

**AGREEMENT FOR FOOD CONCESSION SERVICES AND LEASE BETWEEN
INDIAN RIVER COUNTY AND
BOTTOM'S UP BEVERAGE OF FLORIDA, LLC.**

THIS AGREEMENT for Food Concession Services and Lease and (the "Agreement") is entered into by and between Bottom's Up Beverage of Florida, LLC., a Florida Corporation, 9425 Meadowood Drive, Ft. Pierce, FL 34951 ("Concessionaire") and Indian River County, a political subdivision of the State of Florida, 1801 27th Street, Vero Beach, FL 32960, (the "County") as of the date set forth below as the effective date (the "Effective Date").

BACKGROUND FACTS

WHEREAS, Concessionaire is desirous of entering into this Agreement for Food Concession Services and Lease at the Sandridge Golf Club and has represented to County that it has the competency and experience to continue to perform the services during construction of a new clubhouse and restaurant as set forth in this Agreement; and

WHEREAS, the County's intent is to select a concessionaire to provide golf course patrons and employees with good service and high-quality food at an economical rate in the Snack Bar. Sandridge Golf Club accommodates approximately 129,000 rounds of golf annually including over forty golf tournaments and outings per year; and

WHEREAS, the Concessionaire has been successfully conducting a food and beverage operation at Sandridge Golf Club for the last 10 years fulfilling all obligations to complete improvements and replace equipment under the prior lease; and

WHEREAS, the intent of the County to enter into this agreement and contract for food service for the facility operated within the Snack Bar at Sandridge Golf Club based on 1,705 square feet of space in the clubhouse during construction of a new clubhouse restaurant and banquet facility; and

WHEREAS, the County is currently out to bid for the construction of a new clubhouse and restaurant and the estimated time for competitive selection of a contractor and completion of construction is 18-24 months; and

WHEREAS, the County is the owner of Sandridge Golf Club, 5300 73rd Street, Vero Beach, Florida, 32967 (the "Course") and desires to engage Concessionaire to continue providing services to the County as more particularly described in this Agreement; and

WHEREAS, in order to preserve continuity of operations, the concessionaire and the County are desirous of extending the general terms of the current Agreement For Food Concession Services and Lease for an undetermined period not to exceed 24 months.

NOW THEREFORE, in consideration of the mutual benefits to be derived from this agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound agree as follows:

SECTION I - LEASE

Background Facts. The Background Facts are agreed to be true and correct are incorporated herein by this reference.

- 1. Property and Term of Lease.** The County leases to Concessionaire and Concessionaire leases from County, the snack bar/concession area at Sandridge Golf Club consisting of approximately 1705 sq. ft. of space inside the Golf Club, as more particularly described on **Exhibit A** attached hereto and by this reference incorporated herein, for a term of twenty-four (24) months commencing on April 1, 2025, and terminating upon thirty (30) days notice from the County. The rent paid shall be as follows: Each month, rent shall be payable at the rate of ten (10) percent of all food and non-alcoholic beverage income from whatever source and fifteen (15) percent of alcoholic beverage income from whatever source per month payable on the first day of each month. If the first of the month is a Saturday, Sunday or a holiday recognized by the County, then on the next business day. After the 5th of the month, a late fee of \$50.00 per day will be assessed. The monthly rent payment shall be accompanied by a monthly report of daily receipts in report form. Daily dated cash register tapes shall be retained by Concessionaire for a period of three (3) years and made available for examination to the County upon 24-hour request. Concessionaire shall ring in all receipts into Sandridge's point of sale system.
- 2. Length of Lease.** The Agreement shall be for an original fixed term of twenty-four (24) months from the date of execution subject to early termination, upon thirty (30) days advance written notice from the County and shall not be renewable thereafter without a competitive selection process; however, the County may extend this Agreement with Concessionaire if deemed to be in the best interest of Indian River County due to delays in completion of the new facility.
- 3. Security Deposit.** County shall retain the security deposit in the amount of \$1,000.00 paid to the County under the prior lease. The security deposit is refundable upon termination of this Agreement after satisfactory inspection of the leased premises by County.
- 4. Use of Leased Premises.** During the term of this Agreement, Concessionaire shall use the leased premises for operation of a food concession and banquet facility, etc. Concessionaire shall not use the premises, or any part thereof, or permit the same to be used for any illegal, immoral, or improper purposes; not to make, or permit to be made, any disturbance, noise, or annoyance whatsoever detrimental to the premises or the comfort and peace of the inhabitants of the vicinity of the premises. Concessionaire may use the leased premises only for Golf Course events and not for any other purpose without prior permission.
- 5. Utilities, Tables and Beverage Cart.** County will provide electrical service, water and sewer services for the leased premises. The County will furnish the existing seating and tables for patrons. County will furnish a Beverage Cart for use by Concessionaire to sell food, snacks and drinks to golfing patrons at a minimum of three (3) days a week.
- 6. Assignment and Subletting.** Concessionaire shall not assign this Agreement or any part thereof to any other person, firm or entity without the County's written permission. Any attempted assignment of the Agreement shall be void and may, at the sole option of the County, be deemed an event of default under the lease.
- 7. Prohibition on Encumbrances.** Concessionaire shall not mortgage, pledge, or encumber the Agreement, in whole or in part, or the leasehold estate granted under the Agreement, to any other person, firm or entity. Any attempt to do so shall be void and may, at the sole option of the County,

