



WESTPORT™

Board of Finance

Town Hall, 110 Myrtle Avenue
Westport, CT 06880
BOF@westportct.gov

NOTICE AND AGENDA OF BOARD OF FINANCE SPECIAL MEETING

SPECIAL NOTICE ABOUT PROCEDURES FOR THIS ELECTRONIC MEETING:

There will not be a physical location for this meeting. This meeting will be held electronically. Meeting materials will be available at westportct.gov along with the meeting notice posted on the Meeting List & Calendar page.

INSTRUCTIONS TO ATTEND ZOOM MEETING:

Join Zoom Meeting

<https://us02web.zoom.us/j/89181445505?pwd=cUJaRWdBSzlua01YZ1BPZGluSjNldz09>

Phone Number: +1 646 876 9923 US (New York)

Meeting ID: 891 8144 5505

Passcode: 105165

NOTICE OF BOF EXECUTIVE SESSION

The Board of Finance will hold a Special Meeting on **Monday, February 13, 2023 at 7:30 p.m. with remote participation** for the following purpose. It is anticipated that the Board of Finance will vote to go into Executive Session for such discussion:

1. To discuss the Inn at Longshore lease.

Public access will resume at 8:00 p.m. via the zoom link above.

2. Upon the request of the First Selectwoman and in accordance with §C6-2 of the Town Charter, to recommend a Fourth Amendment to the Lease between the Town of Westport and Longshore Hospitality, LLC for the Inn at Longshore, located at 260 South Compo Road.

FOURTH AMENDMENT TO LEASE

This Fourth Amendment to Lease (the "Fourth Amendment") is dated as of January 28, 2023 by and between the TOWN OF WESTPORT (the "Town" or "Landlord") and LONGSHORE HOSPITALITY, LLC ("Longshore Hospitality" or "Tenant"). The foregoing entities are sometimes referred to individually or collectively as "Party" or the "Parties."

RECITALS

- A. The Town and Longshore Associates of Westport Limited Partnership ("LAWLP") entered into a Lease dated January 1, 2007 (the "2007 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 2007 Lease, thereby extending the Term of the 2007 Lease to December 31, 2028.
- C. LAWLP assigned all of its rights and obligations under the 2007 Lease to Longshore Hospitality pursuant to that certain Assignment and Assumption of Leases dated as of October 26, 2020.
- D. The Town and Longshore Hospitality entered into a First Amendment to Lease dated November 4, 2020 (the "First Amendment"), amending certain provisions of the 2007 Lease.
- E. The Town and Longshore Hospitality entered into a Second Amendment to Lease dated January 27, 2021 (the "Second Amendment"), amending certain provisions of the 2007 Lease related to insurance.
- F. The Town and Longshore Hospitality entered into a Third Amendment to Lease dated December 22, 2021 (the "Third Amendment"), amending certain provisions of the 2007 Lease.
- G. For purposes of this Fourth Amendment, the word "Lease" means the 2007 Lease, as amended by the First Amendment, the Second Amendment and the Third Amendment.
- H. The Town and Longshore Hospitality desire to amend certain provisions of the Lease in order to facilitate a major renovation and improvement project at the Inn at Longshore and implement other needed changes.

NOW THEREFORE, for good and valuable consideration, the Parties agree as follows.

1. New Definitions. The following new defined phrases are added to Article II.

- a. **2.04A. "ARCHITECT"** means an architect licensed to practice in Connecticut.
- b. **2.04B. "AUDIT"** means an audit by the Town's Finance Director or his designee 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.
- c. **2.11A. "CONSTRUCTION BUDGET SUMMARY"** means the Construction Budget Summary included in the Project Summary.
- d. **2.11B. "CONSTRUCTION COMPLETION DATE"** means the date on which all elements of the Improvement Project described in the Project are substantially completed and a Certificate or Certificates of Occupancy has been issued for all habitable spaces in the Building.
- e. **2.15A. "IMPROVEMENT PROJECT"** means the renovation and improvement project to be undertaken by Tenant to address physical improvements to the Leased Premises.
- f. **2.15B. "IMPROVEMENT PROJECT DEFAULT"** means a failure by Tenant, by December 31, 2027, to complete all of the elements of the Improvement Project described in the Project Summary or to spend for labor and materials associated with the Improvement Project the full amount of the Tenant's Capital Investment Commitment. Notwithstanding Article XIV, an Improvement Project Default shall be effective thirty (30) days after delivery of Notice by the Town to Tenant without further grace period or opportunity to cure, unless, within that thirty (30) day period, Tenant has delivered to the Town an affidavit, signed by a Manager of Tenant, certifying that Tenant completed all of the elements of the work described in the Project Summary and that the work was completed under-budget due to value engineering, prudent construction management practices, or both, accompanied by an itemized list showing the savings realized by Tenant on the elements of the work described in the Construction Budget Summary.
- g. **2.15C. "INTERIM PERIOD"** means the period beginning on the date of signing of this Fourth Amendment by the Town's First Selectwoman and ending on the first day of the Post-Renovation Period.
- h. **2.19A. "OPERATIONS RESUMPTION DATE"** means, with respect to the beginning of the Post-Renovation Period, the date upon which there occurs a Catered Event; an overnight stay in a guest room in the Building; or meal service in the Restaurant.
- i. **2.19B. "POST-RENOVATION PERIOD"** means the period beginning on the Operations Resumption Date and ending on the last day of the Term.
- j. **2.20A. "PROJECT SUMMARY"** means the Project Summary attached to this Fourth Amendment as Exhibit A.

