



## WESTPORT CONNECTICUT BOARD OF FINANCE

### ***SPECIAL NOTICE ABOUT PROCEDURES FOR THIS ELECTRONIC MEETING:***

***Pursuant to the Governor's Executive Order No. 7B, there will not be a physical location for this meeting. This meeting will be held electronically and live streamed on [westportct.gov](http://westportct.gov) and shown on Optimum Government Access Channel 79 and Frontier Channel 6020. Emails to BOF members can be sent to [BOF@westportct.gov](mailto:BOF@westportct.gov). Comments to be read during the public comment period may be emailed to [BOFcomments@westportct.gov](mailto:BOFcomments@westportct.gov). We will use our best efforts to read public comments if they are received during the public comment period and if they state your full name and address. If you would like to give your comments by participating in real time in the meeting, please send an email by noon on October 22, 2020, to [mmace@westportct.gov](mailto:mmace@westportct.gov) stating your name and address and the agenda item to which your comments will relate, and meeting participation details will be emailed to you to enable you to participate in real time in the meeting. Meeting materials will be available at [westportct.gov](http://westportct.gov) along with the meeting notice posted on the Meeting List & Calendar page.***

### **NOTICE OF BOF SPECIAL MEETING**

The Board of Finance will hold a Special Meeting on **Thursday, October 22, 2020 at 5:00 p.m. with remote participation** for the following purposes:

### **AGENDA**

1. Discussion and action regarding Consent to Assignment and Assumption to Lease and First Amendment to Lease regarding the Inn at Longshore, 260 Compo Road South, Westport.

*It is the policy of the Town of Westport that all Town-sponsored public meetings and events are accessible to people with disabilities. If you need assistance in participating in a meeting or event due to a disability as defined under the Americans with Disabilities Act, please contact Westport's ADA Coordinator at 203-341-1043 or [eflug@westportct.gov](mailto:eflug@westportct.gov) at least three (3) business days prior to the scheduled meeting or event to request an accommodation.*

## FIRST AMENDMENT TO LEASE

This First Amendment to Lease (the "First Amendment") is dated as of October \_\_, 2020 (the "Effective Date") by and between the TOWN OF WESTPORT (the "Town") and LONGSHORE HOSPITALITY, LLC ("Longshore Hospitality" or "Tenant"). The foregoing entities are referred to individually or collectively as "Party" or "Parties".

### RECITALS

- A. The Town and Longshore Associates of Westport Limited Partnership ("LAWLP") entered into a Lease dated January 1, 2007 (the "Lease") pursuant to which LAWLP leased from the Town certain Leased Premises, as defined in the Lease, including the building known as The Inn at Longshore.
- B. LAWLP exercised the two Extension Options provided for under Article XVII of the Lease, thereby extending the Term of the Lease to December 31, 2028.
- C. LAWLP has assigned all of its rights and obligations under the Lease to Longshore Hospitality pursuant to that certain Lease Assignment Agreement of even date herewith.
- D. The Town and Longshore Hospitality now desire to amend certain provisions of the Lease.

NOW THEREFORE, the Parties agree as follows.

#### 1. Base Rent During Interim Period.

(a) For the period beginning on the Effective Date and ending December 31, 2021 (the "Interim Period"), in lieu of the Base Rent due under the Lease, Tenant shall pay as Base Rent twenty percent (20%) of the Gross Revenue. Payments of Base Rent for the Interim Period will be due and payable on the tenth (10<sup>th</sup>) day of each month in arrears. For example, the payment for the partial month of October, 2020 will be due on November 10, 2020 and the payment for the month of November, 2020 will be due on December 10, 2020.

(b) Definitions. The following capitalized words and phrases are defined in the Lease: Catered Event; Catering and Banquet Business Operations; Lodging Business Operations; Restaurant; and Restaurant Sublease. The following capitalized words and phrases are newly defined in this First Amendment: (i) "Gross Revenue" means all Receipts from Catering and Banquet Business Operations and Lodging Business Operations; (ii) "Receipts" means all funds received from guests and customers, whether paid by cash, check, credit card, electronic payment or any other means and includes, without limitation, payment of fees and charges for food, beverages, bartenders, wait staff, rooms, guest services and Itemized Service Charges but excludes Voluntary Tips, Connecticut Sales Tax and Connecticut Room Occupancy Tax; (iii) "Itemized Service Charges" means all charges for services that are separately listed on a guest contract or



guest invoice, whether referred to as a service charge, fee, gratuity or the like, except to the extent that the funds are distributed to the staff working the shift or event; and (iv) “Voluntary Tips” means all funds voluntarily paid to the proprietor or event manager without solicitation to the extent that the funds are distributed to the staff working the shift or event and all tips left for a waiter, waitress, bartender, host, hostess, maid or room attendant that the waiter, waitress, bartender, host, hostess, maid or room attendant is permitted to retain for him/herself or obliged to share with other staff at the conclusion of the shift or event.

2. **Restaurant Operations and Reporting Obligation During Interim Period.**

(a) For the duration of the Interim Period, Tenant shall pay, as Additional Rent, seventy percent (70%) of all funds received by Tenant from the operator of the Restaurant in consideration of the operator’s use and occupancy of the Restaurant. Payments of Additional Rent under this Section 2(a) will be due and payable on the tenth (10<sup>th</sup>) day of each month in arrears.

(b) Notwithstanding Section 2(a) of this First Amendment, if, at any time during the Interim Period, Tenant or any entity affiliated with, or under common control with Tenant, assumes responsibility for business operations in the Restaurant, whether due to termination or expiration of the Restaurant Sublease or otherwise, then, for the duration of the Interim Period, Tenant shall pay, as Additional Rent, seven percent (7%) all Receipts from business operations in the Restaurant. The Town grants to Tenant a credit such that Tenant shall be entitled to retain the first \$100,000.00 of Additional Rent due under this Section 2(b) (the “Restaurant Reopening Credit”). Any unused portion of the Restaurant Reopening Credit will expire on December 31, 2021. Payments of Additional Rent under this Section 2(b) will be due and payable on the tenth (10<sup>th</sup>) day of each month in arrears.

(c) Within two (2) weeks after the Effective Date, Tenant shall deliver to the Town’s attorney a copy of Tenant’s customary form of event contract for Catered Events. Together with each monthly payment of Base Rent due with respect to the Interim Period, Tenant shall deliver to the Town’s Finance Director financial records of Tenant in a format reasonably acceptable to the Town’s Finance Director so as to allow the Town’s Finance Director to verify the Base Rent and Additional Rent due under Section 1(a), Section 2(a) and Section 2(b) of this First Amendment, provided that the Town’s Finance Director shall have the right to require Tenant to deliver a ledger that includes the following data: (a) funds received from the operator of the Restaurant for the applicable calendar month; and (b) for each day of the applicable calendar month, the name and total Receipts from each guest and customer. Notwithstanding, for any day to which Section 2(b) of this First Amendment applies, the ledger need not identify specific Restaurant customers and a statement of the total Receipts from all Restaurant customers will suffice. Tenant shall retain copies of all guest contracts, invoices, credit card slips and other records supporting the reporting obligation in this Section 2(c) for a period of three (3) years and shall, upon five (5) days’ notice, make all of those records available for audit by representatives of the Town during regular business hours at the Leased Premises or at the offices of the Tenant’s accounting firm, provided that the accounting firm is located in Fairfield County, Connecticut.

3. **Base Rent During Remainder Period.** The Base Rent due for the period beginning on January 1, 2022 and ending on December 31, 2028 (the “Remainder Period”) shall be the amount determined pursuant to Article XVII of the Lease, except that Section 1 of this First

Amendment shall be ignored in calculating the Base Rent due for the 2022 calendar year. For the avoidance of doubt, in determining the Base Rent due for the 2022 calendar year, the percentage of increase in the CPI (not less than 3.0% and not greater than 8.0%) shall be applied to the Base Rent that would have been due under the Lease during the 2021 calendar year but for Section 1 of this First Amendment. The Town represents that the Base Rent that would have been due under the Lease during the 2020 calendar year but for Section 1 of this First Amendment is \$934,357.85.

4. **Mutual Waiver and Release.** The Town and Longshore Hospitality each irrevocably waive and forever release and hold harmless the other from all claims and causes of action arising under the Lease prior to the Effective Date, including, without limitation, claims for payment of Base Rent and Additional Rent. This mutual waiver and release shall survive the termination or expiration of this First Amendment and the Lease.

5. **Other Terms Remain In Effect.** Except as specifically modified by this First Amendment, the terms and conditions of the Lease shall remain in full force and effect and shall be complied with by the Town and Longshore Hospitality, respectively. Without limiting the generality of the foregoing, Longshore Hospitality affirms its obligation to timely make all payments of Rent and to perform all maintenance and repair work on the Building, as required by the Lease, except as specifically modified by this First Amendment.

6. **Counterparts and Electronic Signatures.** This First Amendment may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which when taken together shall constitute one and the same First Amendment. The Parties agree that this First Amendment may be transmitted between them or their respective attorneys by electronic mail and, upon evidence of receipt of same, shall constitute delivery of this First Amendment. The parties intend that electronic signatures or signatures indicated on a PDF constitute original signatures and that a First Amendment containing the signatures (original, electronic or on a PDF) of all the Parties is binding on the Parties once sent via electronic mail or delivered to the other Party.

7. **Miscellaneous.** Except as otherwise provided in this First Amendment, capitalized words and phrases used in this First Amendment shall have the meanings ascribed to them in the Lease. This First Amendment shall be binding upon the successors and permitted assigns of the Parties. The Recitals are to be considered part of this First Amendment. This First Amendment shall not be effective until signed by the Town's First Selectman.

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IN WITNESS WHEREOF, each Party has caused this First Amendment to be executed on the date(s) below written, the date of this First Amendment being as of the Effective Date, if different than the date of execution for either Party.

**TOWN OF WESTPORT**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**LONGSHORE HOSPITALITY, LLC**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

*{Signature page to First Amendment to Lease}*

## CONSENT TO ASSIGNMENT AND ASSUMPTION OF LEASE

This Consent to Assignment and Assumption of Lease (this "Consent") is dated as of October \_\_\_\_, 2020 by TOWN OF WESTPORT, a Connecticut municipal corporation (the "Town"), joined by LONGSHORE ASSOCIATES OF WESTPORT LIMITED PARTNERSHIP, a Connecticut limited partnership (the "Assignor"), and LONGSHORE HOSPITALITY, LLC, a Connecticut limited liability company (the "Assignee").

### RECITALS

- A. The Town and Assignor are parties to that certain Lease dated January 1, 2007 (the "Lease"), under which Assignor leases that certain premises known as the Inn at Longshore, including the building and surrounding grounds, as more specifically described in the Lease (the "Leased Premises").
- B. Assignee is acquiring substantially all of the assets of Assignor under the terms of a certain Asset Purchase Agreement of even date herewith (the "APA").
- C. Assignor desires to assign all of its rights and obligations under the Lease to Assignee, and Assignor has entered into a Lease Assignment and Assumption Agreement with Assignee (the "Assignment"), a fully-executed copy of which is attached hereto as Exhibit A.
- D. In accordance with Article IX of the Lease, the Assignment is subject to the Town's prior written Consent.

NOW, THEREFORE, in consideration of the covenants, warranties, representations and conditions of this Consent, the sufficiency of which is hereby conclusively acknowledged, the Town, Assignor and Assignee agree as follows.

1. Consent by Town. The Town hereby consents to the Assignment without waiver of any restriction in the Lease concerning further assignment or subleasing; provided that:

(a) The Town is not bound by any of the terms, covenants and provisions of the Assignment, and does not consent to or approve any matters which are contemplated by the Assignment and which are subject to the Town's further consent or approval under the provisions of the Lease;

(b) The Assignor and Assignee acknowledge and agree that the Town is not a party to the Assignment or the APA;

(c) Assignee acknowledges and agrees that the Town is not contractually bound in any manner by the terms and conditions of the Assignment or the APA;

(d) Neither the Assignment nor this Consent will be construed to amend the Lease in any respect; and

(e) Assignee shall procure policies of insurance meeting the requirements of Article VIII of the Lease and the Town's consent is subject to Assignee providing to the Town, on

or before the Effective Date and as a condition of its occupancy of the Leased Premises, certificates of insurance adding the Town as additional insured or loss payee, as applicable, to Assignee's insurance policies.