be deemed an event of default under the Agreement. This covenant shall be binding on Concessionaire's successors in interest.

8. Employees Hired by Concessionaire. All Concessionaire's employees shall be considered to be at all times its sole employees and not employees or agents of Indian River County. Information regarding an employee's experience and qualifications shall also be furnished to County prior to hiring.

9. Complaints Concerning Operations. The County or its representative may submit a written report to Concessionaire enumerating problem areas encountered. Concessionaire will provide written documentation of action to be taken to resolve problems.

10. Termination of Contract. The County reserves the right to terminate the agreement at any time, upon thirty (30) days advance written notice.

11. Bankruptcy. If Concessionaire is adjudged bankrupt, either voluntary or involuntary, the County may terminate this Agreement effective on the day and time the bankruptcy petition is filed and the County may proceed to provide service as previously outlined.

12. Right to Inspect. The Landlord may enter and inspect the leased premises at all reasonable hours to insure the premises is being properly maintained and kept in good condition.

SECTION II - FOOD CONCESSION OPERATION

1. Services. During the Term of this Agreement, Concessionaire agrees to provide to County the services, including all labor, materials, and supplies required to perform such services, including but not limited to food and beverage service, cart service, and daily cleaning of the leased premises.

2. Tournaments and Special Events. Sandridge Golf Club hosts approximately 40 tournaments and special events ("special events") annually. Often times special events call for breakfast, lunch and/or dinners to be offered to the special event sponsor. The Management of Sandridge Golf Club reserves the exclusive right to offer Concessionaire the opportunity to provide food and beverage services for each special event held at Sandridge Golf Club. Some conditions may be unique to each event and subject to terms mutually agreed upon by Sandridge and Concessionaire. Should the parties fail to reach mutually acceptable terms on any special event, Sandridge may seek an alternate vendor to provide food and beverage services for that special event. Under this election, Sandridge reserves the right to utilize the seating area of the leased premises excluding the use of any equipment owned by the Concessionaire. The election by Sandridge to utilize an alternate vendor for any given special event shall not affect the Concessionaire's right of first refusal to provide food and beverage services at any future special event. Nothing herein shall prohibit Sandridge from providing or accepting donations of food and beverage items for the benefit of any Special Event or Tournament.

- a. The County will coordinate with Concessionaire to develop a variety of meal and snack menu choices with per person pricing that can be offered to the special event sponsor. Golf Club management will work with the special event sponsor to work out details in reference to beverage distribution and food service for the special event. Sandridge staff will provide Concessionaire with the menu selection and a good faith estimate of the number of meals to be served seven (7) days in advance of the special event. This figure will be updated throughout the week preceding the event, and the final number of meals will be conveyed to Concessionaire on the morning of the

special event. The final number of meals will determine the amount Concessionaire will be paid for the special event.

- b. Special event sponsors shall be permitted to offer nominal food and beverage items (such as bottled water, fruit and snacks) to special event participants. Concessionaire shall not be required to assist in distribution of the nominal items.
- c. The County also reserves the right to use the seating area at no charge for periodic employee meetings and seminars that are deemed to be in the best interest of the County.

3. Daily Menu. At a minimum, Concessionaire shall furnish the following recommended minimum merchandise or other similar type of services for the needs and convenience of the employees and general public at the Sandridge Golf Club.