- k. **2.22A. "RECEIPTS"** means all funds received from guests, customers, vendors and service providers, whether paid by cash, check, credit card, electronic funds transfer or any other means, and includes, without limitation, fees, charges, referral fees and commissions, for food, beverages, bartenders, wait staff, rooms, guest services, flowers, photography, videography, furniture and equipment rentals, music and Itemized Service Charges but excludes Voluntary Tips, Connecticut Sales Tax and Connecticut Room Occupancy Tax.
- i. **2.23A. "RENOVATION PERIOD"** means the period during which Catering and Banquet Business Operations, Lodging Business Operations and meal service in the Restaurant are suspended by Tenant in connection with the Improvement Project.
- m. **2.28A. "TENANT'S CAPITAL INVESTMENT COMMITMENT"** means \$8,000,000. The following rules apply to the calculation of Tenant's Capital Investment Commitment. There may be counted towards Tenant's Capital Investment Commitment only the charges of the construction contractor(s) for labor, materials, insurance, site safety, profit and the like, and the fees of design professionals (for example, architects, engineers and interior designers) that are associated with capital improvements. Notwithstanding, paintings, framed art, sculptures and decorative fixtures, such as chandeliers and sconces, may be counted towards Tenant's Capital Investment Commitment only if included on a list, delivered by Tenant to the Town's Finance Director, that includes the name of the artist or fabricator and the cost of each item (the "Art and Opulent Fixtures List"). All items appearing on the Art and Opulent Fixtures List shall remain at the Leased Premises for the duration of the Term and shall be turned over to the Landlord free-of-charge upon expiration or termination of this Lease. Tenant shall not remove from the Leased Premises any item appearing on the Art and Opulent Fixtures List without the Landlord's Consent.¹ Consumable items and supplies customarily used in restaurants, banquet facilities or hotels, including, without limitation, flatware, utensils, glassware, liquor and linens shall not be counted towards Tenant's Capital Investment Commitment.

¹ The following exception shall apply to portable items appearing on the Art and Opulent Fixtures List that have appreciated in value as of the date of expiration or termination of this Lease. If, as of the date of expiration or termination of this Lease, Tenant is current on all of its monetary obligations under this Lease and there is not an uncured event of default, then Tenant may remove from the Leased Premises any item that has appreciated in value provided that: (a) the item is not physically attached to the Building (*for example, a chandelier may not be removed*); (b) Tenant delivers to Landlord, at least thirty (30) days prior to the expiration or termination of this Lease, a list of the items that Tenant plans to remove (the "Removal List"); (c) the Removal List includes the current estimated value of each item supported by an appraisal signed by a reputable art or antiques dealer; and (d) the Removal List is accompanied by a check payable to the Landlord in the amount of the product of the original cost of each item appearing on the Removal List and the increase in the CPI since the date of the Art and Opulent Fixtures List. For this purpose, there shall be no floor or ceiling on annual increases in the CPI. *Example: If the Removal List includes an Andy Warhol print (original cost \$5,000) and a Norman Rockwell print (original cost \$5,000) and the increase in CPI between the date of the Art and Opulent Fixtures List and the date of expiration or termination of this Lease is 90%, then Tenant shall deliver to the Landlord a check in the amount of \$19,000.*

2. **Restatement of Certain Definitions in First Amendment.** The following phrases defined in Section 1(b) of the First Amendment are pertinent to this Fourth Amendment and are therefore restated: Gross Revenue; Itemized Service Charges; and Voluntary Tips.

