

Concession Agreement

THIS CONCESSION AGREEMENT ("Agreement") is made and entered into as of April 20, 2021 (the "Effective Date"), by and between Kemper Sports Management, Inc. ("KSM") and RBG Hospitality Group, LLC. ("Concessionaire") (each a "Party" and collectively the "Parties").

WHEREAS, pursuant to a Qualified Management and Maintenance Agreement (the "Management Agreement") entered into as of March 29, 2019 between KSM and the Township of West Orange (the "Township"), KSM operates and manages the golf course and related facilities known as the "Rock Spring Golf Course" located in West Orange, New Jersey (the "Property"). The Management Agreement is attached hereto as Exhibit A.

WHEREAS the Property includes certain food and beverage facilities as more fully described in Exhibit B attached hereto, including the equipment and furnishings described therein (the "Concession Services Facilities")

NOW THEREFORE, for valuable consideration, including the promises, covenants, representations and warranties hereinafter set forth, the receipt and adequacy of which are hereby acknowledged, the parties, intending to be legally and equitably bound, agree as follows:

Article 1

KSM Management Agreement with Township

1.1 Management Agreement. Except as specifically set forth herein, this Agreement is subject and subordinate to all of the terms and conditions of the Management Agreement, which, to the extent applicable to the Concession Services Facilities and the Concession Services, are hereby incorporated by reference. Concessionaire hereby assumes and agrees to perform the obligations of KSM related to the Concession Services under the Management Agreement to the extent not assumed by Concessionaire under this Agreement. Concessionaire shall not commit or permit to be committed any act or omission which would violate any term or condition of the Management Agreement.

1.2 Order of Precedence. In the event of any conflict between the provisions of the Management Agreement and this Agreement, the terms of the Management Agreement shall govern and control except to the extent directly contradicted by the terms of this Agreement.

Article 2

Term; Opening

2.1 Term. This Agreement shall be effective upon the Effective Date and, unless terminated earlier as provided herein, shall end on December 31, 2021 (the "Term").

2.2 Transition and Schedule. The Concessionaire will use its best efforts to open the Concession Services to the public (the "Opening Date") no later than May 29, 2021.

Article 3

Grant of License

3.1 Grant of License. Subject to the terms and conditions of this Agreement, KSM hereby grants Concessionaire the following license rights during the Term:

- (i) The use of the Concession Services Facilities to manage and operate the provision and sale of food and beverages at the Property (the "Concession Services").

- (ii) The right for the sale of food, beverages (including alcoholic beverages) and related services including banquets and catering at the Property.
- (iii) The right to enter upon and traverse the Property, including the Clubhouse as necessary to exercise its rights and obligations hereunder.

3.2 No other Use. Concessionaire shall occupy the Concession Services Facilities and any other locations as may be approved for sale of food, beverages and related services including banquets, catering and other related events, and for no other purpose. Concessionaire shall occupy and operate the Concession Services Facilities as a licensee and not as a lessee.

Article 4

Concessionaire Obligations

4.1 General Responsibilities of the Concessionaire. The Concessionaire shall provide high quality services to customers of the Property and shall operate the Concession Services at its own cost and expense in an orderly manner and not annoy, disturb or be offensive to customers, patrons, or others in the immediate vicinity of such operations. The operation of the Concession Services Facilities shall be conducted in a manner acceptable to the Township in its reasonable determination and in a manner consistent with the standards of a first class daily fee golf course in the Northeast. The Concessionaire or a designee on behalf of the Concessionaire shall be available to attend any necessary meetings with KSM and/or the Township related to the Concession Services at the Property. In connection with foregoing, Concessionaire shall do the following:

- (i) Maintain for sale, or for use in connection with the services of meals, and at all times, a reasonable stock of food, alcoholic and non-alcoholic beverages, confections, and other articles in amounts sufficient to meet customer demands and which are of industry standard quality and are of such purity and content so as to comply with applicable federal, state, and local food, health and sanitation laws and regulation;
- (ii) Require all employees to be neatly dressed and courteous at all times, and to refrain from boisterous or objectionable conduct when at work on Township property;
- (iii) Discontinue and remedy all reasonably objectionable practices upon demand of Township if and when the Township raises good faith objections to the conditions of those portions of the Concession Services Facilities, the quality of the food, articles sold, or character of the service;
- (iv) Keep all fixtures and equipment within those areas occupied by Concessionaire clean, neat, safe, sanitary and in good order at all times;
- (v) Store all waste matter, garbage and refuse in a manner satisfactory to Township and arrange for the disposal thereof at the expense of Concessionaire;
- (vi) Comply with all requirements of Township, or State Department of Health Services, or measures in health or sanitary regulation adopted by any legal authority, and grant access for inspection purposes to any duly authorized representative of the State Department of Health Services or Township.
- (vii) Refrain from attaching, hanging, or otherwise affixing any sign or advertising matter on the exterior of the Concession Services Facilities, or anywhere on the Properties without first having obtained the written consent of KSM;
- (viii) Not permit other businesses, vendors, customers, or any other person or entity to directly provide services or entertainment to customers or display or sell goods, wares or merchandise

either within the interior or exterior of the Concession Services Facilities, or anywhere on the Property, without first having obtained written consent of KSM;