2. Representations and Warranties of Assignor. Assignor represents and warrants to the Town as follows:

(a) The Lease is in full force and effect and has not been modified or amended;

(b) No default exists by the Town in any of its obligations under the Lease; nor, to the best of Assignor's knowledge, has any event occurred which, with the giving of notice and passage of time, will constitute a default by the Town under the Lease; and

(c) Assignor has the full right and authority to enter into the Assignment with Assignee, subject only to obtaining the Town's Consent.

3. Mutual Waivers and Releases of Claims. The Town and the Assignor each irrevocably waive and forever release and hold harmless the other from all claims, demands, lawsuits and causes of action existing or arising under the Lease and Assignor's use and occupancy of the Leased Premises before or after the Effective Date, including, without limitation, claims for delinquent or unpaid Base Rent and Additional Rent, claims for breaches of warranties, covenants and representations, claims related to events of default, and claims related to the COVID-19 pandemic. Without limiting the generality of the foregoing, Assignor hereby irrevocably waives and forever releases and holds the Town harmless from all claims and allegations in the Verified Complaint filed by Assignor in the lawsuit pending in the Connecticut Superior Court, Housing Session, Docket No. NWH-CV-20-6005822-S (the "Lawsuit"). Assignor agrees to file in the Connecticut Superior Court by October 15, 2020 such forms as are necessary to formally withdraw the Lawsuit with prejudice. The Town's covenants under this Section are: (a) solely for the benefit of Assignor; (b) not assignable to the Assignee or any affiliate of the Assignee; and (c) not to be interpreted or construed as being for the benefit of, or enforceable by, the Assignee.

4. Conditions of Occupancy. Assignee represents that Assignee has inspected the Leased Premises to Assignee's full satisfaction. Assignee accepts the Leased Premises in "AS IS" condition. Assignee agrees that the Town shall have no obligation for any maintenance, repairs or improvements to the Leased Premises or any costs thereof. Assignee acknowledges and agrees that its occupancy of the Leased Premises shall be in accordance with all of the maintenance, repair and improvement requirements and conditions set forth in the Lease.

5. Reservations and Deposits. Assignee represents and warrants to the Town that Assignee has received from Assignor a complete list of all reservations and deposits accepted by Assignor for Catered Events scheduled to occur after the Effective Date (the "Event List"). Assignee agrees to honor all of the reservations and deposits for Catered Events appearing on the Event List. Assignor and Assignee agree, jointly and severally, to hold harmless and indemnify the Town from and against all claims, demands, lawsuits and causes of action (including, but not limited to, attorney's fees, court costs and disbursements) by anyone claiming to have made a reservation or deposit with Assignor for a Catered Event regardless of whether or not the Catered Event appears on the Event List.



6. Indemnification of the Town by Assignor and Assignee. Assignor and Assignee each, jointly and severally, agrees to indemnify and holds harmless the Town from and against any and all claims, actions, proceedings, costs, damages and expenses (including, but not limited to, attorney's fees, court costs and disbursements), incurred or arising from this Consent, including, without limitation, any claims by BNG Partners, LLC, its owners, members and managers ("BNG Partners"), related to that certain establishment known as Pearl Restaurant and Bar.

7. Pearl Sublease. With respect to that certain Sublease between Assignor and BNG Partners dated May 12, 2015 (the "Pearl Sublease") and the use and occupancy of the Restaurant by BNG Partners: (a) Assignee agrees to manage relations with BNG Partners in good faith and in a commercially reasonable manner; (b) Assignor agrees to indemnify and hold harmless the Town from and against any and all claims, actions, proceedings, costs, damages and expenses (including, but not limited to, attorney's fees, court costs and disbursements) arising prior to the Effective Date; and (b) Assignee agrees to indemnify and hold harmless the Town from and against any and all claims, actions, proceedings, costs, damages and expenses (including, but not limited to, attorney's fees, court costs and disbursements) arising on or after the Effective Date. The intent of this Section is that the Town shall have no liability for any claims by BNG Partners arising out of the Pearl Sublease and the use and occupancy of the Restaurant.

8. Notices. All notices, demands or other writings provided to be given, made or sent by any party hereto under this Consent or under the Lease shall be deemed to have been fully given, if made in writing and delivered in person, by a nationally recognized overnight delivery service (such as FedEx or UPS) providing a receipt for delivery, or by public courier or deposited in the United States mail certified or registered, return receipt requested and postage prepaid and addressed to the parties at the following addresses. The address to which any notice, demand or other writing may be given, made or sent to either party may be changed by written notice given by such party as above provided. All notices under the Lease shall be directed to:

If to Assignor:

Longshore Associates Limited Partnership  
Attention: Rory Tagert  
1030 3<sup>rd</sup> Avenue South  
Naples, Florida 34102

With a copy to:  
Joel Z. Green, Esq.  
The Law Offices of Green and Gross, P.C.  
1087 Broad Street, Suite 401  
Bridgeport, CT 06604

If to Assignee:

Longshore Hospitality, LLC  
Attention: Michael Ryan



260 Compo Road South  
Westport, CT 06880

With a copy to:  
Jim Randel, Esq.  
265 Post Road West  
Westport, CT 06880

If to the Town:

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

9. Effectiveness. This Consent shall become effective (the "Effective Date") on the date of signature by the Town's First Selectman.

10. Waiver of Jury Trial; Consent to Jurisdiction. The Town, Assignor and Assignee each waive the right to trial by jury in the event of any cause or controversy arising out of this Consent or any other matter arising between them or with respect to the Lease. In the event of any cause or action, the parties hereby consent to the jurisdiction of the courts located in Fairfield County, Connecticut.

11. Counterparts and Electronic Signatures. This Consent may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which when taken together shall constitute one and the same Consent. The parties agree that this Consent may be transmitted among them or their respective attorneys by electronic mail and, upon evidence of receipt of same, shall constitute delivery of this Consent. The parties intend that electronic signatures or signatures indicated on a PDF constitute original signatures and that a Consent containing the signatures (original, electronic or on a PDF) of all the parties is binding on the parties once sent via electronic mail or delivered to the other parties.

12. Miscellaneous. Except as otherwise provided in this Consent, capitalized words and phrases used in this Consent shall have the meanings ascribed to them in the Lease. This Consent shall be binding upon the successors and permitted assigns of the parties. The Recitals are to be considered part of this Consent.

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# SIGNATURE PAGE



## EXHIBIT "A"

### ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT (the "Assignment"), dated as of the \_\_\_\_\_ day of October, 2020 (the "Effective Date"), is made by and between LONGSHORE ASSOCIATES OF WESTPORT LIMITED PARTNERSHIP, a Connecticut limited partnership (the "Assignor"), and LONGSHORE HOSPITALITY, LLC, a Connecticut limited liability company (the "Assignee").

#### RECITALS:

Under the terms of that certain Asset Purchase Agreement between the Assignor, as Seller, and the Assignee, as Purchaser, made and entered into as of October , 2020 as the same may have been amended (the "Agreement") pertaining to the sale of certain assets of the Assignor as more fully set forth in the Agreement, which assets are utilized in the conduct of the Assignor's business located at 260 Compo Road South, Westport, Connecticut (the "Premises"), the Assignor is assigning to the Assignee and the Assignee is acquiring all of the Assignor's right, title and interest in, to and under that certain lease by and between the Town of Westport, as Lessor, and the Limited Partnership, as Lessee, dated January 1, 2007 with respect to the use and occupancy of a portion of the premises located at 260 Compo Road South, Westport, Connecticut (the "Lease").

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor and the Assignee agree and set forth below.

1. Assignment of the Lease. The Assignor assigns, conveys and transfers to the Assignee all of the Assignor's, as tenant, right, title and interest in, to and under the Lease and all claims and causes of action now existing under the same, together with all Security Deposits held by the landlord pursuant to and under the Lease. True and complete original and/or copy of the Lease has previously been delivered to the Assignee and the Assignee hereby acknowledges receipt hereof, and the Assignor certifies and attests that the same include all modifications or amendments to such Lease of which the Assignor is aware.

2. Assumption of Lease. The Assignee assumes and agrees to perform, discharge, fulfill and comply with all covenants, duties and obligations to be performed, fulfilled or complied with by the Assignor under the Lease arising on and after the Effective Date.

3. The Assignee's Indemnification of the Assignor under the Lease. The Assignee agrees to indemnify, defend and hold the Assignor harmless from all liabilities, obligations, actions, suits, proceedings or claims and all costs and expenses, including without limitation, reasonable attorneys' fees and costs, incurred in connection with the Lease, based upon or arising out of any breach or alleged breach of the Lease by the Assignee, or any event or condition, occurring or alleged to have occurred on or after the Effective Date.

4. The Assignor's Indemnification of the Assignee under the Lease. The Assignor agrees to indemnify, defend and hold the Assignee harmless from, all liabilities, obligations, actions, suits, proceedings or claims, and all costs and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred in connection with the Lease, based upon or arising out of any breach or alleged breach of the Lease by the Assignor, or any event or condition, occurring or alleged to have occurred before the Effective Date.

5. Cooperation. The Assignor covenants and agrees to reasonably cooperate with the Assignee, upon the Assignee's request, in making any claim or bringing any action under or on account of the Lease, provided, however, it will be at no cost to the Assignor.

6. Further Assurances. The Assignor shall promptly execute and deliver to the Assignee any additional instrument or other document that the Assignee reasonably requests to evidence or better effect the assignment contained herein.

7. Binding Effect. This Assignment shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

8. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

9. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Connecticut.

10. Recitals. The Recitals set forth above are incorporated herein by this reference and are acknowledged by the parties to be true and correct.



**IN WITNESS WHEREOF**, the Assignor and the Assignee have executed this Assignment as of the Effective Date.

In the presence of:

\_\_\_\_\_

ASSIGNOR

LONGSHORE ASSOCIATES OF  
WESTPORT LIMITED PARTNERSHIP

\_\_\_\_\_  
By: Rory Tagert, President  
Longshore Associates, Inc., General Partner

\_\_\_\_\_

ASSIGNEE

LONGSHORE HOSPITALITY, LLC

\_\_\_\_\_  
By: Michael Ryan, Its Manager

STATE OF CONNECTICUT

ss: }

COUNTY OF FAIRFIELD

Personally appeared Rory Tagert, President of Longshore Associates, Inc., the general partner of Longshore Associates of Westport Limited Partnership, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed as President of Longshore Associates, Inc. as the general partner of said Longshore Associates of Westport Limited Partnership, and the free and deed of Longshore Associates of Westport Limited Partnership, before me, on October \_\_\_\_\_, 2020.

\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public

STATE OF CONNECTICUT

ss: }

COUNTY OF FAIRFIELD

Personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Longshore Hospitality, LLC, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed as \_\_\_\_\_ of Longshore Hospitality, LLC and the free and deed of Longshore Hospitality, LLC, before me, on October \_\_\_\_\_, 2020.

\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public

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# LEASE

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**THIS LEASE** is dated and effective as of January 1, 2007, by and between the TOWN OF WESTPORT (the "Landlord") and LONGSHORE ASSOCIATES OF WESTPORT LIMITED PARTNERSHIP (the "Tenant").

In consideration of the mutual benefits and obligations set forth in this Lease, Landlord and Tenant agree as follows.

## ARTICLE I LEASING DATA

*I.I. LEASING DATA.* This Article contains data used in other provisions of this Lease but set forth in this Article for ease of reference. For example, although the monthly Base Rent is specified in this Article, Article IV is the operative provision of the Lease regarding the payment of the monthly Base Rent. Whenever any item contained in this Article is more specifically described in a subsequent Article of the Lease, the more specific description will control.