3. **Town's Consent Prior to Commencement of Work.** Section 6.02, which provides for the Town's prior Consent to alteration and improvement work, shall apply to the Improvement Project except that: (a) the references in Section 6.02 to closure of the Restaurant shall not apply, it being acknowledged that the Restaurant will be closed while construction is in progress; (b) prior to commencement of work on the Improvement Project, Tenant shall deliver to the Town for review and approval by all Town boards and commissions having jurisdiction, detailed plans and specifications and a written estimate of the cost of work for the Improvement Project prepared by an Architect; and (c) it shall not be unreasonable for the Town to withhold its Consent to the Improvement Project if: (i) the plans and specifications do not include all of the work described in the Project Summary; or (ii) the estimate of the cost of work for the Improvement Project is less than the Tenant's Capital Investment Commitment.

4. **Contracts and Payment.** Tenant will be responsible for entering into all contracts with design professionals, construction and trade contractors and suppliers for labor and materials associated with the Improvement Project and for payment of all design professionals, contractors and suppliers for services rendered and materials provided. Tenant will procure and maintain a policy of builder's risk insurance, naming the Town as additional insured, for the duration of the construction phase of the Improvement Project. Tenant shall forward to the Town's Finance Director an affidavit signed by Tenant's Manager certifying the total paid to date by Tenant to contractors and suppliers: (a) within two (2) weeks after the total paid by Tenant to contractors and suppliers exceeds the Tenant's Capital Investment Commitment; and (b) within three (3) months following the Construction Completion Date. Tenant shall retain, for a period of five (5) years following the Construction Completion Date, copies of all invoices and payment confirmations (*for example, cancelled checks or confirmations of electronic funds transfer*) associated with the Improvement Project (the "Invoice and Payment Records"). Tenant shall make the Invoice and Payment Records available for Audit.

5. **Base Rent Calculated By Percentage of Gross Revenue.**

- a. The following sections are deleted in their entirety: Section 1.1(h) (Revenue Share); Section 2.03 (Applicable Revenue Threshold); Section 2.14 (Excess Revenues); and Section 4.02(c) (Revenue Share).
- b. Effective as of the first day of the month after the beginning of the Interim Period and thereafter for the duration of the Interim Period, in lieu of the Base Rent due under the 2007 Lease, Tenant shall pay, as Base Rent, 15% of Gross Revenue. Beginning on the first day of the Post-Renovation Period and thereafter for the duration of the Term, in lieu of the Base Rent due under the 2007 Lease, Tenant shall pay, as Base Rent, 18.8% of Gross Revenue. Tenant will calculate Gross Revenue on a monthly basis. Payments of Base Rent are due on or before the tenth (10th) day of each month in arrears. *Example: Payment of Base Rent for the month of March, 2023 will be due on or before April 10, 2023.*

- c. Together with each monthly payment of Base Rent, 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 due under Section 5(b) of this Fourth Amendment. The Town's Finance Director shall have the right to require Tenant to deliver a ledger that includes the following data: for each day of the applicable calendar month, the name and total Receipts from each guest and customer. Tenant shall retain copies of all guest contracts, invoices, credit card slips and other records supporting the reporting obligation in this Section 5(c) for a period of three (3) years and shall, upon five (5) days' notice, make all of those records available for Audit.

- d. In calculating Gross Revenue and Base Rent under Section 5(b) of this Fourth Amendment, Tenant shall not, by means of cross-marketing, cross-promotion, event packaging, bundling of services or otherwise, allocate or assign Receipts to the Restaurant or to any business entity in which Tenant or any of Tenant's principal owners has an ownership interest, if those Receipts are properly allocable to Catering and Banquet Business Operations or Lodging Business Operations. The Town shall, upon request, have the right to Audit the financial records of the Restaurant and any business entity in which Tenant or any of Tenant's principal owners has a controlling or majority ownership interest. In the event of a disagreement between the Town and Tenant as to whether Receipts that are properly allocable to Banquet and Catering Business Operations or Lodging Business Operations have been diverted in violation of this Section 5(d), then the disagreement shall be resolved under the dispute resolution provisions of Section 16 of this Fourth Amendment.

