

FOOD AND BEVERAGE CONCESSION AND LEASE

This Food and Beverage Concession and Lease is dated as of July ____, 2020 by and between the TOWN OF WESTPORT (the “Town”) and UPSILON ENTERTAINMENT GROUP, LLC (the “Tenant”).

1. **The Premises.** The Town hereby leases to the Tenant the following premises located in Westport, Connecticut:
 - a. The kitchen, food preparation and patron service areas situated in the building known as the Pavilion at Compo Beach (the “Compo Beach Pavilion Space”), which premises are more particularly shown on Exhibit A;
 - b. The building known as the Halfway House, located at Longshore Club Park, Westport, Connecticut (the “Halfway House”); and
 - c. The kitchen, food preparation and patron service areas situated in the building known as the Longshore Pavilion, located at Longshore Club Park, Westport, Connecticut shown on Exhibit B (the “Longshore Pavilion Space”).
 - d. The Compo Beach Pavilion Space, the Halfway House and the Longshore Pavilion Space are sometimes referred to collectively as the “Premises”.

2. **Definitions.**
 - a. “Base Rent” means, for each Lease Year, the amount indicated in the column labeled *Base Rent Per Lease Year* in the table at Paragraph 5.
 - b. “Beach Season” means April 15 through and including October 31.
 - c. “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.
 - d. “Effective Date” means April 1, 2020.
 - e. “Golf Season” means April 1 through and including November 15.
 - f. “Gross Revenue” means the total dollar amount of receipts from the sale of food, beverages and Ancillary Items at the Premises.
 - g. “Gross Revenue Percentage” means, for each Lease Year during the Initial Term, the percentage indicated in the column labeled *Gross Revenue Percentage* in Paragraph 5.

- h. “Lease” means this Food and Beverage Concession and Lease.
 - i. “Lease Year” means November 16 through November 15.
 - j. “Operating Season” means any of the following: a Beach Season; a Pool Season; a Skating Season; or a Golf Season.
 - k. “Pool Season” means the Saturday before Memorial Day through and including Labor Day.
 - l. “Requisite Hours” means and includes the Beach Pavilion Requisite Hours, the Halfway House Requisite Hours and the Longshore Pavilion Requisite Hours.
 - m. “Revenue Supplement” means, for each Lease Year, the amount, if any, by which the product of the Gross Revenue and the Gross Revenue Percentage exceeds the Base Rent. *Example A: For the Lease Year beginning 11/16/2023 and ending 11/15/2024, the Gross Revenue is \$1,100,000. Revenue Supplement = $(\$1,100,000 \times .12) - \$120,000 = \$12,000$. Example B: For the Lease Year beginning 11/16/2023 and ending 11/15/2024, the Gross Revenue is \$1,250,000. Revenue Supplement = $(\$1,250,000 \times .12) - \$120,000 = \$30,000$.*
 - n. “Skating Season” means November 16 through and including March 15.
 - o. “Term” means the period of time during which Tenant is entitled possession of the Premises in accordance with the provisions of this Lease, but does not include any hold over period.
3. **Initial Term and Extension Options.**
- a. Unless sooner terminated pursuant to the provisions of this Lease, the Term shall begin on the Effective Date and end on November 15, 2024 (the “Initial Term”).
 - b. The Tenant shall have the option to extend the Initial Term for two 5-year periods, beginning November 16, 2024 and November 16, 2029, respectively, subject to such conditions as are mutually agreed upon by the Town and the Tenant.
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. **Rent.** For the privilege of operating the Concession at the Premises, Tenant shall pay rent as follows. Base Rent for each Lease Year will be due in three (3) installments on

June 1, July 15 and September 1, as indicated in the following table. If, for any Lease Year, the product of the Gross Revenue and the Gross Revenue Percentage exceeds the Base Rent, then, in addition to the Base Rent, Tenant shall pay the Revenue Supplement to the Town by December 31, as indicated in the following table.

