



WESTPORT CONNECTICUT BOARD OF FINANCE

NOTICE OF EXECUTIVE SESSION

The Board of Finance will hold a Special Meeting on **Wednesday, April 18, 2018 at 7:30 p.m.** in the **Auditorium of Town Hall** for the following purposes. It is anticipated that the Board of Finance will vote to go into Executive Session for such discussions.

1. To discuss the First Amendment to the Food and Beverage Concession and Lease agreement of the Pavilion at Compo Beach and the Leases of the Halfway House at Longshore Club Park and the Longshore Club Pavilion between the Town of Westport and Joseph C. Romeo Jr.

NOTICE OF SPECIAL MEETING

The Board of Finance will hold its Public Meeting on **Wednesday, April 18, 2018 at 8:00 p.m.** in the **Auditorium of Town Hall** for the following purposes:

AGENDA

1. In accordance with Section C6-2 of the Town Charter and upon the request of the Director of Parks and Recreation, to approve the First Amendment to the Food and Beverage Concession and Lease agreement of the Pavilion at Compo Beach between the Town of Westport and Joseph C. Romeo Jr. d/b/a Joey's By the Shore.
2. In accordance with Section C6-2 of the Town Charter and upon the request of the Director of Parks and Recreation, to approve the First Amendment to the Food and Beverage Concession and the Leases of the Halfway House at Longshore Club Park and the Longshore Club Pavilion, between the Town of Westport and Joseph C. Romeo Jr.
3. The Board will approve the "BOF Recommended Budget for Fiscal Year 2018-2019" as follows:
 - a. Vote on BOE as presented
 - b. General Fund

Note: The practice for upcoming BOF regular meetings will be to close the meetings at 10:00 PM. Motions to extend individual meetings can be heard.

Item # 1
BOF 4/4/18 Tabled
to 4/18/18



WESTPORT CONNECTICUT

PARKS AND RECREATION DEPARTMENT

LONGSHORE CLUB PARK

260 SOUTH COMPO ROAD, WESTPORT, CT 06880

(203) 341-5090

March 15, 2018

The Honorable James S. Marpe
First Selectman
Town Hall
110 Myrtle Avenue
Westport, CT 06880

Dear Mr. Marpe:

The Parks and Recreation Department respectfully requests to be placed on the Board of Finance Agenda to approve the First Amendment to Food and Beverage Concession and Lease Pavilion at Compo Beach.

Respectfully,

A handwritten signature in cursive script, appearing to read "Jennifer A. Fava".

Jennifer A. Fava
Director of Parks and Recreation

cc: Gary Conrad, Finance Director
Eileen Flug, Assistant Town Attorney

Approved for submission
To Board of Finance (3/16/18)

A handwritten signature in cursive script, appearing to read "James S. Marpe".

James S. Marpe
First Selectman



WESTPORT CONNECTICUT


PARKS AND RECREATION DEPARTMENT

LONGSHORE CLUB PARK

260 SOUTH COMPO ROAD, WESTPORT, CT 06880

(203) 341-5090

MEMO TO: Board of Finance

MEMO FROM: Jennifer Fava, Director 

DATE: March 15, 2018

RE: **Request for Approval of First Amendment to Food and Beverage Concession and Lease Pavilion at Compo Beach.**

The Food and Beverage Concession and Lease dated June 20, 2012 between the Town and Joseph C. Romeo, Jr. d/b/a Joey's By The Shore has expired. Included in that document, the Tenant shall have the option to extend the Term of the Lease and the Concession for one five (5) year period. Mr. Romeo has expressed his desire to exercise his option for the extension.

Based upon discussions, the attached First Amendment to Food and Beverage Concession and Lease Pavilion at Compo Beach has been negotiated. The changes from the original concession and lease are as outlined below:

Section 2 - The term of the amendment is for one additional five (5) year term which shall end on November 30, 2022. Any further extension shall be at the option of the Town.

Section 3 - Assignment and Subleasing – The 2012 lease was held by Joseph C. Romeo, Jr. d/b/a Joey's By The Shore. This section allows for the assignment of the lease to be given to JBTS, LLC a limited liability company organized by the tenant.

Section 4 – Rent – The rent has been calculated in accordance with the format used in the 2012 concession and lease which follows the CPI as of July. Year 1 - \$90,681; Year 2 - \$92,475. Each subsequent Lease Year of the Term, the rent will increase based on the CPI as of the preceding July. Payment is made in equal installments on May 1, June 15, and August 1 annually.

Section 5 – Tenant's Obligations – These obligations are carried over from the 2012 Lease as they were deferred until a determination was made in regard to the future of the existing building.

Section 6 – The insurance requirements have been updated to be in compliance with the Town's revised limits and requirements.

Unconditional Personal Guaranty – Due to the change to the LLC (limited liability company), the Town is requiring an Unconditional Personal Guaranty from Joseph Romeo.

The Parks and Recreation Department is satisfied with the service provided by Joey's By The Shore at Compo Beach and therefore recommends the approval of the First Amendment to Food and Beverage Concession and Lease Pavilion at Compo Beach for the five (5) year term ending November 30, 2022.

Additionally, Joseph Romeo has decided not to exercise his option to extend the Food and Beverage Concession and Lease Longshore Pavilion nor the Food and Beverage Concession and Lease Halfway House at Longshore Club Park. The Parks and Recreation Department will be issuing an RFP for these services.

attachments

cc: Gary Conrad, Finance Director
Eileen Flug, Assistant Town Attorney

**FIRST AMENDMENT TO
FOOD AND BEVERAGE CONCESSION AND LEASE
PAVILION AT COMPO BEACH**

This First Amendment to Food and Beverage Concession and Lease ("First Amendment") is dated as of December 1, 2017 (the "Amendment Effective Date") by and between the TOWN OF WESTPORT (the "Town" or the "Owner") and JOSEPH C. ROMEO, JR. d/b/a Joey's By The Shore (the "Tenant").

RECITALS

- A. The Town entered into a Food and Beverage Concession and Lease Agreement dated July 20, 2012 (the "2012 Lease") with the Tenant to lease to the Tenant the kitchen, food preparation and patron service areas situated in the facility known as the Pavilion at Compo Beach, Westport, Connecticut (the "Premises"), which Premises are more particularly shown on Schedule A to the 2012 Lease.
- B. The Term of the 2012 Lease expired on November 30, 2017.
- C. The Town and the Tenant desire to extend the Term of the 2012 Lease and make other modifications to the 2012 Lease, all effective as of the Amendment Effective Date;

NOW THEREFORE, the Town and the Tenant agree as follows.

- 1. **Definitions and Interpretation.** Unless otherwise indicated herein, all capitalized words and phrases used herein shall have the meanings ascribed to them in the 2012 Lease. The term "Lease" as used herein and in the 2012 Lease shall hereafter mean and refer to the 2012 Lease as amended by this First Amendment. This First Amendment is effective on the Amendment Effective Date, defined above. On and after the Amendment Effective Date, the Lease shall be deemed extended and modified as provided herein, and all of the provisions of the Lease shall remain in full force and effect, except as otherwise provided herein.
- 2. **The Term.** The Term of the Lease is hereby extended for one (1) 5-year period commencing on December 1, 2017 and, unless sooner terminated pursuant to the provisions of the Lease, shall end on November 30, 2022. The defined term "Term" is hereby amended to mean the initial term of the Lease as extended by this Section. Section 8 of the 2012 Lease is hereby deleted in its entirety; any further extension of the Lease shall be at the option of the Town.
- 3. **Assignment and Subleasing.** Section 22 of the 2012 Lease is hereby deleted in its entirety and replaced with the following.

The Town consents to the assignment of the Lease by Tenant to JBTS, LLC, a Connecticut limited liability company organized by the Tenant. JBTS, LLC shall hereafter be referred to as the "Tenant". Any further assignment of the Lease or subleasing of the Premises by the Tenant will be permitted only with the advance written consent of the Town. Tenant acknowledges that the Town retains the absolute right to withhold its consent if, in the Town's sole discretion, the Town believes that the proposed assignment or sublease will not be in the best interest of the Town or the Concession. Factors considered by the Town shall not be limited to the financial strength or creditworthiness of the proposed assignee or subtenant.

4. **Rent.** Section 6 of the 2012 Lease is hereby deleted in its entirety and replaced with the following:

For the privilege of operating the Concession at the Premises, the Tenant shall pay rent as follows. For the Lease Year commencing December 1, 2017, the Tenant will pay rent in the amount of \$90,681. For the Lease Year commencing December 1, 2018, the Tenant will pay rent in the amount of \$92,475. For each subsequent Lease Year of the Term, the rent shall be adjusted to reflect the percent change in the CPI. The percent change in the CPI shall be measured each July by reference to the CPI for the preceding July. On or before each September 15 (beginning with September 15, 2019) the Town shall deliver Notice to the Tenant of the percent change in the CPI and the new rent applicable for the new Lease Year. Notwithstanding anything herein to the contrary, the percent change in the CPI shall not cause the rent to decrease from one Lease Year to the next.

5. **Tenant's Obligations.** The first sentence of Section 11(h) of the 2012 Lease is hereby deleted in its entirety and replaced with the following (and the remaining sentences of Section 11(h) shall remain unchanged):

The Tenant will make the following improvements and upgrades to the Premises before December 31, 2018: (i) Replacement of existing skylights; and (ii) Design and installation of one or more windows in the front wall (subject to the Tenant's obtaining all necessary municipal permits and approvals).

6. **Insurance.** Section 17 (Insurance) of the 2012 Lease is hereby deleted in its entirety and replaced with the following:

Insurance. The Tenant shall obtain the insurance coverages described below and maintain such coverages for the life of this Lease, from a company or companies with an A.M. Best rating of A- (VII) or better. All insurance shall be carried with insurers authorized to do business in the State of Connecticut. Such insurance shall protect the Town from claims that may arise out of or result from the Tenant's obligations under this Lease or from the obligations of any subcontractor or any other person or entity directly or indirectly employed by the Tenant or by anyone for whose acts the Tenant may be liable. The Tenant must require that all sub-contractors, agents and assigns procure and maintain

sufficient insurance protection. The Tenant shall not commence work under this Lease until all insurance required of the Tenant has been procured and approved by the Town.

