

**EVALUATION REPORT
AND
RECOMMENDATION OF CONTRACT AWARD
REGARDING
REQUEST FOR PROPOSALS
FOR FOOD AND BEVERAGE CONCESSION FOR
THE HIGH BRIDGE HILLS GOLF COURSE

HIGH BRIDGE, NEW JERSEY**

**By: Evaluation Committee
Dated: FEBRUARY 11, 2022**

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This Evaluation Report and Recommendation of Contract Award (the “Report”) is being provided pursuant to and in accordance with the requirements of the competitive contracting provisions of the Local Public Contracts Law (N.J.S.A. 40A:11-4.1 et seq.) (the “LPCL”). The purpose of this Report is to provide the Council (the “Borough Council”) of the Borough of High Bridge, New Jersey (the “Borough”) with an evaluation of the proposal received in response to a Request for Proposals for Food and Beverage Concession for the High Bridge Hills Golf Course issued by the Borough, and to provide a recommendation to the Borough Council of a Respondent for the award of a contract (the “Selected Respondent”).

Recommendation

Based on the information and analysis set forth in this Report, the Evaluation Committee (defined herein) recommends the Borough Council award the contract with the Borough for a food and beverage concession for the High Bridge Hills Golf Course (the “Golf Course”), which is owned by the Borough, (the “Contract”) to Indigo Sports, LLC for a term commencing on April 1, 2022 and terminating on December 31, 2026 (the “Contract Term”).

I. EXECUTIVE SUMMARY

A. Request for Proposals

On December 20, 2021 the Borough issued a Request for Proposals (“RFP”) through the competitive contracting process of the LPCL, to solicit proposals from qualified and experienced firms or entities to enter into the Contract with the Borough for the Contract Term for the food and beverage concession for the Golf Course including the provision of food and beverage services including the operation, management and maintenance of the bar located in the clubhouse at the Golf Course in accordance with the Contract, as more particularly described in the RFP (the “Services”). The Borough issued one (1) addenda to the RFP which was e-mailed to all recipients of the RFP.

B. Proposals

On January 28, 2022, the Borough received a proposal (the “Proposal”) in response to the RFP from:

Indigo Sports, LLC (fka Antares Golf, LLC) (“Indigo”)
12700 Sunrise Valley Drive
Suite 300
Reston, VA 20191

C. Evaluation

To evaluate the Proposal, the Borough formed an Evaluation Committee comprised of: Michele Lee, Mayor; Bonnie Fleming, Administrator; and Councilperson Natalie Ferry (collectively, the “Evaluation Committee” or “Committee”) as assisted by Frances McManimon, Esq. of McManimon, Scotland & Baumann, LLC, Special Counsel to the Borough (“Special

Counsel”). The evaluation process was undertaken in accordance with the competitive contracting provisions of the LPCL and all other applicable law. The Evaluation Committee conducted a comprehensive review and evaluation of the Proposal. The review of the Proposal was based upon qualifications, experience, proposed operation management, maintenance plan and approach, project team, proposal and other factors, as set forth in the Proposal. The review and evaluation of the Proposal was conducted in accordance with the proposal evaluation criteria set forth in the RFP and the evaluation form (“Evaluation Form”). This criteria was developed to meet the specific needs of the Borough in obtaining the Services. The total score of the Proposal is as follows:

Indigo: 83 out of 100

The Evaluation Committee, with the assistance of the Special Counsel, drafted this Report for the Borough Council.

II. COMPREHENSIVE RFP CONTENT DETAILS

It is the intent of the Borough to enter into a Contract with a qualified vendor for the Contract Term commencing April 1, 2022 and terminating on December 31, 2026. The Contract, which was provided as an attachment to the RFP and is attached hereto as Attachment B, requires the Selected Respondent to provide food and beverage services at the Golf Course including the operation, management and maintenance of the bar located in the clubhouse at the Golf Course in accordance with the Contract. The RFP also requires the Selected Respondent to provide the Services in accordance with all Federal, State and local requirements, laws, rules and regulations, and to meet and implement certain processes and procedures as minimum standards. The RFP also advised potential respondents, that the Borough would evaluate each proposal on the basis of established criteria as set forth in the RFP, and in accordance with the competitive contracting provisions of the LPCL and applicable law.

A. Form of Proposal and Required Forms

Respondents were required to submit, as part of their proposal submission, the documents and information described in the RFP, to demonstrate that the Respondent meets or exceeds the required administrative criteria of the RFP. Respondents were invited to submit supplemental information, in addition to the required information, that might be useful in evaluating the Respondent’s qualifications. Respondents were encouraged to be clear, factual, and concise in the presentation of their information.

Proposal submissions were required to include:

- General Information (RFP Section II, 3.5.2)
- Administrative Information (RFP Section III, 3.5.3);
- Financial Information (RFP Section IV, 3.5.4);
- Supplemental Information; and
- Proposal (RFP Section VII, 3.5.6)

Proposal submissions were required to include the following, among other items:

- Proposal Form A-1: Respondent Form/Cover Letter
- Proposal Form A-2: Ownership Disclosure Statement
- Proposal Form A-3: Consent to Investigate
- Proposal Form A-4: Non-Collusion Affidavit
- Proposal Form A-5: Bid Bond
- Proposal Form A-6: Gratuity Affidavit
- Proposal Form A-7: Insurance Certification
- Proposal Form A-8: Equal Employment Opportunity Certificate
- Proposal Form A-9: Proposal

B. Evaluation Process

The Borough formed an Evaluation Committee to review the Proposal and developed a comprehensive Evaluation Form to guide the Committee in its review of the Proposal. The review and evaluation of the Proposal were based on the model evaluation criteria and methodology set forth in N.J.A.C. 5:34-4.2 and the competitive contracting review process set forth in N.J.S.A. 40A:11-4.5 of the LPCL. Prior to reviewing the Proposal, each member of the Committee, along with Special Counsel, submitted a Certification confirming no conflict in accordance with N.J.A.C. 5:34-4.3(f). A copy of the Proposal was also sent to the Special Counsel, for technical review to determine if the Respondents included and completed the documentation and information set forth in the RFP.

Each member of the Evaluation Committee reviewed the Proposal, particularly with respect to the Respondent's Administrative and Management information and the Cost Proposal. The Evaluation Committee met to discuss their review, and as a Committee, evaluated the information and documentation based on the evaluation criteria and categories set forth in the RFP (Section 4). The Committee completed the Evaluation Form for the Respondent. The Proposal Evaluation Form is attached hereto as Attachment A.