- (ix) Not make any alterations, changes or additions to the restaurant or to any fixtures or equipment owned by Township without first having obtained written consent of KSM;
- (x) Provide a sufficient quantity of expendable equipment, including but not limited to tables, chairs, linen, glassware, dishes, cutlery and kitchen utensils;
- (xi) Pay any and all taxes, levies, charges, or assessments, including but not limited to personal property taxes, sales and use taxes, assessed against Concessionaire, in performing its duties and obligations or exercising its privileges under this Agreement, for whatever purposes in connection with the operation of the Concession Services Facilities;
- (xii) Subject to Section 4.5 with respect to the bathrooms, furnish and pay all costs in connection with janitorial and maintenance services in connection with the Concession Services Facilities.
- (xiii) Keep areas occupied by Concessionaire in a clean and sanitary condition, reasonably free from garbage, refuse, and waste at all times to the satisfaction of Township and to a level of quality to that of similar facilities in the community;
- (xiv) Repair and replace anything broken or damaged as a result of any act or neglect by Concessionaire in all areas of the Clubhouse building; and
- (xv) Return the Concession Services Facilities in the same condition as received, ordinary wear and tear excepted.

4.2 Hours of Operation. The Concession Services shall be fully operational during the times that the golf course is open for play and, in any event, at minimum, open to the public from 11am to 9pm, provided, however, upon prior written approval from KSM and Township, Concessionaire may extend the hours of operation as permitted by law. Seasonal changes of hours are subject to prior written approval by KSM and the Township. Concessionaire shall make accommodations to service the golfing clientele outside of the hours of operation and to designate special areas/rooms for the golfers to use.

4.3 Concession Pricing. The rates charged by the Concessionaire for food and beverage concessions shall be as mutually agreed in writing and is subject to approval by the Township.

4.4 Township Events. The Concessionaire acknowledges that pursuant to the Management Agreement, the Township may hold up to four (4) events at the Property ("Township Sponsored Events"). KSM and Concessionaire shall agree in good faith upon special discounted rates that may be applicable for the Township Sponsored Events. KSM shall provide Concessionaire prior written notice of the dates and times of the Township-sponsored or hosted events.

4.5 Maintenance and Repair. Except as otherwise provided in Article 5 "KSM Obligations" below, Concessionaire shall be responsible for the day-to-day maintenance and upkeep of the Concession Services Facilities, which shall include, but is not limited to, all cleaning, upkeep, repairs and replacement of equipment, furniture and fixtures and providing all necessary supplies and materials. The Concession Services Facilities shall be maintained in the same or better condition as present on the Effective Date; KSM, the Township and Concessionaire shall sign off on the condition of the Concession Services Facilities within forty-eight (48) hours before the Opening Date. Notwithstanding the foregoing, KSM shall be responsible to clean and maintain the bathrooms serving the Concession Services Facilities until 5:00pm on each day and thereafter Concessionaire will take over and maintain them until closing.

4.6 Staffing. The Concessionaire shall have and retain full control over the employment and discharge of all persons assisting in the performance of its services hereunder. The Concessionaire shall be solely responsible for all matters relating to wages, hours of work, working conditions, and payment of

employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters, except that the Concessionaire must comply with the Prevailing Wage requirement in Section 9.3 below. The Concessionaire shall be responsible for its own acts and those of its subordinates, employees, and any and all approved subcontractors, if any, during the term of this Agreement. The Concessionaire shall file a wage report with KSM on a quarterly basis showing payment of payroll taxes

4.7 License and Permits. The Concessionaire shall obtain all necessary licenses and permits for the operation of the Concession Services, including without limitation, the banquet facility, and food and drink concessions and shall furnish copies of such licenses to Township, including a liquor license from the Division of Alcohol and Beverage Control. The parties acknowledge that KSM has been issued a temporary liquor license by the Township and the parties will reasonably cooperate in working with the Township with respect to ensuring the proper licensing of the sale of alcoholic beverages at the Property. Otherwise, Concessionaire shall be responsible for any and all aspects of the food and beverage concessions on the premises, including all permits, codes and other regulations of the Township, Essex County and the State of New Jersey.