Base Rent Payments Due	Base Rent Per Lease Year	Base Rent Installment Amount	Gross Revenue Percentage	Revenue Supplement Payment Due
06/01/2020 07/15/2020 09/01/2020	\$100,000	\$33,333 \$33,333 \$33,334	10%	12/31/2020
06/01/2021 07/15/2021 09/01/2021	\$100,000	\$33,333 \$33,333 \$33,334	10%	12/31/2021
06/01/2022 07/15/2022 09/01/2022	\$110,000	\$36,666 \$36,666 \$36,667	12%	12/31/2022
06/01/2023 07/15/2023 09/01/2023	\$115,000	\$38,333 \$38,333 \$38,334	12%	12/31/2023
06/01/2024 07/15/2024 09/01/2024	\$120,000	\$40,000 \$40,000 \$40,000	12%	12/31/2024

6. Exclusive Vendor Rights.

- a. During the Term and within Longshore Club Park and 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, or candy.
- b. As of the Effective Date, the exclusive vendor rights granted under Paragraph 6(a) do not apply to any Ancillary Items (defined below at Paragraph 9(r)). The Town’s Director of Parks and Recreation may, in her 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 6(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 several decades. For purposes of this Lease, “Adjacent Grounds” means the area indicated on Exhibit C.

- ii. The Town may authorize beverage vending machines at the marinas. It is noted that beverage vending machines have been located at the marinas for many years.
 - iii. The Town may authorize private parties at Compo Beach and Longshore Club Park to be professionally catered by third party caterers. Private parties at Compo Beach and Longshore Club Park are subject to the customary permit requirements of the Department of Parks and Recreation. Tenant will not have exclusive or preferential rights with respect to catering private parties at Compo Beach and Longshore Club Park. Tenant may, however, place within the Compo Beach Pavilion Space and the Longshore Pavilion Space signs advertising Tenant's catering services. The size, design and number of signs advertising Tenant's catering services are subject to compliance with applicable Town ordinances and regulations and the prior written approval of the Town's Director of Parks and Recreation.
- 7. **Default.** If Tenant: (a) fails to pay any installment of Base Rent or Revenue Supplement within ten (10) Business 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 9(i)); 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 Base Rent and Revenue Supplement 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. For the purposes of this Lease, "Business Day" means Monday through and including Friday, excluding legal holidays in the State of Connecticut.
- 8. **Tenant's Obligations.** In addition to the obligation to pay Base Rent and Revenue Supplement, Tenant shall have the following obligations at the Tenant's sole cost and expense.
 - a. Tenant shall paint and repaint the interior surfaces of the Premises as frequently as reasonably necessary in order to maintain an appearance that is attractive and inviting to the public.
 - b. Tenant shall, 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. Tenant shall, 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 Effective Date, reasonable wear and tear excepted.
- d. The Tenant shall install and maintain adequate freezer and refrigeration equipment to ensure the freshness of all food served and as required to meet Health Department regulations.
- e. All beef sold by Tenant shall be “one hundred percent USDA Choice”.
- f. Tenant shall provide routine cleaning, maintenance and repair of the hood and ansul systems at the Premises.
- g. Except for interior painting, Tenant shall not make any alteration or improvement to the Premises or to any other portion of the buildings in which the Premises are located unless Tenant has secured all approvals and permits required under applicable Connecticut statutes and the Town’s regulations and ordinances and obtained the prior written consent of the Town’s Director of Parks and Recreation and Building Superintendent. The Town’s Director of Parks and Recreation and Building Superintendent will not unreasonably withhold consent to alterations or improvements, but, prior to delivering consent, may require Tenant to submit improvement plans, the identity of the contractor or contractors to perform the work and references for those contractors. Prior to commencement of alteration or improvement work, the Town may, in accordance with applicable statutes and the Town’s customary practices, require the Tenant to deliver performance and labor and materials payment bonds. Prior to commencement of alteration or improvement work, the Town will require Tenant to deliver a certificate or certificates of insurance for the each contractor, showing public liability insurance coverage, workers’ compensation insurance coverage and any other insurance coverage reasonably required by the Town, which certificate or certificates name the Town as an additional insured and provide that the coverage will not be canceled or non-renewed without at least thirty (30) days’ advance written notice to the Town. All work performed by or through Tenant shall be performed in full compliance with all applicable laws, codes and regulations and shall be carried out in a prompt and workmanlike manner. Tenant will be responsible for the cost of all permits and will promptly pay all contractors and suppliers hired by Tenant to furnish labor or materials.
- h. Tenant will provide custodial service for the Premises as follows: (i) for the Compo Beach Pavilion during the Beach Season; (ii) for the Halfway House during the Golf Season; and (iii) for the Longshore Pavilion Space during the Pool Season and the Skating Season. The custodial service to be provided by Tenant shall include, without limitation, routine cleaning and mopping of the patron service and seating areas (at least once per day), and removal of trash from

