

Term Sheet for Jaycee Park Concessionaire Agreement

Parties

The City of Cape Coral, FL (the “City”) and a newly formed limited liability company to be owned and controlled by Kearns Restaurant Holdings, LLC, a Florida limited liability company (“Concessionaire”) intend to enter into a Concessionaire Agreement on the Terms set forth in this Term Sheet. Nothing contained herein shall be binding upon the parties until such time as the parties have entered into a final agreement.

Subject Premises

The Subject premises is located on the south end of Jaycee Park, and has been specifically identified as the “Concession Area” within the legal description and sketch as shown in Exhibit “A.” This specific Concession Area will be deemed a “Wet Zone,” as that term relates to the service and sale of alcoholic beverages within the Concession Area. The remainder of Jaycee Park will be a “Dry Zone.”

Premises Name

Concessionaire reserves the right to name the concession building, and the building shall be referred to herein as the “Concession Building”

Agreement Type

The Concessionaire Agreement will grant to Concessionaire the exclusive rights to manage and operate the Jaycee Park Concession Area and Food Truck Court. The Concession Area and Food Truck Court includes a 1,100 square foot building (which is partially constructed), and six (6) fully serviced pads for food trucks. The building contains three (3) unisex public restrooms. The Concession Area includes two (2) game areas: two (2) cornhole lanes and two (2) pool tables. A smaller bandshell/pavilion (256 square foot) is included within the Concession Area for use by the Concessionaire. The Concessionaire will be permitted to utilize the smaller bandshell for the entertainment of the Concessionaire’s customers.

Term of the Agreement

The initial term of the Agreement shall be 20 years. Concessionaire will have the option to renew the term for one (1) additional ten (10) year term, for a total of 30 years. No further consent or authorization shall be required by the City for the renewal of the term; provided that the Concessionaire is current and is not then in default in its obligations under the Concessionaire Agreement.

Rights and Operations

The Concessionaire shall have the exclusive right to operate all food, beverage, alcohol and retail sales within the Concession Area. No additional food and beverage services shall be permitted to operate, independently or otherwise, within Jaycee Park during the term of the Concession Agreement or any renewal thereof.

Completion of Buildout

The City shall be responsible for the completion of the Concession Building shell. Prior to execution of the Concessionaire Agreement, the City shall provide the Concessionaire with a complete set of the plans

and specifications for the Concession Building and other improvements, together with a written Scope of Work and Delivery Plan, to be agreed upon between the parties.

The City shall deliver the premises in a condition consistent with the approved plans and permits for the Jaycee Park concession facility in a condition that is structurally complete and dried in; free of construction liens and contractor claims; and with all inspections to date passed.

The City will work with Concessionaire for the transfer of any permits that may be required for the completion of the build-out of the Concession Building.

The Concessionaire shall be responsible for all monetary and non-monetary costs associated with the completion of the buildout of the building shell, which shall include, but not be limited to, all necessary furnishings, fixtures and concession operations equipment for the Concession Area.

The timetable for the City's completion of the building shell and the Concessionaire's contribution towards, and completion of the buildout are to be agreed upon as part of the final agreement.

Concession Fees

- A. Initial Payment: The Concessionaire shall pay the City an initial fee of \$1,064,876, plus any and all applied interest, which shall be paid in 240 equal monthly installments of \$4,437, plus interest costs associated with the 240 monthly installments. Interest shall be calculated at a fixed rate not to exceed 5%.
- B. Minimum Guarantee ("MG"): \$75,000 per year (\$6,250 per month) due upon issuance of building Certificate of Occupancy.
- C. Percent of Total Gross Receipts ("PG"): four (4%) percent in years 1-10; five (5%) percent in years 11-20; and five (5) and five-tenths (5.5%) percent during any renewal term.
 - a. Definition of Gross Receipts: Any and all receipts, revenues and income of any nature derived directly or indirectly from all business conducted at, upon or from the Concession Area (including all Concession Operations) by Concessionaire, all Subconcessionaires, licensees, assignees and any and all others, whether evidenced by cash, check, credit, charge account, exchange or otherwise, including, without limitation, receipts from the sale of food, beverage, alcoholic beverages, services, merchandise, equipment rental, so called location fees, sponsorship (if they pass through the revenue accounts of the newly formed limited liability company, or advertising fees or other consideration, from vending or other machines, and from orders for any of the foregoing taken at the Concession Area or through any website, application or other interface (whether such orders are filled from or at the Concession Area or elsewhere).