6. **Abatement of Base Rent During Renovation Period.** Payments of Base Rent shall not be due during the Renovation Period. If Tenant realizes any Receipts from Catering and Banquet Business Operations or Lodging Business Operations during the Renovation Period, then one third of those Receipts shall be counted as Gross Revenue in each of the first three (3) months of the Post-Renovation Period. *Example: During the Renovation Period, Tenant accepts a non-refundable deposit for a wedding. Three weeks later (but still during the Renovation Period), the bride and groom cancel the wedding and forfeit the deposit. One third of the deposit is counted as Gross Revenue in each of the first three (3) months of the Post-Renovation Period.* Additional Rent shall continue to be due and payable during the Renovation Period. *Examples of Additional Rent include sewer use charges and reimbursement of insurance premiums under the Second Amendment.*

7. **Minimum Rent.** Beginning January 1, 2029 and thereafter for the duration of the Term, Base Rent will be subject to a floor (the "Minimum Rent"). For the 2029 calendar year the Minimum Rent will be \$600,000.00. Beginning with the 2030 calendar year and thereafter for each calendar year of the Term, the Minimum Rent will be increased by the percentage of increase of the CPI, as defined and limited under Section 2.12. For the avoidance of doubt, in no event shall the Minimum Rent decrease from one calendar year to the next, even if the CPI decreases. Payments of Minimum Rent will be made on a monthly basis (on the first day of each month, in

advance), subject to reconciliation with the Base Rent calculated under Section 5(b) of this Fourth Amendment. For any month in which the Base Rent exceeds the Minimum Rent, the excess will not be credited to the Minimum Rent payment due for any subsequent month.

8. Excessive Duration of Renovation Period, Early Commencement of Minimum Rent. Notwithstanding the first sentence of Section 7 of this Fourth Amendment, if the Renovation Period extends longer than twelve (12) months due to circumstances within Tenant's reasonable control, then monthly payments of Minimum Rent, at the rates prescribed by Section 9 of this Fourth Amendment, shall be due starting on the first day of the month after the first anniversary of the start of the Renovation Period.

9. Seasonal Adjustment of Minimum Rent. In recognition of the seasonality of Catered Events and patronage of the Restaurant, Tenant will be entitled to a seasonal adjustment of the monthly Minimum Rent payments as follows: November through April, $\frac{2}{3}$ multiplier; May through October, $1\frac{1}{3}$ multiplier. *Example: Minimum Rent for 2029 calendar year = \$600,000 ÷ 12 months = \$50,000 per month. The payments for January through and including April are \$50,000 X $\frac{2}{3}$ = \$33,333 per month. The payments for May through and including October are \$50,000 X $1\frac{1}{3}$ = \$66,667 per month. The payments for November and December are \$50,000 X $\frac{2}{3}$ = \$33,333 per month.*

10. Examples of Calculation of Payment of Base Rent and Minimum Rent. The following examples show how payments of Base Rent and Minimum Rent will be calculated and reconciled. *Example A: The payment of Minimum Rent due and paid by Tenant for January, 2029 is \$33,333. On February 5, 2029, Tenant submits a calculation of Base Rent indicating that, for the month of January, 2029, 18.8% of Gross Revenue was \$38,333. On or before February 10, 2029, Tenant will pay the Town the sum of \$5,000, being the excess of the Base Rent over the monthly payment of Minimum Rent. Tenant cannot claim the \$5,000 excess as a credit against the monthly payment due for February, 2029 or any subsequent month. Example B: The monthly payment of Minimum Rent due and paid by Tenant for June, 2029 is \$66,667. On July 5, 2029, Tenant submits a calculation of Base Rent indicating that, for the month of June, 2029, 18.8% of Gross Revenue was \$61,667 (i. e., the monthly payment of Minimum Rent exceeded the Base Rent). The payment of Minimum Rent due for the month of July, 2029 will be \$66,667. Tenant cannot claim the \$5,000 difference as a credit against the monthly payment due for June, 2029, July, 2029 or any subsequent month.*

11. Good Standing Credits.

- a. Beginning with the second month of the Post-Renovation Period, or if later, the second month after the Construction Completion Date, and for each of the next eighty-three (83) months, for each month that Tenant is current on its monthly payments of Rent and there is not an uncured event of default under Article XIV, Tenant will be entitled to a credit in the amount of \$28,500 against the monthly payment of Rent (the "Good Standing Credit").

- b. The following rules shall apply to the period ending December 31, 2028². If the Good Standing Credit exceeds the Base Rent due for a month, then the excess shall be applied as a credit to the Base Rent due for the first month thereafter in which the Base Rent exceeds the Good Standing Credit and to each successive month in which the Base Rent exceeds the Good Standing Credit until the excess is exhausted. *Example: If the Base Rent due for the month of October, 2027 is \$25,500, the Base Rent due for the month of November, 2027 is \$30,000 and the Base Rent due for the month of December, 2027 is \$30,000, then the "unused" Good Standing Credit of \$3,000 (i. e., for the month of October, 2027) shall be carried forward and applied as follows: \$1,500 to the Base Rent due for November, 2027 and \$1,500 to the Base Rent due for December, 2027. Notwithstanding anything in this Fourth Amendment to the contrary, under no circumstances shall the Town be obligated to pay to Tenant the amount of any Good Standing Credit that is unused or unapplied due to expiration or termination of this Lease.*