4.8 Concessionaire Equipment and Furnishings. All equipment, furnishings, signs and advertising installed by the Concessionaire shall be subject to prior written approval by KSM and shall in any event be in keeping with the appropriate standards of decor at the Property. The Concessionaire agrees that all equipment, furnishings and improvements provided shall meet the requirements of all applicable building, and other related codes.

4.9 Compliance with Rules and Regulations. Concessionaire shall not use the Concession Services Facilities for any unlawful purpose or act and shall comply with and obey all laws, regulations (including zoning and sign regulations) or orders of any governmental authority or agency. The Concessionaire agrees that its operation of the Golf Course will be in accordance with all rules, regulations, procedures, conditions and terms of the Township now in effect or as may hereafter be adopted by the Township.

4.10 POS System. The parties acknowledge and agree that upon the Effective Date, Concessionaire will use their own POS system at the Property based on their other locations, and will give KSM full access to the POS system at the Property pertaining to sales and receipts.

4.11 Contract Compliance Officer. The Concessionaire acknowledges and agrees that pursuant to the Management Agreement, a Contract Compliance Officer has been designated by the Township to monitor compliance with the terms and conditions of the Management Agreement, which shall include Concessionaire's activities under this Agreement. The Concessionaire shall allow the Contract Compliance Officer to perform periodic inspections of the Concessionaire's operations and to have full and complete access to all personnel and documents needed to ensure compliance with the Management Agreement and this Agreement.

4.12 Liens. The Concessionaire shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or material man's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Property or any interest therein or equipment or materials provided therefor. The Concessionaire also shall pay promptly before a fine or penalty may attach any taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any services performed hereunder by the Concessionaire or its agents and Concessionaires on the Property. If the Concessionaire breaches its obligations under this Section, it shall immediately notify the KSM in writing, shall within twenty (20) days of the filing thereof initiate efforts to cause such Lien to be discharged and released of record without cost to KSM or the Township, and shall defend and indemnify KSM and the Township against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

Article 5

KSM Obligations

5.1 Repairs, Care & Maintenance. KSM shall maintain the HVAC system and all electrical, plumbing, structural and mechanical components serving the Concession Services Facilities throughout the term of this agreement. KSM shall be responsible to clean and maintain the bathrooms serving the Concession Services Facilities until 5:00pm each day pursuant to Section 4.5 “Maintenance and Repair” above.

5.2 Major Repairs. KSM shall be responsible for making Major Repairs (subject to Concessionaire’s indemnification obligations). For purposes of this Section 5.2, “Major Repairs” means any repairs or replacements that: (i) exceed \$2,500 in costs; and (ii) extend the life of the item subject to the repair beyond a three (3) year period.

5.3 Condition of Concession Services Facilities. KSM shall fulfill its obligations to provide the Concession Services Facilities upon the Opening Date in the condition as set forth in Article 7 “Condition of Concession Services Facilities”.

Article 6

Concession License Fee; Utilities

6.1 Concession License Fee. In consideration for the license granted hereunder, Concessionaire shall pay KSM a monthly fee equal to a percentage of the monthly Gross Concession Revenues generated during the prior month from the operation of the Concession Services with the amount of such percentage determined based on the amount of aggregated Gross Concession Revenues generated since the Opening Date as set forth in the table below (the “License Fee”):

Aggregate Gross Concession Revenues	Concession License Fee Percentage
\$0 up to \$999,999	4%
\$1 million to \$2,999,999	5%
\$3 million and above	6%

Concessionaire shall pay KSM the License Fee on a monthly basis no later than fifteen (15) days after the end of each calendar month concurrent with the delivery by Concessionaire to KSM of an accurate accounting of the operation of the Concession Services Facilities for such immediately preceding calendar month as further set forth in Section 6.2 below.

As used herein, “Gross Concession Revenues” means the total amount of money, service charges, and rental charges received or charged by Concessionaire, or any agent, subcontractor, or employee of the Concessionaire for all Concession Services sales made, whether cash or credit, collected or not, and regardless of shortages or shrinkage, excluding applicable sales taxes.

6.2 Financial Reporting. Concessionaire shall during the Term maintain accounting records on a modified accrual basis (i.e., revenue is booked when cash is received, and expenses are booked when goods/services are authorized). Within fifteen (15) days after the close of each calendar month during the Term, Concessionaire shall submit a financial statement to KSM showing the financial activities for food and beverage operations conducted by Concessionaire at the Property for the preceding calendar month and for the calendar year to date

6.3 Utilities. Concessionaire shall reimburse KSM for all fees associated with all utility services at the Property that exceed a baseline amount to be mutually agreed upon in good faith by KSM and Concessionaire. Utility services include, without limitation, gas, electric, water, sewer, cable, internet, and garbage.

