtime rate                              \$55.00 per hour  
(To keep terminal building open beyond  
published hours)

#### **Telephone Service**

Local Service                                      \$23.50 per line per month \*

Voice mail    \$ 4.25 per line per month

Phone rental    \$ 6.00 per phone per month

Maintenance fee                                      \$ 15.50 per line per month

Internet access via T-1                              \$ 64.00 per connection per month \*

\* Plus applicable federal / state taxes and surcharges

## **EXHIBIT "C"**

### **City of Killeen**

#### **Airport Provided Appliances and Fixtures**

##### **Rooms B208 & 219**

Dry storage shelving  
Back bar draft beer refrigerator  
Draft beer arm with drainer  
Four compartment bar sink  
Cocktail station  
Glass rack stand  
Back counter  
Drop-in Sink with faucet  
Ice Machine  
Back bar  
Reach in Freezer

##### **Room B217**

Walk-in Cooler  
Bag-n-box syrup rack  
Pot & Pan sink  
Walk-in Freezer  
Reach in Freezer  
Fryer  
Griddle Range  
Hand sink  
Chip rack  
Dry storage shelving  
Exhaust Ventilator w/Fire Suppression