III. PROPOSAL EVALUATION CRITERIA

The following sets forth the evaluation criteria and percentage weighing that was applied by the Evaluation Committee in their review and evaluation of the Proposal. The Administrative and Management criteria and the Cost Proposal were weighted as set forth in the RFP.

1. Administrative Criteria: Proposal follows RFP format, corporate resources and staff, pending/threatened legal and administrative proceedings and corporate restructuring which could materially affect ability to provide Services, material

pending legal and administrative proceedings in which respondent/guarantor officers, directors, employees, principals, property is subject, criminal charges brought against the respondent and disposition, civil proceedings, disqualification/prevented from bidding/contract termination of federal, state local government project, default, compliance history, refusal to testify, permit violations

2. Management Criteria: Management structure and experience, organizational chart, experience of personnel dedicated to the Services
3. Proposal: Concession fees

IV. PROPOSAL

The Proposal is set forth below.

Indigo Proposal

CONCESSION FEE TO BOROUGH

YEAR ONE	5% of gross revenue from food and beverage sales
YEAR TWO	5% of gross revenue from food and beverage sales
YEAR THREE	5% of gross revenue from food and beverage sales
YEAR FOUR	5% of gross revenue from food and beverage sales
YEAR FIVE	5% of gross revenue from food and beverage sales

V. RECOMMENDATION – SELECTED RESPONDENT

The Evaluation Committee applied the Evaluation Criteria set forth in the RFP to the Proposal. The Proposal was also reviewed for legal compliance, as well as administrative experience, and cost proposal, all as set forth in the RFP. The Evaluation Committee believes that Indigo Sports, LLC, has the experience and administrative capability to work with the Borough and efficiently and effectively provide the Services sought under the RFP. The Evaluation Committee also believes the Proposal submitted by Indigo, is competitive, feasible and justifiable based on the Services to be provided. Accordingly, the Evaluation Committee recommends that the Borough Council award the Contract to Indigo Sports, LLC with an annual concession fee to the Borough of 5% of gross revenue from food and beverage sales. The proposed form of Contract, attached hereto as Attachment B, sets forth the terms, Services and other provisions described in this Report.

**ATTACHMENT A
PROPOSAL EVALUATION FORM**

Introduction

These guidelines are provided to assist you in the evaluation of proposals received in response to a Request for Proposals (RFP). As a member of the Evaluation Committee, you represent High Bridge Borough, and your reviews of the proposals must be conducted individually and professionally. Evaluation Committee members must follow the established evaluation format and be able to evaluate all proposals objectively and without bias. One of the most important elements in the evaluation process is the assurance that each Offeror is treated fairly and equally. Each member of the Evaluation Committee must submit a Conflict of Interest Statement in accordance with N.J.A.C. 5:34-4.3(f).

Evaluation Guidelines

The proposals will be evaluated in two stages.

First, the submitted proposals are reviewed for responsiveness to determine if they are in compliance with the RFP submission requirements as outlined in the RFP. The proposals will then be scored based upon the criteria presented on the RFP Evaluation Form which should be consistent the requirements of the RFP. Each proposal must be scored by multiplying the rating you determine it deserves by the weighted value of the RFP criterion on the Proposal Evaluation Form.

Rating

TEN (10) BEING EXCELLENT AND ZERO (0) BEING UNSATISFACTORY. You should give considerable thought to the rating you award. The evaluation process is designed to value the judgment and assessment of each individual evaluator. As an evaluator, your scores must reflect your individual judgment based on the selection criteria. The evaluators will discuss the proposals at the Evaluation Committee meeting. The scores will be tabulated at the meeting.

The highest scoring offeror(s) may be required to be interviewed by the Evaluation Committee. The interview/presentation is the second stage of the process. It is not mandatory; however, it is a good tool for the Evaluation Committee to use in its evaluation. It provides an opportunity to meet the key personnel. It is subjective and is not scored. You will be asked to rank the firms interviewed after all the interviews are completed. At the end of the interviews, the Evaluation Committee will have a discussion and do a final ranking of the proposals.

High Bridge Borough Evaluation Guide and Form Food and Beverage Concession for High Bridge Hills Golf Course

RFP Title: REQUEST FOR PROPOSALS FOR FOOD AND BEVERAGE CONCESSION FOR THE HIGH BRIDGE HILLS GOLF COURSE

Proposer: Indigo Sports

Points	Guidance	Expected Occurrence
10	Excellent, insightful response- Meets all Evaluation Criteria for each 1 thru 8 below	Rare (<5%)
8-9	Very Good, thoughtful response – Meets 80-90% of Criteria	Occasional (20%)
6-7	Good, More than adequate response - Meets 60-70% of Criteria	Frequent (40% or >)
4-5	Adequate response, no special insights - Meets 40-50% of Criteria	Occasional (20%)
2-3	Inadequate response - Meets 20-30% of Criteria	Infrequent (< 10%)
0-1	Totally inadequate response, No response given - Meets 0-10% of Criteria	Rare (< 5%)

Evaluation

Criteria	Possible Points	Points Awarded	Weighted Multiplier	Total Points
1. Concession Fee	0-10	7	3.0	21
2. Proposed management structure and experience	0-10	9	3.0	27
3. Service plan and operation and management experience of similar facilities	0-10	9	3.0	27
4. Financial Capability	0-10	8	1.0	8
TOTAL SCORE	X	X		83

Evaluation Committee

Date Evaluated: 2/11/22

ATTACHMENT B
PROPOSED CONTRACT

**FOOD AND BEVERAGE SERVICES CONCESSION AGREEMENT
FOR
HIGH BRIDGE HILLS GOLF COURSE
HIGH BRIDGE, NEW JERSEY**

THIS FOOD AND BEVERAGE SERVICES CONCESSION AGREEMENT (“Agreement”) made as of this ___ day of March, 2022, and effective as of April 1, 2022 (the “Effective Date”), is entered into by the Borough of High Bridge, having an address of 97 West Main Street, High Bridge, New Jersey, (the “Borough”), and Indigo Sports, LLC (fka Antares Golf, LLC) having an address of 12700 Sunrise Valley Drive, Suite 300, Reston, VA 20191 (“the Contractor”) (together, the Borough and the Contractor, the “Parties” and each a “Party”).