the patron service and seating areas as frequently as necessary to maintain a neat and clean appearance.

9. **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 limit employee parking in the lot directly behind the Pavilion at Compo Beach 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 designated by the staff of the Department of Parks and Recreation.
 - d. During each Beach Season, Tenant will be open for business at the Compo Beach Pavilion Space each day for at least the following hours (the "Beach Pavilion 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.
 - e. During each Golf Season, Tenant will be open for business at the Halfway House each day for at least the following hours (the "Halfway House 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.
 - iii. Tuesday after Labor Day through November 1: 9:00 a.m. to 5:00 p.m. (service is optional after November 1).
 - f. Tenant will be open for business at the Longshore Pavilion Space each day for at least the following hours (the "Longshore Pavilion Requisite Hours"):
 - i. During the Pool Season: Saturday before Memorial Day through June 14, 3:00 p.m. to 7:00 p.m., and June 15 through Labor Day from 10:00 a.m. to 7:00 p.m.; and
 - ii. During the Skating Season from 10:00 a.m. to 7:00 p.m.
 - g. Tenant may, with the written consent of the Department of Parks and Recreation, open the Compo Beach Pavilion Space, the Halfway House or the Longshore

Pavilion Space for business at other times of the Lease Year or beyond the Requisite Hours.

- h. Tenant promises to open the Compo Beach Pavilion Space for business for the Beach Pavilion Requisite Hours seven days per week during each Beach Season. Tenant promises to open the Halfway House for business for the Halfway House Requisite Hours seven days per week during each Golf Season. Tenant promises to open the Longshore Pavilion Space for business for the Pavilion Requisite Hours seven days per week during each Pool Season and Skating Season.
- i. The promises in Paragraph 9(h) are 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, the Town may, in its discretion, elect to deliver a Notice of violation of the Continuous Operations Covenant.
- j. Notwithstanding the Continuous Operations Covenant, Tenant shall not be required to open at any time when closure of Tenant’s business is necessitated by dangerous weather or interruption of electrical service.
- k. Notwithstanding the Continuous Operations Covenant, Tenant shall not be required to open: (i) the Compo Beach Pavilion Space at any time during which the Town has closed Compo Beach to the public; (ii) the Halfway House at any time during which the Town has closed the golf course to the public or; (iii) the Longshore Pavilion Space at any time during which the Town has closed the swimming pool or the skating rink to the public.
- l. Tenant shall ensure that each of the Compo Beach Pavilion Space, the Halfway House and the Longshore Pavilion Space is adequately staffed and operated under the supervision of a manager of at least twenty one (21) years of age who is physically present at all times when open to the public.
- m. Tenant shall not sell beverages in glass containers.
- n. Tenant shall comply with all applicable ordinances of the Town of Westport, including, without limitation, the Single Use Plastics Ordinance.
- o. 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 items appearing on the Base Menu will be consistent with past practices at the Premises, that is a casual beach-side snack bar; and (ii) the Base Menu shall be subject to the annual review and approval of the Town. Tenant will deliver to the Town’s Director of Parks and Recreation a copy of its proposed Base Menu for each upcoming Operating Season not more than four (4) months and not less than one (1) month before the start of the Operating 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, from time to time, 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 \$4.00, then the Tenant may not offer, as a Special, a four inch hotdog for \$3.00.* Tenant may provide to holders of a Parks and Recreation Department hand pass (for example, holders of basic, golf, tennis and caregiver hand passes) a discount off the prices charged for food and beverage items.