6.4 Late Fees. Concessionaire shall pay to KSM all of the fees described above, and any other sums due KSM, at the times, at the places, and in the manner herein provided. If any payment or any part thereof to be made by Concessionaire to KSM pursuant to the terms hereof shall become overdue for a period of ten (10) days, a "late charge" may be charged by KSM for the purpose of defraying the expense incident to handling such delinquency. The late charge shall be equal to the lesser of (i) one percent (1%) per month, or (ii) the highest amount allowed to be charged by applicable law. Further, nothing herein shall be construed as waiving any rights of KSM arising out of any Events of Default of Concessionaire by reason of KSM assessing or accepting any such late payment or late charge; the right to collect the late charge is separate and apart from any rights relating to remedies of KSM after default by Concessionaire in the performance or observance of the terms of this Agreement. Concessionaire shall bear the costs of any legal or collection fees and expenses incurred by KSM in attempting to enforce Concessionaire's payment obligations hereunder.

Article 7

Condition of Concession Services Area

7.1 Condition of Concession Services Area. Except as provided in Section 7.2 below, Concessionaire acknowledges that as of the Opening Date, the Concession Services Area and every part thereof, are in good condition and without need of repair, and Sublessee accepts the Concession Services Facilities "as is". Notwithstanding the foregoing, as of the Commence Date, KSM shall cause the Concession Services Facilities to be in "good operating condition" with HVAC, kitchen equipment, bathrooms, plumbing and electrical systems serving the Concession Services Facilities in good working order.

7.2 KSM Pre-Opening Date Repairs. Prior to the Opening Date, KSM shall ensure that the patio and BBQ space is free of any structural damage that may materially impair the operations of the Concession Services, including repairing the railings and installing the canopy above the patio.

Article 8

Surety, Insurance, and Indemnification

8.1 Concessionaire's Insurance. Concessionaire shall maintain insurance as set forth in Exhibit C "Insurance Provisions" attached hereto.

8.2 Waiver of Subrogation. Notwithstanding anything else contained in this Agreement, Concessionaire and KSM each hereby waive all rights of recovery against the other and their affiliates, and against each of their officers, employees, agents and representatives, on account of loss by or damage to the waiving party's property or the property of others under its control, to the extent that such loss or damage is (i) insured against under any insurance policy which either may have in force at the time of the loss or damage; or (ii) is required to be insured against in accordance with this Agreement. Concessionaire shall, upon obtaining any policies of insurance required under this Agreement, give notice to its insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Agreement. This waiver of subrogation shall survive the expiration or termination of this Agreement.

8.3 Indemnification.

(a) The Concessionaire shall defend, indemnify, and save harmless the KSM, the Township, and their respective chairpersons, members, elected officials, officers, directors, employees, agents and attorneys, from and against all claims, suits, judgments, expense, fines, penalties assessments and costs of

every kind and description, by reason of injury to persons or damage to property, resulting or alleged to result from any act or omission of the Concessionaire including, but not limited to, expenses or claims related to environmental contamination, investigation, injury, remediation, remediation cost assessment, request for contribution or natural resource damage claims.

(b) KSM shall defend, indemnify, and save harmless the Concessionaire, and its respective chairpersons, members, elected officials, officers, directors, employees, agents and attorneys, from and against all claims, suits, judgments, expense, fines, penalties assessments and costs of every kind and description, by reason of claims related to (i) environmental contamination, investigation, injury, remediation, remediation cost assessment, request for contribution or natural resource damage claims arising from conditions existing on or preceding the Effective Date, and (ii) the purchase and sale of the Property from Montclair Golf Club, including without limitation, and matters related to the lawsuit captioned MGC v. Accardi and Township of West Orange v. Accardi, Docket No. ESX-C-69-19.

Article 9

State and Federal Law Compliance

9.1 Concessionaire's Employees. The Concessionaire shall remove or replace any employee at the request of KSM or the Township, in KSM's or the Township's sole discretion.

9.2 Affirmative Action/EEO Compliance Notice. The Concessionaire shall comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et. seq. (Affirmative Action/Equal Employment Opportunity).

9.3 Prevailing Wage. To the extent applicable under N.J.S.A. 34:11-56.25 et. seq., all persons performing any public work at the Concession Services Facilities are to be paid the prevailing wage rates as determined by the Department of Labor of the State of New Jersey. Nothing shall prohibit the Concessionaire from paying more than the prevailing wage rates for public work performed at the Concession Services Facilities in connection with this Agreement.

9.4 Business Registration Certificate. No later than ten (10) days from the Effective Date, the Concessionaire shall provide to the Township proof of its business registration. Proof of business registration shall be:

- A copy of a Business Registration Certificate issued by the Department of Treasury, Division of Revenue; or
- A copy of the web printed version provided by the NJ Division of Revenue

BRCs are available from the State of New Jersey Department of Treasury, Division of Revenue. BRCs can be obtained, in approximately one week's time, by following the on-line procedures at www.nj.gov/treasury/revenue/taxreg.htm.