WHEREAS, the Borough owns the High Bridge Hills Golf Course located in High Bridge, New Jersey, an 18-hole golf course with a clubhouse, parking lot, driving range, maintenance and storage facilities for the golf carts, equipment and related vehicles, and other amenities (the “Golf Course”); and

WHEREAS, a club house is located at the Golf Course in a quadruple wide trailer and houses a bar, kitchen and dining area (the “Bar”); and

WHEREAS, the Borough executed a five (5) year agreement with Indigo Sports, LLC effective January 1, 2022 for the operation, management and maintenance of the Golf Course and for the management and operation of the pro shop located in the club house (the “O&M Agreement”); and

WHEREAS, the O&M Agreement does not provide for the provision of food and beverage services at the Golf Course; and

WHEREAS, the Contractor is engaged in the business of operation and management of golf course facilities; and

WHEREAS, the Contractor and the Borough desire to enter into this Agreement which will be effective on the Effective Date for the provision of food and beverage services at the Golf Course, including the operation and management of the Bar (the “Food and Beverage Services”); and

WHEREAS, the Contractor and the Borough desire to reduce to writing their understanding concerning the provision of the Food and Beverage Services by the Contractor commencing on the Effective Date.

NOW, THEREFORE, in consideration of the mutual covenants, hereinafter specified to be kept and performed by the Parties hereto, IT IS HEREBY AGREED, by and between the Borough and the Contractor as follows:

1. **TERM OF AGREEMENT:** The term of this Agreement shall commence on the Effective Date and shall expire on December 31, 2026 unless terminated or cancelled as set forth herein (the "Term").
2. **SERVICES PROVIDED BY THE CONTRACTOR:** The Contractor, as an

independent contractor and through any subsidiary approved in accordance with the provisions of this Agreement, shall have the sole and exclusive right to perform all tasks required to provide the Food and Beverage Services. The Borough and the Contractor agree that they shall cooperate reasonably with each other to permit the Contractor to carry out its duties under this Agreement with respect to the Food and Beverage Services. The Contractor shall oversee, coordinate, organize, manage, direct, and facilitate the Food and Beverage Services as more particularly set forth herein, and in accordance with the terms of this Agreement. The Contractor shall perform the Food and Beverage Services on a day-to-day basis and shall maintain the Food and Beverage Services in a high-quality, efficient, economical, and business-like manner comparable to other quality golf services in the region. The Contractor agrees to keep the Bar in good order and condition. During the Term and subject to the provisions hereof, the Contractor shall perform, without limitation, the following in connection with the Food and Beverage Services:

- A. Food and Beverage Services. The Contractor shall operate and maintain the grille-area, Bar, beverage cart, seating areas, storage areas, kitchen area, and service areas at the Golf Course. The hours of operation shall be as customary for comparable daily-fee golf courses. The Contractor shall offer a reasonable priced array of food and beverage items for sale to the patrons of the Golf Course and customers.
- B. Emergency Contacts. The Contractor will provide the Borough with the names and telephone numbers of at least two qualified persons who can be called by the Borough representatives when emergency conditions occur during hours when the Contractor's normal work force is not present. The Borough shall call for such assistance only in the event of a genuine and substantial emergency.
- C. Equipment and Supplies. Subsequent to the Effective Date, the Contractor shall procure all necessary equipment, supplies, inventories and materials of good quality and in sufficient amounts, to fulfill the requirements of this Agreement for the Food and Beverage Services. In purchasing supplies, inventories and services, the Contractor will utilize its purchasing procurement services and/or other group buying techniques involving other affiliated clubs managed by the Contractor, provided that the cost thereof shall be competitive with that which would be charged by non-affiliated third party vendors in an arms-length transaction. In such event, the Contractor may receive and retain a fee or other compensation from vendors and service providers in exchange for the Contractor's services in making the benefit of volume purchases available with respect to the Food and Beverage Services, or negotiating and implementing the arrangements with such vendors or providers, provided that the cost shall be competitive as aforesaid. The list of items of equipment, supplies and materials shall include, but not be limited to: counters, displays, computing equipment, point-of-sale system, telephones, office equipment, desks, office supplies, food preparation equipment, small wares, food storage equipment, ice machine, tables, chairs, utensils, cleaning supplies, trash receptacles, and other appurtenant equipment pertaining to the Food and Beverage Services. All equipment and supplies on site will be available for use by the Contractor. The Contractor will replace and repair such items as necessary.

- D. Employees. The Contractor agrees to recruit, hire, promote, pay, train, and supervise all employees necessary for the performance of its obligations herein including, but not limited to, the food and beverage manager to implement the Food and Beverage Services. The Contractor shall fix their compensation and fringe benefits, and generally establish and maintain all policies relating to employment and employment benefits. All costs of every kind and nature pertaining to employees of the Contractor arising out of the employer-employee relationship, including without limitation, salaries, fringe benefits and bonuses, shall be an expense paid by the Contractor, unless provided otherwise in this Agreement. All employees shall be the employees or independent contractors of the Contractor in rendering the Food and Beverage Services, and not of the Borough. All matters pertaining to the employment of such employees or independent contractors shall be the sole responsibility of the Contractor, and the Borough shall bear no responsibility or liability therefore.

The Contractor shall establish, administer, and maintain the payroll procedure and systems for the Contractor's employees and shall be responsible for overseeing the benefits to, and handling the appropriate payroll deductions for, individual employees. Benefits shall be limited to vacations, sick leave, medical insurance coverage, and 401(k) plan, as determined by the Contractor in its sole discretion. The Contractor shall fully comply with all applicable laws and regulations concerning workers' compensation, social security, unemployment, tax withholding and reporting, hours of labor, wages, working conditions and all other laws affecting or respecting the employment of such employees or independent contractors in the furnishing of the Food and Beverage Services. The Contractor shall have no authority to enter into any employment agreement which purports to be on behalf of the Borough, or which otherwise obligates the Borough in any respect. The Contractor shall comply with Federal and State employment laws.

- E. Discounts. The Contractor shall utilize any national purchase discounts which it may obtain from vendors for products or services, which may include food and beverage equipment, supplies, insurance coverage, food and beverage goods, and retail hard and soft goods.
- F. Supervision. The Contractor shall supervise its on-site staff charged with executing all or part of the Food and Beverage Services described in this Agreement.
- G. Equipment. The Contractor shall, develop a list of required equipment and a purchase/lease schedule pursuant to its preparation of the Annual Budget and Program and maintain in good working condition and order the physical plant and equipment, and all equipment necessary to perform the Food and Beverage Services in the normal course of business.
- H. Consultation. The Contractor shall, as part of its provision of Food and Beverage Services hereunder, make its regional and corporate staff available to the Borough for consultation regarding Food and Beverage Service.