- p. Tenant will use its best efforts to maintain a proper and wholesome atmosphere in and around the Premises.
 - q. Tenant may 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, with respect to the Halfway House, that the sound does not disturb the golfers. Tenant acknowledges that failure to abide by that condition may result in the revocation of the authorization to use radios and musical appliances. The installation or use of external speakers is prohibited.
 - r. 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").
 - s. Food and beverage deliveries to the Longshore Pavilion Space 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.
 - t. Tenant covenants not to assign for work at the Premises any person whose name appears on the Sex Offender Registry of the State of Connecticut and Tenant shall provide verification of compliance with this covenant as required by the Town.
 - u. Tenant shall, at Tenant's expense, provide uniforms for all staff working at the Premises and Tenant will be responsible for ensuring that all staff wear their uniforms at all times while on duty. Uniforms worn by Tenant's staff are subject to the approval of the Town's Director of Parks and Recreation.
10. **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 at Compo Beach and Longshore Club Park or may temporarily close part or all of Compo Beach and 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 Compo Beach or Longshore Club Park.

11. **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.

12. **Improvements, Fixtures, Equipment and Modifications.**

- a. Any and all improvements, upgrades and alterations to the Premises made during the Term will be the property of the Town.
- b. Any and all trade fixtures and equipment including, without limitation, cooking equipment, soda fountains, fryolators, frozen drink machines, grills, coffee urns, refrigerators, freezers, ice machines, tables, chairs, counters and countertops, that 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.
- c. With respect to the Compo Beach Pavilion Space, a list of the equipment and fixtures installed by the Town is attached as Exhibit D.
- d. With respect to the Halfway House, a list of the equipment and fixtures installed by the Town is attached as Exhibit E.
- e. With respect to the Longshore Pavilion Space, a list of the equipment and fixtures installed by the Town is attached as Exhibit F.
- f. The equipment and fixtures listed on Exhibit D, Exhibit E and Exhibit F and all other items installed by the Town are the Town's property and 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.
- g. Tenant will be responsible, at 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 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 12(b).

- h. If modifications to the Premises become necessary to comply with any federal, state or local regulations related to accommodations for the disabled, the Town will be responsible for the cost of those modifications except that the Town may, upon at least sixty (60) days' prior Notice to Tenant, elect to terminate this Lease if the cost of the modifications exceeds ten thousand dollars (\$10,000).

13. **Utilities.**

- a. With respect to the Compo Beach Pavilion Space and the Halfway House, the Town will provide water and Tenant will establish accounts in Tenant's name for electricity service and all other utility services directly with the applicable utility service providers. 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.
- b. With respect to the Compo Beach Pavilion Space, Tenant must provide access to internet for use by the Town for security surveillance system.
- c. With respect to the Longshore Pavilion Space, the Town will provide water, electricity and propane and Tenant will establish accounts in Tenant's name for all other utility services directly with the applicable utility service providers. Tenant shall pay all other applicable utility service providers within thirty (30) days after Tenant's receipt of utility service bill.
- d. The following rules apply to trash and recyclable removal and carting services.
 - i. Compo Beach Pavilion Space. Tenant is responsible, at Tenant's expense, for contracting with a carting contractor for a dumpster to be located in the customary space and for regular emptying of the dumpster and carting of recyclables. Tenant is responsible for collecting and depositing in the dumpster or recyclable receptacle, as appropriate, the waste associated with the operation of the Concession (*for example, cardboard boxes and commercial food wrappers*) and the trash and recyclables deposited in the receptacles located in and around the patron service and seating areas. The Town will collect and dispose of the trash and recyclables deposited in the receptacles scattered about the rest of Compo Beach.
 - ii. Longshore Pavilion Space and Halfway House. Tenant is responsible, at Tenant's expense, for collecting and depositing in the receptacles in the corral areas the waste associated with the operation of the Concession (*for example, cardboard boxes and commercial food wrappers*) and the trash and recyclables deposited in the receptacles located in and around the patron service and seating areas. The Town will cart away the trash and recyclables deposited in the receptacles located in the corral areas. The Town will collect and dispose of the trash and recyclables deposited in the receptacles scattered about the rest of Longshore Club Park.