For each policy required by this Lease, the Tenant shall, before the execution of this Lease by the Town, provide the Town with certificates of insurance. The Tenant shall provide updated certificates of insurance at least 30 days before any renewal of any such coverage. The certificates shall require notice of cancellation to the Town according to policy provisions.

A. Commercial General Liability Insurance:

The Tenant shall provide commercial general liability insurance including products and completed operations. Limits shall be at least: Bodily injury & property damage coverage with an occurrence limit of \$1,000,000; Personal & advertising injury limit of \$1,000,000 per occurrence; General aggregate limit of \$2,000,000 (other than products and completed operations); Products and completed operations aggregate limit of \$2,000,000. Coverage will continue three years after the completion of the work.

- The policy shall name the Town as an additional insured and include ISO Form CG 2010 (04/13) and CG 2037 (04/13) or equivalent.
- Such coverage will be provided on an occurrence basis and shall be primary and shall not contribute in any way to any insurance or self-insured retention carried by the Town.
- The policy shall contain a waiver of subrogation in favor of the Town.
- Such coverage shall contain a broad form contractual liability endorsement or wording within the policy form to comply with the hold harmless and indemnity provision(s) of this Lease and all other agreements between the Town and Tenant.
- Deductible and self-insured retentions shall be declared and are subject to the approval of the Town.

B. Commercial Automobile Insurance:

The Tenant shall provide commercial automobile insurance for any owned, non-owned or hired autos, in the amount of \$1,000,000 each accident covering bodily injury and property damage on a combined single limit basis. The policy shall name the Town as an additional insured and provide a waiver of subrogation.

C. Workers Compensation:

The Tenant shall provide workers compensation insurance required by law with employer's liability limits for at least the amounts of liability for bodily injury by accident of \$500,000 each accident and bodily injury by disease of \$500,000 including a waiver of subrogation.

D. Umbrella or Excess Liability Insurance:

The Tenant shall provide an umbrella or excess liability policy in excess (without restriction or limitation) of those limits and coverages described in items (A) through (C). Such policy shall contain limits of liability in the amount of \$2,000,000 each occurrence and \$2,000,000 in the aggregate. The Town reserves the right to require higher limits of umbrella or excess liability coverage depending on the scope of the Lease.

{This space intentionally left blank. The next page is the signature page.}

IN WITNESS WHEREOF, the Town and the Tenant have caused this First Amendment to be executed on the date(s) written below.

JBTS, LLC

Signature _____

Name _____

Title _____

Date _____

TOWN OF WESTPORT

Signature _____

Name James S. Marpe

Title First Selectman

Date _____

UNCONDITIONAL PERSONAL GUARANTY

I hereby unconditionally guaranty the punctual payment when due of all obligations of the Tenant to the Town under the Lease and under any amendment, modification, renewal, extension, substitution or replacement of the Lease.

Joseph C. Romeo, Jr.

Date

Approved as to Form:

Eileen Lavigne Flug, Assistant Town Attorney

Approved as to compliance with Chapter 12 of the Charter of the Town of Westport:

Gary Conrad, Finance Director

COPY

**FOOD AND BEVERAGE CONCESSION AND LEASE
PAVILION AT COMPO BEACH**

This Food and Beverage Concession and Lease is dated as of July 20, 2012 by and between the TOWN OF WESTPORT (the "Town") and JOSEPH C. ROMEO, JR. d/b/a Joey's By The Shore (the "Tenant").

1. **The Premises**. The Town hereby leases to the Tenant the kitchen, food preparation and patron service areas situated in the facility known as the Pavilion at Compo Beach, Westport, Connecticut (the "Premises"). The Premises are more particularly shown on Schedule A.
2. **Definitions**.
 - a. "Concession" means a fast food and beverage service business. The term describes the use of the Premises that is authorized and permitted under this Lease.
 - b. "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the New York, Northern New Jersey and Long Island (NY-NJ-CT-PA) Region (1982-1984 = 100).
 - c. "Effective Date" means July 20, 2012.
 - d. "Lease" means this Food and Beverage Concession and Lease.
 - e. "Lease Year" means December 1 through November 30.
 - f. "Prior Lease" means that certain Commercial Lease between the Town and the Tenant dated November 1, 2007.
 - g. "Beach Season" means April 15 through and including October 31.
3. **The Term**. Unless sooner terminated pursuant to the provisions of this Lease, the term of this Lease shall begin on the Effective Date and end on November 30, 2017 (the "Term").
4. **The Concession**. The Tenant shall have the right to use the Premises to operate the Concession and for no other purpose. The Tenant's right to operate the Concession shall terminate upon the expiration of the Term or earlier termination of this Lease by the Town without requirement for any separate declaration or Notice. The Concession is subject to restrictions, as specified below.

5. **Prior Lease.** Prior to the Effective Date, Tenant occupied the Premises under the Prior Lease. This Lease supersedes the Prior Lease in all respects.
6. **Rent.** For the privilege of operating the Concession at the Premises, Tenant shall pay rent as follows. For the Lease Year commencing December 1, 2011, Tenant will pay rent in the amount of \$80,586.00. For the Lease Year commencing December 1, 2012, Tenant will pay rent in the amount of \$84,596.40. For each subsequent Lease Year of the Term, the rent shall be adjusted to reflect the percent change in the CPI. The percent change in the CPI shall be measured each July by reference to the CPI for the preceding July. On or before each September 15 (beginning with September 15, 2013) the Town shall deliver Notice to the Tenant of the percent change in the CPI and the new rent applicable for the new Lease Year. Notwithstanding anything herein to the contrary, the percent change in the CPI shall not cause the rent to decrease from one Lease Year to the next.
7. **Payment of Rent.** Rent for each Lease Year shall be due in three (3) equal installments on May 1st, June 15th and August 1st.
8. **Option to Extend.** The Tenant shall have the option to extend the Term of this Lease and the Concession for one five (5) year period, beginning December 1, 2017 subject to such conditions as are mutually agreed upon by the Town and the Tenant.
9. **Exclusive Vendor Rights.**
 - a. During the Term and within the area of Compo Beach that is under the Town's control, the Town will not grant any permit or authorization to any third party to sell to consumers or deliver to consumers soft drinks, food, candy or the Ancillary Items described in Paragraph 12(j)(i) through and including 12(j)(v).
 - b. As of the date of this Lease, the exclusive vendor rights granted under Paragraph 9(a) do not apply to any Ancillary Items described in Paragraph 12(j)(vi). The Town's Director of Parks and Recreation may, in his discretion, elect to add specific Ancillary Items to the list to which exclusive vendor rights apply, but it shall be conclusively presumed that exclusive vendor rights do not apply unless Tenant is in possession of a written communication from the Town's Director of Parks and Recreation that makes specific reference to Paragraph 9(a) and the Ancillary Items to which exclusive vendor rights apply.
 - c. Notwithstanding Paragraph 9(a), the Town may, in its discretion, authorize: (a) private parties on Compo Beach to be professionally catered; and (b) beverage vending machines located at the marina.
10. **Default.** If Tenant: (a) fails to pay any installment of rent within ten (10) days of the due date; (b) receives a second Notice in any one Beach Season of violation of the Continuous Operations Covenant (defined in Paragraph 12(e)); or (c) fails to perform or comply with any other obligation, covenant or condition under this Lease within thirty

(30) days after receipt of Notice from the Town (each an "Event of Default"), then the entire balance of rent for the Lease Year in which the Event of Default occurs shall become immediately due and payable at the option of the Town and, at the option of the Town upon delivery of Notice, the Lease shall immediately be terminated. If the Town exercises its right to terminate the Lease, the Tenant shall vacate the Premises within ten (10) days after receipt of Notice and Tenant shall be responsible for all costs, expenses and damages, including attorneys' fees, incurred by the Town if Tenant fails to vacate the Premises within that ten (10) day period.

11. **Tenant's Obligations.** In addition to the obligation to pay rent, Tenant shall have the following obligations.

- a. Each Lease Year, all interior surfaces of the Premises will be redecorated and repainted.
- b. The Tenant will, at all times, maintain and operate the Concession in compliance with the highest standards and requirements of the Connecticut Department of Health, the Westport/Weston Health District, the Westport Fire Marshall and all applicable federal, state and local regulations.
- c. If modifications to the Premises become necessary to comply with any federal, state or local regulations related to accommodations for the disabled, the Tenant shall be responsible for the first five thousand dollars (\$5,000) of the cost of those modifications. To the extent that the cost of those modifications exceeds five thousand dollars (\$5,000), then the Town and Tenant shall share the costs equally.
- d. The Tenant shall commit no waste, make all necessary repairs to the Premises and surrender the Premises at or upon the termination of this Lease in broom clean condition in at least as good condition as the Premises were on the date of this Lease, reasonable wear and tear excepted.
- e. The Tenant shall install and maintain, at the Tenant's sole expense, adequate freezer and refrigeration equipment to insure the freshness of all food served and as required to meet Health Department regulations.
- f. All beef sold by Tenant on the Premises shall be "one hundred percent USDA Choice".
- g. Tenant shall provide routine cleaning, maintenance and repair of the hood and ansul system at the Premises.
- h. Tenant will make the following improvements and upgrades to the Premises before December 31, 2013: (i) Replacement of existing skylights; (ii) Design and installation of one or more windows in the front wall (subject to Tenant obtaining all necessary municipal permits and approvals); and (iii) Replacement of ansul (fire suppression) system. Tenant will deliver copies of all proposed contracts for

the improvement and upgrade work to the Town's Director of Parks and Recreation and Building Superintendent for review and approval before commencement of any improvement or upgrade work. The Town shall not unreasonably withhold or delay its approval of any such proposed contract. It is understood, however, that the Tenant has made a commitment to spend a minimum of \$20,000 on the improvements and upgrades as a whole and the Town may withhold its approval on the grounds that the price of any contract is disproportionate to the value of the services to be performed thereunder or is otherwise likely to interfere with the Tenant's commitment.

12: Covenants Regarding Operations. Tenant covenants and agrees as follows.