9.5 Disclosure of Contributions to New Jersey ELEC. The Concessionaire shall comply with all reporting requirements to the New Jersey Election Law Enforcement Commission ("ELEC") pursuant to N.J.S.A. 44A:20-27.

9.6 Compliance with All Applicable Laws. The Concessionaire shall comply with any and all Applicable Law. The Concessionaire shall pay all regulatory fines and penalties, without limitation, assessed against the Township, or the Concessionaire for the Concessionaire's non-compliance, and any reasonable attorneys' and consultants' fees incurred by the Township and and/or the Township. The

Concessionaire shall comply with and shall satisfy, and shall pay, all costs or fees associated with all regulatory requirements pertaining to the above.

9.7 Permits and Approvals. The Concessionaire shall be obligated to obtain, at its sole cost and expense, all permits, and approvals required for operation and management of the Concession Services Facilities.

9.8 Tax. The Concessionaire shall be responsible for all tax obligations arising from the operation of the Concession Services Facilities, including, but not limited to any and all obligations for the payment of sale taxes. Notwithstanding the foregoing, Concessionaire shall not be responsible for any real property taxes and assessments (including, but not limited to, project sewer, street, paving and other improvement lien assessments) against the Property.

9.9 Records Retention. Pursuant to N.J.A.C. §17:44-2.2, the Concessionaire shall maintain all documentation related to the Concession Services under this Agreement for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

Article 10

Events of Default; Remedies

10.1 Events of Default. The occurrence of any one or more of the following events which is not cured within the specified cure period, if any, shall constitute a default under this Agreement (hereinafter referred to as an “Event of Default”):

- (i) **Failure to Pay Sums Due.** Either Party’s failure to pay any sums payable under this Agreement when and as the same shall become due and payable and such failure shall continue for a period of five (5) days after written notice (specifying the item not paid) thereof from the other Party to the defaulting Party;
- (ii) **Failure to Comply.** Either Party’s material failure to comply with any of the terms or conditions of this Agreement, and such failure shall continue for a period of ten (10) business days after written notice thereof from the other Party to the defaulting Party specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any such failure cannot with due diligence be cured within such ten (10) business day period, if the defaulting Party proceeds promptly and diligently to cure the same and thereafter diligently prosecutes the curing of such failure, the time within which the failure may be cured shall be extended for such period as may be necessary for the defaulting Party to cure the failure;
- (iii) **Bankruptcy.** If either Party (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by said party for the purpose of effecting any of the foregoing (collectively, an “Insolvency Proceeding”); and
- (iv) **Reorganization; Receiver.** An order, judgment, or decree is entered without the application, approval, or consent of either Party by any court of competent jurisdiction approving a petition seeking reorganization of said Party or appointing a receiver, trustee, or liquidator of said Party, or of all or a substantial part of any of the assets of said Party, and such order,

judgment, or decree remains unstayed and in effect for a period of ninety (90) days from the date of entry thereof.

10.2 Remedies. Upon the occurrence of an Event of Default by the other Party, the non-breaching party may terminate this Agreement by written notice and seek any available legal remedy. No remedy granted to hereunder is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. No delay or omission by a Party to exercise any right accruing upon an Event of Default shall impair such Party's exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

Article 11

Representations and Warranties

11.1. Representations and Warranties. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that:

- (i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization;
- (ii) It has the full right, power and authority to enter into, execute, deliver and perform its obligations under this Agreement;
- (iii) It has taken all requisite corporate or other action to approve the execution, delivery and performance of this Agreement;
- (iv) This Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally and general principles of equity;
- (v) There is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would affect its ability to carry out the transactions contemplated herein; and
- (vi) The execution of, and performance under, this Agreement shall not violate any existing Applicable Law or any agreement to which it is a party.

11.2. Additional Concessionaire Representations and Warranties. In addition to any other representations and warranties contained in this Agreement, the Concessionaire represents and warrants to KSM as of the Effective Date that:

- (i) The Concessionaire is an "Equal Opportunity Employer," which term shall be prominently displayed in all solicitations or advertisements for employees placed by or on behalf of the Concessionaire.
- (ii) The Concessionaire represents and warrants that it has not offered or given any gratuity for the purposes of securing this Agreement.
- (iii) The Concessionaire agrees to comply with Title VII of the Civil Rights Act of 1964 (as amended), the American with Disabilities Act and the Age Discrimination Employment Act, all amendments thereto and all requirements imposed by or pursuant to those laws, to the end that no person shall be, on the grounds of sex, race, religion, color, marital status, ancestry, affectional or sexual orientation, gender identity or expression, disability, age or national origin, excluded from participation in or be denied the benefits of, or otherwise subjected to discrimination either in seeking service by or employment with the Concessionaire.