14. **Insurance.** Tenant shall purchase and maintain for the duration of Tenant's occupancy of the Premises the following insurance. Tenant shall obtain the minimum insurance coverages described below 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, or may be alleged to arise out of or result from, Tenant's obligations under this Lease and/or from the obligations of any subcontractor and/or any other person or entity directly or indirectly employed by Tenant and/or by anyone for whose acts said Tenant may be liable. Tenant must require that all contractors, agents and assigns procure and maintain sufficient insurance protection. Before the execution of this Lease by the Town, Tenant shall provide the Town with certificates of insurance for each policy required by this Lease. Tenant shall provide updated certificates of insurance at least thirty (30) days before any renewal of any such coverage. The certificates shall require notice of cancellation to the Town according to policy provisions. The Town reserves the right, from time to time, upon Notice to Tenant, to make reasonable adjustments to the insurance coverage limits indicated below.

- a. **Workers Compensation.** Tenant shall provide statutory 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 in favor of the Town. Full compliance with the United States Longshoremen's and Harbor Workers' Compensation Act and the Jones Act is required where applicable.
- b. **Commercial General Liability Insurance.** Tenant shall provide commercial general liability insurance including products and completed operations and including XCU coverage if applicable. 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.
 - 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.
 - The 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.
 - The 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 all agreements between the Town and Tenant.
 - A per project aggregate limit of liability endorsement shall apply for any construction contract.
 - Deductible and self-insured retentions shall be declared and are subject to the approval of the Town.

- c. Commercial Automobile Insurance. 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.
 - d. Umbrella or Excess Liability Insurance. 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). The policy shall contain limits of liability in the amount of \$5,000,000 each occurrence and \$5,000,000 in the aggregate.
15. **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 Tenant.
16. **Delivery of Financial Statements.** For each Lease Year during the Term, Tenant shall deliver to the Town's Director of Parks and Recreation a financial statement prepared and certified by a CPA licensed in the State of Connecticut. Tenant shall deliver the financial statement for each Lease Year by December 15. Each financial statement shall show Tenant's Gross Revenues and expenses for each of the three spaces that comprise the Premises: the Compo Beach Pavilion Space, the Halfway House and the Longshore Pavilion Space. Tenant shall include with each financial statement a calculation showing, for the applicable Lease Year, the product of the Gross Revenue and the Gross Revenue Percentage and then subtracting the Base Rent and indicating the amount, if any, of the Revenue Supplement payment that is due. The Town reserves the right to perform an independent audit of Tenant's operations and financial statements upon reasonable advance Notice.
17. **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 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.
18. **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 Compo Beach Pavilion Space, the Halfway House or the Longshore Pavilion Space is 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 Pavilion at Compo Beach, the Halfway House or the Longshore Pavilion is totally destroyed or the casualty results