- Food capable of being cooked on a propane gas grill such as hamburgers, chicken and BBQ; delicatessen style sandwiches, hot dogs, chips, candy, soups, salads, donuts, condiments, bagels and other miscellaneous food products.
- Beverages (Coke and/or Pepsi, coffee, soft drinks, etc.).
- Vending machines for cold beverages and miscellaneous snacks shall be furnished, serviced and maintained. These machines will be located with the approval of the Manager of Golf Operations.

4. Sale of Alcoholic Beverages. Concessionaire may sell alcoholic beverages by obtaining and maintaining its own 4COP liquor license. The terms of this license mandate that 51% of the concessions sold consists of food and there is a minimum seating capacity of 150 persons. Concessionaire shall be responsible for the annual liquor license renewal fee. Concessionaire will sell all alcoholic beverages in strict accordance with the laws of the State of Florida and in strict accordance with all guidelines set forth by the County. **Violation of this part of the Agreement shall be cause for immediate termination of this Agreement.**

- a. Concessionaire must provide Alcohol Compliance Training in accordance with the Florida Responsible Vendor Act (F.S. 561.701-706) using services to train employees on the Beverage Laws of the State of Florida.
- b. Concessionaire will be required to pay all taxes and timely remit any reports or paperwork associated with the sale of alcoholic beverages. Concessionaire shall maintain accurate records relating to the sale of alcoholic beverages.

5. Hours of Operation. Concessionaire shall operate the concession stand at a minimum from 6:45 am to 5:30 pm each day of the year except for Christmas Day. The Director of Golf or Manager of Golf Operations may require a change in days and hours of operation if such a change is desirable in providing the best service to the public.

6. Operation during Emergency. During any federally, State, or locally declared emergency or disaster, the County reserves the right to have the full and exclusive use of the Leased Premises for as long as reasonably necessary as the County, in its sole discretion, shall determine, for any appropriate governmental purposes in connection with such Emergency. Concessionaire shall pay no rent during said period. Concessionaire understands that the County has response and recovery

obligations before, during and in the immediate aftermath of an Emergency, and that providing for part of the County's food and beverage needs shall be the top business priority of Concessionaire during the Emergency. At the County's request, Concessionaire shall cooperate with the County in Emergency food and beverage planning and shall be open for business during the hours that the County requires in connection with any Emergency to provide food and beverage service, even if the hours required are different from the hours stated otherwise in this agreement. In the event of an Emergency, the County and Concessionaire will mutually agree on the terms, conditions and payment for Concessionaire's service to County.

7. Occupational and Other Taxes. Concessionaire shall have a current business tax receipt for each year of the lease term and pay all taxes which shall be imposed or assessed by any and all governmental authorities in connection with the business or operation conducted under this agreement.

8. Compliance with Laws. Concessionaire shall meet all federal, state, county and municipal laws, ordinances, policies, and rules applicable to the operation of the concession.

9. Public Relations. Concessionaire shall maintain good public relations with users of the facility and cooperate with Indian River County officials in all matters pertaining to the area.

10. Garbage and Disposal. Concessionaire shall comply with the standards of franchise garbage and disposal collection specifications.

11. Personal Property. Any and all personal property placed on the premises by the Concessionaire, or her employees, shall be at their own risk and the County shall not be liable for any damage or loss to said personal property for any cause whatsoever.

12. Appearance of Employees. All of Concessionaire's service employees must be dressed in uniform fashion while on duty. The uniforms must be approved by the County in advance. These employees must always be neat in appearance and present themselves in a manner that is pleasing to the public. They must also abide by all of the standards set forth by the State of Florida for Food Preparation and Service.

SECTION III - INSURANCE

1. Indemnification and Insurance. Concessionaire shall not commence work until all the insurance required under this section has been obtained, and until such insurance has been approved by the County. Concessionaire will purchase and maintain such insurance as follows:

A. **Workers' Compensation Insurance:** Concessionaire shall procure and maintain workers' compensation insurance to the extent required by law for all her employees to be engaged in work under this agreement. In case any employees are to be engaged in hazardous work under this contract and are not protected under the workers' compensation statute, the Concessionaire shall provide adequate coverage for the protection of such employees.

B. **Public Liability Insurance:** Concessionaire shall procure and shall maintain broad form commercial general liability insurance (including contractual coverage) and commercial automobile liability insurance in amounts not less than shown below. The County shall be an additional named insured on this policy with respect to all claims arising out of the operations or work to be performed.