- I. Revenue Collection. The Contractor will collect all revenue from the Food and Beverage Service operations and maintain an accurate record of all transactions.
- J. Cash Register/Point of Sale System. The Contractor will record all receipts derived from the operation of the Food and Beverage Services, from whatever source, on cash registers and/or point of sale systems capable of recording detailed daily transaction information. Original detailed transaction information must be retained for five (5) years. This information shall be shared with the Borough upon request, in paper and/or electronic format.
- K. Accounting. The Contractor shall provide separate budgeting, bookkeeping and reporting services to the Borough for the Food and Beverage Services (it being understood that copies of all books and records shall be kept at the Golf Course and that all books, records, software, data, programs, manuals and the like shall remain the property of the Borough):
- i. the Contractor shall prepare and deliver to the Borough, in accordance with procedures and formats reasonably acceptable to the Borough, on an accrual basis and generally accepted accounting principles, regular monthly and annual operating statements which shall include, without limitation, comments regarding each monthly and annual report and such other items as the Borough may reasonable request. Monthly operating statements shall be furnished to the Borough by the 20th day following the last day of each month, and annual operating statements shall be furnished by the 45th day following the last day of each calendar year. The annual operating statement shall be audited and prepared by a certified public accountant reasonably satisfactory to the Borough, the cost of which shall be an operating expense of the Bar.
 - ii. the Contractor shall prepare and deliver to the Borough no later than November 1st of each year (except for the first full or partial calendar year when the Contractor shall prepare and deliver to the Borough no later than thirty (30) days after the Effective Date) for the duration of this Agreement for the following calendar year: (a) an annual operating budget, including a comparison to the annual operating budget for the immediately preceding year and a projection of anticipated monthly revenues and expenses and cash flows for the Food and Beverage Services for the following calendar year, including, without limitation, a reasonable contingency and anticipated working capital requirements over the Food and Beverage Services for the year; (b) a capital improvements budget for the next calendar year as applicable, and (c) a general marketing and operational program with respect to the Food and Beverage Services, including, without limitation, operating policies, standards for operations and quality of service standards (collectively, the “Annual Budget and Program”).

The Contractor and the Borough shall use their mutual best efforts to agree upon the Annual Budget and Program for the following year on or before calendar year end. The Annual Budget and Program shall also include the

Contractor's proposals with respect to operation of the Bar, menu for the food and beverage service, and a capital reserve in an amount not less than three percent (3%) of projected Gross Revenues (as defined below) from the Food and Beverage Services. The Borough shall make the final determination and have the final approval of the Annual Budget and Program. Each Party may, from time to time, propose to the other Party during the course of the year, such changes or amendments to the Annual Budget and Program as such Party may consider necessary or appropriate, and the Contractor and the Borough shall use their mutual best efforts to act upon such proposal within thirty (30) days after such proposal is made. The Contractor shall secure the prior written approval of the Borough for: (i) expenditures in excess of one hundred ten percent (110%) of any line item in the Annual Budget and Program by Ten Thousand Dollars (\$10,000), except for expenditures necessary in the event of emergencies for which prompt notice will be given to the Borough.

- iii. the Contractor shall establish, administer, and maintain the payroll procedure and systems for the Contractor employees for the Food and Beverage Services and shall be responsible for overseeing the benefits to, and handling the appropriate payroll deductions for, individual employees.

L. Meeting With Borough Representatives. The Contractor shall, at the request of either Party, periodically consult with the Borough regarding the Food and Beverage Services at a time, date and place designated by the Borough. The Borough shall designate an individual or a Committee to consult and meet with the Contractor monthly or more frequently as reasonably requested by Borough. The Contractor will be available to meet with Borough representatives during the Borough's annual budget cycle.

M. Operating Expenses. Except as provided for to the contrary herein, the Contractor shall be responsible for paying all expenses incurred in the provision of the Food and Beverage Services ("Operating Expenses"). Operating Expenses for same shall include, but not be limited to: all Contractor staff payroll, food and beverage operations, accounting, marketing, license fees, equipment leases, equipment maintenance, custodial maintenance, the cost of all inventory held for resale.

N. Standards of Operation. The Contractor shall operate the Food and Beverage Services in a professional, competent and cost effective manner, consistent with such operation at other municipal golf courses of the same size and quality in the area.

- i. the Contractor recognizes that, its agents and employees will devote its efforts toward rendering courteous service to the public with a view of adding to the enjoyment of the patrons at this recreational facility.
- ii. the Contractor shall operate and manage the Food and Beverage Services in a business-like manner and will not permit any act or conduct on the part of its employees that would be detrimental to the Golf Course.

- iii. Settlements of disputes with customers in regard to merchandise or service shall in the first instance, be under the control of the Contractor and shall be handled in accordance with the policy prevailing in the Contractor's business.
- iv. the Contractor's staff is expected to dress appropriately for the function they perform. In accordance with the Contractor's resource guide and employee manual, clothing may not contain any controversial, derogatory, or discriminatory language or images.

O. Custodial and Security. The Contractor shall be responsible for opening and closing the Food and Beverage Services each day.

3. **BOROUGH'S RESPONSIBILITIES:** During the Term of this Agreement, the Borough's responsibilities shall be as follows: The Borough shall permit the Contractor to provide the Food and Beverage Services and shall cooperate with the Contractor to enable them to accomplish the tasks set forth in this Agreement. The Borough shall monitor and evaluate the Contractor's performance for compliance with terms of this Agreement; and make periodic inspections to determine if custodial functions are adequate. The Borough shall also make available funds for capital improvements and any applicable reimbursements and payments due to the Contractor in a timely manner.

4. **INSURANCE.** The Contractor agrees to obtain, secure and maintain at all times during the Term of this Agreement, insurance of the types and of the amounts set forth below. The Contractor shall furnish to the Borough certificates of insurance or copies of the policies evidencing the required insurance on the Effective Date of this Agreement and shall thereafter furnish new certificates thirty (30) days prior to the expiration date of the previous certificates. The type and minimum amount of insurance coverage to be obtained is as follows:

Comprehensive General Public Liability	\$1,000,000 combined single limit for bodily injury and property damage
Property Insurance	Amount sufficient to cover buildings and contents of the concession premises
Commercial Auto Liability (Per Location)	\$1,000,000 per occurrence
Property Damage	Borough to provide replacement cost coverage for Bar and clubhouse
Liquor Liability (Per Location)	\$1,000,000 limit
Workers Compensation	As required by the State of New Jersey
New Jersey Employers Liability (Per Location)	\$1,000,000/1,000,000/1,000,000
Umbrella Liability Policy- To Follow Form Over Liability Policy (Per Location)	\$4,000,000

The Contractor shall be liable for the payment of the premium of the Liquor Liability insurance (“Liquor Liability Premium”) during the Term of this Agreement. The Borough shall be liable for the payment of the premiums of said insurance, except for the Liquor Liability Premium as set forth herein, during the Term of this Agreement for so long as the Borough shall own the Golf Course. Such policies shall name the Contractor, the Borough, and any applicable third parties as named-insured’s under such policies. All insurance policies required hereunder shall contain a provision requiring the insurer to notify the Contractor, the Borough and other named insured at least thirty (30) days in advance of any cancellation or termination of such policy and satisfactory waiver of subrogation provisions.