in the whole Compo Beach Pavilion Space, Halfway House or Longshore Pavilion Space being unusable by the Tenant, then the Town may elect not to repair or rebuild the destroyed or damaged building, provided that the Town shall make that decision and deliver Notice to Tenant within four (4) months. If the Town elects not to repair or rebuild the Pavilion at Compo Beach, the Halfway House or the Longshore Pavilion, then either party may elect to terminate this Lease with respect to any or all of the Compo Beach Pavilion Space, the Halfway House or the Longshore Pavilion Space. If a party elects to terminate this Lease with respect to the Compo Beach Pavilion Space, the Halfway House and the Longshore Pavilion Space, then this Lease shall be terminated effective on the third (3rd) day after the party delivers Notice to the other party and Tenant shall vacate the Premises and surrender possession to Town as soon as reasonably possible. If either party elects to terminate this Lease with respect to the destroyed or damaged building (i. e., the Compo Beach Pavilion Space, the Halfway House or the Longshore Pavilion Space) but not the other buildings, then the rent due under this Lease shall be adjusted proportionately, provided that either party may terminate this Lease if an agreement on the rent adjustment is not reached within one (1) month after delivery of a letter specifying a dollar amount as the party's last and final offer. If this Lease is terminated with respect to the Compo Beach Pavilion Space, the Halfway House or the Longshore Pavilion Space pursuant to this Paragraph and Tenant is not in default under this Lease, then Tenant's liability for rent with respect to the Compo Beach Pavilion Space, the Halfway House or the Longshore Pavilion Space, as applicable, 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.

19. **Security Deposit.** Tenant has deposited with the Town the sum of \$8,333.33 (i. e., one month's Base Rent for the first Lease Year) 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 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 Tenant set off or apply any part of the Security Deposit against any rent.

20. **Assignment, Subleasing and Inspection.** Assignment by Tenant of this Lease or the Concession and subleasing by Tenant of the Premises requires the prior written approval of the Town, which approval may be withheld by the Town in its sole discretion. Any attempt to assign this Lease or the Concession or sublease the whole or any part of the Premises without the prior written approval of the Town shall be void. The Town shall have the right to inspect the Premises at any time.

21. **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.
22. **Business Manager.** Tenant covenants and agrees that 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.
23. **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); or a nationally recognized courier service which requires the recipient to sign a receipt (such as FedEx). 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: Town of Westport, Attention: First Selectman, 110 Myrtle Avenue,
Westport, CT 06880.

Tenant: Upsilon Entertainment Group, LLC, Attention, Itai Shoffman, 4 Durham
Road, Larchmont, NY 10538.

24. **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.

{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,
UPSILON ENTERTAINMENT GROUP, LLC

Signature _____

Name _____

Title _____

Date _____

TOWN OF WESTPORT

Signature _____

Name _____

Title _____

Date _____

EXHIBIT B: FLOOR PLAN OF LONGSHORE PAVILION

The Longshore Pavilion Space is the area shaded orange.