- a. Tenant will abide by all conditions and regulations of the Department of Parks and Recreation with respect to hours of opening and closing and the placement of signs.
- b. Tenant will limit employee parking in the lot directly behind the Premises to no more than six (6) vehicles at any time. Tenant will require all additional employee vehicles to park in areas within the Compo Beach facility as designated by the staff of the Department of Parks and Recreation.
- c. During the Beach Season, the Tenant will be open for business at the Premises for at least the following hours (the "Requisite Hours"): Monday through Friday from 10:00 a.m. to 6:00 p.m.; and Saturdays, Sundays and legal holidays from 9:00 a.m. to 7:00 p.m.
- d. Tenant may, with the written consent of the Department of Parks and Recreation, open the Premises for business at other times of the Lease Year or beyond the Requisite Hours.
- e. Tenant promises to open the Premises for business for the Requisite Hours seven days per week during the Beach Season. That promise is referred to as the "Continuous Operations Covenant". If, during any one Beach Season, Tenant is not open for business at the Premises for the Requisite Hours for more than two (2) consecutive days or more than five (5) days in the aggregate, the Town may deliver Notice of violation of the Continuous Operations Covenant. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to open the Premises for business at any time during which the Town has closed Compo Beach to the public or closure of Tenant's business is necessitated by dangerous weather or interruption of electrical service.
- f. Tenant shall not sell beverages in glass containers.
- g. Tenant shall at all times offer a base menu of food and beverages at the Premises (the "Base Menu"). In recognition of the fact that the Premises are located in a municipal park, Tenant covenants and agrees that: (i) the price, portion size and

quality of each item appearing on the Base Menu will be consistent generally with items sold by year-round Westport restaurants; and (ii) the Base Menu shall be subject to the annual review and approval of the Town. Tenant will deliver to the Director of Parks and Recreation a copy of its proposed Base Menu for each upcoming Beach Season on or before March 1. The Town will not unreasonably withhold or delay its approval of the Base Menu. During the course of a Beach Season, the Tenant will not increase the price of any item appearing on the Base Menu. Notwithstanding anything in this Paragraph to the contrary, the Tenant may serve "Specials" (i. e., items not appearing on the Base Menu) without obtaining the Town's approval, provided that no "Special" may be an inferior substitute, with respect to quantity or quality, for any item appearing on the Base Menu. By way of example, if the Base Menu includes an eight inch hotdog for \$3.00, then the Tenant may not offer, as a "Special", a four inch hotdog for \$2.00.

- h. Tenant will use its best efforts to maintain a proper and wholesome atmosphere in and around the Premises.
- i. Tenant has authorization from the Department of Parks and Recreation to use radios and other musical appliances in connection with Tenant's business operations on the strict condition that Tenant will regulate the volume of those devices so that they cannot be heard by people more than twenty (20) feet from the Premises. Tenant acknowledges that failure to abide by that condition may result in the revocation of that authorization. The installation or use of external loudspeakers is prohibited.
- j. In addition to fast food and beverages, Tenant may offer for sale at the Premises the following items (the "Ancillary Items"): (i) sunscreens; (ii) towels; (iii) beach toys; (iv) Westport-themed shirts and caps; (v) beach chair and umbrella rentals; and (vi) such other sundries and associated items as may be approved in writing from time to time by the Town's Director of Parks and Recreation.

13. **Parking and Traffic Control.** The Department of Parks and Recreation, Parks and Recreation Commission or Board of Selectmen, in its or their sole discretion, may make regulations concerning traffic or parking upon the beach or may temporarily close part or all of Compo Beach. The Tenant waives all claims that it may have now or in the future for loss or damage as a result of regulations concerning traffic, parking or temporary closure of all or part of Compo Beach.

14. **Prohibited Uses.** Tenant covenants and agrees that no alcoholic beverages or tobacco products will be kept or sold at the Premises and Tenant will use all reasonable efforts to prevent alcoholic beverages and tobacco products from being used or consumed at the Premises. Tenant covenants and agrees that no pinball machines, arcade games or gambling devices of any nature will be installed, used or maintained at the Premises.

15. **Trade Fixtures and Other Fixtures.**

- a. Any and all trade fixtures, including, without limitation, cooking equipment, soda fountains, fryolators, frozen drink machines, grills, coffee urns, refrigerators, freezers, ice machines, tables, chairs, counters and countertops that were or are installed by the Tenant in the Premises are Tenant's property and will be removed by the Tenant at the end of the Term or earlier termination of this Lease. Tenant will be responsible for repairing any damage to the Premises caused by the removal of those items.
 - b. The electric hot water heater, hood, grill, plumbing, insulation, shelving and all other items installed by the Town are the Town's property and the Tenant shall surrender possession of that property in good condition, reasonable wear and tear excepted, at the end of the Term or earlier termination of this Lease.
 - c. The Tenant will be responsible, at the Tenant's cost and expense for maintaining, repairing and replacing all equipment required to operate the Concession, without regard to whether that equipment was originally installed by the Town or the Tenant. Any change of equipment models must be approved by the Department of Health. Replacement equipment must be "New" or "Used In Like New Condition". If the Tenant replaces an item of equipment that was originally installed by the Town, the replacement item shall be the Tenant's property for purposes of Paragraph 15(a).
16. **Utilities.** The Town will provide water service at the Town's cost for water used at the Premises. The Town will provide for electricity service to the Premises subject to the Tenant's obligation to pay for all electricity consumed at the Premises as follows. If the electricity service account is held in the Town's name, then Tenant shall pay the Town within ten (10) days after Tenant's receipt of each bill from the Town. If the electricity service account is held in the Tenant's name, then the Tenant shall pay the electricity service provider within thirty (30) days after Tenant's receipt of each bill from the electricity service provider. If other utility services are used at the Premises, Tenant will be responsible for paying for the utility services used as follows. If the utility service account is held in the Town's name, then Tenant shall pay the Town within ten (10) days after tenant's receipt of each bill from the Town. If the utility service account is held in the Tenant's name, then Tenant shall pay the utility service provider within thirty (30) days after Tenant's receipt of each bill from the utility service provider.
17. **Insurance.** Tenant shall purchase and maintain for the duration of Tenant's occupancy of the Premises the following insurance.
- a. Commercial General Liability Insurance with limits of insurance no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate covering bodily injury and property damage resulting from personal & advertising injury, products and completed operations and operations of the Tenant.
 - b. Commercial Automobile Insurance for any owned automobiles used in the conduct of Tenant's business in the amount of \$1,000,000 per accident covering

bodily injury and property damage on a combined single limit basis. Such coverage shall also include hired and non-owned automobile coverage.

- c. Workers' Compensation Insurance in an amount not less than that required by law with employer's liability limits for at least the amounts of liability for bodily injury by accident of \$100,000 each accident and bodily injury by disease of \$100,000 and a policy limit of \$500,000.
 - d. Each insurance policy procured by the Tenant under this Lease shall: (i) be underwritten by an insurance company licensed to do business in the State of Connecticut; (ii) name the Town as additional insured; (iii) be underwritten on an occurrence basis; (iv) be primary and shall not contribute in any way to any insurance, deductible or self insured retention carried by the Town; (v) contain contractual liability coverage within the policy form; and (vi) provide for not less than thirty (30) days' prior Notice to the Town in the event of cancellation, non-renewal or material change in coverage.
 - e. All deductibles shall be declared and are subject to the approval of the Town.
 - f. Upon signing of this Lease and thereafter, from time to time, within ten (10) days of the Town's request, the Tenant shall deliver to the Town evidence satisfactory to the Town that each of the above policies is in effect. In most cases, a standard form certificate of insurance will suffice. The Town reserves the right, however, to require the Tenant to deliver a copy of the policy.
18. **Hold Harmless and Indemnification Covenant.** Tenant shall indemnify and hold harmless the Town, its elected and appointed officials, agents and employees from all claims, demands and judgments of third persons, including, without limitation, those for death, personal injuries and property damage, arising out of the negligent, reckless or intentional acts or omissions of Tenant, its officers, members, employees, agents, contractors, customers, guests, invitees and all other persons doing business with the Tenant.
19. **Taxes and License Fees.** Tenant covenants and agrees to pay all federal, state and local taxes and license fees assessed or imposed on its trade fixtures and personal property and upon the Tenant's business or on income therefrom, provided, however, that the real property of Town leased hereunder will not be subject to taxation by the Town.
20. **Fire or Other Casualty.** Tenant shall keep all of its trade fixtures and personal property at the Premises at Tenant's risk and shall be insured against loss by fire and other casualties at Tenant's sole expense. If the Premises are partially damaged by fire or other casualty, the damage shall be repaired by the Town at the Town's expense and the rent, until such repairs are completed, shall be abated in proportion to the percentage of the Premises that Tenant is unable to use while repairs are being made. If the Premises are totally destroyed or the casualty results in the whole Premises being unusable by the Tenant, as determined by the Town in its sole discretion, then the Town may elect not to

repair or rebuild the Premises provided that the Town shall make that decision within: (a) twenty (20) business days, if the casualty occurs during the Beach Season; or (b) prior to April 15, if the casualty occurs outside of the Beach Season, and thereupon this Lease shall be terminated upon the third (3rd) day after the Town delivers Notice to the Tenant of the Town's decision and Tenant shall thereupon vacate the Premises and surrender possession to Town as soon as reasonably possible. If this Lease is terminated pursuant to the preceding sentence and Tenant is not in default under this Lease, then Tenant's liability for rent shall cease as of the day following the casualty. Notwithstanding anything in this Lease to the contrary, the Town's obligation to make repairs or rebuild the Premises shall be limited to the amount of the available proceeds of fire or casualty insurance paid to the Town on account of the casualty.

21. **Security Deposit.** The Tenant deposited with the Town the sum of \$6,715.50 (i. e., one month's rent for the Lease Year commencing December 1, 2011) on or before the date of execution of this Lease and the Town acknowledges that the Town is holding that sum (the "Security Deposit"). The Security Deposit shall be security for the full and faithful performance of all obligations of Tenant under this Lease. The rights and remedies reserved to the Town under this Lease are cumulative, and in the event of a default by the Tenant, the Town shall not be required to resort to the Security Deposit before exercising any other remedy available to the Town under this Lease or by law. The Security Deposit will be refunded without interest to the Tenant within forty five (45) days following the expiration of this Lease, except to the extent the Security Deposit has been applied to any damages of the Town on account of Tenant's failure to comply with any obligation of Tenant under this Lease. In no event, except when the Town elects at Town's sole option to do so, may the Tenant set off or apply any part of the Security Deposit against any rent.
22. **Assignment, Sublet and Inspection.** Assignment by Tenant of this Lease or the Concession and subletting the Premises are strictly prohibited. Any attempt to assign this Lease or the Concession or sublet the whole or any part of the Premises without the prior written consent of the Town shall be void. The Town shall have the right to inspect the Premises at any time.
23. **Parks Facilities Privileges.** The Town shall afford to the Tenant privileges with respect to the Town's Parks and Recreation facilities that are equal to those afforded to non-resident real estate taxpayers.
24. **Termination.** If the Town is not satisfied with the performance of the Tenant in operating the Concession, the Town may terminate this Lease for just cause upon delivery of Notice.
25. **Business Manager.** The Tenant covenants and agrees that the Tenant's on-site business manager will be available to meet with a representative of the Department of Parks and Recreation on a weekly basis during the Beach Season to discuss the operation of the Concession.