- (a) The "Building" is the building in which the Leased Premises is located at 260 South Compo Road, Westport, Connecticut and described as "The Inn at Longshore".
- (b) The "Leased Premises" is the entire Building together with the land immediately surrounding the Building and the designated parking area to the east and the lawn area to the south and east of the Building. The Leased Premises are more particularly described on Exhibit A.
- (c) The "Initial Commencement Date" is January 1, 2007.
- (d) The "Initial Term" is the period of time beginning with the Initial Commencement Date and ending on December 31, 2018.
- (e) The "Leased Premises Use" is an inn with lodging, a restaurant, cocktail lounge, kitchen, catering facility, and meeting/banquet rooms all open to the general public and not restricted in any fashion or subject to membership requirements.
- (f) The annual Base Rent for the first twelve (12) months of the Initial Term (i. e., Initial Commencement Date through December 31, 2007) is Four Hundred Twenty Five Thousand Dollars (\$425,000) payable in equal monthly installments of Thirty Five Thousand Four Hundred Seventeen Dollars (\$35,417) in advance, on the first of each month. For the 2008 calendar year, the annual Base Rent is Five Hundred Twenty Five Thousand Dollars (\$525,000). For the 2009 calendar year, the annual Base Rent is Six Hundred Seventy Five Thousand Dollars (\$675,000). For

each succeeding calendar year, the annual Base Rent shall be the same as the annual Base Rent for the preceding lease year, except that the annual Base Rent for the then current lease year shall be increased by the percentage of increase, if any, that has taken place in the CPI measured and determined pursuant to Section 2.12.

- (g) An "Entitlement Fee" in an amount established by the Westport Parks & Recreation Department shall be paid annually, in advance on a per room unit basis. The amount of the Entitlement Fee will be determined by reference to the fees established by the Westport Parks & Recreation Department for the use of recreational facilities by summer residents. There shall be no adjustment for the fact that some of the Tenant's guests are residents of the Town of Westport.
- (h) The Landlord's "Revenue Share" is an amount equal to ten percent (10%) of the Excess Revenues.
- (i) The "Notice Address" for Landlord and Tenant are:

Landlord:       Town of Westport  
                  Attn: Finance Director  
                  110 Myrtle Avenue  
                  Westport, CT 06880

Tenant:           Longshore Associates of Westport Limited Partnership  
                  Attn: Rory Tagert  
                  260 South Compo Road  
                  Westport, CT 06880

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**ARTICLE II – DEFINITIONS**

**2.01. CAPITALIZED WORDS AND PHRASES.**

This Lease contains many words and phrases with initial, capitalized letters. These words and phrases are used as specially defined terms in an effort to make the Lease easier to read. An effort has been made to set forth some of the more common defined terms in this Article, but other Articles may also contain defined terms. Whenever a capitalized word or phrase is used in this Lease, it shall have the definition specifically ascribed to it, unless the context of the usage implies otherwise. Some of the definitions listed below may not be used in the main body of the Lease.

**2.02. "ADDITIONAL RENT"** means any charge, other than the Base Rent, payable by Tenant to Landlord under any provision of this Lease.

**2.03 "APPLICABLE REVENUE THRESHOLD"** means for 2009 and, thereafter for each calendar year during the Term, the result of the equation in Column A or Column B, whichever is lower.

Column A	Column B
$\frac{BR - ASR}{.10}$	$\frac{BR - AASR}{.10}$

For the purposes of this Section, the following acronyms are used.

(i) BR means Base Rent, as defined in Section 2.05.

(ii) ASR (annual sublease rent) means the sum of the rent due under the Restaurant Sublease for the calendar year in question.

(iii) AASR (assumed annual sublease rent) means \$152,000 (i. e., the ASR for 2006) increased by the percentage of increase, if any, that has taken place in the CPI measured and determined pursuant to Section 2.12 but disregarding the CPI Ceiling, as defined in that Section.

Example 1: Assuming a CPI of 3%, the AASR for 2009 is calculated as follows:  $\$152,000 \times 1.03 \times 1.03 \times 1.03 = \$158,445$ . If the ASR for 2009 is \$175,000, then the Applicable Revenue Threshold for 2009 will be \$5,000,000 because \$5,000,000 (result from Column A) is lower than \$5,089,050 (result from

Column B). On the other hand, if the ASR for 2009 is \$150,000, then the Applicable Revenue Threshold for 2009 will be \$5,089,050 because \$5,089,050 (result from Column B) is lower than \$5,250,000 (result from Column A).

Example 2: If, in a given calendar year, or a substantial portion thereof, there is no Restaurant Sublease (by way of example, if the current "Splash sublease terminates and is not renewed), then the equation in Column B would be used to determine the Applicable Revenue Threshold and the equation in Column A would be inapplicable.

**2.04. "APPROVAL / APPROVED"** means the written consent or approval of the Landlord's Director of Parks and Recreation or First Selectman.

**2.05. "BASE RENT"** means the amount due from the Tenant under Section 1.1(f) calculated on either an annual or a monthly basis as the context requires. With respect to an Extension Period, Base Rent shall be determined pursuant to Article XVII.

**2.06. "BUILDING"** means the building known as the Inn at Longshore located on the property described in Exhibit A.

**2.07 "CATERED EVENT"** means any event or party occurring in the course of the Catering and Banquet Business Operations.

**2.08. "CATERING AND BANQUET BUSINESS OPERATIONS"** means the Tenant's catering and banquet business operations conducted at the Leased Premises. The phrase excludes the restaurant, patio bar and cocktail lounge operations. Included within the meaning of the phrase are, without limitation: meetings, seminars, conventions, conferences, weddings, social events, private parties and related food preparation waiter/waitress and bartender services. Off premises catering is also included within the meaning of the phrase to the extent that food is prepared at the Leased Premises.

**2.09. "CHANGE OF CONTROL"** means a transfer, whether in one transaction or a series of transactions, of more than fifty percent (50%) of the capital account, profits interest, stock, membership or partnership units or management rights of a business entity and includes, by way of example and without limitation, a sale to a third party and a gift or assignment to a family member.



2.10. "COMMON AREA" means the lawn area to the south and to the southeast of the Building shown as the cross-hatched section on Exhibit A.

2.11. "CONSENT" of Landlord means the written consent or approval of the Landlord's Director of Parks and Recreation or First Selectman.

2.12. "CPI" means the Consumer Price Index for All Urban Consumers, Area = New York - Northern New Jersey - Long Island, NY-NJ-CT-PA, Item = All Items, Base Period = 1982-84=100, as published by the U. S. Department of Labor's Bureau of Labor Statistics. The percent change in the CPI shall be measured each September (beginning with September, 2006) by reference to the CPI for the preceding October. Each year (beginning with 2006) the Landlord shall deliver notice to the Tenant of the percent change in the CPI and the new AASR (defined in Section 2.03) applicable for the next calendar year. Each year (beginning with 2009) the Landlord shall deliver notice to the Tenant of the percent change in the CPI and the new Base Rent applicable for the next calendar year. Notwithstanding the statistics published by the Bureau of Labor Statistics, for the purposes of this Agreement, the percent change in the CPI shall be not less than three percent (3.0%) or greater than eight percent (8.0%) (the "CPI Ceiling").

2.13. "DEFAULT RATE" is the rate of interest equal to the lesser of: (a) 4% over the Wall Street Prime in effect at the time the Default Rate begins to accrue; or (b) the maximum rate of interest permitted to be charged under law.

2.14. "EXCESS REVENUES" means, with respect to 2009 and each subsequent calendar year during the Term, the excess of the gross revenue of the Tenant's Catering and Banquet Business Operations and Lodging Business Operations over the Applicable Revenue Threshold.

2.15. "FISCAL YEAR" means the 12-month period comprising Landlord's fiscal year beginning July 1 and ending June 30.

2.16. "LEASED PREMISES" means the Building and the surrounding land and parking areas as more particularly described on Exhibit A.

2.17. "LEASED PREMISES UTILITY CHARGES" means the following charges payable by Tenant for utility consumption by the Leased Premises: sewer use charges and any and all other utilities, energy sources or services ordered by Tenant that are not included within the definition of Tenant Utilities.

2.18. "LODGING BUSINESS OPERATIONS" means all of Tenant's business operations associated with the renting of the guest rooms at the Leased Premises, including room charges, room service, mini-bar and all other items charged to guests' bills.

2.19. "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 Federal Express or UPS Next Day) and, in the case of Notice to Tenant, delivery to the Leased Premises. All Notices will be effective on receipt, except in the case of delivery to the Leased Premises, in which event the Notice will be effective as of the date of delivery. Notice must be given to the other party at the party's Notice Address, except in the case of Notice to Tenant, which may always be given at the Leased Premises. The Notice Address for each party is the address listed in the Section 1.1(i), or to such other address designated by a party by Notice to the other party, provided, that Landlord shall not be required to give Notice to more than one address, and if more than one address is specified, Landlord may choose any one address of those designated by Tenant.

2.20. "PRIOR LEASE" means that certain Lease between the Landlord and the Tenant originally signed on February 22, 1984 (resigned March 7 and 23, 1984), as amended.

2.21 "PUB MENU" means the food and beverage service directed at the Recreational Patrons offered in a designated portion of the Restaurant (or, with the Landlord's Consent in some other portion of the Leased Premises) as more particularly described in Section 6.01(c).

2.22. "REAL ESTATE" means the real property immediately surrounding the Building together with the designated parking area to the east of the Building and the lawn area to the south and east of the Building as more particularly described in Exhibit A.

2.23 "RECREATIONAL PATRONS" means golfers and other recreational users of Longshore Club Park.

2.24. "RENT" means all sums payable by Tenant to Landlord under the provisions of this Lease, including all Base Rent and Additional Rent. Rent is exclusive of Tenant's continuing obligations to make payments under any and all promissory notes that Tenant executed in favor of the Landlord prior to the Initial Commencement Date.

2.25 "RESTAURANT" means the portion of the Building dedicated to the restaurant, cocktail lounge and patio bar facility. Requirements applicable to the Restaurant are described in Section 6.01(c).

2.26. "RESTAURANT SUBLEASE" means the sublease, if any, between the Tenant and the operator of the Restaurant. By way of clarification, as of the Initial Commencement Date, a subtenant operates the Restaurant under the name "Splash". Within five (5) days of receipt of Notice from the Landlord, but not more frequently than twice per calendar year, the Tenant shall deliver to the Landlord a signed certificate indicating the amount of rent due from any subtenant and the Landlord shall have the right to contact any subtenant directly to corroborate the information contained in that certificate.

2.27. "REVENUE SHARE" means the percentage listed in Section 1.1(h) of the Excess Revenues. Tenant shall keep accurate records of its gross revenue from the Catering and Banquet Business Operations and Lodging Business Operations on a calendar year basis. Throughout the Term, Tenant shall deliver to Landlord: (a) a quarterly itemized statement of that revenue within fifteen (15) days after the completion of each calendar quarter; and (b) an unqualified statement by a Certified Public Accountant of that revenue covering the entire calendar year within sixty (60) days after the completion of each calendar year. Tenant shall retain at the Leased Premises for a period of not less than three (3) years, copies of all records supporting the quarterly statements and annual statements delivered to the Landlord. Upon five (5) days' notice, the Tenant shall make available for audit by Landlord or an accounting firm designated by Landlord the Tenant's quarterly statements, annual statements and supporting records. The Landlord or an accounting firm designated by Landlord shall have the right to audit those records at the Leased Premises during regular business hours.

2.28. "SPECIAL TAXES" means all special assessments for special benefits including, without limitation, sewer assessments and water service/line assessments (if and when a new water line is installed and connected to the Leased Premises), imposed upon the Leased Premises during the term of the Lease and all taxes and assessments imposed upon the personal property of Tenant

2.29. "TENANT UTILITIES" means the following utilities or services with respect to the Building that are separately metered or accounted for by the utility/service provider: electricity (separately metered); heating oil (separate account at fuel oil company); propane, interior cleaning (separate account at cleaning company); telephone, internet and other communication services; disposal of trash and recyclables, water usage (if and when a new water line is installed and connected to the Leased Premises) and security/alarm service.

2.30. "TERM" means the period of time during which Tenant is entitled to possession of the Leased Premises in accordance with the provisions of this Lease, but does not include any hold over period.

2.31. "WALL STREET PRIME" means the interest rate published by the *Wall Street Journal* as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks, or a similar substitute rate selected by Landlord if the foregoing rate is no longer published.