Except as otherwise provided in this paragraph, the Contractor shall be responsible for securing and maintaining all of the insurance policies required hereunder, provided, however, that the Contractor shall have no obligation to pay such premiums from its own funds, except for the Liquor Liability Premium for which the Contractor is obligated to pay. The Contractor shall obtain competitive bids for the coverage each year. The Contractor contemplates that it will secure such insurance as a part of a blanket policy; the premiums attributable to the Bar shall be determined by making a reasonable allocation based on the relation of the amount of insurance carried for the Bar to the total policy amount provided for other the Contractor clubs in the blanket policy, and further provided however, that the Borough shall have first approved such policies, and the blanket polices shall have dedicated coverage to the Bar in the amounts set forth above. Except for the Liquor Liability Premium, the premiums for any such policies shall be paid by the Borough and in accordance with the Annual Budget and Program. The premium for the Liquor Liability insurance policy shall be paid for by the Contractor.

5. DEPOSIT OF REVENUES AND CONCESSION FEE: At the commencement of this Agreement, the Contractor shall maintain, with a financial institution of its choice with a branch located in Hunterdon County, New Jersey, an operating account (the “Operating Account”) into which all of the revenues and income of any nature derived directly or indirectly from the operation of Food and Beverage Services (the “Gross Revenues”), shall be deposited in accordance with the terms of this paragraph. Gross Revenues shall be determined on an accrual basis and in accordance with GAAP as defined herein.

Deposits shall be made by the Contractor on a daily basis (including Sunday), unless otherwise directed by the Borough. Any payments made pursuant to this Agreement from the Operating Account shall be made in accordance with applicable law. A report containing the details of each deposit (the “Deposit Report”) shall be included with the Contractor’s monthly statement to the Borough of High Bridge’s Chief Financial Officer. Originals of the deposit receipts shall be retained by the Contractor and shall be mailed or hand delivered by the Contractor to the Borough of High Bridge’s Chief Financial Officer immediately following a request therefore by the Chief Financial Officer. The Deposit Report shall identify the deposit as a Food and Beverage Service deposit.

On the 15th day of each calendar month, the Contractor shall pay a concession fee (the “Concession Fee”) of 5% of Gross Revenues from the Food and Beverage Services to the Borough during the Term of this Agreement based on a percentage of monthly Gross Revenue, excluding taxes, from the Food and Beverage Services sales (the “Concession Fee”). The revenues from the Concession Fee shall be calculated daily. The Concession Fee shall be

payable each month to the Borough, for the preceding month's Gross Revenue, based on the percentage of monthly Gross Revenue.

The Contractor shall pay all Operating Expenses for the Food and Beverage Services on behalf of the Borough from the Operating Account which expenses shall include, but not be limited to, payments of all monthly payroll and related expenses, operating expenses, management fees, sales, use and taxes on sales. The Contractor will not pay Federal or State income taxes levied on the Borough.

6. **TAXES AND FEES:** Revenues deposited in the Operating Account shall be inclusive of all sales as collected from customers for the Food and Beverage Services. The Contractor shall, as part of providing the Borough a monthly reconciliation of Gross Revenues, pay to the taxing authorities all sales and use taxes attributable to Gross Revenues. The Contractor and the Borough acknowledge that the intent of this paragraph is to allow the collection and payment of these taxes in a manner that is "economically neutral" and therefore, a complete "pay-through" to both Parties.

The Contractor will not be responsible for payment of any Borough, county, state or other municipal authority real estate nor property taxes of any kind during the Term of the Agreement.

The Contractor shall NOT be paid a management fee from the Borough during the Term of this Agreement in consideration of the Food and Beverage Services provided by the Contractor as set forth herein.

7. **INTEREST:** Any interest due to either the Contractor or the Borough pursuant to this Agreement shall accrue at a rate equal to the prime rate publicly announced by Bank of America on the date such interest began to accrue which shall be thirty (30) days after the due date. Except as otherwise specifically provided herein, interest on any payment due by either Party to the other hereunder shall be payable from and after the thirtieth (30th) day after the date upon which such payment was due if such payment is not timely made.

8. **CAPITAL IMPROVEMENTS:** The Contractor and the Borough shall, from time to time, perform work in connection with capital improvements during the Term of the Agreement. Capital improvements shall be deemed to include any item purchased in connection with the operation of the Bar which, under generally accepted accounting principles consistently applied, would be a capital improvement. All costs for capital improvements shall be as set forth below and all decisions as to whether or not to undertake any capital improvement projects or otherwise in respect of any capital improvements shall be made jointly by the Borough and the Contractor and both Parties agree to meet periodically to assist in the process of determining prioritization and time schedules of planned capital improvements. The Contractor and the Borough may agree to capital improvements in the future. No alterations or improvements shall be made without the prior written consent of the Borough. The Contractor shall submit plans for review and approval by the Borough prior to the start of any capital projects. The Borough agrees to promptly review plans for proposed improvements or alterations, and if the improvements are acceptable to the Borough, to promptly approve same; which plans as approved shall be attached to an executed copy of this Agreement and incorporated herein. The Contractor shall obtain all necessary governmental permits needed to accomplish the approved capital improvements and shall submit copies of such permits to the Borough prior to commencing any construction on the

Bar. The Borough shall assist the Contractor in obtaining governmental permits where required. The Contractor shall maintain records on the costs of improvements and shall make such records available to the Borough for review.

9. DEFAULT AND REMEDIES:

A. Borough's Default. The following shall constitute an event of default ("Event of Default") by the Borough under this Agreement:

- i. Failure to timely pay the Contractor any compensation, or reimbursement due the Contractor pursuant to this Agreement, unless said amounts are under legitimate dispute;
- ii. Breach of the Borough of any material provision of this Agreement;
- iii. The Borough makes an assignment for the benefit of its creditors, or becomes a party for more than thirty (30) days to any voluntary or involuntary insolvency proceedings or bankruptcy proceedings or reorganization.