26. **Notices.** For the purposes of this Lease, "Notice" means only written notification given by one party to the other. Notice may only be given by: a form of US Mail in which the recipient is required to sign a receipt (such as certified, return receipt); a nationally recognized courier service which requires the recipient to sign a receipt (such as Federal Express). All Notices will be effective on receipt. Notice must be given to the other party at the party's Notice Address. The "Notice Address" for each party is as follows.

Town of Westport, Attention: First Selectman, 110 Myrtle Avenue, Westport, CT 06880.

Tenant: Joseph C. Romeo, Jr., 41 Guyer Road, Westport, CT 06880.

27. **Captions.** The captions at the beginning of each paragraph of this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or the scope or content of any of its provisions.

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In witness whereof, the parties have signed on the dates indicated below.

TENANT,
JOSEPH C. ROMEO, JR. d/b/a Joey's By The Shore

Signature Joseph C. Romeo Jr.
Date 7-19-12

TOWN OF WESTPORT

Signature Gordon F. Joseloff
Name Gordon F. Joseloff
Title First Selectman
Date 7/20/12

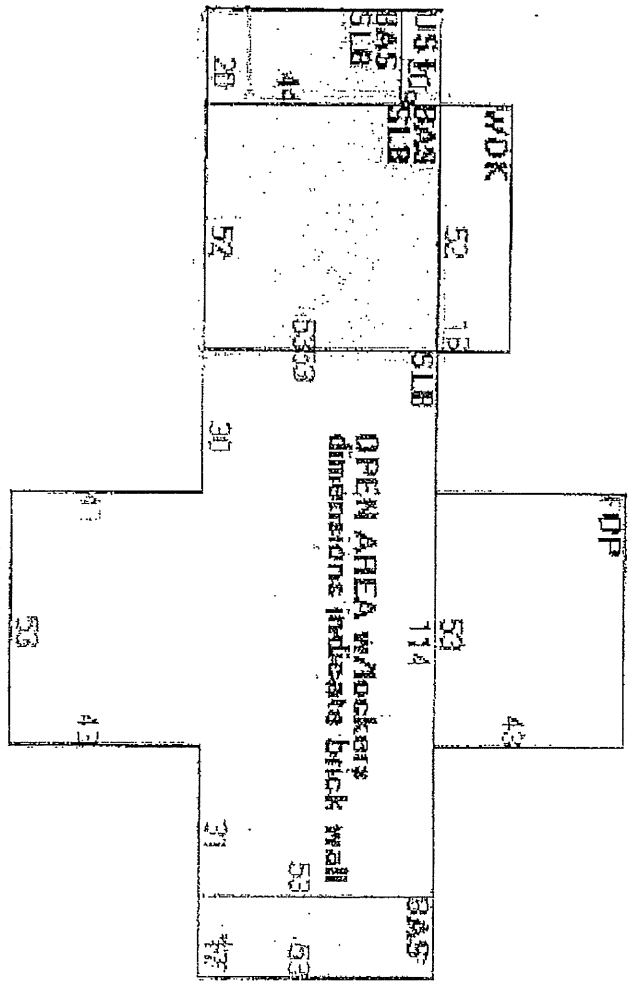
Approved as to Form:

Gail Kelly
Gail Kelly, Assistant Town Attorney

Approved as to compliance with Chapter 12 of the Charter of the Town of Westport:

Gary Conrad
Gary Conrad, Finance Director

SCHEDULE A
THE "PREMISES" IS THE AREA WITHIN THE ORANGE LINES





WESTPORT CONNECTICUT

PARKS AND RECREATION DEPARTMENT

LONGSHORE CLUB PARK

260 SOUTH COMPO ROAD, WESTPORT, CT 06880

(203) 341-5090


April 9, 2018

The Honorable James S. Marpe
First Selectman
Town Hall
110 Myrtle Avenue
Westport, CT 06880

Dear Mr. Marpe:

The Parks and Recreation Department respectfully requests to be placed on the Board of Finance Agenda to approve the First Amendment to Food and Beverage Concession and Leases Halfway House at Longshore Club Park and longshore Pavilion.

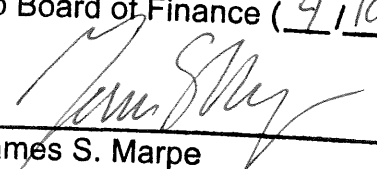
Respectfully,



Jennifer A. Fava
Director of Parks and Recreation

cc: Gary Conrad, Finance Director
Eileen Flug, Assistant Town Attorney

Approved for submission
To Board of Finance (4, 10, 18)



James S. Marpe
First Selectman



WESTPORT CONNECTICUT


PARKS AND RECREATION DEPARTMENT

LONGSHORE CLUB PARK

260 SOUTH COMPO ROAD, WESTPORT, CT 06880

(203) 341-5090

MEMO TO: Board of Finance

MEMO FROM: Jennifer Fava, Director 

DATE: April 9, 2018


RE: **Request for Approval of First Amendment to Food and Beverage Concession and Leases Halfway House at Longshore Club Park and Longshore Pavilion**

Upon request of the Board of Finance, we have come to an agreement with Joseph C. Romeo, Jr. to extend the Concession and Lease for the Halfway House at Longshore Club Park and the Longshore Pavilion to provide services through the 2018 pool and golf seasons.

The agreement is for a sum of \$18,000 for both concessions which is a pro-rated fee based on the current fee structure. This arrangement will allow the continuation of services at these locations for the 2018 summer season while we work towards bringing in a new vendor.

Therefore, the Parks and Recreation recommends the approval of the First Amendment to Food and Beverage Concession and Leases Halfway House at Longshore Club Parks and Longshore Pavilion.

attachments

cc: Gary Conrad, Finance Director 
Eileen Flug, Assistant Town Attorney



**AMENDMENT TO
FOOD AND BEVERAGE CONCESSION AND LEASES

HALFWAY HOUSE AT LONGSHORE CLUB PARK
AND
LONGSHORE PAVILION**

This Amendment to Food and Beverage Concession and Leases ("Amendment") is dated as of April __, 2018 (the "Amendment Effective Date") by and between the TOWN OF WESTPORT (the "Town") and JOSEPH C. ROMEO, JR. (the "Tenant").

RECITALS

- A. The Town entered into a Food and Beverage Concession and Lease Agreement dated July 20, 2012 (the "2012 Halfway House Lease") with the Tenant to lease to the Tenant the kitchen, food preparation and patron service areas situated in the facility known as the Halfway House, located at Longshore Club Park, Westport, Connecticut (the "Halfway House").
- B. The Town entered into a Food and Beverage Concession and Lease Agreement dated July 20, 2012 (the "2012 Longshore Pavilion Lease") with the Tenant to lease to the Tenant the kitchen, food preparation and patron service areas situated in the facility known as the Longshore Pavilion, located at Longshore Club Park, Westport, Connecticut (the "Longshore Pavilion").
- C. The Term of the 2012 Halfway House Lease expired on November 30, 2017.
- D. The Term of the 2018 Longshore Pavilion Lease expired on September 15, 2017.
- E. The Town and the Tenant desire to extend the Term of the 2012 Halfway House Lease and the 2012 Longshore Pavilion Lease, respectively, and to adjust the rent.

NOW THEREFORE, the Town and the Tenant agree as follows.

- 1. **Definitions and Interpretation.** Unless otherwise indicated herein, all capitalized words and phrases used herein shall have the meanings ascribed to them in the 2012 Halfway House Lease and the 2012 Longshore Pavilion Lease, respectively. This Amendment is effective on the Amendment Effective Date as defined above. On and after the Amendment Effective Date, the 2012 Halfway House Lease and the 2012 Longshore Pavilion Lease shall be deemed extended and modified as provided herein, and all of the provisions of the 2012 Halfway House Lease and the 2012 Longshore Pavilion Lease shall remain in full force and effect, except as otherwise provided herein.

2. **The Term.** The Term of the 2012 Halfway House Lease is extended for the period ending November 30, 2018. The Term of the 2012 Longshore Pavilion Lease is hereby extended for the period ending September 15, 2018. Section 8 of the 2012 Halfway House Lease and Section 8 of the 2012 Longshore Pavilion Lease are hereby deleted.
3. **Rent.** Section 6 of the 2012 Halfway House Lease and Section 6 of the 2012 Longshore Pavilion Lease are hereby deleted and replaced with the following:

For the privilege of operating the Concession at the Halfway House and Longshore Pavilion, collectively, the Tenant shall pay as rent the sum of \$18,000.00. Rent shall be due in six (6) equal monthly installments of \$3,000.00 commencing on May 1, 2018 and on the first day of each month thereafter with the last installment due on October 1, 2018.

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IN WITNESS WHEREOF, the Town and the Tenant have caused this First Amendment to be executed on the date(s) written below.

TENANT,
JOSEPH C. ROMEO, JR.

Signature _____
Joseph Romeo, Jr.
Date _____

TOWN OF WESTPORT

Signature _____
James S. Marpe
First Selectman
Date _____

Approved as to Form:

Eileen Lavigne Flug, Assistant Town Attorney

Approved as to compliance with Chapter 12 of the Charter of the Town of Westport:

Gary Conrad, Finance Director

**FOOD AND BEVERAGE CONCESSION AND LEASE
HALFWAY HOUSE AT LONGSHORE CLUB PARK**

This Food and Beverage Concession and Lease is dated as of July 20, 2012 by and between the TOWN OF WESTPORT (the "Town") and JOSEPH C. ROMBO, JR. (the "Tenant").