### ARTICLE III - LEASING OF LEASED PREMISES AND TERM OF LEASE

3.01. *LEASING OF LEASED PREMISES.* Landlord hereby leases the Leased Premises to Tenant for the Term, subject to the conditions described in Section 3.02, applicable to the Common Area and subject to the other provisions of this Lease. Tenant shall have the exclusive use of the parking lot to the east of the Building.

3.02. *NON-EXCLUSIVE USE OF COMMON AREA.* Tenant's right to use the Common Area shall be subject to the following conditions. During any Catered Event and for a reasonable time before and after, during which set-up and break-down are taking place, Tenant shall have the right to exclude members of the public from that portion off the Common Area that is required to accommodate the Catered Event. In order to avoid confusion by the public, whenever Tenant desires to exclude members of the public from

the Common Area to accommodate a Catered Event, Tenant shall post signs indicating "Private Party", "Not Open to the Public" or a similar message. At all other times, the public shall have full use of the Common Area for recreational activities, sunbathing, walking, picnicking, and the like, without hinderance or interference by Tenant or Tenant's patrons. Landlord shall not, without Tenant's Consent, sanction or permit the use of the Common Area by the public or any third party organization for an organized event. The Landlord's Parks and Recreation Commission may adopt regulations for the use of the Common Area not inconsistent with this Section.

**3.03. QUIET ENJOYMENT.** Upon payment by Tenant of the Rents herein provided, and upon the observance and performance of all the covenants, provisions and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the Term without hindrance or interruption by Landlord or any person claiming by or through Landlord, except as expressly provided in this Lease.

**3.04. COMMENCEMENT DATE.** The Term will begin on the Initial Commencement Date set forth in Section 1.1(c).

**3.05. CONDITION OF LEASED PREMISES UPON DELIVERY TO TENANT.** The Leased Premises shall be delivered to Tenant on the Initial Commencement Date in as-is condition, broom clean and free of all personal property of others.

**3.06. EFFECT OF PRIOR LEASE.** Except as described in this Section below, this Lease supercedes the Prior Lease and all rights and obligations of the Landlord and the Tenant under the Prior Lease shall be deemed to have expired as of the Initial Commencement Date. Tenant will not, however, be relieved of any obligation for: (a) payments due under any promissory note payable by the Tenant to the Landlord; (b) any unpaid rent, indemnification covenant or hold harmless covenant under the Prior Lease, including, without limitation, Article 8, Section M; and (c) the payments required under Paragraph 2 of Lease Amendment #3 (dated December 9, 1999), and those obligations and covenants shall be deemed continuing obligations and covenants of the Tenant.

#### ARTICLE IV - PAYMENT OF RENT

**4.01. PAYMENT OF RENT.** Tenant shall pay the monthly Base Rent on the first day of each month during the Term, in advance. If the Initial Commencement Date is a day other than the first day of a calendar month, then the monthly installment of Base Rent for that fractional month shall be prorated on a daily basis based upon a thirty (30) day month and Tenant shall pay that prorated amount on the first day of the next calendar month. Any charge other than Base Rent shall be due in accordance with the Lease provision governing the charge.

#### **4.02. PAYMENT OF ADDITIONAL RENT.**

(a) At least once per Fiscal Year but no more frequently than four (4) times per Fiscal Year, Landlord will prepare an itemized statement of the Leased Premises Utility Charges and the Special Taxes incurred by Tenant since the date of the Landlord's last itemized statement. Tenant shall pay to Landlord the amount shown on each itemized statement within fifteen (15) days after receipt.

(b) Tenant shall pay the Entitlement Fee in one lump sum per year. Tenant shall make the first payment of Entitlement Fee at the time of the first Base Rent payment and Tenant shall make succeeding payments on the same date each year thereafter.

(c) Tenant shall pay the Revenue Share in one lump sum per year. With respect to each calendar year, Tenant shall pay the Revenue Share on or before February 15 of the succeeding year. By way of example, the due date for the 2009 calendar year will be February 15, 2010.

(d) With respect to any other item of Additional Rent, Tenant shall pay the balance shown on any Landlord statement within fifteen (15) days after receipt.

**4.03. ADDITIONAL PROVISIONS REGARDING PAYMENT OF RENT.** All Rent shall be due and payable without any setoff or deduction to Landlord at the times specified in this Article, above. If any installment of Rent is not paid within ten (10) days of its due date, Tenant shall pay a late charge to Landlord equal to the greater of \$100 or 5% of the overdue payment. If the outstanding balance of Rent owed to Landlord contains any amount that has not been paid within ten (10) days of its due date, then beginning on the eleventh (11<sup>th</sup>) day, the entire outstanding balance of Rent owed by Tenant shall bear interest at the Default Rate, until the outstanding balance no longer includes any amounts not paid



within ten (10) days of their due date. Any liability for unpaid Rent shall survive the termination of the Lease.

#### ARTICLE V - LEASED PREMISES UTILITIES

**5.01. IN GENERAL.** Landlord shall provide for access to electricity, telephone service and water for the Leased Premises. In the case of electricity, Landlord's responsibility shall consist of being responsible for providing electricity up to the point of the meter.

**5.02. TENANT UTILITIES.** Payment for the Tenant Utilities (defined in Section 2.29) is the obligation and responsibility of the Tenant. Accounts for the Tenant Utilities will be in the Tenant's name and the Tenant will pay the bills rendered by the utility/service providers by the due dates specified in the respective bills or invoices.

#### ARTICLE VI - USE OF LEASED PREMISES AND TENANT'S CONDUCT IN BUILDING

**6.01. PERMITTED AND REQUIRED USES OF THE LEASED PREMISES.** Tenant will comply with the following conditions.

(a) Tenant and any permitted assignee or sublessee shall use the Leased Premises for the purposes described in this Section 6.01 and Section 1.1(e) and for no other purpose. The use of the Leased Premises shall also be in accordance with all of the following affecting the Leased Premises: laws, statutes, regulations, codes, municipal ordinances, municipal zoning regulations, special permits (including amendments thereto), court stipulations and court judgments. Tenant will comply with all rules and regulations reasonably established by Landlord applicable to the Leased Premises.

(b) Tenant will conduct the Catering and Banquet Business Operations and the Lodging Business Operations in a first class manner.

(c) With respect to the Restaurant, the Tenant shall operate (or obtain, through a Restaurant Sublease, a contractual commitment to the operation of) a first class restaurant, staffed with experienced personnel and complying with the following conditions. The operation of the Restaurant shall be independent of any chain or franchise agreement. A portion of the Restaurant (or, with the Landlord's

Consent, some other portion of the Leased Premises) will be designated for food and beverage service directed at the Recreational Patrons. To that end, at all times during the hours listed below, Tenant shall offer and prominently display the Pub Menu consisting of at least the items listed below and shall accommodate and serve those items to appropriately attired Recreational Patrons in the designated area.

Minimum Hours of Operation. 11:30 a.m. through 6:00 p.m. as follows: April 1 through April 30, Friday, Saturday and Sunday; May 1 through October 31, seven days per week. In the discretion of the Tenant (or the operator of the Restaurant), the Pub Menu may be offered during hours or on days per week that are outside of the Minimum Hours of Operation. The Pub Menu need not, however, be offered at any time during which golf play at the Longshore Club Golf Course is suspended due to inclement weather or otherwise.

Pub Menu: 8 ounce hamburger, turkey club sandwich, tuna salad platter, house salad, chicken Caesar salad, soft drinks, iced tea, coffee, draft beer, domestic bottled beer, imported bottled beer. Maximum prices will be determined annually, prior to the start of each golf season, by the Landlord's Director of Parks and Recreation by Notice to the Tenant. The Landlord's Director of Parks and Recreation will determine the maximum prices by finding the average of the prices charged for similar items at three grill/pubs in Westport.

(d) Tenant may permit its guests to use all recreational facilities of the Landlord at the rates charged to and on the conditions imposed upon residents, except for the municipal golf course. The following special rules will apply with respect to use of the municipal golf course: (i) Tenant's guests will be charged "non-resident" greens fees; and (ii) for each golf season, Landlord will provide to Tenant ten (10) special reservation passes, each permitting one guest of Tenant to reserve a tee time more than the maximum number of hours in advance permitted under the Landlord's automated tee time reservation system. By way of example, as of the Initial Commencement Date, under the Landlord's automated tee time reservation system, golfers are not permitted to reserve tee times more than 72 hours in advance. Use of the special reservation passes shall, however, be limited to no more than two per day.

Unused special reservation passes will expire at the end of each golf season and will not be carried over to the next golf season.

(e) Tenant shall use its best efforts to accommodate functions and meetings of local civic and town groups. Tenant will be deemed in compliance with its obligations under this Section if the number and type of local civic and town groups accommodated by the Tenant during each calendar year is not materially different from the list attached as Schedule 6.01(e).

**6.02. TENANT ALTERATIONS, TENANT'S CONTRACTORS, MECHANIC'S LIENS, ETC.** Except for cosmetic, non-structural alterations or improvements costing less than \$40,000.00 (which may be accomplished without Landlord's consent), Tenant shall not cause any alteration or improvement to be made to the Leased Premises or the Building unless Tenant has obtained Landlord's prior Consent. Landlord will not unreasonably withhold Landlord's Consent to such alterations or improvements, but prior to rendering Consent, Landlord may require Tenant to submit building plans (in detail reasonably required by Landlord), a work schedule/timeline, the identity of the contractor or contractors and subcontractors hired to perform the alterations and references for those contractors and subcontractors. Landlord may also condition its Consent upon the delivery of performance and/or labor and material payment bonds or other security for Tenant's payment of the cost of the alterations or improvements. A proposed work schedule/timeline that, in the Landlord's reasonable judgment, results in unnecessary closure of the Restaurant will be reasonable grounds for the Landlord to withhold its consent to proposed alterations or improvements. Prior to the commencement of any alteration or improvement by any contractor, Landlord will be provided with a certificate of insurance for such contractor, showing public liability coverage, workers' compensation coverage and any other coverage reasonably required by Landlord, which certificate names Landlord as an additional insured and provides that the coverage will not be canceled or not renewed without at least fifteen (15) days advance Notice to Landlord. Tenant will use its best efforts to have all work performed in a manner so as to minimize the need to close the Restaurant. All work performed by or through Tenant shall be performed in full compliance with all laws, including, but not limited to, all Planning and Zoning Regulations, and shall be carried out in a prompt and workmanlike manner. Tenant shall promptly pay all contractors and

materialmen hired by Tenant to furnish any labor or materials which may give rise to the filing of a mechanic's lien against the Real Estate attributable to alterations and improvements done by or through Tenant. If any such lien is placed against the Real Estate, Tenant shall cause same to be discharged as against the Real Estate within the sooner of: (a) thirty (30) days after Tenant receives notice of such lien; or (b) thirty (30) days after request by Landlord to remove such lien. If bond is filed and such lien is discharged, Tenant shall not be obligated to discharge the lien by payment. Notwithstanding any notice and grace period before default elsewhere set forth in this Lease, if Tenant fails to discharge such lien within the time period set forth in this Section above, and further fails to discharge such lien within ten (10) more business days after Notice of failure to discharge the lien is given from Landlord, then Tenant shall be in material default of the Lease, without any further notice or grace period. Subject to Tenant's compliance with the conditions of this Section (e. g., identification of contractors, bonds, insurance and liens), Landlord agrees that Tenant shall be permitted to install a back-up electricity generator on the Leased Premises.

**6.03. TENANT'S GENERAL COMPLIANCE WITH LAWS.** Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of all statutes, regulations and ordinances now in force or which may hereafter be in force and not being reasonably disputed by Tenant pertaining to Tenant's use of the Leased Premises and Building and any act therein by Tenant. Specific reference is made to Tenant's duty to comply with all state, federal and municipal statutes, regulations and ordinances concerning environmental protection and Tenant's conduct at the Building. Tenant shall indemnify and hold Landlord harmless from and against any damage, liability, cost and/or expense which Landlord may suffer by reason of Tenant's failure to comply with statutes, regulations and ordinances governing Tenant's conduct at the Building.