12. **Capital Improvement Fund.** Starting with the first January after the start of the Post-Renovation Period and each January thereafter for the duration of the Term, Tenant will contribute to a capital improvement fund ("CI Fund"), to be held by Tenant in a bank account, the following amounts calculated by reference to the prior calendar year: one percent (1%) of Gross Revenue. The CI Fund will be dedicated by Tenant exclusively for capital improvements to the Leased Premises. The CI Fund will be subject to Audit. Semi-annually, in the months of January and July, Tenant will deliver to the Town's Finance Director a report on Tenant's contributions to, and use of, the CI Fund, including copies of monthly bank statements showing all deposits and withdrawals/payments, together with copies of supporting invoices.

13. **Extension of Term.** The Term of the Lease is extended for a period of ten (10) years beginning January 1, 2029 and ending December 31, 2038 (the "Expiration Date").

14. **Extension Options.** Section 17.01, Section 17.02, Section 17.03, Section 17.04 and Section 17.05 are deleted in their entirety and replaced with the following.

17.01. EXTENSION OPTIONS. The Town grants Tenant two options to extend this Lease with respect to the entire Leased Premises (each an "Extension Option" and the "First Extension Option" and "Second Extension Option", respectively). The Extension Options shall be for consecutive ten (10) year periods beginning January 1, 2039 and January 1, 2049, respectively (each an "Extension Period" and the "First Extension Period" and "Second Extension Period", respectively). The following terms and conditions shall apply to the Extension Options.

- (a) **Manner of Notice.** Tenant shall deliver to the Town Notice of the exercise of the First Extension Option not later than eighteen (18) months prior to the Expiration Date, time being of the essence. Tenant shall deliver to the Town Notice of the exercise of the Second Extension Option not later than eighteen (18) months prior to the expiration of the First Extension Period, time being of the essence. For the

² Tenant's obligation to make monthly payments of Minimum Rent commences on January 1, 2029 under Section 7 of this Fourth Amendment.

purposes of this Lease, "Extension Notice" shall mean a Notice delivered pursuant to this Section 17.01(a). If an Extension Notice is not delivered by the applicable deadline, then the applicable Extension Option shall automatically expire.

- (b) Termination Due to Improvement Project Default. In the event of an Improvement Project Default, the Town shall have to terminate the Extension Options, in the Town's sole and absolute discretion, by delivery of Notice to Tenant.
- (c) Suspension. Tenant's right to exercise the Extension Options shall be suspended, at the election of the Town, 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, the Town shall have the right to cancel Tenant's exercise of the Extension Option by delivery of Notice to Tenant.
- (d) Base Rent, Minimum Rent and Other Terms and Conditions. During the Extension Periods, the Base Rent and Minimum Rent shall continue to be payable in the amounts and manner as provided in this Fourth Amendment and all of the other terms, conditions and covenants of the Lease shall continue to apply.

15. Other Changes.

- a. Arrangements for utilities and services at the Leased Premises will remain unchanged except that the Town will assume responsibility for plowing snow in the parking lot and driveway adjacent to the Building.
- b. Tenant shall no longer be obligated to pay the Entitlement Fee (defined in Section 1.1(g) and referred to in Section 4.02(b)).
- c. Tenant shall no longer be obligated to dedicate a portion of the Restaurant to Recreational Patrons (defined in Section 2.23 and referred to in Section 6.01(c)).
- d. Tenant shall no longer be obligated to offer a Pub Menu (defined in Section 2.21 and referred to in Section 6.01(c)).
- e. Tenant shall no longer be required to operate the Restaurant for specific minimum hours (referred to in Section 6.01(c)).
- f. Section 6.06(l) (requirement for the Leased Premises to be open to the public for minimum days and times) is deleted.
- g. The Notice Address for Tenant is changed to: Longshore Hospitality, LLC, Attention Michael Ryan, 260 South Compo Road, Westport, CT 06880.

16. **Resolution of Disagreements Regarding Calculation of Base Rent.** Disagreements as to the calculation of Base Rent or arising under Section 5(d) of this Fourth Amendment shall be resolved as follows.