1. **The Premises.** The Town hereby leases to the Tenant the kitchen, food preparation and patron service areas situated in the facility known as the Halfway House, located at Longshore Club Park, Westport, Connecticut (the "Premises"). The Premises are more particularly shown on Schedule A [*not applicable, the Premises consist of the entire building*].
2. **Definitions.**
 - a. "Concession" means a fast food and beverage service business. The term describes the use of the Premises that is authorized and permitted under this Lease.
 - b. "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the New York, Northern New Jersey and Long Island (NY-NJ-CT-PA) Region (1982-1984 = 100).
 - c. "Effective Date" means July 20, 2012.
 - d. "Lease" means this Food and Beverage Concession and Lease.
 - e. "Lease Year" means December 1 through November 30.
 - f. "Prior Lease" means that certain Lease Agreement between the Town and the Tenant dated April 15, 2007.
 - g. "Golf Season" means April 1 through and including November 30.
3. **The Term.** Unless sooner terminated pursuant to the provisions of this Lease, the term of this Lease shall begin on the Effective Date and end on November 30, 2017 (the "Term").
4. **The Concession.** The Tenant shall have the right to use the Premises to operate the Concession and for no other purpose. The Tenant's right to operate the Concession shall terminate upon the expiration of the Term or earlier termination of this Lease by the Town without requirement for any separate declaration or Notice. The Concession is subject to restrictions, as specified below.

5. **Prior Lease.** Prior to the Effective Date, Tenant occupied the Premises under the Prior Lease. This Lease supersedes the Prior Lease in all respects.

6. **Rent.** For the privilege of operating the Concession at the Premises, Tenant shall pay rent as follows. For the Lease Year commencing December 1, 2011, Tenant will pay rent in the amount of \$7,746.00. For the Lease Year commencing December 1, 2012, Tenant will pay rent in the amount of \$8,133.30. For each subsequent Lease Year of the Term, the rent shall be adjusted to reflect the percent change in the CPI. The percent change in the CPI shall be measured each July by reference to the CPI for the preceding July. On or before each September 15 (beginning with September 15, 2013) the Town shall deliver Notice to the Tenant of the percent change in the CPI and the new rent applicable for the new Lease Year. Notwithstanding anything herein to the contrary, the percent change in the CPI shall not cause the rent to decrease from one Lease Year to the next.

7. **Payment of Rent.** Rent for each Lease Year shall be due in seven (7) installments as follows:

April 1	5%
May 1	15%
June 1	20%
July 1	20%
August 1	20%
September 1	15%
October 1	5%

8. **Option to Extend.** The Tenant shall have the option to extend the Term of this Lease and the Concession for one five (5) year period, beginning December 1, 2017 subject to such conditions as are mutually agreed upon by the Town and the Tenant.

9. **Exclusive Vendor Rights.**
 - a. During the Term and within Longshore Club Park, the Town will not grant any permit or authorization to any third party to sell to consumers or deliver to consumers soft drinks, food or, candy.

 - b. As of the date of this Lease, the exclusive vendor rights granted under Paragraph 9(a) do not apply to any Ancillary Items (defined below at Paragraph 12(j)). The Town's Director of Parks and Recreation may, in his discretion, elect to add specific Ancillary Items to the list to which exclusive vendor rights apply, but it shall be conclusively presumed that exclusive vendor rights do not apply unless Tenant is in possession of a written communication from the Town's Director of Parks and Recreation that makes specific reference to Paragraph 9(a) and the Ancillary Items to which exclusive vendor rights apply.

- c. The Town's covenant of exclusive vendor rights is subject to the following exceptions:
- i. The Town may authorize a restaurant and catering/event facility to operate at the Inn at Longshore and adjacent grounds. It is noted that a restaurant and catering/event facility have operated at the Inn at Longshore with occasional use of the adjacent grounds for private parties for many years;
 - ii. The Town may authorize a food and beverage concession at the Longshore Pavilion located near the swimming pool / ice skating rink. It is noted that a food and beverage concession has operated at the Longshore Pavilion for many years and the Tenant is the current holder of the lease and concession at the Longshore Pavilion; and
 - iii. The Town may authorize beverage vending machines at the marina. It is noted that beverage vending machines have been located at the marina for many years.
10. **Default.** If Tenant: (a) fails to pay any installment of rent within ten (10) days of the due date; (b) receives a second Notice in any one Golf Season of violation of the Continuous Operations Covenant (defined in Paragraph 12(e)); or (c) fails to perform or comply with any other obligation, covenant or condition under this Lease within thirty (30) days after receipt of Notice from the Town (each an "Event of Default"), then the entire balance of rent for the Lease Year in which the Event of Default occurs shall become immediately due and payable at the option of the Town and, at the option of the Town upon delivery of Notice, the Lease shall immediately be terminated. If the Town exercises its right to terminate the Lease, the Tenant shall vacate the Premises within ten (10) days after receipt of Notice and Tenant shall be responsible for all costs, expenses and damages, including attorneys' fees, incurred by the Town if Tenant fails to vacate the Premises within that ten (10) day period.
11. **Tenant's Obligations.** In addition to the obligation to pay rent, Tenant shall have the following obligations.
- a. Each Lease Year, all interior surfaces of the Premises will be redecorated and repainted.
 - b. The Tenant will, at all times, maintain and operate the Concession in compliance with the highest standards and requirements of the Connecticut Department of Health, the Westport/Weston Health District, the Westport Fire Marshall and all applicable federal, state and local regulations.
 - c. *[Modifications necessary to comply with any federal, state or local regulations related to accommodations for the disabled. This clause intentionally deleted. The Halfway House is newly constructed in 2012.]*

- d. The Tenant shall commit no waste, make all necessary repairs to the Premises and surrender the Premises at or upon the termination of this Lease in broom clean condition in at least as good condition as the Premises were on the date of this Lease, reasonable wear and tear excepted.
- e. The Tenant shall install and maintain, at the Tenant's sole expense, adequate freezer and refrigeration equipment to insure the freshness of all food served and as required to meet Health Department regulations.
- f. All beef sold by Tenant on the Premises shall be "one hundred percent USDA Choice".
- g. The Tenant shall provide routine cleaning, maintenance and repair of the hood and ansul system at the Premises.
- h. The Tenant will make the following improvements and upgrades to the Premises before December 31, 2013: None [The Halfway House is newly constructed in 2012]. If the Town authorizes improvements or upgrades to the Premises during the Term, Tenant will deliver copies of all proposed contracts for the improvement and upgrade work to the Town's Director of Parks and Recreation and Building Superintendent for review and approval before commencement of any improvement or upgrade work. The Town shall not unreasonably withhold or delay its approval of any such proposed contract. The Tenant has made a commitment to spend a minimum of \$0.00 on improvements and upgrades during the Term and the Town may withhold its approval on the grounds that the price of any contract is disproportionate to the value of the services to be performed thereunder or is otherwise likely to interfere with the Tenant's commitment.
- i. The Tenant will provide custodial service for the Premises during the Golf Season, including, without limitation, daily cleaning and mopping of the patron service and seating areas and the restrooms and removal of trash from the patron seating areas and restrooms as frequently as necessary to maintain a neat and clean appearance.

12. Covenants Regarding Operations. Tenant covenants and agrees as follows.

- a. Tenant will abide by all conditions and regulations of the Department of Parks and Recreation with respect to hours of opening and closing and the placement of signs.
- b. Tenant will limit employee parking in the lot located at Longshore Club Park to no more than four (4) vehicles at any time. Tenant will require all employee vehicles to park in areas within Longshore Club Park as designated by the staff of the Department of Parks and Recreation.

- c. Tenant will be open for business at the Premises each day during the Golf Season for at least the following hours (the "Requisite Hours").
- i. April 1 through Friday before Memorial Day: 9:00 a.m. to 5:00 p.m.
 - ii. Saturday before Memorial Day through Labor Day: 8:00 a.m. to 7:00 p.m. (full service is not required from 4:30 p.m. to 7:00 p.m.).
 - iii. Tuesday after Labor Day through November 1: 9:00 a.m. to 5:00 p.m. (service is optional after November 1).
- d. Tenant may, with the written consent of the Department of Parks and Recreation, open the Premises for business at other times of the Lease Year or beyond the Requisite Hours.
- e. Tenant promises to open the Premises for business for the Requisite Hours seven days per week during each Golf Season. That promise is referred to as the "Continuous Operations Covenant". If, during any Golf Season, Tenant is not open for business at the Premises for the Requisite Hours for more than two (2) consecutive days or more than five (5) days in the aggregate, the Town may, in its discretion, elect to deliver a Notice of violation of the Continuous Operations Covenant. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to open the Premises for business at any time during which the Town has closed the golf course to the public or closure of Tenant's business is necessitated by dangerous weather or interruption of electrical service.
- f. Tenant shall not sell beverages in glass containers.
- g. Tenant shall at all times offer a base menu of food and beverages at the Premises (the "Base Menu"). In recognition of the fact that the Premises are located in a municipal park, Tenant covenants and agrees that: (i) the price, portion size and quality of each item appearing on the Base Menu will be consistent generally with items sold by year-round Westport restaurants; and (ii) the Base Menu shall be subject to the annual review and approval of the Town. Tenant will deliver to the Director of Parks and Recreation a copy of its proposed Base Menu for each upcoming Golf Season on or before March 1. The Town will not unreasonably withhold or delay its approval of the Base Menu. During the course of a Golf Season, the Tenant will not increase the price of any item appearing on the Base Menu. Notwithstanding anything in this Paragraph to the contrary, the Tenant may serve "Specials" (i. e., items not appearing on the Base Menu) without obtaining the Town's approval, provided that no "Special" may be an inferior substitute, with respect to quantity or quality, for any item appearing on the Base Menu. By way of example, if the Base Menu includes an eight inch hotdog for \$3.00, then the Tenant may not offer, as a "Special", a four inch hotdog for \$2.00.