B. The Contractor's Default. The following shall constitute an event of default ("Event of Default") by the Contractor under this Agreement:

- i. Failure to staff, manage and maintain the Food and Beverage Services or pay the Concession Fee in accordance with provisions of this Agreement, subject to abnormal weather conditions, acts of God, or other events or conditions beyond the reasonable control of the Contractor;
- ii. Breach by the Contractor of any material provision of this Agreement; or
- iii. The Contractor makes an assignment for the benefit of its creditors, or becomes a party for more than thirty (30) days, to any voluntary or involuntary insolvency proceedings, bankruptcy proceedings or reorganization.

C. Notice of Default. When either Party to this Agreement believes that the other Party (the "Defaulting Party") has committed an Event of Default, it shall give written notice thereof to the Defaulting Party, and the Defaulting Party shall, except in the case of a failure to insure, have ten (10) days in the event of a payment default, or such longer period (not to exceed a period of thirty (30) days unless the Defaulting Party has begun to cure within the thirty (30) day period and is diligently pursuing such cure) as shall be reasonably necessary due to weather, growing conditions, or other such factors beyond the reasonable control of the Defaulting Party, within which to cure the default.

D. Remedy. If the Defaulting Party does not cure the default within the grace period provided in Paragraph 9C above, the other Party may terminate this Agreement on five (5) days written notice to the other Party and pursue all rights and remedies

available in law or equity, including payment of accrued amounts pursuant to Paragraphs 5, 6 or 7 hereof, subject to legitimate offsets.

10. TERMINATION AND CANCELLATION:

- A. Termination at Option of Borough. The Borough shall have the right to terminate this Agreement in accordance with Internal Revenue Procedure 97-13, without penalty or cause, in its sole discretion, after the end of the third year of the Agreement.
- B. Automatic Termination. This Agreement shall automatically terminate upon expiration of the Term of the Agreement. Upon termination of this Agreement, the Contractor shall release, transfer, assign, and quitclaim all of the assets of the Food and Beverage Services (other than assets or personal property purchased by the Contractor that are readily separable from the Golf Course) to the Borough; provided any claim the Contractor may have for compensation will survive such transfer.
- C. Assets to be Transferred. Said assets shall include, but shall not be limited to, all of the Contractor right, title and interest, if any, to any of the following arising out of activities of the Food & Beverage Services: contract rights; trade names; phone numbers for the Bar; and maintenance books and records but specifically excluding the Contractor's personal property purchased with the Contractor's own funds and located in the Bar.
- D. Liabilities. The Contractor shall hold the Borough harmless from any and all debts and liabilities incurred by the Contractor during the term of this Agreement, with respect to Contractor's obligations under this Agreement which are not otherwise subject to reimbursement by the Borough.
- E. Closing. The transfer of assets and payment of any sums due the Contractor shall occur on or within ninety (90) days following the date on which this Agreement is terminated.
- F. Event of Default. Either Party may terminate this Agreement upon the occurrence of an Event of Default by the other Party in accordance with the provisions of Paragraph 9.
- G. Termination Due to Sale. In the event of a sale or transfer of the Golf Course, the Borough shall have the unilateral right to terminate this Agreement at any time on sixty (60) days written notice.
- H. No Waiver. By terminating this Agreement in accordance with this Section 10, neither Party shall be deemed to have waived any action it might have, in law or equity, by reason of a breach of or default under this Agreement.

11. OWNERSHIP AND REMOVAL OF PROPERTY: The Parties acknowledge that at the commencement of this Agreement that all property at the Golf Course (other than property

owned or leased by the current operator) is the property of the Borough. The Contractor shall not remove any Borough property from the Golf Course.

Upon termination or cancellation of this Agreement for any reasons or under any circumstances, the Contractor's (i) proprietary computer programs relating to accounting, operations, marketing, and forecasting, (ii) operations manuals of the Contractor and (iii) the information and processes related to and used by the Contractor in the marketing plan shall remain the sole property of the Contractor and shall be removed by the Contractor upon termination of this Agreement. Additionally, any actual or implied association of the Bar with Contractor shall cease upon termination.

12. **USE OF FACILITY AND COMPLIANCE WITH LAWS:** During the Term of this Agreement and subject to the provisions of this Agreement, the Bar shall be open to the public. The Contractor shall comply with all applicable federal or state laws and Borough ordinances and with applicable directives, rules and regulations of public officials and departments in the enforcement of Borough ordinances and with directions, rules and regulations from the State of New Jersey or from the United States with respect to the Bar.

13. **EQUALITY OF TREATMENT:** The Contractor shall conduct its business in such a manner which assures fair, equal and nondiscriminatory treatment at all times in all respects to all persons without regard to race, color, religion, sex, age, sexual orientation, or national origin. No person shall be refused service, be given discriminatory treatment or be denied any privilege, or use of facilities at the Bar on the account of race, color, religion, sex, age, sexual orientation or national origin.

14. **LIENS AND ENCUMBRANCES:** The Contractor shall keep the Bar free and clear of any liens and encumbrances arising or growing out of its operation, management and maintenance of the Bar. At the Borough's request, the Contractor shall furnish the Borough written proof of payment of any item, which would or might constitute the basis for such a lien on the Bar, if not paid.

15. **LIQUOR LICENSE:** Subject to any relevant New Jersey Alcoholic Beverage Control ("ABC") licensing requirements, the Contractor shall maintain at all times (except for the application period) a valid liquor license for the food and beverage services.

16. **FORCE MAJEURE; FIRE AND OTHER CASUALTY:** If all or any portion of the Bar is destroyed by fire or other casualty, such damage and destruction shall not be a cause for termination hereunder by either Party but the obligations of the Parties shall be governed by the next paragraph; unless such damage or destruction results in the whole or a substantial part of the Bar being unusable for its intended purpose for a period of one (1) year or longer or, in the case of such total or substantial damage or destruction the Borough shall decide not to rebuild the damaged portion of Bar. Then in either such event, this Agreement shall terminate with respect to the Bar on notice from Borough to the Contractor of such termination and neither Party shall have any further rights or obligations hereunder.

If: (a) as a result of any damage or destruction to any part of the Bar not resulting in a termination; or (b) otherwise due to casualty events (other than strikes within the Contractor's control) beyond the Contractor's reasonable control (and so long as the Contractor uses all reasonable diligence to cure such inability), the Contractor shall be unable to perform all of its

obligations hereunder with respect to the Food and Beverage Services; the Borough and the Contractor shall use their mutual best efforts to agree upon an amendment to the Agreement and provisions thereof, to allow payment of necessary expenses for the Food and Beverage Services until such damage or destruction is repaired or such inability is cured and, if the Parties are unable to agree on such an amendment within twenty (20) business days after the Contractor or the Borough shall have given the other Party notice of the occurrence of such event, the Contractor and the Borough shall each have the right to terminate this Agreement by notice of such termination to the other Party and neither Party shall have any further rights or obligations hereunder.