- (iv) The Concessionaire represents that it has, or will secure, at its own expense as set forth and pursuant to the terms of this Agreement, all personnel, agents, and consultants required in performing the services specified in this Agreement. Such Concessionaire personnel shall not be employees of or have any contractual relationship with the Township. All of the services hereunder will be performed by the Concessionaire or under its supervision, and all personnel engaged in such services shall be fully qualified and shall be authorized under Applicable Law to perform such services.
- (v) The Concessionaire shall not hire or engage any other subcontractor to provide a substantial portion of the services under this Agreement without the prior written consent of the Township. Any approved subcontractors shall name KSM and the Township as an additional insureds on all insurance policies submitted to KSM and the Township and any such subcontractor shall execute an agreement to hold harmless, indemnify and defend the Township in addition to any other requirements set forth in this Agreement pursuant to, and as a condition precedent to, performing any services required under this Agreement.
- (vi) The services to be performed by the Concessionaire shall at all times be subject to the direction and control of the Concessionaire.
- (vii) It is understood by the Concessionaire that this Agreement shall be subject to approval by the Township Council.
- (viii) The Concessionaire, in accordance with its status as an independent Concessionaire, covenants and agrees that it shall conduct itself consistent with such status, that its employees will neither hold themselves out as, nor claim to be, an officer or employee of KSM or the Township by reason hereof. The Concessionaire will not by reason hereof, make any claim, demand or application that its employees or officers have any right or privilege applicable to an officer or employee of KSM or the Township, including, but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.
- (ix) The Concessionaire shall not and will not perform any services beyond the scope of this Agreement and/or furnish any materials not herein provided without the written consent of KSM.

Article 12

Limitation of Liability and Survival

12.1 Limitation of Liability. Neither Party nor any of its indemnified persons shall be liable to any other Party or its indemnified persons for any special, punitive, exemplary, incidental, indirect, or consequential damages, or losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with this Agreement or in tort.

12.2 Survival. The provisions of this Article shall survive the termination or expiration of this Agreement.

Article 13

Miscellaneous

13.1 Notices. All notices, demands, requests and other communications provided for under this Agreement, except for real-time or routine communications between the designated representatives concerning the services provided pursuant to this Agreement or any term or condition of this Agreement, will be in writing addressed to the respective Party, as the case may be, at the following addresses. Either Party may change the address to which notices are sent or the designation of its designated representative

by written notice to the other as required by this Section 13.1. Notice will be deemed to have been given (a) when presented personally, upon receipt, (b) when sent by a nationally recognized overnight courier service, on the date delivered to the addressee, (c) when sent by mail, postage prepaid, registered or certified, return receipt requested, on the date delivered to the addressee or (d) when sent by facsimile or other electronic transmission, on the date of electronic confirmation of transmission (if sent on a Business Day before 5:00 p.m. Eastern Prevailing Time) or the first Business Day thereafter (if sent at any other time). The names and addresses for the service of notices referred to in this Section and the designated representatives are:

KSM: Kemper Sports Management, Inc.
500 Skokie Boulevard / Suite 444
Northbrook, IL 60062
Attn: Steve Skinner, Chief - Executive Officer

With a copy to: General Counsel
[same address]

Concessionaire: RBG Hospitality Group, LLC.
90 Rock Springs Road
West Orange, NJ 07052
Attn: Alap Vora – Managing Member

13.2 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the Parties, or to impose any partnership duty, obligation or liability on the Parties. No Party shall act as agent of the other, have the authority or hold itself out as having the authority to bind the other Party to any contract, obligation or commitment or take any other action on behalf of the other Party, in each case except as expressly set forth in this Agreement.

13.3 Assignment. This Agreement may not be assigned by the Concessionaire without the prior written consent of the Township, which consent shall not be unreasonably withheld or delayed.

13.4 Further Assurances. Each Party hereby undertakes to take or cause to be taken all actions, including the execution of additional instruments or documents, necessary to give full effect to the provisions of this Agreement.

13.5 Third Party Beneficiaries. This Agreement is for the benefit of the Parties hereto and their respective successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any third party any remedy, claim, liability, reimbursement, cause of action or other right.

13.6 Dispute Resolution. Either party (the “Initiating Party”) may raise a concern regarding interpretation or clarification of this Agreement, or in the acceptable performance thereof (the “Dispute”) by submitting a summary of the issue and its position with respect to said issue in writing to the non-Initiating party. The non-Initiating Party shall, within ten (10) days of receipt of the writing from the Initiating Party, respond with a written response of its position on the issue. Either Party may, after the exchange of written positions, send a notice of dispute to the other Party requesting a conference of management personnel with authority to resolve the dispute. Such conference between management personnel designated by each of the Parties shall be held within ten (10) days of delivery of the notice of dispute or such other time as mutually agreed to by the Parties. In the event the Parties are unable to resolve the dispute through the procedures set forth in this Section, either Party shall have the right to pursue the remedies in accordance with applicable law.