**6.04. SIGNAGE.** Tenant will not place or maintain, or cause to be placed or maintained, on any portion of the Building or any portion of the Real Estate any sign or advertising matter without Landlord's Consent.

**6.05. ENVIRONMENTAL COMPLIANCE.** Tenant will not under any circumstances cause or permit the depositing, spillage or seepage of any "Hazardous or Special Substance" in any dumpster or in any other area of the Building or the Real Estate other than an

in an area and in a manner which is in strict compliance with all laws and which is Approved in advance by Landlord. Tenant will not use, store, generate or dispose of any substance in any manner which would cause the Building to be classified as an Establishment under the laws of the State of Connecticut. Tenant will indemnify Landlord from and against any loss, cost, damage, fines, testing deemed reasonably necessary by Landlord or any other expense incurred by Landlord as a result of any violation of any environmental law or this Section by Tenant or any agent, servant, employee or contractor of Tenant. "Hazardous or Special Substance" means any substance that may not be dumped in a land fill as general trash, any substance listed under the laws of the State of Connecticut or the United States as a hazardous waste, or any other substance whose use, presence or storage at the Leased Premises requires any person to comply with any environmental reporting or registration requirement under any law.

**6.06. OTHER DUTIES OF TENANT REGARDING MAINTENANCE, REPAIR AND CONDUCT.** Tenant will conform Tenant's conduct to the following standards and will perform the following duties, all in a prompt, diligent and workmanlike manner, at Tenant's sole cost and expense.

(a) Tenant will be responsible for all repairs and renovations to the structure and systems of the Building, and to the Leased Premises reasonably necessary to maintain the Building in a condition of a first class restaurant, inn and catering facility, including, without limitation, repairs and replacement of the roof, windows, foundation, structural floor slabs, siding, exterior and load bearing walls (including painting), exterior doors, exterior decks and patios, floors, carpeting, ceilings, furnishings and the electrical, plumbing, heating, ventilation and air conditioning systems.

(b) Upon at least twenty four (24) hours Notice from the Landlord, the Tenant shall permit the Landlord's agents and representatives unrestricted access to the Leased Premises for the purpose of inspecting structures and systems and performing a capital needs assessment. The Landlord shall, however, use reasonable efforts to minimize inspection activities that are likely to disrupt the Tenant's business operations. The Tenant's Operations Manager (defined in Section 18.01) shall, at least once per year, but not more frequently than once per calendar quarter, attend a meeting called by the Landlord's Director of Public Works or Director of Parks and Recreation. The purpose of those

meetings shall be to: (i) discuss and prioritize the capital needs of the Leased Premises, including, for example, the results of the Landlord's latest inspection and needs assessment; (ii) discuss the appropriate budget for Tenant's expenditures to address those capital needs; and (iii) discuss the appropriate time schedule for the performance of the work necessary to address those capital needs. On or before each January 31, the Tenant shall deliver to the Landlord an itemized statement showing the amount expended by the Tenant in complying with Sections 6.06(a) and 6.06(b) during the preceding calendar year. Tenant shall retain all invoices from contractors and material suppliers in connection with maintenance and repair work at the Leased Premises for a period of not less than five (5) years and Tenant shall make those records available for inspection by the Landlord upon Notice during regular business hours.

(c) Tenant will keep the Leased Premises in good repair, provided, however, that the cost of any repairs to the Building or the Leased Premises necessitated by any negligent or willful act or omission of Landlord, Landlord's agents or employees shall be reimbursed to Tenant by Landlord.

(d) Tenant will be responsible for furnishing (on or before May 1, 2007) and maintaining a solid waste handling system with a functional odor abatement feature.

(e) Tenant will be responsible for cleaning and maintaining the Leased Premises in a clean and neat condition.

(f) Tenant will remove all trash from the Leased Premises with such frequency as is consistent with the operation of Tenant's business in a first class manner, which will include placing general trash in the appropriate solid waste handling system and recyclable trash in the appropriate receptacle in order to comply with any environmental laws affecting Tenant's conduct.

(g) Tenant shall maintain a grease removal system that will insure that there is no grease build up in the effluent line of the Leased Premises or the adjoining pump station which services the Leased Premises.

(h) Tenant will keep the sidewalks adjoining the Leased Premises, the parking area to the east of the Leased Premises and driveways on and



adjacent to the Leased Premises free from dirt, rubbish, ice and snow.

(i) Tenant will maintain and keep in good condition and repair the curbs, sidewalks, pavement and other appurtenances on or immediately adjacent to the Leased Premises.

(j) Tenant shall cut and maintain the lawn and landscaped areas of the Leased Premises.

(k) Tenant will comply with all laws affecting Tenant's use of the Leased Premises, which laws may include, but are not limited to: the municipal zoning regulations; any environmental laws; and any licensing laws regulating the operation of Tenant's business.

(l) Tenant will cause the Leased Premises to be open to the public as follows: (i) the Longshore Inn will be open for overnight stays by paying guests on a year-round basis; (ii) the Restaurant will be open for service of its regular menu at least six (6) days per week from at least May 1 through at least October 31; and (iii) a designated portion of the Restaurant will be open for service of the Pub Menu in accordance with at least the Minimum Hours of Operation described in Section 6.01(c).

(m) Tenant will meet with the Director of Parks and Recreation on a bi-monthly basis, or more frequently, if requested, to discuss public and private parties and events at the Leased Premises that have a reasonable potential to affect the public use of Landlord's recreational facilities at Westport Longshore Club Park or involve the use of the Common Area. By way of example and not limitation, this Section shall apply to events involving special security, parking and traffic control arrangements.

(n) Unless otherwise Approved by Landlord, Tenant will use only personnel designated by the Westport Parks and Recreation Department for security, parking and traffic control at all parties and events.

(o) During the first five (5) years of the Initial Term, Tenant will use commercially reasonable efforts to make the capital improvements described in Schedule 6.06(o).

**6.07. LIMITATIONS ON TENANT'S CONDUCT.**  
Tenant agrees to abide by the following limitations regarding conduct in the Building.

(a) Tenant shall not use or permit the use of the Leased Premises for a "fast food" operation. Casual luncheon fare offered under the Pub Menu is, however, authorized and permitted.

(b) In connection with the operation of the Restaurant, musical entertainment may be provided to patrons of the Restaurant provided that no separate charge is made for that entertainment.

(c) Tenant will not use the Leased Premises nor permit the Leased Premises to be used for any concert, play, musical performance, dance or other entertainment open to the general public for which an admission fee is charged. Outdoor concerts are prohibited without regard to whether or not the event is open to the public or an admission fee is charged. Live musical performances and DJs are permitted in connection with weddings and other private parties held indoors or outdoors on the Common Area provided that no admission fee is charged and the music is not so loud as to be distracting or annoying to golfers or others using Landlord's recreational facilities at Westport Longshore Club Park. Use of outdoor public address systems shall be limited to announcements associated with weddings and other private parties held on the Common Area.

(d) Notwithstanding Section 6.07(c), live musical performances and DJs are permitted on the patio bar on Sundays between May 15 and September 15 from 4:00 p.m. to 8:00 p.m. provided that the music is no louder than is reasonably necessary to be heard by patrons in the patio bar area. Tenant and any permitted subtenants will comply with all court stipulations and judgments relating to the patio bar, including, but not limited to, a Stipulation for Judgment in Longshore Associates of Westport v. Planning and Zoning Commission, Docket No. CV 85 0074682S dated February 7, 1986; and a Memorandum of Decision in DeCaro v. Westport Zoning Board of Appeals, Docket No. CV99-0174624S dated May 2, 2000.

(e) Tenant will not place any trash anywhere in the Building outside of the Leased Premises or on the Real Estate except in the solid waste handling system(s) located outside the Building.

(f) Tenant will not cause or permit to emanate from the Leased Premises any objectionable odor, as determined in Landlord's reasonable discretion.

(g) Tenant will not permit the parking of any vehicles in any manner which interferes with the drives, sidewalks and fire lanes and any other areas desired to be kept clear by Landlord.

(h) Tenant will not permit the overnight parking of any vehicles in the parking area except by overnight guests of the inn.

(i) Tenant will not use the Leased Premises or permit the Leased Premises to be used for any purpose prohibited by any law, ordinance or regulation.

(j) Tenant will not, without the Landlord's prior Consent, not to be unreasonably withheld, schedule or permit to be held at the Leased Premises, any event the attendance of which exceeds the maximum building occupancy applicable to the Building as determined by the Westport Fire Marshall. Provided that the event in question is to be held on a weekday (i. e., Monday through Friday, excluding holidays), Landlord will withhold its consent only if, in the judgment of the Landlord's Director of Parks and Recreation, Tenant has not made adequate arrangements for parking or management of noise or music volume.

## ARTICLE VII - LANDLORD'S RIGHT TO PERFORM WORK.

### 7.01. LANDLORD'S RIGHT TO PERFORM WORK.

Landlord shall have the right to undertake the following activities in the Building and on the Real Estate: construction of additions to the Building and additional buildings; demolition of additional buildings; changing the grade and/or layout of the Common Area; excavation of the Common Area for the purposes of the above and/or installing or repairing utility lines; and remodeling of the exterior of the Building. Landlord's right to undertake any of the foregoing activities shall be limited such that: there will be no unreasonable interference with Tenant's use of the Leased Premises or access thereto.

## ARTICLE VIII - INSURANCE, INDEMNIFICATION, WAIVERS, ETC.

**8.01. TENANT'S INSURANCE COVERAGES.** During the Term, the Tenant shall procure and maintain, at Tenant's cost, the following insurance coverages on the Leased Premises.

(a) Coverage for all risks of direct physical loss of or damage to the Building structure, and any appurtenances, as well as all leasehold improvements and, in any event, in an amount not less than ninety (90) percent of the full insurable value as determined annually by the parties, together with such other insurance as is set forth in this Article, and subject to an agreed amount clause.

(b) The term "full insurable value" shall mean the actual replacement cost, excluding foundation and excavation costs.

(c) Comprehensive public liability insurance as follows.

(1) The policy shall contain a cross-liability endorsement stating that in the event that a claim is brought by one insured against another insured under the policy, or by an employee of one insured against another insured under the policy, each insured shall be considered a separate insured for purposes of the insurance; provided available and at a reasonable cost.

(2) The policy shall be written on the "caused by any occurrence" rather than written on the "caused by accident" basis for bodily injury and property damage liability coverage.

(3) The policy shall be written with a blanket contractual liability endorsement providing automatic coverage for bodily injury or property damage assumed under any type of contract or agreement.

(4) The policy shall be written using a "personal injury" endorsement providing coverage for claims arising out of false arrest, false imprisonment, defamation of character, libel and slander, wrongful eviction and invasion of privacy and such endorsement shall not contain an exclusion of coverage for claims for "personal injury" brought by employees of an insured. The policy shall provide coverage against any claim, direct or

indirect, actual or alleged, related to the employment of any person by an insured.

(5) The policy shall be written with combined single limits for bodily injury, personal property damage and liquor liability of at least Two Million Dollars (\$2,000,000.00), and a supplemental catastrophic liability policy of Ten Million Dollars (\$10,000.00).

(e) Business interruption insurance to protect the Landlord against loss one hundred percent (100%) of rents in the event of interruption of the Tenant's business through destruction of real or personal property at the Leased Premises by a peril insurable under an all risk of direct physical loss policy.

(f) Steam boiler insurance on all steam boilers, present boilers, including piping and mechanical and electrical systems, or other such like apparatus as Landlord may deem necessary to be covered by such insurance and in such amount or amounts as Landlord may from time to time reasonably require.

(g) Flood insurance (whenever such insurance shall be obtainable) and war or riot damage insurance (whenever such insurance shall be obtainable) upon all buildings, improvements, fixtures and equipment to their full insurable value.

(h) Such other forms of insurance as from time to time may be reasonably required by Landlord, which at the time are commonly insured against in the case of the premises similarly situated, due regard being, or to be given, to the height and type of building, its construction, use and occupancy.