17. INDEMNIFICATION AND LIABILITY:

- A. The Contractor is not an agent or employee of the Borough and all activities relating to the Food and Beverage Services shall be in its capacity as an independent contractor to the Borough. The Contractor agrees to indemnify, hold harmless and defend the Borough, its officers, agents and employees, from and against all liability for any and all claims, liens, suits, demands or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorney's fees and other reasonable costs arising out of or resulting from the Contractor negligence or intentional acts. The Borough agrees to indemnify the Contractor, hold harmless and defend the Contractor, its officers, agents and employees, from and against all liabilities for any and all claims, liens, suits, demands or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorney's and other reasonable costs arising out of or resulting from the negligence or intentional acts of the Borough or its officers or employees. The Contractor and the Borough will provide each other with prompt and timely notice of any event covered by the indemnity section of this Agreement and in the event a claim or action is filed, each party may employ attorneys of its own choosing to appear and defend the claim or action on its behalf.
- B. Choice of Law and Venue. The Contractor hereby irrevocably submits to the jurisdiction of the courts of the State of New Jersey and the federal courts whose jurisdiction includes the State of New Jersey. The Parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey which shall be the exclusive courts of jurisdiction and venue for any litigation, special proceeding or other proceeding between the Parties that may be brought, or arise out of, or in connection with, or by reason of this Agreement.
- C. Liability of the Contractor. Except as otherwise provided herein, the Contractor shall not be responsible for the acts or omissions of any of the Borough's other contractors or any subcontractor, or any employees of Borough, or any persons representing the Borough, performing any services for, or in connection with, the Food & Beverage Services, or any consultants or other persons engaged by the Borough with respect thereto, unless and only to the extent the Contractor is supervising same, and the Contractor shall be responsible only for the performance of the Contractor's obligations hereunder in accordance with the

terms hereof.

- D. Legal Actions. Legal counsel for the Contractor and the Borough shall cooperate in the defense and prosecution of any action affecting the Bar and Golf Course. The Contractor shall not institute or defend any legal action or retain counsel affecting the Bar and Golf Course without the Borough's prior written consent. The Contractor shall immediately forward all legal notices to the Borough or notices of a financial nature which relate to the Bar and Golf Course, at the address listed under Paragraph 19J. The Contractor shall advise and assist the Borough in instituting or defending, as the case may be, in the name of the Bar and Golf Course, the Borough and/or the Contractor, but in any event as an expense of the Bar and Golf Course, all actions arising out of the operation of the Bar, and any and all legal actions or proceedings to collect charges, third party payments, rents, or other incomes for the Contractor, the Borough or the Bar, or to lawfully evict or dispossess tenants or other persons in possession thereunder, or to lawfully cancel, modify or terminate any lease, license or concession agreement in the event of breach of default thereof or to defend any action brought against the Borough, unless otherwise directed by the Borough. The Contractor shall assist the Borough to take the acts necessary to protect or litigate to a final decision in any appropriate court or forum, as a Contractor expense, and any violation, order, rule, or regulation affecting the Bar. All expenses arising out of claims, actions or damages attributable to the negligence of the Contractor shall be paid by the Contractor and shall not be an expense of the Golf Course.
- E. Non-recourse. In the event that the Contractor makes any claim against the Bar, Golf Course and the Borough, the Contractor's shall have no recourse against the Borough.
- F. Survival. The obligations under this Section 17 shall survive the termination of this Agreement.

18. **LOGO AND NAME:** The Contractor is hereby authorized to use the High Bridge Hills Golf Course name and logo during the Term of this Agreement for the purposes of advertising, promoting and marketing the bar and Food and Beverage Services. Such rights granted to the Contractor shall not be permitted to be transferred or assigned without prior written approval by the Borough.

19. **GENERAL PROVISIONS:**

- A. Entire Agreement. This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings, and representations (if any) made by and between such Parties.
- B. Written Amendments. The provisions of this Agreement may only be amended or supplemented in a writing signed by both Parties.
- C. Further Amendments. The Parties hereby agree from time to time to execute and deliver such further instruments and documents, and do all such other acts and

things, which may be convenient or necessary to more effectively and completely, carry out the intentions of the Agreement.

- D. Compliance with Laws. The Contractor shall, at all times conduct its business providing the Food and Beverage Services in a lawful manner and in full compliance with all applicable governmental laws, ordinances, rules and regulations including all of the Borough's financing obligations, all obligations under insurance policies for the Bar.
- E. Environmental Laws. To the best of the Borough's knowledge, the Borough represents to the Contractor that no hazardous materials have been released into the environment or have been deposited, spilled, discharged, placed or disposed of at or within the Bar in violation of any Environmental Law (as defined below). To the best of the Borough's knowledge, the Borough also represents that there are no underground storage tanks of any nature at the Bar (fuel, propane, gas etc.). The Borough does not have any knowledge of asbestos-containing products within the Bar. The Borough shall promptly notify the Contractor as soon as Borough knows of any changes to the representations contained in this Section 19.

For the purposes of this Agreement, "Environmental Law" shall mean: All applicable Federal, State, Borough or local (or other political subdivision thereof) laws, statutes, codes, acts, ordinances, orders, rules, regulations, directives, judgments, decrees, injunctions, directions, permits, licenses, authorizations, decisions and determinations issued, adopted or enacted by any judicial, legislative, regulatory, administrative or executive body of any governmental or quasi-governmental authority, department, branch, division, agency or entity exercising functions of or pertaining to any government having jurisdiction affecting the Bar, or any licenses and permits of any governmental authorities, from time to time applicable to the Bar or any part thereof regarding hazardous materials.

Limited to the provisions of this Section 19, the Borough hereby agrees to indemnify and defend the Contractor from, and agrees to hold the Contractor harmless against, any and all liability, loss, cost, damage, penalties, claims, causes of action, proceedings and expense, including without limitation, court costs and reasonable attorneys' fees, incurred by the Contractor or imposed on the Contractor by any person whomsoever, caused by, relating to or resulting from or out of or in connection with any misrepresentation by Borough under this Section 19. The provisions of this Section 19 shall survive the expiration or any termination of this Agreement.