C. Commercial General Liability (other than automobile) \$500,000 combined single limit for bodily injury and property damage

- i) Premises/Operations
- ii) Independent Contractors
- iii) Products/Completed Operations
- iv) Personal Injury
- v) Contractual Liability
- vi) Liquor Liability

D. Business Auto Liability \$500,000 combined single limit for bodily injury and property damage

- i) Owned/Leased Automobiles
- ii) Non-Owned Automobiles
- iii) Hired Automobiles

2. **Proof of Insurance:** Concessionaire shall furnish the County with a certificate of insurance in a form acceptable to the County for the insurance required. Such certificate or an endorsement provided by Concessionaire must state that the County will be given thirty (30) days' written notice prior to cancellation or material change in coverage. Copies of an endorsement naming County as Additional Insured must accompany the Certificate of Insurance.

3. **General Requirements of Insurance.** Any deductibles or self-insured retentions greater than \$5,000 must be approved by the Risk Manager for Indian River County with the ultimate responsibility for same going to Concessionaire. Concessionaire's insurance coverage shall be primary. All above insurance policies shall be placed with insurers with a Best's rating of no less than A + VII. The insurer chosen shall also be licensed to do business in Florida. The insurance policies procured shall be per occurrence policies or as generally available on the open insurance market. The Insurance Carriers shall supply Certificates of Insurance evidencing such coverage to the Indian River County Risk Management Department within ten days of execution of this Contract. The insurance companies selected shall send written verification to the Indian River County Risk Management Department that they will provide thirty (30) days written notice to the Indian River County Department of Risk Management of its intent to cancel or terminate said policies of insurance.

- a. Concessionaire hereby agrees to indemnify Indian River County and Representatives thereof from all claims arising solely from intentional, reckless or negligent acts, errors or omissions of the Concessionaire or Concessionaire's Representatives in the performance of services under this agreement and for which Concessionaire is legally liable.

3. **Insurance Requirements for County.** Concessionaire acknowledges that County is a political subdivision of the State of Florida and as such, is entitled to certain protection from liability under Florida law. To the extent allowed by law, the County hereby agrees to indemnify Concessionaire from claims arising from the negligent acts, errors or omissions of the COUNTY in the performance of the services under this agreement and for which County is legally liable. Additionally, the County hereby states that its improvements are adequately insured against loss whether through self-insurance or excess coverage.

4. Indemnification of County. Concessionaire shall indemnify and hold harmless the County from all suits, actions or claims including reasonable attorney's fees, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property by or from the said successful bidder or by or in consequence of any liability losses, misconduct or negligent act or omission of Concessionaire, her agents or employees in connection with the operation of the food service concession.

5. Notice of Claims. County and Concessionaire shall give prompt notice to the other of any third-party claims made against either or both of them, and shall cooperate fully with each other and with any insurance carrier to the end that all such claims will be properly investigated, defended and adjusted.

6. Failure to Maintain Insurance. Failure to maintain such insurance will be deemed as a cause for termination of this agreement.

SECTION IV - COUNTY RESPONSIBILITIES

1. Obligations to Provide Facilities. County, at its sole cost and expense, shall be responsible for providing safe and adequate facilities required by Concessionaire to perform the Services under this Agreement. These facilities shall include, without limitation, workspace and other facilities that adhere to current federal and state safety standards. County shall cooperate at all times with Concessionaire to provide a safe and adequate work environment for Concessionaire's employees and others who work on or around the Course. Concessionaire has inspected County's facilities and agrees that they are adequate facilities needed to perform the services under this agreement and the facilities adhere to current federal and state safety standards.

2. Emergency Maintenance. At any time during this agreement, if the County determines that any portion of the golf club house is in immediate jeopardy of sustaining some type of serious harm due to a maintenance failure of Concessionaire, the County may utilize its own work force to go on the leased premises and perform such tasks as are necessary to prevent such serious harm from taking place. The costs of such preventative maintenance shall be itemized by the County and submitted to Concessionaire, which shall be paid within thirty days.

SECTION V - DEFAULT, REMEDIES

1. Default by Concessionaire. In the event Concessionaire is in default under the terms of this Agreement, after thirty (30) days written notice and opportunity to cure, County may, in addition to any right of termination provided in this Agreement, maintain an action for damages arising from the default.