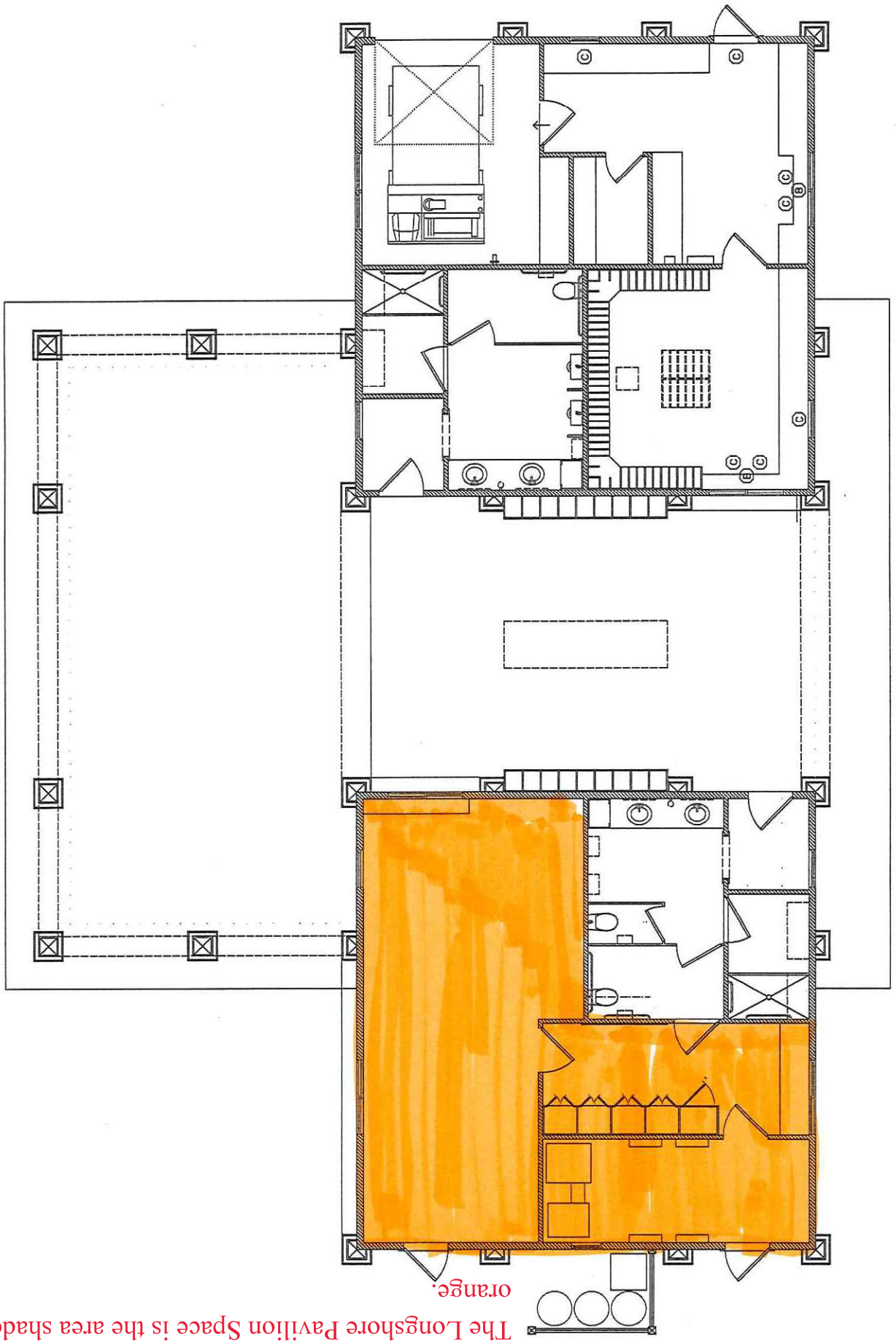
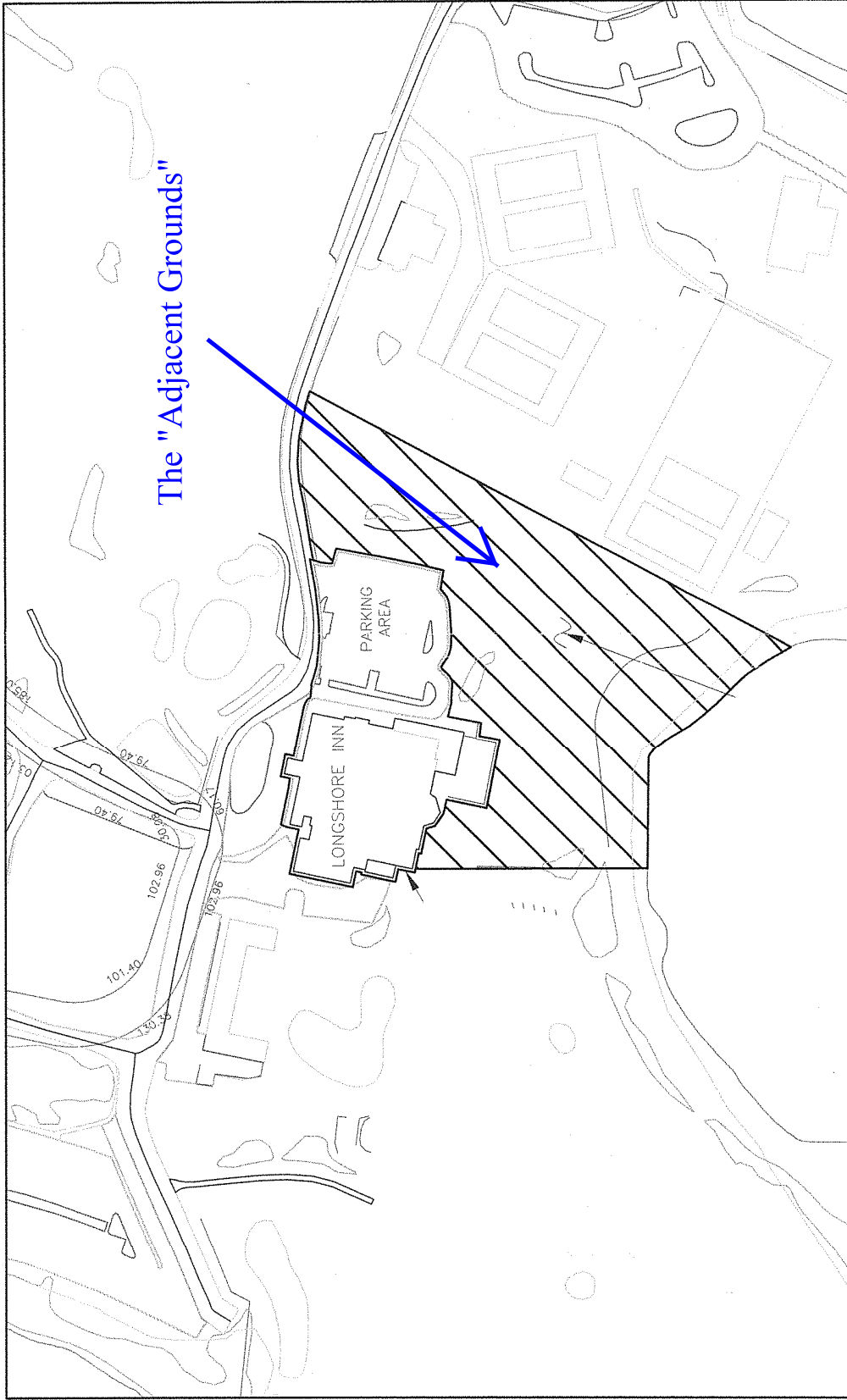