13.7 Governing Law. This Agreement shall be governed by and shall be construed and interpreted in accordance with the laws of the State of New Jersey, without reference to principles of conflicts of laws there under.

13.8 Entire Agreement. This Agreement, together with the Exhibits hereto, constitute the entire agreement and understanding between the Concessionaire and KSM with respect to the subject matter hereof and supersedes all other prior oral and/or written agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and thereof and are made a part of this Agreement by reference. Each Party acknowledges that it and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

13.9 Amendments. No amendment, modification, waiver, change or addition hereto shall be effective or binding on any of the Parties hereto unless the same is in writing and signed by each of the Parties hereto.

13.10 Waivers. Any waiver, express or implied, by any Party of any right or of any failure to perform or breach of this Agreement by any other Party shall not constitute or be deemed as a waiver of any other right or of any other failure to perform or breach of this Agreement by such other Party, whether of a similar or dissimilar nature.

13.11 Severability. In the event of the invalidity or unenforceability of any provision of this Agreement, the validity or enforceability of the other provisions hereof shall not be affected and the Parties shall substitute for such invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intended effect of the invalid or unenforceable provision.

13.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

13.13 Confidentiality. The terms and provisions of this Agreement shall be confidential between Concessionaire and KSM and shall be released to third parties (other than the Township) only in connection with carrying out their respective duties and obligations described herein, in connection with any order of court, in order to comply with governmental rules and regulations, or as may be mutually agreed in writing by the Parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the Effective Date.

KEMPER SPORTS MANAGEMENT, INC.	RBG Hospitality Group, LLC.
By: _____	By: <u>avora</u>
Name Printed: _____	Name Printed: Alap Vora
Title: _____	Title: Managing Partner
Date: _____	Date: <u>4/20/21</u>

Exhibit A
Management Agreement

[Insert]

Exhibit B

Concession Services Facilities

[Insert description]

Exhibit C

Insurance Requirements

(A) The Concessionaire shall maintain in force at all times during the term of the Agreement as a direct cost of operation, insurance coverage as required by the Township. Such coverage shall be provided on a primary and noncontributory basis and will be obtained from an insurance company authorized and licensed to do business in the State of New Jersey and rated not less than A-VII by the most current Best's Manual.

The specifications outlined are standard industry Insurance Services Office (ISO) forms that are used by most insurers. In the event a carrier utilizes a proprietary policy form, the agent or broker must provide a statement that the policy provides a scope of coverage at least as broad as the requested ISO form.

Such coverage shall include, at a minimum, the following:

Worker's Compensation & Employers Liability:

Worker's Compensation as required by statute.

Employers Liability with limits of:	\$1,000,000 Each Accident
	\$1,000,000 Disease - Policy Limit \$1,000,000 - Each Employee

Commercial General Liability

Occurrence Form - Insurance Services Offices - (ISO) Form CG0001 (Ed. 04/13; 12/07; 12/04)

Limits:	\$2,000,000 Each Occurrence
	\$1,000,000 Personal & Advertising Injury Limit
	\$2,000,000 General Aggregate
	\$2,000,000 Products-Completed Operations Aggregate

The following endorsements are to be included in the CGL:

- Per Location - General Aggregate Limit
- Additional Insured-Owners, Lessees or Concessionaires -(ISO) Form CG2010 (Ed 04/13) or Additional Insured - Designated Person or Organization (ISO) Form CG2026 (Ed 04/13)
- Owner: Township of West Orange and its officers, directors and employees.
- Primary and Noncontributory - Other Insurance Condition (CG20 01 04 13)
- Waiver of Transfer of Rights of Recovery Against Others To Us (CG2404 Ed 05/09)
- Earlier Notice of Cancellation Provided by Us (CG0224) - Number of Days' Notice: 30 Days except 10 days for non-payment of premium -**Endorsement specifically applying to:** Township of West Orange and its officers, directors and employees

Regarding Commercial General Liability Form CG0001, the coverage cannot contain any of the following endorsements that restrict or amend:

- Coverage A. exclusion b (Contractual exclusion) - An amendment to the definition of "Insured Contract" is not acceptable.
- Coverage A. exclusion e. (Employer's Liability) - An amendment to the definition of "employee" is not acceptable.
- Coverage A. exclusion f (Pollution exclusion) - An amendment to the exclusion is not acceptable. (An exception will be made if there is a separate Concessionaire's Pollution-Professional Liability policy).
- Coverage A. exclusion I. (Damage to Your Work) - An amendment to the exclusion relating to work performed by independent Concessionaires is not acceptable.
- Condition 7 - Separation of Insureds - An "insured versus insured" exclusion or Cross Liability Exclusion are not acceptable. (An endorsement that excludes "Named Insured versus Named Insured" is acceptable).