2. Default by County. In the event that County is in default under the terms of this Agreement after any grace period or notice and cure period expressly provided herein, Concessionaire may, in addition to any right of termination contained in this Agreement, exercise any right or remedy available at law or equity including, without limitation, an action for damages arising out of the breach.

SECTION VI - MISCELLANEOUS

1. Any written consent, approval or instruction issued by County's representation identified in SECTION VII of this Agreement shall be binding to the same extent as if given by County. County may change the designated County's representative by written notice to Concessionaire.
2. In connection with this Agreement, the parties agree to cooperate in good faith and to perform no act, or allow any omission, which would inhibit the other party from performing its obligations under this Agreement.
3. This Agreement, together with the Exhibits and Response to Request for Proposal constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. This Agreement shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of County and Concessionaire by their respective duly authorized representatives.
4. Any notice which either party is required or may desire to give to the other under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address shown on the First Page of this Agreement. If County or Concessionaire wish to change its respective address for purposes of notice under this Agreement, they may do so by giving to the other written notice of change of address.
5. Nothing in this Agreement shall be construed to create a partnership, a joint venture or agency relationship between the parties. Neither party shall have any authority to enter into agreements on behalf of the other, or otherwise to bind or oblige the other in any manner. The language of this Agreement shall not be construed more strongly against either party, regardless of which party is responsible for its drafting.
6. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
7. The parties agree that any litigation arising from this Agreement shall be brought in Indian River County Florida.
8. In the event of acts or occurrences not caused by County or beyond the control of Concessionaire, including, without limitation, acts of God, fire, flood, hurricanes, ice storms, severe, unusual or unseasonable weather or climatological changes that prevents Concessionaire from performing its duties under this agreement, Concessionaire shall be excused from the performance under this Agreement during the period of such acts or occurrences and for reasonable times thereafter, unless Concessionaire and County can agree on such other duties that can be performed by Concessionaire. If Concessionaire is unable to perform its duties under this agreement for more than 15 consecutive days due to the acts or occurrences, County may terminate this agreement.
9. In the event of the sale or other transfer of control over the Course, County will assign this Agreement to the purchaser or transferee, and upon such assignment and the written assumptions by the purchaser of all the obligations of County to Concessionaire hereunder, County shall be fully released and relieved of all obligations hereunder arising from and after the date of the assignment.

10. Concessionaire shall be responsible for obtaining, and shall pay for, any such permits, fees, and licenses required to operate all business contemplated by this Agreement.

11. Concessionaire agrees to maintain all books, documents, papers, records, and accounts pertaining to work performed under this Agreement, including property, personnel, and financial records, as are deemed necessary by the County to ensure proper accounting for all funds expended under this Agreement and in such a manner as will readily conform to the terms of this Agreement. Said records and materials shall be available, upon request for audit or inspection purposes to Indian River County, its authorized representatives, and its auditors at Concessionaire’s office at all reasonable times during the term of this Agreement, and for three (3) years from the date of final payment.

12. Concessionaire agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability, and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability.

13. It is agreed by the parties that, at all times and for all purposes within the scope of this Agreement, the relationship of Concessionaire to the County is that of independent contractor, and not that of employee.

14. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

SECTION VII – NOTICES

Concessionaire and the County’s contact information regarding this Agreement is:

FOR COUNTY:
Bela Nagy, Director of Golf
Indian River County
1801 27th Street
Vero Beach, Florida 32960
TELEPHONE: (772) 770-5003
FAX: (772) 770-5109

FOR CONCESSIONAIRE:
Chris Higgins
Bottom’s Up Beverage of Florida, LLC
9425 Meadowood Drive
Ft. Pierce, FL 34951
TELEPHONE: (772) _____
FAX: (772) _____

In witness, the County and Concessionaire have caused these presents to be executed in their names the year first written above.

Bottom’s Up Beverage of Florida, LLC

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

BY: _____
Chris Higgins, Concessionaire

BY: _____
Joseph E. Flescher, Chairman
Board of County Commissioners

Date Approved by the BCC: _____

WITNESS: _____

ATTEST: Jeffrey R. Smith, Clerk of Court and
Comptroller

WITNESS: _____

BY: _____
Deputy Clerk of Court

APPROVED:

John A. Titkanich, Jr. County Administrator

Approved as to form and legal sufficiency

Christopher A. Hicks
Assistant County Attorney