- h. Tenant will use its best efforts to maintain a proper and wholesome atmosphere in and around the Premises.
- i. Tenant has authorization from the Department of Parks and Recreation to use radios and other musical appliances within the Premises on the strict condition that Tenant will regulate the volume of those devices so that they cannot be heard by people more than ten (10) feet from the Premises and do not disturb the golfers. Tenant acknowledges that failure to abide by that condition may result in the revocation of that authorization. The installation or use of external speakers is prohibited.
- j. In addition to fast food and beverages, Tenant may offer for sale at the Premises such other sundries and associated items as may be approved in writing from time to time by the Town's Director of Parks and Recreation (the "Ancillary Items").

13. **Parking and Traffic Control.** The Department of Parks and Recreation, Parks and Recreation Commission or Board of Selectmen, in its or their sole discretion, may make regulations concerning traffic or parking in Longshore Club Park or may temporarily close part or all of Longshore Club Park. The Tenant waives all claims that it may have now or in the future for loss or damage as a result of regulations concerning traffic, parking or temporary closure of all or part of Longshore Club Park.

14. **Prohibited Uses.** Tenant covenants and agrees that no alcoholic beverages or tobacco products will be kept or sold at the Premises and Tenant will use all reasonable efforts to prevent alcoholic beverages and tobacco products from being used or consumed at the Premises. Tenant covenants and agrees that no pinball machines, arcade games or gambling devices of any nature will be installed, used or maintained at the Premises.

15. **Trade Fixtures and Other Fixtures.**

- a. Any and all trade fixtures and equipment that were or are installed by the Tenant in the Premises are Tenant's property and will be removed by the Tenant at the end of the Term or earlier termination of this Lease. Tenant will be responsible for repairing any damage to the Premises caused by the removal of trade fixtures and equipment installed by the Tenant.
- b. A list of the equipment and fixtures installed by the Town is attached as Exhibit A. The equipment and fixtures listed on Exhibit A and all other items installed by the Town are the Town's property and the Tenant shall surrender possession of that property in good condition, reasonable wear and tear excepted, at the end of the Term or earlier termination of this Lease.
- c. The Tenant will be responsible, at the Tenant's cost and expense for maintaining, repairing and replacing all equipment required to operate the Concession, without regard to whether that equipment was originally installed by the Town or the Tenant. Any change of equipment models must be approved by the Department

of Health. Replacement equipment must be "New" or "Used In Like New Condition". If the Tenant replaces an item of equipment that was originally installed by the Town, the replacement item shall be the Tenant's property for purposes of Paragraph 15(a).

16. Utilities. The Town will provide water service at the Town's cost for water used at the Premises. Tenant will establish accounts in Tenant's name for electricity service and all other utility services required at the Premises directly with the applicable utility service providers and Tenant shall pay the electricity service provider and all other applicable utility service providers within thirty (30) days after Tenant's receipt of each electricity or other utility service bill.

17. Insurance. Tenant shall purchase and maintain for the duration of Tenant's occupancy of the Premises the following insurance.

a. Commercial General Liability Insurance with limits of insurance no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate covering bodily injury and property damage resulting from personal & advertising injury, products and completed operations and operations of the Tenant.

b. Commercial Automobile Insurance for any owned automobiles used in the conduct of Tenant's business in the amount of \$1,000,000 per accident covering bodily injury and property damage on a combined single limit basis. Such coverage shall also include hired and non-owned automobile coverage.

c. Workers' Compensation Insurance in an amount not less than that required by law with employer's liability limits for at least the amounts of liability for bodily injury by accident of \$100,000 each accident and bodily injury by disease of \$100,000 and a policy limit of \$500,000.

d. Each insurance policy procured by the Tenant under this Lease shall: (i) be underwritten by an insurance company licensed to do business in the State of Connecticut; (ii) name the Town as additional insured; (iii) be underwritten on an occurrence basis; (iv) be primary and shall not contribute in any way to any insurance, deductible or self insured retention carried by the Town; (v) contain contractual liability coverage within the policy form; and (vi) provide for not less than thirty (30) days' prior Notice to the Town in the event of cancellation, non-renewal or material change in coverage.

e. All deductibles shall be declared and are subject to the approval of the Town.

f. Upon signing of this Lease and thereafter, from time to time, within ten (10) days of the Town's request, the Tenant shall deliver to the Town evidence satisfactory to the Town that each of the above policies is in effect. In most cases, a standard form certificate of insurance will suffice. The Town reserves the right, however, to require the Tenant to deliver a copy of the policy.

18. **Hold Harmless and Indemnification Covenant.** Tenant shall indemnify and hold harmless the Town, its elected and appointed officials, agents and employees from all claims, demands and judgments of third persons, including, without limitation, those for death, personal injuries and property damage, arising out of the negligent, reckless or intentional acts or omissions of Tenant, its officers, members, employees, agents, contractors, customers, guests, invitees and all other persons doing business with the Tenant.
19. **Taxes and License Fees.** Tenant covenants and agrees to pay all federal, state and local taxes and license fees assessed or imposed on its trade fixtures and personal property and upon the Tenant's business or on income therefrom, provided, however, that the real property of Town leased hereunder will not be subject to taxation by the Town.
20. **Fire or Other Casualty.** Tenant shall keep all of its trade fixtures and personal property at the Premises at Tenant's risk and shall be insured against loss by fire and other casualties at Tenant's sole expense. If the Premises are partially damaged by fire or other casualty, the damage shall be repaired by the Town at the Town's expense and the rent, until such repairs are completed, shall be abated in proportion to the percentage of the Premises that Tenant is unable to use while repairs are being made. If the Premises are totally destroyed or the casualty results in the whole Premises being unusable by the Tenant, as determined by the Town in its sole discretion, then the Town may elect not to repair or rebuild the Premises provided that the Town shall make that decision within thirty (30) days and thereupon this Lease shall be terminated upon the third (3rd) day after the Town delivers Notice to the Tenant of the Town's decision and Tenant shall thereupon vacate the Premises and surrender possession to Town as soon as reasonably possible. If this Lease is terminated pursuant to the preceding sentence and Tenant is not in default under this Lease, then Tenant's liability for rent shall cease as of the day following the casualty. Notwithstanding anything in this Lease to the contrary, the Town's obligation to make repairs or rebuild the Premises shall be limited to the amount of the available proceeds of fire or casualty insurance paid to the Town on account of the casualty.
21. **Security Deposit.** The Tenant has deposited with the Town the sum of \$645.50 (i. e., one month's rent for the Lease Year commencing December 1, 2011) on or before the date of execution of this Lease and the Town acknowledges that the Town is holding that sum (the "Security Deposit"). The Security Deposit shall be security for the full and faithful performance of all obligations of Tenant under this Lease. The rights and remedies reserved to the Town under this Lease are cumulative, and in the event of a default by the Tenant, the Town shall not be required to resort to the Security Deposit before exercising any other remedy available to the Town under this Lease or by law. The Security Deposit will be refunded without interest to the Tenant within forty five (45) days following the expiration of this Lease, except to the extent the Security Deposit has been applied to any damages of the Town on account of Tenant's failure to comply with any obligation of Tenant under this Lease. In no event, except when the Town elects at Town's sole option to do so, may the Tenant set off or apply any part of the Security Deposit against any rent.

22. **Assignment, Sublet and Inspection.** Assignment by Tenant of this Lease or the Concession and subletting the Premises are strictly prohibited. Any attempt to assign this Lease or the Concession or sublet the whole or any part of the Premises without the prior written consent of the Town shall be void. The Town shall have the right to inspect the Premises at any time.
23. **Parks Facilities Privileges.** The Town shall afford to the Tenant privileges with respect to the Town's Parks and Recreation facilities that are equal to those afforded to non-resident real estate taxpayers.
24. **Termination By Town.** If the Town is not satisfied with the performance of the Tenant in operating the Concession, the Town may terminate this Lease for just cause upon delivery of Notice.
25. **Tenant's Early Termination Option.** The Town grants to the Tenant the right to terminate this Lease effective as of the last day of the 2013-2014 Golf Season (i. e., November 30, 2014) and the last day of each subsequent Golf Season (each an "Early Termination Date"), provided that the Tenant delivers to the Town Notice of the Tenant's intent to terminate the Lease at least six (6) months before the Early Termination Date. If the Tenant exercises its early termination option under this Paragraph, the Landlord shall be entitled to retain - and the Tenant hereby releases all claims to - the Security Deposit. Termination pursuant to this Paragraph automatically terminates the Concession.
26. **Business Manager.** The Tenant covenants and agrees that the Tenant's on-site business manager will be available to meet with a representative of the Department of Parks and Recreation on a weekly basis during each Operating Season to discuss the operation of the Concession.
27. **Notices.** For the purposes of this Lease, "Notice" means only written notification given by one party to the other. Notice may only be given by: a form of US Mail in which the recipient is required to sign a receipt (such as certified, return receipt); a nationally recognized courier service which requires the recipient to sign a receipt (such as Federal Express). All Notices will be effective on receipt. Notice must be given to the other party at the party's Notice Address. The "Notice Address" for each party is as follows.
- Town of Westport, Attention: First Selectman, 110 Myrtle Avenue, Westport, CT 06880.
- Tenant: Joseph C. Romeo, Jr., 41 Guyer Road, Westport, CT 06880.
28. **Captions.** The captions at the beginning of each paragraph of this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or the scope or content of any of its provisions.

In witness whereof, the parties have signed on the dates indicated below.

TENANT,
JOSEPH C. ROMEO, JR.

Signature Joseph C. Romeo, Jr.
Date 7-19-12

TOWN OF WESTPORT

Signature Gordon F. Joseloff
Name Gordon F. Joseloff
Title First Selectman
Date 7/20/12

Approved as to Form:

Gail Kelly
Gail Kelly, Assistant Town Attorney

Approved as to compliance with Chapter 12 of the Charter of the Town of Westport:

Gary Conrad
Gary Conrad, Finance Director

EXHIBIT A
LIST OF EQUIPMENT AND FIXTURES INSTALLED BY THE TOWN

The following items will be furnished by Town and remain property of Town.

- Three compartment sink with drain board
- Hand sink
- Beverage – air refrigerated sandwich unit
- Connolly Roll-a-Grill
- Beverage – air refrigerated reach in freezer
- True work top freezer
- Stainless steel work tables
- Metro wire shelving
- Panasonic commercial microwave
- Cadco Convection oven
- Bunn cappuccino/hot chocolate machine
- Bunn coffee brewer
- Hoshizaki ice machine
- 18" Griddle

The following items are anticipated to be provided by food and beverage vendors and remain the property of those vendors.