- a. **Negotiation.** First, the Parties shall meet either alone or together with their respective advisors, in the spirit of good faith, to attempt to negotiate a resolution of the disagreement by mutual agreement in writing.
- b. **Mediation.** If the Parties are unable to resolve the disagreement by mutual agreement under Section 16(a) of this Fourth Amendment within two (2) weeks following the initiation of negotiations between the Parties, then the disagreement shall be submitted to non-binding mediation between the Parties and a mediator to be jointly selected by the Parties. A Party seeking to resolve a disagreement shall notify the other Party, in writing, that it wishes to begin the mediation process. Upon receipt of such written notice, the Parties shall meet to mutually select a mediator. The mediation process shall be deemed initiated upon the receipt of the aforementioned written notice by the receiving Party.
- c. **Arbitration.** If the disagreement is not resolved by mediation under Section 16(b) of this Fourth Amendment within a period of two (2) weeks following the initiation of mediation, then either Party may demand that the dispute be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Commercial Arbitration Rules") and upon such demand, the disagreement shall be submitted to arbitration in Fairfield County, Connecticut. The Parties may agree upon one (1) arbitrator. If they cannot so agree within two (2) weeks following demand for arbitration, then each Party shall select an arbitrator, and the arbitrators so selected shall select a third arbitrator (the "Deciding Arbitrator"), and the decision of the Deciding Arbitrator shall be binding and conclusive. If either Party refuses or neglects to join in the appointment of an arbitrator, an arbitrator shall be appointed in accordance with the Commercial Arbitration Rules. All arbitration hearings conducted hereunder, and all judicial proceedings to enforce any of the provisions of this Lease, shall take place in Fairfield County, Connecticut. The Parties expressly consent to such venue and to the personal and subject matter jurisdiction of such courts and such proceedings. Notice shall be given and the hearing conducted in accordance with the provisions of the Commercial Arbitration Rules. The arbitrator shall hear and determine the matter and shall execute and acknowledge its award in writing and deliver a copy thereof to each Party by registered or certified mail. A judgment confirming the award of the arbitrator may be rendered in any court having jurisdiction. Costs and expenses of arbitration, including, but not limited to, the fees of the arbitrator, shall be borne by the non-prevailing Party or in such proportion as the arbitrator shall determine.
- d. Either Party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either Party also may,

without waiving any remedy under this Lease, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that property, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

17. **Other Terms Remain In Effect.** Except as specifically modified by this Fourth 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. If a clause or provision in this Fourth Amendment conflicts with a clause or provision of the 2007 Lease, First Amendment, Second Amendment or Third Amendment, then the clause or provision of this Fourth Amendment shall control.

18. **Municipal Approvals.** The Town's obligations under this Fourth Amendment are contingent upon approval by all boards and commissions of the Town having jurisdiction and this Fourth Amendment shall not be binding upon the Town unless and until all such approvals have been secured.

19. **Counterparts and Electronic Signatures.** This Fourth 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 Fourth Amendment. The Parties agree that this Fourth 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 Fourth Amendment. The Parties intend that electronic signatures or signatures indicated on a PDF constitute original signatures and that a Fourth 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.

20. **Examples and Use of Italics.** In order to illustrate the operation and effect of certain provisions of this Fourth Amendment, italicized examples are sometimes used. Italicized examples are provided for convenience only, not for emphasis. Examples found in this Fourth Amendment shall not be construed as overriding the meaning of the words in the section or sections in which the examples or italicized words are found

21. **Miscellaneous.** Unless otherwise indicated in this Fourth Amendment, references to Articles and Sections refer to Articles and Sections of the 2007 Lease. Except as otherwise provided in this Fourth Amendment, capitalized words and phrases used in this Fourth Amendment shall have the meanings ascribed to them in the Lease. This Fourth Amendment shall be binding upon the successors and permitted assigns of the Parties. The Recitals are to be considered part of this Fourth Amendment. This Fourth Amendment shall not be effective until signed by the Town's First Selectwoman.

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IN WITNESS WHEREOF, the Parties have caused this Fourth Amendment to be executed on the date(s) written below.

TOWN OF WESTPORT

Signature J. S. T.
Name Jennifer S. Tucker
Title First Selectwoman, Westport
Date 1/31/23

LONGSHORE HOSPITALITY, LLC

Signature Michael Ryan
Name Michael Ryan
Title Managing Partner
Date 1/28/23

{Signature page to Fourth Amendment to Lease}

EXHIBIT A - PROJECT SUMMARY

Inn at Longshore Project Summary - Remodel Winter 2025

Longshore Hospitality LLC is currently planning a comprehensive renovation and upgrade of the Inn at Longshore. The vision is to reimagine the crown jewel of Westport and transform it into the preeminent waterfront hospitality venue in Fairfield County while maintaining the historical integrity of the property.