(i) All insurance required to be maintained under this Lease shall be affected under enforceable policies issued by insurers licensed to do business in Connecticut. Tenant shall give Landlord Notice of any proposed insurer and Landlord shall have the reasonable right of Approval over the insurer selected by Tenant. Each policy shall, to the extent possible, name Landlord as an additional insured. With respect to the coverage required by Section 8.01(a), however, Landlord shall be named as the

sole loss payee. Each policy shall be written pursuant to an agreement that such policy shall not be cancelled or non-renewed without at least thirty (30) days' notice to the Landlord

(j) Tenant shall give Notice to the Landlord of the payment of premiums for such insurance as Tenant is required to maintain under this Lease and shall provide Landlord with proof of the existence of the required insurance upon request.

**8.02 TENANT'S COMPLIANCE.** The Tenant shall not carry any stock of goods or do anything in or about the Leased Premises which will in any way impair or invalidate the obligation of any policy of insurance. Tenant shall, at its own cost and expense, comply with all of the rules and regulations of the Fire Insurance Rating Organization having jurisdiction, or any similar body.

**8.03. INDEMNIFICATION AND HOLD HARMLESS COVENANTS.** Except for acts or omissions of the Landlord or its employees or agents, Tenant shall defend, pay, indemnify and save free and harmless Landlord, and any fee owner or ground or underlying lessors of the Leased Premises, from and against any and all claims, demands, fines, suits, actions, proceedings, orders, decrees and judgments of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including attorneys' fees, resulting from or in connection with loss of life, bodily or personal injury or property damage arising, directly or indirectly, out of or from or on account of any occurrence, in, upon, about, at, or from the Leased Premises or occasioned wholly or in part through the use and occupancy of the Leased Premises or by any act or omission of Tenant or any sub-tenant, concessionaire or licensee of Tenant, or their respective employees, agents, contractors or invitees, in, upon, about, at, or from the Leased Premises.

**8.04 RISKS TO PERSON AND PROPERTY.** Tenant and all those claiming by, through or under Tenant shall store their property in and shall occupy and use the Leased Premises solely at their own risk and Tenant and those claiming by, through or under Tenant release Landlord from any and all claims of every kind, including loss of life, personal or bodily

injury, damage to merchandise, equipment, fixtures or other property, or damage to business or for business interruption, arising directly or indirectly, out of or from or on account of such occupancy and use or resulting from any present or future condition or state of repair. Landlord and its agents or employees shall not be responsible or liable at any time to Tenant, or to those claiming by, through or under Tenant, for any loss of life, bodily or personal injury, or damage to property or business, or for business interruption, that may be occasioned by or through the acts, omissions or negligence of any other persons.

**8.05. DEFECTS, LEAKS, WEATHER, UTILITY INTERRUPTIONS, ETC.** Unless resulting from the negligence of Landlord, Landlord and its agents and employees shall not be responsible or liable at any time for any defects, latent or otherwise, in the Leased Premises or any of the systems, equipment including plumbing, heating or air conditioning, electrical wiring or insulation, stairs, porches, railings or walks, machinery, utilities, appliances or apparatus, nor shall Landlord be responsible or liable at any time for loss of life, or injury or damage to any person or to any property or business of Tenant, or those claiming by, through or under Tenant, caused by or resulting from the bursting, breaking, leaking, running, seeping, overflowing or backing up of sewer pipes, downspouts, tanks, tubs, water closets, waste pipe, drain or other pipes, or caused by water, steam, gas, sewage, snow or ice in any part of the Leased Premises, or caused by or resulting from injury done or occasioned by wind, rain, snow or leakage of water or from the interruption in the supply of any utilities, natural occurrences or the elements, or resulting from any defect or negligence in the occupancy, construction, operation or use of any building or improvements on or in the Leased Premises, or any of the equipment, fixtures, machinery, appliances or apparatus on the leased premises or from broken glass, water, snow or ice coming through the roof, doors, windows, walks or other place or the falling of any fixtures, plaster, tile, stucco or other matter, or any equipment or appurtenance becoming out of order or repair or interruption of any service.

## ARTICLE IX - ASSIGNMENT AND SUBLETTING

**9.01. LANDLORD'S CONSENT REQUIRED FOR ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease in whole or in part nor sublet all or any part of the Leased Premises without the prior written Consent of Landlord, which will not be unreasonably withheld or delayed. Prior to any assignment or subletting, Tenant shall give Notice to Landlord of the proposed assignee or subtenant and the terms of the proposed assignment or subtenancy, and upon request of Landlord, Tenant will provide Landlord with any other information reasonably requested by Landlord for the purpose of evaluating the proposed assignee or subtenant. In the case of a proposed subtenancy, the Tenant will deliver to the Landlord a copy of the proposed sublease. The Consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such Consent to subsequent assignment or subletting. Assignment or subletting shall include a sale of substantially all of the assets of Tenant, a Change of Control and an assignment or subletting by operation of law (attachment of Tenant's interest in the leasehold, for example). Unless Landlord shall give Consent of the release of Tenant, no assignment or subletting or acceptance of any rent from any party in possession of the Leased Premises shall constitute a release of Tenant from the obligations under this Lease. By accepting the assignment of this Lease, any assignee assumes all obligations of Tenant to Landlord from and after the date of the assignment, jointly and severally with Tenant. Any attempted assignment or subletting by Tenant without the prior Consent of Landlord shall be void. Landlord has a legitimate interest in keeping the Leased Premises under the stewardship of experienced and financially sound catering and hospitality business management. Accordingly, it shall not be considered unreasonable for the Landlord to withhold its Consent to a proposed assignment or subletting on the grounds that the proposed assignee or subtenant has insufficient experience in the catering and hospitality business or insufficient assets or creditworthiness with which to meet the obligations under this Lease.

**9.02. LANDLORD'S RIGHTS ON CERTAIN ASSIGNMENTS AND SUBLETTINGS.** If Tenant gives Landlord Notice of any proposed assignment or subletting of: (a) more than 50% of the Leased Premises; or (b) more than 10% of the Leased Premises for a use not described in Section 1.1(e) (Leased Premises Use), then, in addition to the Landlord's rights under Section 9.01, Landlord may,



by Notice to Tenant, terminate this Lease by lapse of time, effective on the date specified in Landlord's termination Notice. Landlord's termination Notice under this Section may only be given within thirty (30) days after Notice of the proposed assignment or subletting from Tenant, unless, within fifteen (15) days after the Notice from Tenant Landlord makes a request to Tenant for further information with which to evaluate the proposed assignee or subtenant, in which event the time within which Landlord may give Notice of termination shall be extended to thirty (30) days after Tenant has provided the further information to Landlord. Landlord's termination Notice must specify an effective date for the termination, and if the termination Notice is given, this Lease shall come to an end by lapse of time as if the Term had always expired on the effective date of the termination, and provided Tenant has vacated the Leased Premises in accordance with the provisions of this Lease, Tenant shall be deemed to be released from any further liability or obligations of Tenant under this Lease arising from and after the date Tenant has vacated.

#### **ARTICLE X - RESERVED**

#### **ARTICLE XI - RESERVED**

#### **ARTICLE XII - CASUALTY DAMAGE TO BUILDING**

**12.01. NOTICE.** If the Leased Premises are damaged or destroyed by fire or other casualty during the Term, Tenant shall give immediate Notice to Landlord.

**12.02. OPTION TO TERMINATE, DAMAGE THAT CANNOT BE PROMPTLY REPAIRED.** If the Leased Premises are totally destroyed by fire or such other casualty, or are so damaged that rebuilding or repairs cannot reasonably be completed within one (1) year from the date of the Notice by Tenant to Landlord of the happening of the damage, then this Lease shall, at the option of either party to be exercised in writing no later than ten (10) days after Notice from the Tenant, terminate and Landlord shall receive all insurance proceeds.

**12.03. REPAIR / REBUILDING OF LEASED PREMISES.** If the Leased Premises are damaged by

fire or such other casualty, but not to such an extent that rebuilding or repairs cannot reasonably be completed within one (1) year from the date of the Notice by Tenant to Landlord of the happening of the damage, or if Landlord or Tenant has not exercised its option to terminate pursuant to Section 12.02, then, provided that the casualty has occurred either prior to the final eighteen (18) months of the Term or during such final eighteen (18) months and Landlord or Tenant has not exercised its option to terminate this Lease as set forth in this Section, then this Lease shall remain in full effect and Landlord shall, with the insurance proceeds, proceed at once to rebuild or repair the Leased Premises to substantially the condition in which they existed prior to such damage. If the casualty occurs during the final eighteen (18) months of the Term, Landlord or Tenant shall have the right, at its option, to terminate this Lease by sending Notice of termination to Tenant or Landlord within fifteen (15) days from the date of the Notice by Tenant to Landlord of the happening of the damage, upon which Notice this Lease shall terminate.

**12.04. TENANT'S OBLIGATIONS NOT RELIEVED.** No damage or destruction shall relieve the Tenant of its obligations to make all payments required by this Lease with respect to any portion of the Leased Premises that Tenant continues to use in furtherance of Tenant's business operations unless and until this Lease shall be terminated pursuant to this Article. Tenant's obligations to make payments required by this Lease shall abate with respect to any portion of the Leased Premises damaged as described in Section 12.01 for the period of time that Tenant is unable to use that portion of the Leased Premises in furtherance of Tenant's business operations.

**12.05. ABATEMENT.** Wherever in this Article the phrase "this Lease shall terminate" is used, it shall mean "this lease shall terminate and rent and all charges payable as rent shall abate for the unexpired portion of this Lease, effective as of the date of the Notice by Tenant to Landlord of the happening of the damage (except that Tenant shall pay Rent for any portion of the Leased Premises used by it prior to the time same is surrendered to Landlord) and Tenant shall as soon as reasonably possible surrender to Landlord the Leased Premises

and Landlord may re-enter and take possession of the Leased Premises discharged from this Lease".

**12.06. DAYS REQUIRED TO REPAIR OR REBUILD.** If a dispute should arise between Landlord and Tenant with respect to the number of days required to repair or rebuild any damage pursuant to this Article, either or both parties shall request the insurance company insuring the Leased Premises against such casualty to make a determination of the number of days so required. Such request shall also contain an agreement by the parties to hold the insurance company harmless for any good faith determination made by it. The determination so made shall be conclusive and binding on the parties.

### **ARTICLE XIII - LANDLORD'S LIABILITY LIMITATIONS**

**13.01. LIMITATIONS REGARDING SECURING CLAIMS.** In the event of any alleged default of Landlord, Tenant agrees that Tenant will not seek to secure any claim for damages or indemnification by any attachment, garnishment or other security proceeding against any property of the Landlord other than the Building and the Real Estate, or, if sold, any sales proceeds of the Building and the Real Estate, and if Tenant obtains any judgment against Landlord by virtue of an alleged default of Landlord, Tenant agrees that Tenant will not look to any property of Landlord other than the Building and the Real Estate, or if sold, any sales proceeds, for satisfaction of such judgment. In no event will Tenant be entitled to recover against Landlord, or prosecute or maintain any action for the recovery against Landlord of, any consequential damages and/or business interruption damages against Landlord on account of any act or omission of Landlord which constitutes a breach of this Lease by Landlord.

**13.02. TRANSFER OF LANDLORD'S INTEREST IN BUILDING.** Upon any transfer of Landlord's interest in the Building or the Real Estate, the then transferor landlord shall be relieved of any and all liability to Tenant arising from and after the transfer and the transferee landlord shall not be liable to Tenant for any liability arising prior to the transfer. Notwithstanding the foregoing, if any condition shall exist on the date of transfer which would entitle Tenant to terminate this Lease or the continuance of which would entitle Tenant to terminate this Lease

after the passage of time, unless the condition is corrected within any time allowed under this Lease or by law, the transfer shall not affect Tenant's right to terminate.

**13.03. NO LIABILITY FOR THEFT, ETC.** All property of Tenant in the Building shall be kept at Tenant's own risk, and Landlord shall not be responsible for any theft of Tenant's property or any property of any agent, servant, employee, contractor or invitee of Tenant, unless the theft is committed by Landlord and Tenant shall indemnify and hold Landlord harmless from any claim against Landlord by any agent, servant, employee, contractor or invitee of Tenant based upon any allegation of theft for which Landlord's liability is disclaimed under this Section.