- Beverage – air refrigerated display case
- True refrigerated display case
- Good Humor/Haagen-Daz self serve ice cream freezer (model to be determined)
- Coke soda fountain (model to be determined)

**FOOD AND BEVERAGE CONCESSION AND LEASE
LONGSHORE PAVILION**

This Food and Beverage Concession and Lease is dated as of July 20, 2012 by and between the TOWN OF WESTPORT (the "Town") and JOSEPH C. ROMEO, JR. (the "Tenant").

1. **The Premises.** The Town hereby leases to the Tenant the kitchen, food preparation and patron service areas situated in the facility known as the Longshore Pavilion, located at Longshore Club Park, Westport, Connecticut (the "Premises"). The Premises are more particularly shown on Schedule A.
2. **Definitions.**
 - a. "Concession" means a fast food and beverage service business. The term describes the use of the Premises that is authorized and permitted under this Lease.
 - b. "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the New York, Northern New Jersey and Long Island (NY-NJ-CT-PA) Region (1982-1984 = 100).
 - c. "Effective Date" means July 20, 2012.
 - d. "Lease" means this Food and Beverage Concession and Lease.
 - e. "Lease Year" means September 16 through September 15.
 - f. "Prior Lease" means that certain License Agreement between the Town and the Tenant dated April 1, 2002.
 - g. "Pool Season" means the Saturday before Memorial Day through and including Labor Day.
 - h. "Skating Season" means November 15 through and including March 15.
 - i. "Operating Season" means a Pool Season or a Skating Season.
3. **The Term.** Unless sooner terminated pursuant to the provisions of this Lease, the term of this Lease shall begin on the Effective Date and end on September 15, 2017 (the "Term").
4. **The Concession.** The Tenant shall have the right to use the Premises to operate the Concession and for no other purpose. The Tenant's right to operate the Concession shall

terminate upon the expiration of the Term or earlier termination of this Lease by the Town without requirement for any separate declaration or Notice. The Concession is subject to restrictions, as specified below.

5. **Prior Lease.** Prior to the Effective Date, Tenant occupied the Premises under the Prior Lease. This Lease supersedes the Prior Lease in all respects.
6. **Rent.** For the privilege of operating the Concession at the Premises, Tenant shall pay rent as follows. For the Lease Year commencing September 16, 2011, Tenant will pay rent in the amount of \$32,457.48. For the Lease Year commencing September 16, 2012, Tenant will pay rent in the amount of \$34,080.14. For each subsequent Lease Year of the Term, the rent shall be adjusted to reflect the percent change in the CPI. The percent change in the CPI shall be measured each July by reference to the CPI for the preceding July. On or before each September 15 (beginning with September 15, 2013) the Town shall deliver Notice to the Tenant of the percent change in the CPI and the new rent applicable for the new Lease Year. Notwithstanding anything herein to the contrary, the percent change in the CPI shall not cause the rent to decrease from one Lease Year to the next.
7. **Payment of Rent.** Rent for each Lease Year shall be due in twelve (12) monthly installments as follows: (a) five percent (5%) on October 1, November 1, December 1, January 1, February 1, March 1, April 1, and May 1; and (b) fifteen percent (15%) on June 1, July 1, August 1 and September 1.
8. **Option to Extend.** The Tenant shall have the option to extend the Term of this Lease and the Concession for one five (5) year period, beginning September 16, 2017 subject to such conditions as are mutually agreed upon by the Town and the Tenant.
9. **Exclusive Vendor Rights.**
 - a. During the Term and within Longshore Club Park, the Town will not grant any permit or authorization to any third party to sell to consumers or deliver to consumers soft drinks, food or candy.
 - b. As of the date of this Lease, the exclusive vendor rights granted under Paragraph 9(a) do not apply to any Ancillary Items (defined below at Paragraph 12(k)). The Town's Director of Parks and Recreation may, in his discretion, elect to add specific Ancillary Items to the list to which exclusive vendor rights apply, but it shall be conclusively presumed that exclusive vendor rights do not apply unless Tenant is in possession of a written communication from the Town's Director of Parks and Recreation that makes specific reference to Paragraph 9(a) and the Ancillary Items to which exclusive vendor rights apply.
 - c. The Town's covenant of exclusive vendor rights is subject to the following exceptions:

- i. The Town may authorize a restaurant and catering/event facility to operate at the Inn at Longshore and adjacent grounds. It is noted that a restaurant and catering/event facility have operated at the Inn at Longshore with occasional use of the adjacent grounds for private parties for many years;
 - ii. The Town may authorize a food and beverage concession at the Halfway House located on the golf course. It is noted that a food and beverage concession has operated on the golf course for many years and the Tenant is the current holder of the lease and concession at the Halfway House; and
 - iii. The Town may authorize beverage vending machines at the marina. It is noted that beverage vending machines have been located at the marina for many years.
10. **Default.** If Tenant: (a) fails to pay any installment of rent within ten (10) days of the due date; (b) receives a second Notice in any one Operating Season of violation of the Continuous Operations Covenant (defined in Paragraph 12(e)); or (c) fails to perform or comply with any other obligation, covenant or condition under this Lease within thirty (30) days after receipt of Notice from the Town (each an "Event of Default"), then the entire balance of rent for the Lease Year in which the Event of Default occurs shall become immediately due and payable at the option of the Town and, at the option of the Town upon delivery of Notice, the Lease shall immediately be terminated. If the Town exercises its right to terminate the Lease, the Tenant shall vacate the Premises within ten (10) days after receipt of Notice and Tenant shall be responsible for all costs, expenses and damages, including attorneys' fees, incurred by the Town if Tenant fails to vacate the Premises within that ten (10) day period.
11. **Tenant's Obligations.** In addition to the obligation to pay rent, Tenant shall have the following obligations.
 - a. Each Lease Year, all interior surfaces of the Premises will be redecorated and repainted.
 - b. The Tenant will, at all times, maintain and operate the Concession in compliance with the highest standards and requirements of the Connecticut Department of Health, the Westport/Weston Health District, the Westport Fire Marshall and all applicable federal, state and local regulations.
 - c. If modifications to the Premises become necessary to comply with any federal, state or local regulations related to accommodations for the disabled, the Town shall be responsible for the cost of those modifications except that the Town may, upon Notice to Tenant, elect to terminate this Lease if the cost of the modifications exceeds five thousand dollars (\$5,000).

- d. The Tenant shall commit no waste, make all necessary repairs to the Premises and surrender the Premises at or upon the termination of this Lease in broom clean condition in at least as good condition as the Premises were on the date of this Lease, reasonable wear and tear excepted.
- e. The Tenant shall install and maintain, at the Tenant's sole expense, adequate freezer and refrigeration equipment to insure the freshness of all food served and as required to meet Health Department regulations.
- f. All beef sold by Tenant on the Premises shall be "one hundred percent USDA Choice".
- g. Tenant shall provide routine cleaning, maintenance and repair of the hood and ansul system at the Premises.
- h. Tenant will make the following improvements and upgrades to the Premises before December 31, 2013: None. If the Town authorizes improvements or upgrades to the Premises during the Term, Tenant will deliver copies of all proposed contracts for the improvement and upgrade work to the Town's Director of Parks and Recreation and Building Superintendent for review and approval before commencement of any improvement or upgrade work. The Town shall not unreasonably withhold or delay its approval of any such proposed contract. The Tenant has made a commitment to spend a minimum of \$0.00 on improvements and upgrades during the Term and the Town may withhold its approval on the grounds that the price of any contract is disproportionate to the value of the services to be performed thereunder or is otherwise likely to interfere with the Tenant's commitment.

12. **Covenants Regarding Operations.** Tenant covenants and agrees as follows.

- a. Tenant will abide by all conditions and regulations of the Department of Parks and Recreation with respect to hours of opening and closing and the placement of signs.
- b. Tenant will limit employee parking in the lot located at Longshore Club Park to no more than four (4) vehicles at any time. Tenant will require all employee vehicles to park in areas within Longshore Club Park as designated by the staff of the Department of Parks and Recreation.
- c. Tenant will be open for business at the Premises each day for at least the following hours (the "Requisite Hours").
 - i. During the Pool Season: from the Saturday before Memorial Day through June 14, from 3:00 p.m. to 7:00 p.m., and from June 15 through Labor Day from 10:00 a.m. to 7:00 p.m.

- ii. During the Skating Season from 10:00 a.m. to 7:00 p.m.
- d. Tenant may, with the written consent of the Department of Parks and Recreation, open the Premises for business at other times of the Lease Year or beyond the Requisite Hours.
- e. Tenant promises to open the Premises for business for the Requisite Hours seven days per week during each Operating Season. That promise is referred to as the "Continuous Operations Covenant". If, during any Operating Season, Tenant is not open for business at the Premises for the Requisite Hours for more than two (2) consecutive days or more than five (5) days in the aggregate, then the Town may, in its discretion, elect to deliver a Notice of violation of the Continuous Operations Covenant. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to open the Premises for business at any time during which the Town has closed the swimming pool or ice skating rink to the public or closure of Tenant's business is necessitated by dangerous weather or interruption of electrical service.
- f. Tenant shall not sell beverages in glass containers.
- g. Tenant shall at all times offer a base menu of food and beverages at the Premises (the "Base Menu"). In recognition of the fact that the Premises are located in a municipal park, Tenant covenants and agrees that: (i) the price, portion size and quality of each item appearing on the Base Menu will be consistent generally with items sold by year-round Westport restaurants; and (ii) the Base Menu shall be subject to the annual review and approval of the Town. Tenant will deliver to the Director of Parks and Recreation a copy of its proposed Base Menu for each upcoming Pool Season on or before March 1 and for each upcoming Skating Season on or before November 1, provided that delivery of a proposed Base Menu for a Skating Season shall not be required if it is the same as the Base Menu in effect for the immediately preceding Pool Season. The Town will not unreasonably withhold or delay its approval of the Base Menu. During the course of an Operating Season, the Tenant will not increase the price of any item appearing on the Base Menu. Notwithstanding anything in this Paragraph to the contrary, the Tenant may serve "Specials" (i. e., items not appearing on the Base Menu) without obtaining the Town's approval, provided that no "Special" may be an inferior substitute, with respect to quantity or quality, for any item appearing on the Base Menu. By way of example, if the Base Menu includes an eight inch hotdog for \$3.00, then the Tenant may not offer, as a "Special", a four inch hotdog for \$2.00.
- h. Tenant will use its best efforts to maintain a proper and wholesome atmosphere in and around the Premises.
- i. Tenant has authorization from the Department of Parks and Recreation to use radios and other musical appliances within the Premises on the strict condition

that Tenant will regulate the volume of those devices so that they cannot be heard by people more than ten (10) feet from the Premises. Tenant acknowledges that failure to abide by that condition may result in the revocation of that authorization. The installation or use of external loudspeakers is prohibited.

j. Food and beverage deliveries to the Premises shall occur between the hours of 5:00 a.m. and 9:00 a.m. Tenant will use its best efforts to comply with that restriction, including, without limitation, instructing its food and beverage vendors to comply with the restriction.

k. In addition to fast food and beverages, Tenant may offer for sale at the Premises such other sundries and associated items as may be approved in writing from time to time by the Town's Director of Parks and Recreation (the "Ancillary Items").