The following types of endorsements are not acceptable:

- An endorsement(s) excluding operations relating to Explosion, Collapse, Underground activities (X,C,U) are not acceptable;
- An endorsement that restricts coverage based upon a subcontractor's insufficient insurance limits or failure to obtain Certificates of Insurance;

Business Automobile Policy

Insurance Service Form (ISO) — Form CA 0001 Edition 03 06

Liability Limit: \$1,000,000 - Symbol 1 "Any Auto"

Employment Practices Liability Insurance Policy

Limits: \$1,000,000 Each Occurrence
\$1,000,000 General Aggregate

Liquor Liability Insurance Policy

Limits: \$1,000,000 Each Occurrence
\$1,000,000 General Aggregate

Umbrella/Excess Liability

Limits: \$10,000,000 Per Occurrence
\$10,000,000 Aggregate

Coverage maybe an umbrella form or "follow form excess" but in no event shall coverage be more restrictive than underlying insurance for: Commercial General Liability; Business Automobile Liability; Employer's Liability

(B) Evidence of such coverage being in place will be delivered to KSM no later than ten (10) days from the Effective Date by the Concessionaire providing KSM with a Certificate of Insurance (COI) listing the KSM and the Township as additional insureds.

Prior to the expiration of the required coverage, the Concessionaire will provide KSM with evidence of the renewal of all coverage required on at least the same terms and conditions as originally required in this Agreement.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/23/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Mark Edward Partners LLC 505 Park Ave. New York NY 10022		CONTACT NAME: Melissa Lishner PHONE (A/C, No, Ext): (212) 355-5005 FAX (A/C, No): (212) 813-8085 E-MAIL ADDRESS: mrl@markedwardpartners.com	
INSURED RBG Hospitality Group, LLC 90 Rock Spring Road West Orange NJ 07052		INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Underwriters Insurance Company INSURER B: Sentinel Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 30104 11000	

COVERAGES **CERTIFICATE NUMBER:** CL2142210113 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR VVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC OTHER:	Y	Y	10 SBA AL3RVV	04/22/2021	04/22/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY	Y	Y	10 SBA AL3RVV	04/22/2021	04/22/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	Y	Y	10 SBA AL3RVV	04/22/2021	04/22/2022	EACH OCCURRENCE \$ 8,000,000 AGGREGATE \$ 8,000,000
	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	10 WEC AL3RX8	04/22/2021	04/22/2022	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Liquor Liability			10 SBA AL3RVV	04/22/2021	04/22/2022	Aggregate Limit \$2,000,000 Each Common Cause Limit \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional Insured and Waiver of Subrogation for Township of West Orange and its officers, directors and employees. Primary and Non-Contributory.

CERTIFICATE HOLDER

CANCELLATION

Township of West Orange 66 Main Street West Orange NL 07052	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Mark Edward Partners LLC



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/23/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Mark Edward Partners LLC 505 Park Ave. New York NY 10022		CONTACT NAME: Melissa Lishner PHONE (A/C, No, Ext): (212) 355-5005 FAX (A/C, No): (212) 813-8085 E-MAIL ADDRESS: mrl@markedwardpartners.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Hartford Underwriters Insurance Company	
		INSURER B: Sentinel Insurance Company	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** CL2142210113 **REVISION NUMBER:**

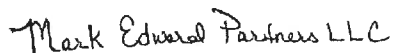
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC OTHER:	Y	Y	10 SBAAL3RVV	04/22/2021	04/22/2022	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000						
	MED EXP (Any one person) \$ 5,000						
	PERSONAL & ADV INJURY \$ 1,000,000						
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	10 SBAAL3RVV	04/22/2021	04/22/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	BODILY INJURY (Per person) \$						
	BODILY INJURY (Per accident) \$						
	PROPERTY DAMAGE (Per accident) \$						
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	Y	Y	10 SBAAL3RVV	04/22/2021	04/22/2022	EACH OCCURRENCE \$ 8,000,000
	AGGREGATE \$ 8,000,000						
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	10 WECAL3RX8	04/22/2021	04/22/2022	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	Aggregate Limit \$2,000,000						
	Each Common Cause Limit						
A	Liquor Liability			10 SBAAL3RVV	04/22/2021	04/22/2022	Limit \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional Insured and Waiver of Subrogation for Kemper Sports Management and its officers, directors and employees. Primary and Non-Contributory.

CERTIFICATE HOLDER

Kemper Sports Management C/O Township of West Orange 66 Main Street West Orange NL 07052	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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