### **ARTICLE XIV - DEFAULTS AND ENFORCEMENT OF LEASE**

**14.01. EVENTS OF DEFAULT BY TENANT.** Tenant will be in default of Tenant's obligations under the Lease upon the happening of any of the following:

(a) Tenant's failure to pay Rent within five (5) business days after Notice to Tenant that the payment has not been received by Landlord on or before its due date.

(b) Tenant's failure to discharge a mechanic's lien in the manner provided in Section 6.02.

(c) Tenant's failure to cure any non compliance with the obligations for the minimum operation of business at the Leased Premises set forth in Section 6.06(l) within five (5) business days after Notice from Landlord.

(d) Tenant's failure to cure within thirty (30) days after Notice to Tenant the noncompliance by Tenant with any other obligation of Tenant under this Lease, except that in the case of an obligation not capable of being cured within said thirty (30) day period (determined without regard to the cost or ability to pay for compliance), Tenant will not be in default as long as Tenant has commenced the cure of the non compliance reasonably promptly after the Notice and is continuously thereafter diligently proceeding to complete the cure. By way of example and not limitation, events of default under this Section 14.01(d) would include Tenant's failure to

comply with Section 6.01(b) (operation of first class business operation) and Section 6.06(a) (maintenance of Leased Premises in first class physical condition).

**14.02. REMEDIES ON ACCOUNT OF DEFAULT.**

In the event of default by Tenant, the entire Base Rent and Additional Rent for the remainder of the Term will be immediately due and payable, the Landlord may terminate this Lease and recover possession of the Leased Premises, and the Landlord may exercise any other remedy available under the law to a landlord on account of a breach of lease by a tenant.

**14.03. COSTS OF ENFORCING LEASE.** Landlord shall be entitled to reimbursement from Tenant of the reasonable costs of enforcement of this Lease incurred by Landlord (including a reasonable attorney's fee) in any action or proceeding brought by Landlord to enforce the provisions of this Lease on account of any failure of Tenant to adhere to Tenant's obligations under this Lease, provided that Landlord prevails in such action or proceeding. All such costs shall be deemed Additional Rent.

**14.04. JURY WAIVER, FORUM AND VENUE.** Landlord and Tenant waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Leased Premises, and/or claim of injury or damage. In any dispute between the parties relating to the tenancy hereby created, unless the parties shall agree otherwise, the exclusive forum for any such legal action shall be the Connecticut state court hearing landlord and tenant disputes, with venue based on the location of the Leased Premises and not the residence or location of the parties.

**ARTICLE XV - VACATING AT END OF TERM, HOLDING OVER**

**15.01. VACATING LEASED PREMISES AT END OF TERM.** At the expiration of the Term, whether by lapse of time or for any other reason, Tenant will surrender the Leased Premises to Landlord, the condition of which upon the surrender shall be broom clean, free of all personal property and in good repair, reasonable wear and tear excepted. All keys to any doors at the Leased Premises shall be turned over to Landlord upon the surrender, and Tenant shall provide Landlord with any other means for opening any other locks (safes, vaults, etc.) at the Leased

Premises upon the surrender. Prior to the surrender: Tenant shall remove all of Tenant's trade fixtures, unless Landlord shall Consent to the retention of any trade fixture; Tenant will remove any alteration that was made in the Building by Tenant without Landlord's Approval; and Tenant will repair and/or restore the Leased Premises and/or Building as a result of any removal of any fixture or improvement removed by Tenant. Without diminishing Tenant's responsibility to remove items from and repair damage in the Leased Premises at the end of the Term, if, prior to Tenant's vacating of the Leased Premises, Tenant fails to remove any item of personal property or any trade fixtures or improvement that it is Tenant's responsibility to remove, all such items will become the property of Landlord.

**15.02. HOLDING OVER.** If Tenant holds over beyond the end of the Term with the Consent of Landlord, then the provisions of the hold over tenancy shall be the same provisions set forth in this Lease governing the rights and obligations of the parties during the Term, except that: the tenancy shall be on the basis of a month to month tenancy, terminable by Landlord immediately by issuance of a notice to quit possession, as long as the quitting date is at least eight (8) days after the giving of the notice to quit; there shall be no rights or options in Tenant to extend the Term, increase or decrease the size of the Leased Premises, purchase any portion of the Real Estate, exercise any right of refusal to any leasing or sale of any portion of the Real Estate or any similar rights that may have been in effect during the Term; and the monthly Base Rent for the hold over shall be the monthly Base Rent in effect immediately prior to the end of the Term, which shall be increased in the same manner as the monthly Base Rent had been increased by any formula or with any regular frequency during the Term. If Tenant has not vacated the Leased Premises on or before the end of the Term and does not have Landlord's Consent to remain in the Leased Premises, the failure to vacate shall not be treated as a hold over for any further term and it is agreed that the use and occupancy damages for which Tenant will be liable during any such period of occupancy will be the amount that would have been payable as Additional Rent had this Lease remained in effect during the period of occupancy plus an amount equal to one and one half times (1.5X) the monthly Base Rent in effect at the end of the Term.

**ARTICLE XVI - MISCELLANEOUS PROVISIONS**

**16.01. NO WAIVER OF OBLIGATIONS.** The waiver by Landlord or Tenant of any breach by or obligation of the other party of any provision in this Lease shall not be deemed to be a waiver of any other breach or obligation. The acceptance of any Rent by Landlord or the payment thereof by Tenant shall not be deemed to be a waiver of any breach by any party. No payment by Tenant or receipt by Landlord of any payment which is less than the amount due shall be deemed to be a waiver of any right to obtain payment of the full amount due, and Landlord may apply any payment by Tenant to any charge owed by Tenant to Landlord under the provisions of this Lease, and no restrictive endorsement, statement of Tenant or any other attempt by Tenant to restrict the application of the payment in any contrary manner shall be operative or effective, and no endorsement on any check or payment made by or on the behalf of Tenant shall be deemed as any accord and satisfaction for any obligation, other than satisfaction of the charge to which Landlord has applied the payment. No waiver of any breach or obligation of any party shall be effective unless in writing by the party charged with the waiver.

**16.02. ENTIRE AGREEMENT.** This Lease, including any exhibits and schedules attached to it or referenced by it, constitute the entire agreement between the parties as to this leasing, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties other than those contained in or specifically referenced by this Lease. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon either party unless in writing by the party to be charged.

**16.03. SEVERABILITY.** The provisions of this Lease are severable, and if any provision shall be determined to be invalid or unenforceable, the provision shall be enforced to the extent permitted by law and, to the extent any provision or portion thereof remains unenforceable or invalid, it shall be severed from this Lease and the remainder of the Lease shall be valid and enforced to the fullest extent permitted by the law.

**16.04. HEADINGS NOT TO LIMIT EFFECT OF LEASE.** The headings for the articles and sections of this Lease are inserted for ease of reference only and no such heading shall be interpreted to limit the operation of any language contained in the article or section following the heading. All language in this Lease shall be given its full operative effect, regardless of the article or section in which it is

located and regardless of its location, proximity or lack of proximity to any other related or unrelated provisions.

**16.05. FORCE MAJEURE.** In the event that Landlord or Tenant shall be delayed in, hindered in, or prevented from, the performance of any act required under the provisions of this Lease, except for the payment of money, by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party whose act is delayed ("Force Majeure"), then as long as the party whose act is delayed is using best efforts to avoid the delay and the effect of the Force Majeure, then performance of such act shall be excused for the period of the delay.

**16.06. LANDLORD'S ENTRY INTO LEASED PREMISES.** Landlord and Landlord's agents and other representatives shall have the right to enter into and upon the Leased Premises at all reasonable hours, upon reasonable advance written or oral notice to Tenant and consistent with Tenant's security requirements, for the purpose of examining the Leased Premises or making alterations. Landlord's entry under this Section may be made at any hour and without notice in the case of emergency. During any period in which Tenant is in possession of the Leased Premises, Tenant will provide Landlord with a key or set of keys and any other means necessary for Landlord to gain emergency access to the Leased Premises in accordance with the provisions of this Section, and Tenant shall update the key, keys or other means of access on hand with Landlord at any time the locks to the Leased Premises are changed.

**16.07. SHOWING OF LEASED PREMISES.** Tenant shall permit Landlord and Landlord's agents to show the Leased Premises to any prospective purchaser of the Building at reasonable hours and upon advance written or oral notice to Tenant. During any period in which there are less than twenty four (24) months remaining in the Term, Tenant shall permit Landlord and Landlord's agents: to show the Leased Premises to any prospective tenant for the Leased Premises at reasonable hours and upon advance written or oral notice to Tenant. Notwithstanding anything in this Section to the contrary, the Landlord shall not show the Leased Premises to any prospective tenant during the period between Tenant's delivery of an Extension Notice (defined in Section 17.01) and the first day of the corresponding Extension Period.



**16.08. NO RESERVATION OR OFFER.** The submission of this Lease for examination does not constitute a reservation of the Leased Premises, and option to lease the Leased Premises or in any other manner an offer by Landlord, unless and until it is executed by Landlord and delivered to Tenant.

**16.9. NO RECORDING.** Tenant shall not record this Lease. If Tenant violates this Section, then notwithstanding any other provision in this Lease to the contrary, Landlord may, at Landlord's election, without any further Notice or cure period, terminate the Lease on account of the breach.

**16.10. JOINT AND SEVERAL LIABILITY.** The references to Tenant and Landlord in this Lease mean all persons or entities comprising Tenant or Landlord at any given time, and if Tenant or Landlord shall consist of more than one person or entity, the obligations of each person or entity shall be joint and several with all other persons or entities comprising Tenant or Landlord, as applicable.

**16.11. CHOICE OF LAW.** Connecticut law shall apply to all state law matters arising under this Lease.

**16.12. BROKERAGE COMMISSION.** Tenant represents that no broker showed Tenant the Premises or brought such Premises to the Tenant's attention and that no Broker's commission is payable. If any claim is made by any real estate agent or broker for a commission based upon the allegation that an agent or broker showed the Leased Premises to Tenant or was otherwise the procuring cause of this Lease, then Tenant will defend the claim and save the Landlord harmless from that claim.

**16.13 TOWN OFFICIALS.** Wherever in this Lease reference is made to an official of the Town of Westport (e. g., First Selectman, Director of Parks and Recreation), that reference shall be deemed to include any official with a different title who assumes substantially the same duties as the referenced official. By way of example, under a mayoral form of municipal government, "Mayor" would be substituted for "First Selectman". In addition, upon Notice to Tenant, the Landlord may make a substitution for any official referenced in this Lease. By way of example, the Landlord may substitute "Superintendent of Parks" for "Director of Parks and Recreation".

## ARTICLE XVII – RIGHT TO EXTEND.

**17.01. THE EXTENSION OPTIONS.** Landlord grants Tenant two options to extend this Lease with

respect to the entire Leased Premises (each an "Extension Option"). The Extension Options shall be for consecutive five (5) year periods (each an "Extension Period") and must be exercised one at a time. If the Tenant exercises the first Extension Option, then the five (5) year period of that Extension Option shall be referred to as the "First Extension Period". The following terms and conditions shall apply to each Extension Option.

(a) No Assignment or Sublease. An Extension Option may not be exercised by or assigned, or otherwise transferred to any person or entity voluntarily or involuntarily. If Tenant assigns any of its interest in this Lease or subleases any portion of the Leased Premises, the Extension Options shall terminate immediately without the need for any act or notice by either party to be effective.

(b) Manner of Notice. Tenant shall deliver to Landlord Notice of the exercise of the first Extension Option not later than twenty four (24) months prior to the expiration of the Initial Term, time being of the essence. Tenant shall deliver to Landlord Notice of the exercise of the second Extension Option not later than twenty four (24) months prior to the expiration of the First Extension Period, time being of the essence. For the purposes of this Lease, "Extension Notice" shall mean a Notice delivered pursuant to this Section 17.01(b). If an Extension Notice is not delivered by the applicable deadline, then the applicable Extension Option shall automatically expire.