13. **Parking and Traffic Control.** The Department of Parks and Recreation, Parks and Recreation Commission or Board of Selectmen, in its or their sole discretion, may make regulations concerning traffic or parking in Longshore Club Park or may temporarily close part or all of Longshore Club Park. The Tenant waives all claims that it may have now or in the future for loss or damage as a result of regulations concerning traffic, parking or temporary closure of all or part of Longshore Club Park.

14. **Prohibited Uses.** Tenant covenants and agrees that no alcoholic beverages or tobacco products will be kept or sold at the Premises and Tenant will use all reasonable efforts to prevent alcoholic beverages and tobacco products from being used or consumed at the Premises. Tenant covenants and agrees that no pinball machines, arcade games or gambling devices of any nature will be installed, used or maintained at the Premises.

15. **Trade Fixtures and Other Fixtures.**

a. Any and all trade fixtures, including, without limitation, cooking equipment, soda fountains, fryolators, frozen drink machines, grills, coffee urns, refrigerators, freezers, ice machines, tables, chairs, counters and countertops that were or are installed by the Tenant in the Premises are Tenant's property and will be removed by the Tenant at the end of the Term or earlier termination of this Lease. Tenant will be responsible for repairing any damage to the Premises caused by the removal of those items.

b. The electric hot water heater, hood, grill, plumbing, insulation, shelving and all other items installed by the Town are the Town's property and the Tenant shall surrender possession of that property in good condition, reasonable wear and tear excepted, at the end of the Term or earlier termination of this Lease.

c. The Tenant will be responsible, at the Tenant's cost and expense for maintaining, repairing and replacing all equipment required to operate the Concession, without regard to whether that equipment was originally installed by the Town or the Tenant. Any change of equipment models must be approved by the Department

of Health. Replacement equipment must be "New" or "Used In Like New Condition". If the Tenant replaces an item of equipment that was originally installed by the Town, the replacement item shall be the Tenant's property for purposes of Paragraph 15(a).

16. **Utilities.** The Town will provide water service at the Town's cost for water used at the Premises. The Town will provide for electricity service to the Premises subject to the Tenant's obligation to pay for all electricity consumed at the Premises as follows. If the electricity service account is held in the Town's name, then Tenant shall pay the Town within ten (10) days after Tenant's receipt of each bill from the Town. If the electricity service account is held in the Tenant's name, then the Tenant shall pay the electricity service provider within thirty (30) days after Tenant's receipt of each bill from the electricity service provider. If other utility services are used at the Premises, Tenant will be responsible for paying for the utility services used as follows. If the utility service account is held in the Town's name, then Tenant shall pay the Town within ten (10) days after tenant's receipt of each bill from the Town. If the utility service account is held in the Tenant's name, then Tenant shall pay the utility service provider within thirty (30) days after Tenant's receipt of each bill from the utility service provider.
17. **Insurance.** Tenant shall purchase and maintain for the duration of Tenant's occupancy of the Premises the following insurance.
 - a. Commercial General Liability Insurance with limits of insurance no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate covering bodily injury and property damage resulting from persona & advertising injury, products and completed operations and operations of the Tenant.
 - b. Commercial Automobile Insurance for any owned automobiles used in the conduct of Tenant's business in the amount of \$1,000,000 per accident covering bodily injury and property damage on a combined single limit basis. Such coverage shall also include hired and non-owned automobile coverage.
 - c. Workers' Compensation Insurance in an amount not less than that required by law with employer's liability limits for at least the amounts of liability for bodily injury by accident of \$100,000 each accident and bodily injury by disease of \$100,000 and a policy limit of \$500,000.
 - d. Each insurance policy procured by the Tenant under this Lease shall: (i) be underwritten by an insurance company licensed to do business in the State of Connecticut; (ii) name the Town as additional insured; (iii) be underwritten on an occurrence basis; (iv) be primary and shall not contribute in any way to any insurance, deductible or self insured retention carried by the Town; (v) contain contractual liability coverage within the policy form; and (vi) provide for not less than thirty (30) days' prior Notice to the Town in the event of cancellation, non-renewal or material change in coverage.

- e. All deductibles shall be declared and are subject to the approval of the Town.
 - f. Upon signing of this Lease and thereafter, from time to time, within ten (10) days of the Town's request, the Tenant shall deliver to the Town evidence satisfactory to the Town that each of the above policies is in effect. In most cases, a standard form certificate of insurance will suffice. The Town reserves the right, however, to require the Tenant to deliver a copy of the policy.
18. **Hold Harmless and Indemnification Covenant.** Tenant shall indemnify and hold harmless the Town, its elected and appointed officials, agents and employees from all claims, demands and judgments of third persons, including, without limitation, those for death, personal injuries and property damage, arising out of the negligent, reckless or intentional acts or omissions of Tenant, its officers, members, employees, agents, contractors, customers, guests, invitees and all other persons doing business with the Tenant.
19. **Taxes and License Fees.** Tenant covenants and agrees to pay all federal, state and local taxes and license fees assessed or imposed on its trade fixtures and personal property and upon the Tenant's business or on income therefrom, provided, however, that the real property of Town leased hereunder will not be subject to taxation by the Town.
20. **Fire or Other Casualty.** Tenant shall keep all of its trade fixtures and personal property at the Premises at Tenant's risk and shall be insured against loss by fire and other casualties at Tenant's sole expense. If the Premises are partially damaged by fire or other casualty, the damage shall be repaired by the Town at the Town's expense and the rent, until such repairs are completed, shall be abated in proportion to the percentage of the Premises that Tenant is unable to use while repairs are being made. If the Premises are totally destroyed or the casualty results in the whole Premises being unusable by the Tenant, as determined by the Town in its sole discretion, then the Town may elect not to repair or rebuild the Premises provided that the Town shall make that decision within thirty (30) days and thereupon this Lease shall be terminated upon the third (3rd) day after the Town delivers Notice to the Tenant of the Town's decision and Tenant shall thereupon vacate the Premises and surrender possession to Town as soon as reasonably possible. If this Lease is terminated pursuant to the preceding sentence and Tenant is not in default under this Lease, then Tenant's liability for rent shall cease as of the day following the casualty. Notwithstanding anything in this Lease to the contrary, the Town's obligation to make repairs or rebuild the Premises shall be limited to the amount of the available proceeds of fire or casualty insurance paid to the Town on account of the casualty.
21. **Security Deposit.** The Tenant has deposited with the Town the sum of \$2,704.67 (i. e., one month's rent for the Lease Year commencing September 16, 2011) on or before the date of execution of this Lease and the Town acknowledges that the Town is holding that sum (the "Security Deposit"). The Security Deposit shall be security for the full and faithful performance of all obligations of Tenant under this Lease. The rights and remedies reserved to the Town under this Lease are cumulative, and in the event of a default by the

Tenant, the Town shall not be required to resort to the Security Deposit before exercising any other remedy available to the Town under this Lease or by law. The Security Deposit will be refunded without interest to the Tenant within forty five (45) days following the expiration of this Lease, except to the extent the Security Deposit has been applied to any damages of the Town on account of Tenant's failure to comply with any obligation of Tenant under this Lease. In no event, except when the Town elects at Town's sole option to do so, may the Tenant set off or apply any part of the Security Deposit against any rent.

22. **Assignment, Sublet and Inspection.** Assignment by Tenant of this Lease or the Concession and subletting the Premises are strictly prohibited. Any attempt to assign this Lease or the Concession or sublet the whole or any part of the Premises without the prior written consent of the Town shall be void. The Town shall have the right to inspect the Premises at any time.
23. **Parks Facilities Privileges.** The Town shall afford to the Tenant privileges with respect to the Town's Parks and Recreation facilities that are equal to those afforded to non-resident real estate taxpayers.
24. **Termination By Town.** If the Town is not satisfied with the performance of the Tenant in operating the Concession, the Town may terminate this Lease for just cause upon delivery of Notice.
25. **Tenant's Early Termination Option.** The Town grants to the Tenant the right to terminate this Lease effective as of the last day of the 2013-2014 Skating Season (i. e., March 15, 2014) and the last day of each subsequent Skating Season (each an "Early Termination Date"), provided that the Tenant delivers to the Town Notice of the Tenant's intent to terminate the Lease at least six (6) months before the Early Termination Date. If the Tenant exercises its early termination option under this Paragraph, the Landlord shall be entitled to retain - and the Tenant hereby releases all claims to - the Security Deposit. Termination pursuant to this Paragraph automatically terminates the Concession.
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This space intentionally left blank. The next page is the signature page.

In witness whereof, the parties have signed on the dates indicated below.

TENANT,
JOSEPH C. ROMEO, JR.

Signature Joseph C. Romeo Jr
Date 7-19-12

TOWN OF WESTPORT

Signature Gordon F. Joseloff
Name Gordon F. Joseloff
Title First Selectman
Date 8/20/12

Approved as to Form:

Gail Kelly
Gail Kelly, Assistant Town Attorney

Approved as to compliance with Chapter 12 of the Charter of the Town of Westport:

Gary Conrad
Gary Conrad, Finance Director

SCHEDULE A
FLOOR PLAN SHOWING THE PREMISES

The Premises are shown as the area within the purple lines on the following page.