With the assistance architect Kenneth R Nadler Consulting, LLC along with numerous engineers and construction experts we have developed a plan which includes the following:

- New VFR HVAC throughout the building.
- Replace all windows and doors.
- Replace exterior siding, trim, columns, roofing, gutters and insulation.
- Upgrade exterior lighting, signage, and wayfinding.
- Guest Rooms will completely be remodeled with new bathrooms, plumbing fixtures, carpet, wallpaper, wainscoting, trim, and furniture.
- Portico will be built at Inn driveway entry.
- Ballroom and Drawing rooms will get new bars, lighting, floor, better access to the new outdoor terrace, carpet, window treatments.
- New Men's and Women's bathrooms.
- Lobby and Breakfast rooms will be reimaged with new flooring, lighting, trim, window treatments, and wainscoting.
- The kitchen will be gutted. We will replace the floors, walls and equipment bringing it up to all current Health Department standards.
- Outdoor terrace expansion with pergola system and bar that connects to the ballroom.
- New landscaping for the entire property
- Paint all areas of the entire building inside and out.
- Basement will be upgraded with epoxy floors and FRP walls.
- Life safety and fire suppression systems to be upgraded to meet code.
- Various plumbing and electrical upgrades as per code requirement.
- ADA compliance upgrades as per code requirement.

Inn at Longshore – Detail Per attached Budget

Div. 1 General Conditions

- Construction Salaries
- Insurances required during construction phase.
- Permit & Bond costs
- Misc. Supplies (unallocated)

- Storage for Inn furniture & contents
- Equipment Rental
- Cleaning

Div. 2 Site

- Demolition – Stage, Dome
- Remediation Testing,
- Misc. Site Expenses
- Landscaping *note: much of the landscaping scope is tied to moving a property line at the building rear adjacent to the existing driving range to allow for new terrace.

Div. 3 Concrete

- New Terrace

Div. 4 Masonry

- Exterior Masonry including Terrace on rear of ballroom. This patio is contingent on town approval of adjusted property line.
- Scaffolding required.

Div. 5 Steel

Div. 6 Wood & Plastics

- Guest Room Renovation Per Unit Allocation
 - Rooms & bathrooms redo. Partial drywall removal depending on room Requires exterior insulation, soundproofing at interior walls & ceilings.
 - \$20,000 per unit x 12 = \$240,000 total
- Basement Cleanup
- Termite damage
- Repair of concealed Structural Damage
- Interior & Exterior Demolition & Framing
- Framing of New Shed Roof over Stage (assuming no mechanicals preclude work)
- Misc. Carpentry
- Finish Carpentry Guest Rooms
- Finish Carpentry Lobby
- Renovation of Ballroom allowance \$300,000
- Millwork Drawing Room Bar
- Installation Drawing Room Bar
- Porte Cochere - \$125,000 Contingent on new Master plan adjustments
- Exterior Trim remove Existing & replace all trim w PVC. Restaurant Columns to be fiberglass.

- Hotel Kitchen FRP walls

Div. 7 Thermal

- Thermal Insulation 1st floor ceiling & 2nd & 3rd floor walls
- Soundproofing Cavity between ground floor, 2nd floor 2 layers of rock wool
- Acoustical treatment in Banquet Ceiling (Sound Proofing) \$22,800
- Pitched Roof Remove & Replace w GAF Architectural Shingle
- All flat or sloped low pitch roofs which were not recently replaced to have existing surface removed and replaced with EPDM
- Copper Standing Seam to be installed at all gable soffits
- Misc. Flashings
- Exterior Siding to be removed and replaced with Hardie Shingles (concrete 5" exposure siding pre-finished)
- Replace Gutters & Leaders
- Upgrade to Copper Fabricated Gutters & Leaders @ semi-circular stage roof

Div. 8 Windows & Doors

- Window Replacement (complete Alu Trend 68 aluminum clad wood windows.
- Window Installation
- Exterior door installation @ Banquet, Conference
- Interior Doors Rated (replacement with metal doors to comply with code)
- Interior Doors Guest Rooms (replace all guest room doors)
- Furnish & Install Interior door hardware
- Install RFID Card Entry Hardware
- Furnish & Install Shower Enclosures (panels)

Div. 9 Finishes

- Drywall
- Floor Covering
 - Ceramic Tile (bath tile covered in room renovation cost)
 - Hotel Kitchen Floor Remove & Replace Quarry Tile
 - Resilient Tile with Vinyl base @ utility spaces and janitor's closets
 - Wood Flooring
 - Demo Existing Front of House, Breakfast, Banquet Allowance \$15,000 psf.
- Painting & Coatings
 - Exterior
 - Interior
- Wallcoverings
 - Banquet & Ground Floor
 - Guest Rooms & Guest Room Halls & Staircases
- Common Bath Renovation Men's & Ladies Allowance of \$154,00 psf.