EXHIBIT C TO FOOD AND BEVERAGE CONCESSION AND LEASE



For the avoidance of doubt, the "Adjacent Grounds" are NOT part of the Premises.



LONGSHORE INN, within LONGSHORE PARK,
260 COMPO ROAD SOUTH, WESTPORT, CT

SCALE 1" = 100'

JANUARY 10, 2007

BY WESTPORT ENGINEERING DIVISION OF PUBLIC WORKS

EXHIBIT D
TOWN OWNED EQUIPMENT AT THE COMPO BEACH PAVILION

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

Hand Sink
Hot water heater
Hood and fire suppression system
Shelving
Serving counter
Toilet and sink

EXHIBIT E
TOWN OWNED EQUIPMENT AT THE LONGSHORE PAVILION

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

Electric water heater
Hood and fire suppression system
Sinks
Shelving

EXHIBIT F
TOWN OWNED EQUIPMENT AT THE HALFWAY HOUSE

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

Three compartment sink with drain board
Hand sink
Norlake – air refrigerated sandwich unit
Wyott Roll-a-Grill
Norlake – air refrigerated reach in freezer
Norlake work top freezer
Stainless steel work tables
Metro wire shelving
Rival microwave
Wisco Convection oven
Bunn coffee brewer
Hoshizaki ice machine
18” Griddle
3 tables
10 chairs
TV