- F. Binding. All of the terms and provisions of this Agreement shall be binding and inure to the benefit of the Parties and their respective permitted successors and assigns. This Agreement is solely for the benefit of the Parties hereto and not for the benefit of any third party.
- G. Assignment. The Contractor may assign or transfer this Agreement and/or may delegate its duties and obligations under this Agreement to Contractor's Affiliates (as defined below) without the Borough's consent. If any of Contractor's duties

and obligations are assigned or delegated to Contractor's Affiliate, Contractor represents and agrees that (i) the Contractor's Affiliate is registered and authorized to do business in New Jersey; (ii) any delegation of duties and obligations to the Contractor's Affiliate shall not, in any respect, release or relieve the Contractor of any of its duties, obligations, or responsibilities, under this Agreement; and (iii) copies of any final executed assignment or delegation documents are given to the Borough within ten (10) days of execution. "Affiliate" means any corporation or other entity controlled by, controlling or under common control with the Contractor, as applicable. The words "control", "controlled" and "controlling" mean ownership, directly or indirectly, of 50% or more of the legal or beneficial ownership interest of such corporation or other entity. All other assignments or delegations of duties shall require the Borough's prior written consent, which shall not be unreasonably withheld, provided that: (i) the entity is registered and authorized to do business in New Jersey; (ii) written notice thereof is given to the Borough at least twenty (20) days prior to the effective date of such assignment or delegation, together with evidence reasonably satisfactory to the Borough that the assignment or delegation complies with the terms of this Paragraph; (iii) copies of the final executed assignment or delegation documents are given to the Borough within ten (10) days thereof; (iv) any delegation of duties and obligations to the entity shall not, in any respect, release or relieve the Contractor of any of its duties, obligations, or responsibilities, under this Agreement.

- H. Subordination and Estoppel. This Agreement shall be subject to and subordinate at all times to the lien of any mortgage (or any such instrument providing a security interest) which may now exist or may hereafter be executed in any amount for which the Golf Course or any portion thereof is specified as security. The Borough agrees to use its reasonably best efforts to obtain from Lender a non-disturbance agreement in Lender's standard form reasonably acceptable to the Contractor.

Within ten (10) days of any such written request which the Borough may make from time to time, the Contractor shall execute and deliver to the Borough a statement in a form reasonably satisfactory to the Borough certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modification), the fact that there are no current defaults under this Agreement by the Borough or the Contractor, except as specified in the Contractor's statement, and such other matters reasonably requested by the Borough.

- I. Right to Pledge. Any provision herein contained to the contrary notwithstanding, the Borough shall have the right to assign all or any portion of its right, title and interest in, to and under this Agreement and in and to the Golf Course, by way of mortgage or security agreement, in order to secure the repayment of construction and/or permanent loans made for the purpose of financing all or any portion of its costs relating to the acquisition of the Golf Course and the construction of the Golf Course, clubhouse and improvements thereon, as well as loans for working capital provided that the Borough shall, upon execution of any such mortgage or security agreement, promptly deliver a true copy of such mortgage security

agreement to the Contractor. The mortgagee or other secured party, and their respective assigns, may enforce such mortgage or security agreement and may acquire title to the Golf Course and the Borough's interest under this Agreement in any lawful way, and may take possession of the encumbered assets, or cause any person having the relationship of an independent contractor to the mortgagee or secured party to take possession of the encumbered assets, upon foreclosure thereof (or in the event of any sale thereof in lieu of foreclosure) may without further consent of the Contractor sell and assign the Golf Course, free and clear of this Agreement. The mortgagee or secured party or its assigns and any independent contractor to the mortgagee or secured party shall be liable to perform the obligations of the Borough hereunder only during the period such person has title to the Golf Course and the Borough's interest hereunder and this Agreement is in effect.

- J. Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given: (i) when delivered, if hand delivered, (ii) two (2) business days after deposit with a reputable overnight courier marked for "next business day" delivery, or (iii) upon receipt, if sent by email, provided that an original thereof is thereafter sent in the manner provided above, and shall be addressed as follows:

In the case of the Contractor:

Mike Cutler, Senior Vice President
Indigo Sports, LLC
12700 Sunrise Valley Drive, Suite 300
Reston, VA 20191
Telephone: (703) 761-1444
Email: mcutler@indigogolf.com

In the case of the Borough:

Attention:

Borough Administrator
Borough of High Bridge
97 West Main Street
High Bridge, NJ 08829
Telephone: (908) 638-6455 x 22
Email: bfleming@highbridge.org

With a copy to:

Frances Ciesla McManimon, Esq.
McManimon, Scotland & Baumann, LLC
427 Riverview Plaza
Trenton, New Jersey 08611
Telephone: (973) 622-2751
Email: fmcmannon@msbnj.com

or to other such address as either Party may designate by notice complying with the terms of this subparagraph.

- K. Headings. The headings contained in this Agreement are for convenience of reference only, and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.
- L. Invalidity. If any provision of this Agreement or any other agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid or unenforceable under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited, invalid or unenforceable, but the remainder of such provision, and this Agreement shall not be invalidated or rendered unenforceable thereby, and shall be given full force and effect so far as possible.
- M. No Waiver. The failure or delay of either Party at any time to require performance by the other Party of any provision of this Agreement shall not affect the right of such Party to subsequently require performance of that provision or to exercise any right, power or remedy hereunder. Waiver by either Party of a breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on either Party in any event shall, of itself, entitle such Party to any other or further notice or demand in similar or other circumstances, except as otherwise herein provided.
- N. No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture between the Parties. The Parties acknowledge that the relationship of the Contractor to the Borough is that of an independent contractor.
- O. Exclusive Remedy. No remedy herein conferred upon either Party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.
- P. Attorney's Fees. If any legal action, work (including the preparation of demand letters and the like) or other proceeding is undertaken for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action, work, or proceeding, in addition to any other relief to which it or they may be entitled.

If a Party to this Agreement becomes a party to any litigation concerning this Agreement or its subject matter by reason of any act or omission of the Party or its authorized representatives, the Party that causes the other Party to become involved in the litigation shall be liable to the other Party for all expenses, including reasonable attorneys' fees and court costs, incurred in the litigation.

Q. Authority. Each Party hereby represents to the other Party that it has the right, power, authority, and financial ability to enter into this Agreement and to perform its obligations under this Agreement, and that it is not restricted by this Agreement or otherwise from entering into and performing this Agreement.

IN WITNESS WHEREOF, this Agreement has been entered into as of the date first written above.

BOROUGH OF HIGH BRIDGE, NJ

By: _____
Michele Lee, Mayor

INDIGO SPORTS, LLC (FKA ANTARES
GOLF, LLC)

By: _____