Div. 10 Specialties

- Bath Accessories (allowance of \$300 per bath)
- Bath Partitions In Men's & Women's common baths
- Interior Signage
- Exterior Signage
- Closet Accessories
- Roof Equipment Fence
- Roll Down Shades

Div. 11 Equipment

- Hotel Kitchen Equipment & Installation \$250,000
- Banquet Bar Equipment & Installation \$40,000
- Service Bar Equipment & Installation \$25,000
- Outside Bar Equipment & Installation \$40,000
- Fire Suppression Ansul Hotel \$10,500
- Drink System – Banquet PH
- Drink System – Exterior PH

Div. 12 Furnishings

- Casework
 - Hotel Vanities (included in room renovation)
- Countertops all natural Stone
 - Hotel Vanities (included in room renovation)
 - Banquet Mezzanine Bar
- FF&E (Includes Carpet)
 - Lobby
 - Guest Rooms
 - Public Areas
 - Outdoor
 - Banquet
 - OS&E

Div. 13 Specialties

Div. 14 Conveyance Systems

Div. 15 Mechanical Systems

- Fire Protection Sprinkler
 - Dry System required for Ballroom VRF
 - Hotel (change heads)
- Plumbing unknown misc.

- HVAC Mechanicals MEP estimate VRF system in Ground floor, Front of House, Conference, Breakfast, Guest Rooms & Hallways (It should be noted that the estimate includes Removals of Existing Systems, General Construction, HVAC, Plumbing, Electrical
- Refrigeration

Div. 16 Electrical

- Panel Replacement where needed
- Electrical Fixtures (Some Fixtures included in Guest Room Renovation & FF&E,)
- Lighting (Ballroom, Mezzanine, Bar, Conference, Parlor, Lounge /Hall Breakfast 95 pieces recessed)
- Low Voltage
 - AP's 18 pieces
 - Backbone
- Sound
 - Exterior
 - Lobby
- AV (2 screens)
- Camera's \$25,000
- Lightning Protection \$35,000

Restaurant Estimate- \$1.200,000

CONSTRUCTION BUDGET SUMMARY

Inn @ Longshore Divisional Summary

Hotel, Restaurant, Soft

Rooms
Area

12
23805

Hard Costs		Per Room	\$/SF
Div. 1 General Requirements Total	\$ 450,000	\$ 37,500	\$ 18.90
Div. 2 Site Total	\$ 400,000	\$ 33,333	\$ 16.80
Div. 3 Concrete Total	\$ 50,000	\$ 4,167	\$ 2.10
Div. 4 Masonry Total	\$ 215,000	\$ 17,917	\$ 9.03
Div. 5 Metals Total	\$ 12,500	\$ 1,042	\$ 0.53
Div. 6 Woods & Plastics Total	\$ 950,000	\$ 79,167	\$ 39.91
Div. 7 Thermal & Moisture Total	\$ 500,000	\$ 41,667	\$ 21.00
Div. 8 Windows & Doors Total	\$ 275,000	\$ 22,917	\$ 11.55
Div. 9 Finishes Total	\$ 475,000	\$ 39,583	\$ 19.95
Div. 10 Specialties Total	\$ 75,000	\$ 6,250	\$ 3.15
Div. 11 Equipment Total	\$ 320,000	\$ 26,667	\$ 13.44
Div. 12 Furnishings Total	\$ 425,000	\$ 35,417	\$ 17.85
Div. 13 Specialties Total	\$ -	\$ -	\$ -
Div. 14 Conveyance Total	\$ -	\$ -	\$ -
Div. 15 Mechanicals Total	\$ 1,200,000	\$ 100,000	\$ 50.41
Div. 16 Electrical Total	\$ 225,000	\$ 18,750	\$ 9.45
Hard Costs	\$ 5,572,500	\$ 464,375	234.09
Contingency	0%	\$ -	
GC FEE	10%	\$ 557,250.00	
Hard Cost Total	\$ 6,129,750		
Div. 20 Soft Costs	\$ 725,000		
Hard & Soft Total	\$ 6,854,750		
Restaurant Hard Costs	\$ 1,100,000		
Contingency	0%	\$ -	
GC FEE	10%	\$ 110,000	
Restaurant Cost Total	\$ 1,210,000		
Total Costs Hotel, Soft, Restaurant, Burden	\$ 8,064,750		