The term “Gross Receipts” shall exclude: (a) amounts of any Federal, State, or City sales tax, use tax, excise tax, resort tax or other tax, governmental imposition, assessment, charge or expense of any kind, collected from customers, provided that the amount thereof is added to the selling price and remitted to the taxing or other governmental authority; (b) all credits and refunds given or made to customers for returns of merchandise; (c) all sums received in settlement for lost or damaged merchandise; (d) sales of machinery, equipment or trade fixtures after use thereof in the conduct of the Operations and not made to customers in the ordinary course of business; (e) the value of meal discounts to Concessionaire’s employees; (f) service charges paid by customers to the extent paid to employees as tips and gratuities; (g) sponsorship revenue or private event buyouts but only if these revenues do not pass through the accounts of the newly formed LLC, (h) gift card sales until redeemed; and (i) any consideration paid by third parties for so-called “naming” rights but only if these revenues do not pass through the accounts of the newly formed LLC; (j) insurance or condemnation proceeds; and (k) capital contributions made by any investors.

- b. MG shall be abated on a prorated basis using a 30 day month if the park or Concession Area is closed to the public for a period exceeding seventy-two (72) consecutive hours due to City directed closure; construction, maintenance or repairs to the park by the City; emergency; inclement weather; City ordinance or any cause beyond the control of Concessionaire. During any such closure period, Concessionaire shall only be obligated to pay PR based on actual Gross Receipts generated during the closure period, if any.

Boat Slips - Under Negotiation

Food Truck Court Operations

The Concessionaire shall manage all facets associated with operation of the Food Truck Court. This shall include, but not be limited to, the below obligations:

1. Selection of food truck vendors
2. Developing financial and lease agreements with each vendor including the fixed and/or percentage rents to be paid by each vendor
3. Ensuring food truck operators have secured all required licensing and permits
4. Establishing a point-of-sale system to track all sales for each truck
5. Maintain a professional operation in both appearance and customer service
6. Identify opportunities for family-friendly pricing

Retail Operations

The Concessionaire will have the right to operate a retail operation out of the Concession Building in a Retail Pavilion to be located within the Concession Area. This may include, but not be limited to, hats and apparel, art, crafts, novelties, artisanal food, fashion and design items and flowers, beach related sundries and skin care products.

Hours of Operation

The hours of operation for the Concession Area and Food Truck Court will be determined by the Concessionaire, with the understanding no operations will be permitted, except for the usual closing and cleaning process, during the hours of 9 PM and 8 AM. The Concessionaire may request modification of its concession operations hours.

Concessionaire reserves the right to close all or any portion of the operations, or reduce the hours of operation, for inclement weather and during specific national or religious holidays, including Christmas Eve. The Concessionaire may request extended hours for specific holidays, City special events or Concessionaire events.

Transfer, Assignment and Sublicense

Except as set forth herein, Concessionaire shall not assign, or otherwise transfer all or any portion of this Agreement and/or of the Concession Area(s) (all of the foregoing are herein after referred to collectively as "transfers"), without the prior written consent of the City Manager or his/her designee, which consent shall not be unreasonably withheld, conditioned or delayed.

Maintenance and Repairs

The Concessionaire shall ensure that the Concession Area, including all food trucks and the Concession Building, is maintained in exceptional condition, and shall make immediate repairs upon receiving written notice from the City. The City shall be responsible for the parking lot and entrances, and all groundskeeping including pest control, and landscaping.

Utilities – Under Negotiation

Insurance and Indemnification

The Concessionaire must maintain Commercial General Liability Insurance in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and \$2,000,000 general aggregate. The City shall be named as additional insured on insurance policy. The Parties hereby acknowledge that the City's Risk Division shall verify and validate that the limits of such insurance coverage meets the City's insurance requirements and industry practice.

Taxes and Assessments

The Concessionaire agrees to pay the non-ad valorem and ad valorem taxes assessed against the subject premises, if any, and any sales and use taxes levied as a result of its use and occupancy of the premises. The Concessionaire agrees to pay any assessments established by City ordinance or resolution.

Miscellaneous

The City shall represent to Concessionaire that all prior agreements for the rights to be granted by the City to Concessionaire have been terminated and that the execution and delivery of the Concessionaire Agreement shall not conflict with or create a breach or default by the City in any other obligations to which the City may be bound.

To the City's knowledge, the plans and specifications for the Concession Building have been prepared in accordance with all requirements of applicable governmental authority including the City of Cape Coral building code and the Americans with Disability Act; all work performed to date has been completed in accordance with the approved plans and specifications and in accordance with applicable code; there are no current code violations, structural defect or stop orders in place, and no hazardous materials or other environmental contamination on the site. If any such issues arise from work performed prior to transfer, the City shall remain responsible. The City will warrant the roof, foundation and structure components of the Concession Building or assign to Concessionaire any construction warranties issued by the general contractor or subcontractors.

Exhibit "A"
Sketch and Legal Description of Concession Area