(c) Effect of Default. Tenant's right to exercise the Extension Options shall be suspended at the election of Landlord during any period in which an event of Tenant default under Article XIV has occurred and remains uncured, but the period of time within which an Extension Option may be exercised shall not be extended. Notwithstanding Tenant's due and timely exercise of an Extension Option, if, after such exercise and prior to the effective date of the Extension Option, an event of Tenant default occurs under Article XIV that is not cured within the applicable grace period, if any, Landlord shall have the right to cancel Tenant's exercise of the Extension Option by delivery of Notice to Tenant.

(d) New Rent. The monthly Base Rent for the first year of each Extension Period shall be equal to the greater of: (i) the monthly Base Rent that would have been payable for that year under Section 1.1(f) had the Initial Term (or the First Extension

Period, as applicable) not expired (i. e., by incorporating the percentage increase in the CPI); or (ii) 100% of the then prevailing fair market rental rate (the "Market Rent") for the Leased Premises as applicable for the Extension Period. During the Extension Periods the Additional Rent shall continue to be payable in the amount and manner as provided in this Lease and all of the terms, conditions and covenants of this Lease shall apply.

**17.02. MARKET RENT NOTICE.** If Tenant properly exercises an Extension Option, Landlord shall deliver to Tenant Notice (the "Market Rent Notice") of the monthly Base Rent for the Extension Period within sixty (60) days following Landlord's receipt of Tenant's Extension Notice. Tenant shall respond in writing to Landlord within thirty (30) days following Landlord's delivery of the Market Rent Notice (the "Tenant Response Period") stating whether Tenant agrees or disagrees with the monthly Base Rent determined by Landlord. If the parties agree on the monthly Base Rent for the applicable Extension Period during the Tenant Response Period, they shall execute an amendment to this Lease within fifteen (15) days stating the applicable Extension Period, the monthly Base Rent and any related terms and conditions. Otherwise, the Market Rent shall be determined in accordance with Section 17.03.

**17.03. DISPUTE.** If the parties are unable to agree on the monthly Base Rent for an Extension Period within the Tenant Response Period, the Market Rent for the applicable Extension Period shall be determined by appraisal as set forth below in order to establish the monthly Base Rent for that Extension Period and Landlord and Tenant shall be bound by the results of the appraisal. Notwithstanding the submission of the issue of Market Rent to appraisal, if the monthly Base Rent has not been established pursuant to Section 17.02 prior to the commencement of the applicable Extension Period, monthly Base Rent for the next ensuing year of the Term shall be paid at the monthly Base Rent established by Landlord in its Market Rent Notice until the appraisal is completed. If, upon completion of the appraisal, it is determined that Market Rent is less or more than that set by Landlord, then an adjustment based upon such lower or greater rent shall be made based on the number of months therefor paid by Tenant but in

no event shall rent be lower than that paid for the final year of the Initial Term (or the final year of the First Extension Period, as applicable). In no event shall the extension of the Term be affected by the determination of the monthly Base Rent, such exercise of an Extension Option being fixed at the time at which Tenant delivers the Extension Notice.

**17.04. APPRAISAL.** When the terms of this Lease provide that Market Rent shall be determined by appraisal with respect to an Extension Period, the following appraisal procedures shall apply:

(a) Within ten (10) business days following the end of the Tenant Response Period, the Tenant and Landlord shall each choose a real estate appraiser who has at least five (5) years' full time commercial appraisal experience in Fairfield County and shall deliver Notice to the other party of its selection. Notwithstanding the preceding sentence, the Landlord may choose the firm of Wellspeak, Dugas & Kane, LLC, or its successor as the Landlord's appraiser. If a party does not appoint an appraiser within such ten (10) day period, the single appraiser appointed shall be the sole appraiser and shall establish the Market Rent for the applicable Extension Period.

(b) If the two (2) appraisers are appointed by the parties as stated above, they shall meet within ten (10) business days following their appointment in accordance with "(a)" above, and the appraisers selected shall select a third appraiser meeting the qualifications as set forth in "(a)" above; if the two (2) appraisers fail to select the third appraiser within such time period, either of the parties to this Lease by giving ten (10) days' Notice to the other party can apply to the then president of the regional real estate board located in Fairfield County, or to the presiding judge of the Superior Court of the Judicial District of Stamford/Norwalk, for the selection of a third appraiser who meets the qualifications stated in "(a)" above. Each of the parties shall bear one half (1/2) of the cost of appointing the third appraiser and of paying the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either party.

(c) Within thirty (30) business days after their appointment, the appraisers shall determine the Market Rent for the Leased Premises for the applicable Extension Period, and shall notify Tenant and Landlord of such determination within three (3) days thereafter, which determination shall be final and binding upon Tenant and Landlord. If the appraisers are unable to agree upon the Market Rent, the Market Rent will be deemed to be the average of the Market Rents proposed by the two appraisers whose Market Rents are closest in dollar value (the Market Rent of the other appraiser being disregarded).

(d) Landlord and Tenant shall each pay one-half (1/2) of the expense of the appraisers' fees.

**17.05. AMENDMENT.** Within fifteen (15) days following the establishment of the Market Rent and the resulting monthly Base Rent with respect to the applicable Extension Period pursuant to the appraisal procedure set forth above, Landlord and Tenant shall execute an amendment to this Lease confirming the monthly Base Rent payable with respect to the applicable Extension Period.

## **ARTICLE XVIII - CONTINUITY OF MANAGEMENT.**

**18.01. DEFINITION OF OPERATIONS MANAGER.** "Operations Manager" means the person (or persons) responsible for the day to day on-site management of the Catering and Banquet Business Operations, the Lodging Business Operations and the Tenant's restaurant and cocktail lounge operations. By way of example, the Operations Manager as of the Initial Commencement Date is Rory Tagert.

**18.02. MANAGEMENT CONTINUITY.** Tenant will not replace an Operations Manager or assign the responsibilities of an Operations Manager to more than one person, without the prior Consent of Landlord, which will not be unreasonably withheld or delayed. The preceding sentence shall include replacements necessitated by the death or disability of an Operations Manager. Prior to any replacement of an Operations Manager or assignment of responsibilities of an Operations Manager to more than one person, Tenant shall give Notice to Landlord of the proposed replacement (or replacements) and, upon request of Landlord, Tenant will provide Landlord with any other information reasonably

requested by Landlord for the purpose of evaluating the proposed replacement (or replacements). The Consent by Landlord to any change of an Operations Manager shall not constitute a waiver of the necessity for such Consent to subsequent changes of an Operations Manager.

**18.03. LANDLORD'S RIGHTS ON CERTAIN CHANGES OF OPERATIONS MANAGER.** If Tenant gives Landlord any Notice of proposed change of an Operations Manager, then Landlord may, by Notice to Tenant, invoke a probationary period of not less than three (3) months or more than twelve (12) months (the "Probationary Period") during which Landlord's Director of Parks and Recreation and Finance Director will monitor the performance of the proposed replacement (or replacements) and, to that end, may require the attendance of the proposed replacement (or replacements) at monthly meetings to discuss issues related to the management transition. The Landlord's Notice under this Section may only be given within thirty (30) days after Notice of the proposed change of Operations Manager and will specify the length of the Probationary Period within the limits described above. The Probationary Period, if invoked, will commence thirty (30) days after the Tenant's Notice of the proposed change of Operations Manager. If, at any time during the Probationary Period, the Landlord is not reasonably satisfied with the performance of the proposed replacement (or replacements), then the Landlord may terminate this Lease by lapse of time, effective on the date specified in Landlord's termination Notice. If the Landlord does not deliver Notice of termination of this Lease prior to the expiration of the Probationary Period, then the Landlord will be deemed to have given the Landlord's Consent to the proposed replacement (or replacements). Landlord's termination Notice must specify an effective date for the termination, and if the termination Notice is given, this Lease shall come to an end by lapse of time as if the Term had always expired on the effective date of the termination, and provided Tenant has vacated the Leased Premises in accordance with the provisions of this Lease, Tenant shall be deemed to be released from any further liability or obligations of Tenant under this Lease arising from and after the date Tenant has vacated.

**18.04. PURPOSE.** The purpose of this Article is to provide a mechanism by which the Landlord can be assured that replacement Operations Managers will maintain the same level of service as Rory Tagert.

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page is the signature page.* --



IN WITNESS WHEREOF, each party has caused this Lease to be executed on the date below written, the date of the Lease being as of the date set forth on Page 1, if different than the date of execution for either party.

TENANT:

LONGSHORE ASSOCIATES OF WESTPORT  
LIMITED PARTNERSHIP

Signature

Name

Title

Date

*[Handwritten Signature]*  
RORY TAGERT.  
MANAGING DIRECTOR.  
1/04/2007.

LANDLORD:

TOWN OF WESTPORT

Signature

Name

Title

Date

*[Handwritten Signature]*  
GUYMON JACOB  
FIRST SHERIFF  
1/18/07

State of Connecticut

County of Fairfield

ss. ~~City~~ Town of Westport

Personally appeared Rory Tagert, signer and sealer of the foregoing instrument, who acknowledged himself to be the Managing Director of Longshore Assoc. of Westport LP and the execution to be his free act and deed and the duly authorized free act and deed of said Ltd. partnership before me, this 4th of JANUARY, 2007.

*[Handwritten Signature]*  
JAMES RANDOL, ESQ.  
Commissioner of the Superior Court/Notary Public  
JAMES RANDOL, ESQ.

State of Connecticut

ss City / Town of Westport

County of Fairfield

Personally appeared Gordon Jasloff, signer and sealer of the foregoing instrument, who acknowledged the same to be his free act and deed and the free act and deed of Town of Westport, before me, this 18 day of January, 2007.

Susan V. Brown  
Commissioner of the Superior Court/Notary Public  
*my commission expires April 30, 2007*

EXHIBIT A – DESCRIPTION OF LEASED PREMISES

SCHEDULE 6.01(e) – LIST OF CIVIC AND TOWN GROUPS

WESTPORT CIVIC GROUP AFFILIATIONS	OTHER CIVIC ORGANIZATIONS
Al's Angel's	Arts for Healing
CT Yankees	Cancer Care
Broadway Beachside	Habitat for Humanity
Chabad Lubavitch of Westport	St. Vincent's
Compo Beach Improvement	St. Vincent's Hospital Gala
County & Ball Snow Date	American Heart Association
County Assembly	Friend's and Family
Westport Teachers Retirement Parties	Norwalk Seaport Association
EMS Dinner	ALS Fundraiser
Greens Farms Academy Meetings	Special Olympics Fundraiser
Levitt Pavilion	United Nations Fundraiser (Thant)
Westport Woman's Club Gala	Friendship Circle
LMGA Kick Off	JHE Foundation Luncheon
LMGA Member Guest	March Madness
LWGA – October	Operation Hope
LWGA Golf – July	Housatonic College Fundraiser
Pal Holiday Party	FCCF
Project Return	
Red & White Ball	
Rotary plus or minus 42 luncheons yearly	
Sam Luciano Golf Tournament	
St. Lukes Anniversary Dinner	
Staples Reunions	
Sunrise Rotary	
Westport Chamber Outing	
Westport Fire Retirement Parties	
Westport Historical Society	
Westport New Neighbors	
Westport P & R Golf Outing	
Westport Playhouse Fundraiser	
Westport Police Retirement Parties	

## SCHEDULE 6.06(o) – PLANNED CAPITAL IMPROVEMENTS

1. Porte Cochere – updating the look of the main entrance with a new porte cochere which would extend from the main entrance over the roadway and anchored by substantial square columns, decorated at the bottom between the two columns with planter boxes.
2. Rear of building directly to the south of the Ballroom – build a stone patio which would be accessed from the Ballroom through three sets of French Divided Light Doors. The patio will be designed to have steps leading from the south of the patio, down to the Great Lawn. Planter boxes would be placed on the wall of the new patio.
3. Replace the acoustic ceiling treatment on the first floor of the Inn with a sheetrock ceiling with upgraded recessed lighting.
4. Recarpeting the ballroom.
5. Gut and redo the men’s bathroom. New stalls and new vanities with updated design. New flooring.
6. Drawing room: replace sliding windows with French divided-light windows. Replace the ceiling with new sheetrock. Upgrade lighting and new carpet and/or treatment.
7. General repainting and refreshing.